

Who Wants to Be a Prosecutor? And Why Care? Law Students' Career Aspirations and Reform Prosecutors' Goals

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ABSTRACT

Often called “progressive” or “reform” prosecutors, a number of reform-minded prosecutors have been elected recently across the United States—promising a distinctive vision of criminal justice and signaling that their role will be more attuned to issues of race and equity than “law and order.” Furthering this vision requires dramatic changes to the working cultures—the norms, practices, and even personnel—of their offices. Diversity plays a major role.

One central challenge is identifying, attracting, and hiring newly-minted lawyers who can, over time, be socialized into and sustain a changing organizational culture. This article empirically examines that challenge, which involves two sides of an equation of sorts. That

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is, the potential fit or link between prosecutors' goals on one side and law students' aspirations on the other.

We argue that although the pool of candidates interested in criminal law has remained relatively small over the past years, reform prosecutors can expand the pool by adopting strategic approaches to encourage minority students to join the prosecution and reaching out to aspiring public defenders. Our empirical findings further suggest that law schools have a more prominent role in the success of criminal justice reforms through the type of students they accept and the experiential learning opportunities they offer.

The article is divided into four substantive sections. It begins by addressing the broad "Why Care?" question and the first side of the equation. It provides an overview of the progressive or reform prosecutor idea, with an emphasis on hiring in the context of changing culture. The next two sections of the article turn to the other question in the title and the student side of the equation. Using a unique set of questions from the 2010 Law School Survey of Student Engagement (LSSSE), which ask students about their motivations for attending law school and choosing law as a profession, our first inquiry considers motivations and connections to students' career aspirations; in particular, working as a prosecutor. Most students have a mixture of motivations for attending law school, and only some of these are more conducive to criminal law as an area of legal specialization; even fewer are conducive to working as a prosecutor. Relying on annual LSSSE survey data from 2007-2018, our second of two inquiries focuses on those students specifically interested in criminal law as an area of legal specialization. In effect, the article's third section looks at the size and nature of the pool (which is quite small), with an emphasis on race and gender (important given prosecutors' interest in diversity) along with debt. Our findings suggest that while debt appears not to be a deterrent, students of color (especially African American and Hispanic males) are the least likely to want to work as prosecutors.

The final section of the article explores policy implications of the findings for expanding the pool of potential hires and better managing applicants' expectations. It emphasizes collaborations between prosecutors and law schools, as well as other organizations, and the importance of experiential learning opportunities that connect students with reform prosecutors and the criminal justice system.

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I. INTRODUCTION

Why would anyone choose a public service career in law?¹ The money is terrible compared to private practice.² To some observers,

1. Public administration and legal scholars have been seeking answers to this question through different lenses. *See generally* Jacqueline Carpenter, Dennis Doverspike & Rosanna F. Miguel, *Public Service Motivation as a Predictor of Attraction to the Public Sector*, 80 J. VOCATIONAL BEHAV. 509 (2012) (suggesting that the motivation to serve the public good is directly or indirectly related to individuals’ occupational choices); Robert K. Christensen & Bradley E. Wright, *The Effects of Public Service Motivation on Job Choice Decisions: Disentangling the Contributions of Person-Organization Fit and Person-Job Fit*, 21 J. PUB. ADMIN. RSCH. & THEORY 723, 738 (2011) (finding that individuals with stronger motivation to serve the public good are more likely to accept jobs that emphasize service to others whether that be private sector, public sector, or non-profit sector); *see also* Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 L. & SOC. INQUIRY 677, 700 (2006) (finding that debt did not have a significant impact on the likelihood that law students would enter the public sector). Instead, McGill argues that a more significant predictor is whether individuals came into law school with that desire. *Id.* at 699.

2. According to a recent survey by the National Association for Law Placement, the median entry-level salary for public defenders is \$58,300, while for local prosecutors, it is \$56,200. *Findings on First-Year Salaries from the 2018 Public Service Attorney Salary Survey*, NAT’L ASS’N FOR L. PLACEMENT (June 2018), <https://www.nalp.org/0618research>. The median entry-level salary for an associate at a law firm of 50 or fewer attorneys was about \$90,000 and for “BigLaw”

these students seem to be irrational actors given the investment made and debt incurred to become a lawyer.³ The prestige or status is problematic at best, and probably worse. One commentator even argued that one cannot work in a prosecutor's office and be a "good person" or be on the "right side of history."⁴ So, for aspiring line prosecutors at the local level, one may be valorized in the view of some for their service to the community, but still may be considered as being at the bottom of the professional hierarchy.⁵

Still, some do aspire to public service in frontline positions, perhaps most importantly in prosecutors' offices and public defenders' offices. These lawyers work at the legal system's enforcement frontline, an arena fraught with tension, especially so now, amid the renewed concerns over social and racial justice.⁶ It is where the law's ideals and principles face the everyday real world and are tested daily. Right away, this draws our attention to public defenders — the lawyers trying to hold that frontline. There is a constant need for law

firms with more than 700 attorneys the median is about \$180,000, an amount that is beyond what even the most experienced public service attorneys make. See *Findings on First-Year Salaries from the 2019 Associate Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (June 2019), <https://www.nalp.org/0619research>; *Findings on First-Year Salaries from the 2018 Public Service Attorney Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (June 2018), <https://www.nalp.org/0618research>.

3. The possible impact of debt on whether students would choose public service work was a major concern of The American Bar Association Task Force on Financing Legal Education [hereinafter *Task Force*]. See Memorandum from Dennis W. Archer, Chair, American Bar Association, Task Force on the Financing of Legal Education Report, Separate Statement of Philip Shrag 57–62 (June 17, 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.pdf. One of us, Daniels, was the consultant to the *Task Force*, *id.* at 43.

4. Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?* 14 GEO. J. LEGAL ETHICS 355, 396 (2001) [hereinafter *Good Prosecutor*]; Abbe Smith, *Are Prosecutors Born or Made?* 25 GEO. J. LEGAL ETHICS 943, 958 (2012) [hereinafter *Born or Made*].

5. A classic study done in the 1970s found prosecutors near the bottom of the prestige scale. Edward Laumann & John Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, AM. BAR FOUND. RSCH. J. 155, 166, 177, 199 (1977).

6. See generally PAUL BUTLER, *CHOKED HOLD: POLICING BLACK MEN* (2017); Angela J. Davis, *In Search of Racial Justice: The Role of the Prosecutor*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 821 (2013); Rebecca C. Hetey & Jennifer L. Eberhardt, *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System*, 27 CURRENT DIRECTIONS IN PSYCH. SCI. 183 (2018); Rebecca C. Hetey & Jennifer L. Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 PSYCH. SCI. 1949 (2014) (finding that exposure to extreme disparities can cause people to become more, not less, supportive of the punitive criminal-justice policies that create those disparities); Anne Coughlin, *The Cosby Case Shows That We Don't Have Rule of Law. We Have Rule by Prosecutor*, WASH. POST (July 8, 2021, 9:53 AM), https://www.washingtonpost.com/outlook/bill-cosby-bruce-castor-prosecutor/2021/07/08/f4dfc59c-df51-11eb-ae31-6b7c5c34f0d6_story.html (arguing that prosecutors have unchecked authority).

students to become skilled and dedicated public defenders to do just that, even if the reality falls short.⁷

Our main interest, however, is in prosecutors. For good or bad, they “are the gatekeepers of America’s criminal justice system.”⁸ They put the law into action and determine under what circumstances defendants will be held accountable.⁹ In particular, it is reform-minded prosecutors, what some may call “progressive prosecutors,” that interest us.¹⁰ We discovered, however, there is no apparent consensus on the most appropriate adjective for characterizing these prosecutors in general or which is most appropriate for the prosecutor in question (in the view of that prosecutor, their supporters, or their critics). Nor is there a consensus on what *exactly* makes one “progressive.” As one observer noted, “‘progressive prosecutor’ has clearly become a buzzword . . . [t]he exact semantics . . . can also vary depending on the jurisdiction.”¹¹

Not needing to enter what is a lively definitional debate, for stylistic reasons we will use the terms “reform” and “progressive” interchangeably. We assume for the purposes of this article that a range of prosecutors exists wanting to make changes in their offices and in

7. See JONATHAN RAPPING, *GIDEON’S PROMISE: A PUBLIC DEFENDER MOVEMENT TO TRANSFORM CRIMINAL JUSTICE* (2020).

8. FAIR AND JUST PROSECUTION & BRENNAN CENTER FOR JUSTICE, 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR 14 (2018), https://fairandjustprosecution.org/wp-content/uploads/2018/12/FJP_21Principles_Interactive-w-destinations.pdf [hereinafter *FJP/Brennan, 21 Principles*].

9. See, e.g., Davis, *supra* note 6, at 823 (stating that prosecutors are the most powerful officials in the criminal justice system and that “their discretionary decisions . . . play a very significant role in creating and maintaining the racial disparities in the criminal justice system.”); ERIK LUNA & MARIANNE WADE, *THE PROSECUTOR IN TRANSNATIONAL PERSPECTIVE* 189, 190 (Erik Luna & Marianne L. Wade, eds., 2012) (“statutes threatening harsh deterrent punishments upon conviction . . . became powerful weapons in the hands of prosecutors, who could force defendants to accept plea bargains so as to avoid these harsh sentencing consequences.”); David A. Sklansky, *The Problems with Prosecutors*, 1 ANN. REV. CRIMINOLOGY 451, 456 (2018) (discussing the relations between prosecutorial discretion and prosecutorial power); Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE UNIV. L. REV. 795 (2012) (examining how implicit bias affects the exercise of discretion). For the exercise of prosecutorial discretion in the context of community prosecution, see, e.g., Bruce A. Green & Alafair S. Burke, *The Community Prosecutor: Questions of Professional Discretion*, 47 WAKE FOREST L. REV. 285 (2012).

10. For a short overview, see Bruce A. Green & Rebecca Roiphe, *When Prosecutors Politick: Progressive Law Enforcers Then and Now*, 110 J. CRIM. L. & CRIMINOLOGY 719, 739–741 (2020).

11. Julia Wick, *Newsletter: What Does It Mean to be a Progressive Prosecutor?*, L.A. TIMES (Nov. 12, 2019, 3:30 AM), <https://www.latimes.com/california/story/2019-11-12/progressive-prosecutor-gascon-chesa-boudin>.

criminal justice, and we will discuss this in the article's next section. We also assume that such prosecutors are not a new phenomenon.¹²

Regardless of the adjective, these prosecutors pledge to reform the criminal justice system from within.¹³ They are organizational leaders seeking to change their offices. They embrace a particular vision of criminal justice, one "pledging a more balanced approach to criminal justice — more attentive to racial disparities, the risk of wrongful conviction, the problem of police violence, and the failures and terrible costs of mass incarceration."¹⁴ In practice, this requires changing the very culture of their organizations.¹⁵

This is no simple matter. Organizations are notoriously resistant to change, with path dependence the norm.¹⁶ Change, if it comes, will not be effortless and immediate. One key aspect of the process is changing the people. Not just those in the top organizational positions but all the way down the line, bringing in people who share an elected prosecutor's vision and can help facilitate change at the ground level.¹⁷ This is a key challenge and the one that interests us.

12. Writing 20 years ago Professor Abbe Smith noted the existence of "unorthodox, independent-minded, or 'progressive' prosecutors," and named four. *Good Prosecutor*, *supra* note 4, at 398.

13. See Justin Jouvenal, *From Defendant to Top Prosecutor, this Tattooed Texas DA Represents a New Wave in Criminal Justice Reform*, WASH. POST (Nov. 19, 2018), https://www.washingtonpost.com/local/public-safety/from-defendant-to-top-prosecutor-this-tattooed-texas-da-represents-a-new-wave-in-criminal-justice-reform/2018/11/19/e1dca7cc-d300-11e8-83d6-291fced2ab1_story.html; Sam Reisman, *The Rise of the Progressive Prosecutor*, LAW360 (Apr. 7, 2019), <https://www.law360.com/articles/1145615/the-rise-of-the-progressive-prosecutor-%20Also; see also FJP/Brennan, 21 Principles, supra note 8. But see Darcy Covert, The False Hope of the Progressive-Prosecutor Movement>, ATLANTIC (June 14, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/myth-progressive-prosecutor-justice-reform/619141/>. Covert is a public defender.

14. David Alan Sklansky, *The Progressive Prosecutor's Handbook*, 50 U.C. DAVIS L. REV. ONLINE 25, 26 (2017).

15. See, e.g., Joyce White Vance, *Want to Reform the Criminal Justice System? Focus on Prosecutors*, TIME (July 7, 2020, 3:55 PM), <https://time.com/5863783/prosecutors-criminal-justice-reform/> (suggesting that structural reforms in D.A.s' Offices should begin with a cultural change among prosecutors); The Crime Rep. Staff, *Why Culture Change for Prosecutors is 'More than Hiring People of Color'*, THE CRIME REP. (Mar. 11, 2021), *Id.* (emphasizing that "while diversity in hiring is part of the solution, it is just one step in a long and challenging process to create a culture of racial equity within prosecutors' offices").

16. See generally Debra Meyerson & Joanne Martin, *Cultural Change: An Integration of Three Different Views*, 24 J. MGMT. STUD. 623 (1987); EDGAR H. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP (2017).

17. Angela J. Davis, *Reimagining Prosecution: A Growing Progressive Movement*, 3 UCLA CRIM. JUST. L. REV. 1, 26–27 (2019).

As Philadelphia District Attorney Larry Krasner eloquently put it, “the coach gets to pick the team.”¹⁸

An important source for meeting that challenge is new law school graduates, and this article looks systematically at those who may want to work as a prosecutor and why. How does that pool of people look? The paper utilizes a unique data source, results from annual Law School Survey of Student Engagement (“LSSSE”) surveys.¹⁹ These surveys provide information on students, and more importantly information *from* them. In other words, the surveys allow students to speak for themselves. We use data from a set of unique questions in the 2010 LSSSE survey that asked students about their motivations for attending law school and choosing law as a profession.²⁰ For more general purposes the paper uses data from the 2007 to 2018 LSSSE survey.²¹ Moving forward, unless otherwise specifically footnoted with a citation, all statistical material used (e.g., numbers, percentages, and statistical relationships) will be from the authors’ original analyses of LSSSE survey data.

18. Quoted in Chris Palmer & Julie Shaw, *New DA Krasner on Ousters: ‘The Coach Gets to Pick the Team’*, PHILA. INQUIRER (Jan. 9, 2018), <https://www.inquirer.com/philly/news/crime/philly-da-larry-krasner-defends-firings-20180109.html>.

19. The Law School Survey of Student Engagement (LSSSE) is administered annually to students in participating schools by the Indiana University Center for Postsecondary Research. See *The LSSSE Survey Tool*, LSSSE, <http://lsse.indiana.edu/about-lsse-surveys/> (last visited Nov. 28, 2021); *Who We Are*, LSSSE, <https://lsse.indiana.edu/who-we-are/> (last visited Nov. 28, 2021). LSSSE has administered its survey from 2004 through 2021. Each survey asks the same questions annually making it ideal for analyzing patterns and changes over time. See BENJAMIN PAGE & ROBERT SHAPIRO, *THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICA’S POLICY PREFERENCES* 39 (1992) (“question wording matters . . . [t]he only safe way to identify opinion change, then, is compare answers to *identical survey questions*.”). LSSSE has provided us with deidentified copies of the raw data files, and our data agreement with LSSSE requires us not to identify schools.

20. According LSSSE’s director at the time, “each year LSSSE develops experimental questions focused on particular themes or issues . . . administered to students at a subset of participating schools . . . [and one such set for 2010] focuses on the motivation of students both with regard to the decision to enter law school and with regard to working hard once in school.” *2010 Annual Survey Results*, LSSSE 5 (2010), https://lsse.indiana.edu/wp-content/uploads/2016/01/2010_LSSSE_Annual_Survey_Results.pdf. The motivation questions went to students at 22 schools (n=4,626) and are discussed briefly in the report. *Id.* at 10–11.

21. Except for the 2010 motivation data set, the LSSSE data used in this paper are from a large data set the authors created for a more general project looking at law students and public service. That data set covers responses from students at 33 law schools appearing in LSSSE surveys at least three times between 2005 and 2010 and at least six times between 2011 and 2020 (n=129,532 student respondents). Since LSSSE participation by schools varies from year to year (some schools appearing only a few times and others more regularly), the dataset is structured to capture regular LSSSE participants. One caveat on LSSSE data — the very top tier of schools are less prevalent as regular participants, but not certainly absent. Generally speaking, LSSSE states, “[a]mong U.S. law schools, the statistical profiles of LSSSE cohorts tend to closely resemble the overall profile of U.S. law schools.” *The LSSSE Survey Tool*, LSSSE, <https://lsse.indiana.edu/about-lsse-surveys/>.

The remainder of this paper is divided into four substantive sections. First, is a section addressing the broad “why care?” question from our title. As an answer, it provides a basic overview of what some call the “progressive prosecutor” movement, its goals and challenges—especially hiring in the context of changing culture.²² In digging deeper into this answer it looks at the idea of “fit” between potential hires and the goals of organizational change as if we are talking about two sides of an equation. Fit is key to the idea of hiring and change. Especially important for progressive prosecutors is the hiring of new law school graduates who can, over time, be socialized into and sustain the changing culture.

The first section envisions two sides of an equation with the goals of prosecutors on one side and potential hires on the other. The second and third sections of the paper are about the other side of that equation—law students. They are the raw material for change and we need to know about them. More significantly, rather than make assumptions, we need to let them speak for themselves and tell us about their motivations in attending law school and their aspirations in a legal career. These are the matters important for anyone looking to hire with a particular goal in mind.

Together these sections address the other question in our title, “who wants to be a prosecutor?” The second section looks at the importance of motivation and the connections to students’ career aspirations—in particular, working as a prosecutor. It relies on the 2010 LSSSE motivation questions. Those connections reflect a complicated picture as to why people choose law school and a career in law on the one hand, and their real-world career aspirations on the other. Most students have a mixture of motivations for attending law school, and only some motivations are more conducive to criminal law as an area of legal specialization and to the work of a prosecutor. Our particular interest is in those students wanting criminal law as their area of legal specialization and who, in turn, want to work as prosecutors. To provide context and sharpen the discussion we will make comparisons,

22. For the rise and proliferation of progressive prosecutors across the country, see RACHEL E. BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 154–60 (2019); EMILY BAZELON, CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION 147–73 (2019); Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 *FORDHAM L. REV.* 8 (2018); David A. Sklansky, *The Changing Political Landscape for Elected Prosecutors*, 14 *OHIO ST. J. CRIM. L.* 647 (2017) (examining local district attorney elections and discussing how electoral democracy can serve as a tool for reforming prosecutors’ offices).

where appropriate, to those interested in working as public defenders or in private practice (those eschewing a career in public service).

The third section moves to just those students interested in criminal law as an area of legal specialization. It relies on LSSSE survey data from 2007-2018, but primarily on data from 2013-2018. Again, while our particular interest is in those criminal law students wanting to work as prosecutors, we will make comparisons to those wanting to work as public defenders and those wanting to work in private practice. In doing so, this section also looks at race and gender (especially important given the prosecutor's interest in diversity and an office that reflects the community it serves) along with debt (the concern that debt may drive students away from any kind of public service).²³ In effect, the third section looks at the size and nature of the pool.

The final section explores some practical implications of our findings for reform-minded prosecutors wanting to use hiring as a part of organizational change. It looks at pipelines and issues of diversity in prosecutors' offices. It examines what law schools and prosecutors might be able to do collaboratively, especially regarding experiential learning opportunities and building bridges. It also looks at the possible roles for other bridge-building organizations that connect interested students with prosecutors.

II. WHY CARE? THE REFORM/PROGRESSIVE PROSECUTOR AND CHANGING PROSECUTORIAL CULTURE

A. Context

Unlike United States Attorneys, who are appointed by the President and handle prosecutions in the federal courts, almost all local state-level chief prosecutors are elected.²⁴ As one commentator's historical overview noted, “[t]he United States is the only country in the

23. McGill argues that debt does not have a significant impact on the likelihood that law schools' students would enter the public sector. Given that she relied upon data from the 1990s and early 2000s it's worth looking again at debt. McGill, *supra* note 1, at 685–86 and 692–95. See also *Task Force*, *supra* note 3.

24. Chief prosecutors are elected in all but three states. See George Coppolo, *States that Elected Their Chief Prosecutors*, Connecticut General Assembly Office of Legislative Research, OLR RSCH. REP. (2003), <https://www.cga.ct.gov/2003/rpt/2003-R-0231.htm>. State attorneys general, a state's top legal officer, are elected in 43 states; see *Attorney General Office Comparisons: Elected vs. Appointed*, BALLOTPEdia, https://ballotpedia.org/Attorney_General_office_comparison#Duties (last visited Oct. 29, 2021); see also Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 MO. L. REV. 803, 809 (2010) (showing that incumbent prosecutors rarely face challengers and that elections do not provide voters with useful informa-

world where citizens elect prosecutors,”²⁵ the idea being “that popular election would give citizens greater control over government, eliminate patronage appointments, and increase the responsiveness of prosecutors to the communities they served.”²⁶

One key driver behind the development of elected prosecutors was the exercise of prosecutorial discretion and the need “to ensure that prosecutors would remain accountable to the local communities they served.”²⁷ Ruefully, the commentary’s final line notes, “however, supporters of the elected prosecutor neglected to consider the effect elections would have on the administration of criminal justice.”²⁸

More contemporaneously, scholars, commentators, and activists have focused their ire on what they see as one especially pernicious effect — a “tough-on-crime” stance — along with the underlying organizational culture affecting the exercise of prosecutorial discretion and an “assembly-line model” of justice.²⁹ It is a stance that one can trace back well over a generation that aligned with then public perceptions about crime, criminals, and race — perceptions that politicians and would-be officeholders both capitalized on and stoked.³⁰ It is an approach, the critics say, having little or no meaningful place for the rights of the accused. One seamlessly operating within a system, whether by intention or not, whose deleterious practical effects fall disproportionately on the impoverished and people of color.³¹

tion to evaluate the work of their prosecutors). *But see* Carissa Byrne Hessick & Michael Morse, *Picking Prosecutors*, 105 IOWA L. REV. 1537 (2020); Sklansky, *supra* note 22.

25. Michael J. Ellis, *The Origins of the Elected Prosecutor*, 121 YALE L. J. 1528, 1530–31 (2012).

26. *Id.* at 1531.

27. *Id.* at 1568.

28. *Id.* *See also* Ronald F. Wright, *How Prosecutor Elections Fail Us*, 6 OHIO ST. J. CRIM. L. 581 (2009); Ronald F. Wright & Marc L. Miller, *The Worldwide Accountability Deficit for Prosecutors*, 67 WASH. & LEE L. REV. 1587 (2010).

29. Green & Roiphe, *supra* note 10.

By late 2019, a number of elected prosecutors across the United States came to be known as ‘progressive prosecutors.’ These included prosecutors elected in Boston, Brooklyn, Kansas City, Philadelphia, and San Francisco. But not all were from the North or from big cities. So-called progressive prosecutors have been elected in Dallas, Houston, Orlando, San Antonio and localities in Louisiana, Mississippi, and Virginia, among other places. In general, beginning in 2015, their campaigns have been funded by a consortium led by George Soros, as part of a broader criminal justice reform effort.

Id. at 738–39.

30. *See* KATHLYN TAYLOR GAUBATZ, *CRIME AND THE PUBLIC MIND* (1995). One should not assume, of course, that every prosecutor at the time – or later – fit this pattern.

31. *See generally* JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM* 206 (2017) (arguing that prosecutors have been and remain the cause of mass incarceration); *see also* Steven Weinberg, *Harmful Error: How*

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More specifically, this displeasure is traced to the 1970s and 1980s, when statutory criminal codes expanded dramatically in the United States because of legislatures' concerns with perceived increases in crime, drugs use, and the social problems accompanying such increases.³² This ongoing expansion provided prosecutors a greater laundry list of possible charges to bring.³³ Legislators took on a greater role in sentencing by introducing a series of mandatory minimum sentences, requiring judges to follow specific, non-discretionary, statutory guidelines.

Enter the reform or progressive prosecutor, someone who successfully runs for a local prosecutor's office on an explicitly reform platform—one in various ways pledging to reform the criminal justice system from within. They embrace a different vision of criminal justice. According to Bruce Green and Rebecca Roiphe, the election of such prosecutors in recent years “marks a significant break from the law-and-order approach to prosecution that dominated for decades.”³⁴

Green and Roiphe provide a nice summary of what the break involves:

[P]rogressive prosecutors advance ideas for reform that take account of the broader socio-economic context in which criminal conduct occurs and cases are prosecuted. They do not simply process cases but seek to change criminal laws, institutions, and procedure. In opposing the status quo and the political establishment responsible for it, today's progressive prosecutors . . . have sought office by

Prosecutors Cause Wrongful Convictions, 7 J. INST. JUST. & INT'L STUD. 28, 29 (2007) (arguing that “prosecutors are the linchpin of the criminal justice system and certainly the linchpin when it comes to wrongful prosecutions and wrongful convictions”); see also TRACI BURCH, *TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION* (2013).

32. See JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* 33 (2007) (stating that “[i]n the last decades of the twentieth century . . . the war on crime reshaped the American prosecutor into an important model for political authority while also giving real prosecutors enormous jurisdiction over the welfare of communities with little attention to the lack of democratic accountability”).

33. See Erik Luna & Marianne Wade, *Prosecutors as Judges*, 67 WASH. & LEE L. REV. 1413 (2010); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 520–23, 550–52 (2001) (arguing that prosecutors have an interest in broad criminalization because it greases the wheels of plea bargaining and legislators also have an interest in accommodating prosecutors because it ensures the enforcement of criminal law). *But see* Jeffrey Bellin, *The Power of Prosecutors*, 94 N.Y.U. L. REV. 171 (2019) (challenging the claims about prosecutorial preeminence and discussing the role of judges, legislators, governors, and police in checking prosecutors' power).

34. Green & Roiphe, *supra* note 10, at 720–21.

appealing directly to the people by promising to protect the poor and to bring the rich and powerful to justice. Consequently, today's progressive prosecutors . . . have faced considerable backlash from the political establishment.³⁵

These prosecutors distinguish themselves by emphasizing such matters as the end of cash bail, declining to pursue certain low-level offenses, more closely scrutinizing the police, reducing racial bias, and addressing mass incarceration.³⁶

Green and Roiphe emphasize the reformers' focus, at least in their campaigns, on leniency and the use of discretion in response to concerns over racial and other disparities.³⁷ In their estimation "a defining feature of contemporary progressive prosecutors' work, and probably the most contentious feature, is the way in which they exercise discretion in investigating, charging, seeking pre-trial detention, plea bargaining, sentencing, and employing alternatives to prosecution and incarceration."³⁸

Reformers also distinguish themselves by emphasizing diversity in hiring.³⁹ Among other things, it means a prosecutor's office that

35. *Id.* at 736. George Gascon, for instance, is facing considerable backlash. See Tim Arango, *Los Angeles Just Elected a Liberal D.A. He's Already Facing a Recall Effort*, N.Y. TIMES (June 19, 2021), <https://www.nytimes.com/2021/06/19/us/george-gascon.html>; *Resisting Reform: How Progressive Prosecutors Navigate Police Union Pushback*, IMPACT JUST. (July 1, 2021), <https://impactjustice.org/resisting-reform-how-progressive-prosecutors-navigate-police-union-pushback/>; Jeremy White, *California Prosecutors Revolt Against Los Angeles DA's Social Justice Changes*, POLITICO (Jan. 25, 2021, 4:30 AM), <https://www.politico.com/news/2021/01/25/george-gascon-california-social-justice-461667>; see also Benjamin Wallace-Wells, *The Trial of Chesa Boudin: Can a Young Progressive Prosecutor Survive a Political Backlash in San Francisco?*, NEW YORKER (July 29, 2021), <https://www.newyorker.com/news/annals-of-inquiry/the-trial-of-chesa-boudin>. Perhaps, only half facetiously, the test of how progressive a prosecutor is the amount of backlash she engenders.

36. Green & Roiphe, *supra* note 10, at 741. For a more detailed and coherent overview of these reform prosecutors and their goals, see *id.* at n.123, directing their readers to *FJP/Brennan, 21 Principles*, *supra* note 8; 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>.

37. "By campaigning on their discretionary charging policies . . . progressive prosecutors seem more directly responsive to popular race-based and class-based sentiment. They discuss their discretionary decision-making on the campaign trail, expressly tying their proposed policies regarding prosecutorial discretion to the social and political concerns of the day." Green & Roiphe, *supra* note 10, at 748.

38. *Id.* at 750–51.

39. See, e.g., Max Marin, *Why Is the Philly DA's Office so White?*, BILLY PENN (Apr. 24, 2019, 8:30 AM), <https://billypenn.com/2019/04/24/why-is-the-philly-das-office-so-white/> (reporting that Krasner's office has implemented a new recruitment program to seek out diverse candidates); see also Adam Geer, *Diversity and Inclusion in Prosecutors' Offices Are Imperative*, PHILA. TRIBUNE (Feb. 21, 2021) https://www.phillytrib.com/commentary/diversity-and-inclusion-in-prosecutors-offices-are-imperative/article_2f244ab1-6ae5-506a-8db5-0d1e86369bb3.html; *About the Office*, SAN FRANCISCO DISTRICT ATTORNEY, <https://www.sfdistrictattorney.org/>

better reflects the community it serves.⁴⁰ Said one California district attorney, “[w]e are a diverse community, we want people to realize our diversity the minute they walk in the doors.”⁴¹ Reflecting the community is important because it helps “to foster an appearance of fairness, cultivate trust within the community, and allow for more effective prosecution.”⁴² The remarks of a deputy district attorney sum up the logic nicely: “we need to be able to respond to the people we are trying to help, the people we are trying to serve and to prosecute, [and] their families. Our jurors need to know we look like them, sound like them, and understand them.”⁴³

B. The Two-Sided Equation: The Link

Why care about law student aspirations in this context? What do those aspirations have to do with progressive or reform prosecutors? What’s the connection? At first glance there may appear to be none at all. Just two disparate matters—the usual job-related angst and dreams of students, on the one hand, and on the other, the goals driving elected state-level prosecutors (and their fervent supporters) that are seeking substantial change in the criminal justice system. In fact, however, there is a critical connection between any kind of reform-oriented success and student interests that align with public service and a social justice sensibility.

Put simply, it’s about people and hiring—hiring in service of organizational change. This is a prerequisite for almost everything else a reform-oriented prosecutor hopes to accomplish.⁴⁴ Organizations do

about-us/join-our-team/ (last visited Oct. 29, 2021) (stating that “diversity promotes a stronger office that pursues and projects fair-mindedness to all those coming in contact with the criminal justice system”).

40. *FJP/Brennan, 21 Principles*, *supra* note 8, at 14–15 (“Hire a diverse staff across all levels . . . teams that include people from a variety of racial, ethnic, and religious backgrounds are more effective and more open to new ideas. Some research shows that increasing the number of minority prosecutors in an office decreases racial sentencing disparities.”); *see also Technical Guide*, PROSECUTORIAL PERFORMANCE INDICATORS (Sept. 2020) <https://ppibuild.wpengine.com/wp-content/uploads/2020/09/PPI-Technical-Guide-Sept-2020.pdf> (“[P]rosecutor’s offices increasingly serve diverse communities. Office leadership and line prosecutors should reflect this diversity in order to better represent local residents and understand their problems, needs, and priorities.”).

41. Katherine J. Bies, Darryl G. Long Jr., Megan S. McKoy, Jimmy S. Threatt & Joshua D. Wolf, *Diversity in Prosecutors’ Offices: Views from the Front Line*, STAN. CRIM. JUST. CTR. 28 (2016), <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Diversity-Case-Studies-Final-3.12.16.pdf>.

42. *Id.* at 34.

43. *Id.* at 15.

44. *See, e.g.*, ELLEN YAROSHEFSKY & BRUCE A. GREEN, *LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT* 267, 285 (Leslie C. Levin & Lynn Mather eds., 2012) (arguing

not change just because the leadership at the very top changes or changes its outlook.⁴⁵ Organizations have their own cultures, meaning the widely shared norms that characterize an organization and act as a social control system shaping members' attitudes, beliefs, and behaviors.⁴⁶ It is the embedded ethos that shapes everyday work, and it does not turn on a dime. In this part of the paper, we'll look at one side of that link, progressive prosecutors and organizational change.

Substantial organizational change (whether we are talking about a prosecutor's office, a public defender's office, a law firm, or some other kind of organization) involves changing the working culture as well as making structural changes or changes in formal policies. Reform-oriented prosecutors seem to recognize this (as do those wanting to change public defenders' offices).⁴⁷ As one such prosecutor succinctly said in a talk with law students, "[c]ulture eats policies for breakfast . . . culture is deep, extensive, and stable If you do not manage culture, it will manage you. And you may not even be aware of the extent to which this is happening."⁴⁸

that offices' hiring policies may affect pretrial disclosure practices because offices can "seek to employ people who will act in accordance with those [offices'] standards" and that hiring can further foster office culture).

45. Studies of organizational culture have suggested that organizational cultures are largely created by organization's leaders. This widespread assumption has been that cultures reflect the values, beliefs, and actions of organization's leaders. See, e.g., EDGAR A. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP 2, 317 (1985); James N. Baron & Michael T. Hannan, *Organizational Blueprints for Success in High-Tech Start-Ups: Lessons from the Stanford Project on Emerging Companies*, 44 CAL. MGMT. REV. 8 (2002). However, empirical evidence for the influence of organization's management on culture formation and change remains inconclusive. See, e.g., Benjamin Schneider, Mark G. Ehrhart & William H. Macey, *Organizational Climate and Culture*, 64 ANN. REV. PSYCH. 361, 372 (2013) (suggesting that empirical studies supporting the role of leaders in organizational culture are difficult to find).

46. According to O'Reilly & Chatman, organizational culture is "a system of shared values defining what is important, and norms, defining appropriate attitudes and behaviors, that guide members' attitudes and behaviors." See Charles A. O'Reilly & Jennifer A. Chatman, *Culture as Social Control: Corporations, Cults, and Commitment*, 18 RSCH. ORGANIZATIONAL BEHAV. 157, 166 (1996); see also Gideon Kunda, *Engineering Culture: Control and Commitment in A High-Tech Corporation*, 17 ACAD. MGMT. REV. 819 (1992); Jennifer A. Chatman & Sandra Eunyong Cha, *Leading by Leveraging Culture*, 45 CAL. MGMT. REV. 20 (2003); Jennifer A. Chatman & Charles A. O'Reilly, *Paradigm Lost: Reinvigorating the Study of Organizational Culture*, 36 RSCH. ORGANIZATIONAL BEHAV. 199 (2016).

47. Said a district attorney in California, "this movement is something more than winning an election. It demands a fundamental transformation from the grass roots: to change an often sticky and resistant office culture." Stanford Law School Workshop (Oct. 2018) (notes on file with the authors). For a similar take on culture and change, but for public defenders, see Rapping, *supra* note 7, at 76–80 (focusing on recruitment and hiring of the next generation of public defenders as a means of reform).

48. Larry Krasner, Dist. Att'y, Phila. Dist. Att'y Office, Keynote Address at Public Interest Center, Northwestern Pritzker School of Law, From Defense Attorney to Progressive Prosecutor: A Reflection and Vision on The Criminal Justice System (Oct. 15, 2019) (notes on file with the authors); see also Chris Hayes, *Why Is This Happening? How Prosecutors Can Help End*

Another prosecutor tied change directly to hiring. Recognizing the need for and challenge of changing organizational culture, he said: Cultural change is not going to happen overnight. But a key part of the culture change in my office involves the way we hire. The kind of questions we ask when we are hiring are a lot different We used to hire people who wanted to be tough on crime and people who wanted to be the best trial attorneys. We now look for people who want to do justice and understand it's a very different obligation than just going into the courtroom and winning a case.⁴⁹

These remarks, like the ones of the prosecutor quoted above, were made to a law student audience, and we note this because the remarks show the link at the heart of our question in the heading for this section of the paper in a very pragmatic way.

C. The Challenge

The challenge is how to rethink the prosecutor's office—the organization itself and its culture—in ways that can serve reform-oriented goals, or at least in ways that do not thwart such goals. It can be especially daunting for those leading a large organization, like a major urban office, for no other reason than the sheer number of people and subdivisions, some with long histories of their own.⁵⁰ As one prosecutor said, “I manage a big office, with hundreds of prosecutors. Some are junior, some have been there for a decade, some have been there for about 30 years.”⁵¹

Critics with some first-hand knowledge of “tough-on-crime” prosecutor's offices can be quite severe in their assessments. They point to a punitive, carceral mindset and their tough-on-crime, win-at-all-costs office culture, one in which prosecutors' core mentality is to “lock them up” by building cases, pursuing criminals, and seeking harsh punishments.⁵² Perhaps most importantly, it is also a mindset that too

Mass Incarceration, with Larry Krasner: Podcast & Transcript, MSNBC & NBC NEWS THINK (July 10, 2018, 6:06 AM), <https://www.nbcnews.com/think/opinion/how-prosecutors-can-help-end-mass-incarceration-larry-krasner-podcast-ncna890126>.

49. Eric Gonzalez, Dist. Att'y, Brooklyn Dist. Att'y Office, Address at the Stanford Criminal Justice Center and the Center for the Legal Profession, Conversation with Progressive Prosecutors (Oct. 15, 2020) (notes on file with the authors).

50. See also Kay L. Levine & Ronald F. Wright, *Prosecution in 3-D*, 102 J. CRIM. L. & CRIMINOLOGY 1119 (2012).

51. Kim Foxx, Dist. Att'y, Cook County State Att'y Office, Keynote Address at the Northwestern Pritzker School of Law, The Children and Family Justice Center and American Constitution Society (Sept. 24, 2019) (notes on file with the authors).

52. See, e.g., Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. REV. 125, 134–36 (2004) (suggesting that prosecutors with “the

often overlooks excessive use of force and other misconduct by police officers, tolerates wealth-based pretrial detention, and a blatant exercise of racially discriminatory discretion.⁵³

The challenge can be daunting indeed, given that many reform prosecutors include increasing numbers of women, people of color, public defenders, civil rights attorneys, and candidates with no previous prosecutor experience.⁵⁴ For instance, before being elected as Philadelphia District Attorney, Larry Krasner was a civil rights attorney who represented many activist groups and had sued law enforcement agencies more than 70 times. His opponent, a career prosecutor, received the endorsement of the police union and argued that the city already had a public defender's office and that they didn't "need the district attorney to be a second."⁵⁵

Robust hiring, and occasionally firing, practices are often used by prosecutors in their efforts to change and diversify organizational culture.⁵⁶ They hope for a fit between a new hire and a reformed culture, and new law school graduates (who would be the line prosecutors) are a prime target, especially women and people of color. While attracting the kind of people needed as a part of organizational change is challenging enough, attracting those new lawyers may be even more so given that some of the most severe critics of prosecutors are aca-

highest conviction rates (and, thus reputations as the best performers) stand the greatest chance for advancement internally."); Matt Sledge, *For Insight into DA-Elect Jason Williams, Look to 'Progressive Prosecutors'*, TIMES-PICAYUNE (Dec. 12, 2020, 12:19 PM), https://www.nola.com/news/courts/article_91bd2408-3ca6-11eb-a142-df7dab535c9e.html (reporting on the "win at all costs" office culture in the Orleans Parish D.A.'s Office that tolerated use of both fake subpoenas and material witness warrants).

53. See David E. Patton, *A Defender's Take on Good Prosecutors*, 87 FORDHAM L. REV. ONLINE 20, 23–24 (2018–2019).

54. Elizabeth Weill-Greenberg, *Public Defender Chesa Boudin Wins San Francisco D.A. Race in Major Victory for Progressive Prosecutor Movement*, APPEAL (Nov. 09, 2019), <https://theappeal.org/public-defender-chesa-boudin-wins-san-francisco-da-race-in-major-victory-progressive-prosecutor-movement/>; Maxine Bernstein, *Criminal Defense Lawyer Defeats Beleaguered Veteran Prosecutor for Wasco County District Attorney: Oregon Elections Results*, OREGON LIVE: THE OREGONIAN (May 19, 2020), <https://www.oregonlive.com/pacific-northwest-news/2020/05/criminal-defense-lawyer-defeats-veteran-prosecutor-to-serve-as-wasco-county-district-attorney-oregon-elections.html>; Nadia Hamdan, *A Former Public Defender Hopes to Unseat Top Prosecutor in Travis County District Attorney Race*, KUT RADIO (July 6, 2020, 9:28 PM), <https://www.kut.org/politics/2020-07-06/a-former-public-defender-hopes-to-unseat-top-prosecutor-in-travis-county-district-attorney-race>.

55. Alan Feuer, *He Sued Police 75 Times: Democrats Want Him as Philadelphia's Top Prosecutor*, N.Y. TIMES (June 17, 2017), <https://www.nytimes.com/2017/06/17/us/philadelphia-krasner-district-attorney-police.html>. In 2021, Krasner won reelection for his second term. See *Philadelphia DA Larry Krasner Wins Second Term*, FOX 29 PHILA. (Nov. 2, 2021), <https://www.fox29.com/news/philadelphia-da-larry-krasner-wins-second-term-ap-reports>.

56. See Green & Roiphe, *supra* note 10, at 727; see *infra* note 130; see also BAZELON, *supra* note 22, at 161.

demics who would discourage women and students of color and students in general from taking such positions—even in the office of a more progressive prosecutor.⁵⁷

Perhaps the most consistently scathing of these academic critics is Professor Abbe Smith of Georgetown University Law Center.⁵⁸ The title of her 2001 article poses a stark question “Can You Be a Good Person and a Good Prosecutor?”⁵⁹ Her purpose was to “examine the morality of prosecution.”⁶⁰ Her answer is a resounding no: “I am saying to those who are committed to social and racial justice: Please don’t join a prosecutor’s office.”⁶¹

Those like Smith with actual experience working in the criminal justice system are important not just because of their normative stance, but because of their experienced-based views on what happens when the best of normative intentions hit the hard, entrenched reality of the everyday world of criminal justice. It is the experienced-based view that gives her assessments strength.

Why? Smith says:

My position is rooted in this time and place. We live in an extraordinarily harsh and punitive time, a time we will look back on in shame. The rate of incarceration in this country, the growing length of prison terms, the conditions of confinement, and the frequency with which we put people to death have created a moral crisis. Although, arguably, all those who work in the criminal justice system have something to do with its perpetuation and legitimacy, *prosecutors are the chief legal enforcers of the current regime* (emphasis added).⁶²

57. This is in addition to a number of other hiring challenges. A study of diversity in California prosecutors’ offices found that “(t)he most frequently identified barrier was the stigma surrounding prosecutors in minority communities, especially among Blacks and Latinos.” Bies et al., *supra* note 41, at 22. The study also noted a “pipeline problem,” that is “the small pool of minority attorneys in California” and the competition for those attorneys. *Id.* at 23.

58. See *Abbe Smith*, GEORGETOWN L., <https://www.law.georgetown.edu/faculty/abbe-smith/> (last visited Dec. 27, 2021).

Abbe Smith is Director of the Criminal Defense and Prisoner Advocacy Clinic, Co-Director of the E. Barrett Prettyman Fellowship Program, and Professor of Law at Georgetown University. She joined the Georgetown faculty in 1996. Prior to Georgetown, Professor Smith was Deputy Director of the Criminal Justice Institute at Harvard Law School, and a Clinical Instructor and Lecturer on Law at Harvard.

Id.

59. *Good Prosecutor*, *supra* note 4. Her article was the focal point of a 2019 symposium. See Bruce Green, *Foreword*, 87 *FORDHAM L. REV. ONLINE* 1 (2018).

60. *Good Prosecutor*, *supra* note 4, at 362–63.

61. *Id.* at 400.

62. *Id.* at 396–97.

Of particular concern for her is the “disproportionate impact on African Americans” and the broader consequences of that impact.⁶³

Though writing in 2001, Smith does acknowledge the idea of “progressive prosecutors,” and she is not sanguine.⁶⁴ They still work within a biased, if not corrupt, system. Even the best cannot escape this reality.⁶⁵ It is the process itself, if not the individual prosecutor’s office, with its emphasis on winning. It mitigates against the more idealistic line prosecutor who hopes to make a difference. “Prosecution is a team effort. Prosecutors have to rely on other prosecutors, police officers, other law enforcement personnel, and a variety of witnesses to do their job.”⁶⁶

Smith has wavered little over time in her assessments. Her normative critique of the criminal justice system with regard to social justice and race is typical of those with a more progressive orientation.⁶⁷ Her views and her 2001 article have been influential enough to have been the focal point of the 2018-2019 symposium in the *Fordham Law Review Online*:

In my view, the decision to become a prosecutor in a time of mass incarceration—a time we will surely look back on in shame—is a moral choice. The disproportionate impact of mass incarceration on black and brown people makes the moral choice inescapable. You can choose to challenge this system either by defending individual clients from its brutality, as defenders do, or through a more broad-based attack. But the very nature of the job prosecutors do — *locking people up* — upholds our shameful system. This hasn’t changed since 2001 (emphasis in original).⁶⁸

The last line in her essay sums up her mostly pessimistic assessment: “I would like to believe that good, well-intentioned people who become prosecutors could bring justice back to the criminal justice system in 2018. But I doubt it.”⁶⁹

Paul Butler, a well-known former federal prosecutor, had hopes of doing something Smith thinks is impossible — making a change

63. *Id.* at 368–72.

64. *Id.* at 398. *See also Born or Made*, *supra* note 4, at 943.

65. *Good Prosecutor*, *supra* note 4, at 399–400.

66. *Id.* at 392; *see also* Smith’s discussion on how she sees the working culture can negatively shape a line prosecutor, *id.* at 380–84.

67. Green & Roiphe, *supra* note 10.

68. Abbe Smith, *Good Person, Good Prosecutor in 2018*, 87 *FORDHAM L. REV. ONLINE* 3, 4 (2018–2019) [hereinafter *Good Person, Bad Prosecutor*]. On the symposium itself, *see* Green, *supra* note 59.

69. *Good Person, Bad Prosecutor*, *supra* note 68, at 7.

from the inside. As if making Smith's point, in a 2010 book, he reflected on his own experience, saying:

My aspirations of changing the system got shot down because I liked winning too much, and I was good at it. I wanted to be well regarded by my peers, to be successful in my career, and to serve my community. And the way to do that, I learned on the job, was to send as many people to jail as I could. I wasn't so much hood winked as seduced.⁷⁰

He too was pessimistic, finding it "difficult to contain injustice when one participates in it,"⁷¹ and those hoping to do so "have signed up with the wrong team."⁷²

Unlike Smith, Butler talks specifically about organizational culture. It eventually makes individuals see themselves on one side or the other along the prosecutor-defender divide.

The culture of the workplace engenders suspicion against prosecutors with too many progressive values, translating it as too much sympathy toward defendants or too much suspicion of the police. It's not that people think you are a bad person, it's just that they wonder why you became a prosecutor.⁷³

In short, Butler's message in his 2010 book is clear for those concerned about locking people up, prosecution is not the right work for them.⁷⁴

In a sense, Butler is talking about the kind of fit, between the person to be hired and the organization hiring them, we discussed above as a key to the success of reform prosecutors. More recently, in talking about progressive prosecutors like Krasner in Philadelphia, he is (unlike his Georgetown colleague Smith) somewhat less pessimistic. In a 2020 interview, Butler said, "Now . . . we have people like Kim Foxx, people like Chesa Boudin, people like Larry Krasner, who are

70. PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 105 (2010).

71. *Id.* at 113.

72. *Id.*

73. *Id.* at 117. See Kay L. Levine & Ronald F. Wright, *Images and Allusions in Prosecutors' Morality Tales*, 5 VA. J. CRIM. L. 38 (2017) (discussing prosecutors' professional self-images and narratives regarding their own duties and those of their adversarial counterparts. The study finds that "wearing the white hat," "going over to the dark side," "being a true believer," and "drinking the Kool-Aid" are common descriptive phrases used by state prosecutors).

74. Butler's assessment sounds much like those of a public defender. Jonathon Rapping, a long-time reformer whose sentiments are with public defenders, remarked that prosecutors "must never intentionally engage in conduct that undermines those tenets at the heart of our democracy. Yet culture drives prosecutors across the country to do this. Every day prosecutors help perpetuate a system that over-prosecutes and over-incarcerates. They do so in a way that disproportionately targets the most vulnerable." Rapping, *supra* note 7, at 167.

the man, the woman, and they're using their vast power to try to make a difference. So I'm, I don't know if you could say optimistically skeptical or encouragingly pessimistic. I'm watching real closely. I'm hoping that they are, as leaders, able to transform."⁷⁵

Butler went on to say that organizational change will require changing the people. "So, when a new leader comes in, she must deal with the old guard, and many of those people are not on board You must fire a lot of people, and some prosecutors like Larry Krasner have been able to do that."⁷⁶ This also means hiring the right kind of people, those sharing the reform culture.⁷⁷ "You want people who are enthusiastic about implementing the policy," and Butler thinks they "aren't hard to find. Come to . . . Georgetown law school. I have a number of students who would die to work with Larry Krasner or Kim Foxx or Chesa Boudin."⁷⁸

75. Kay Antholis, *A Conversation with Paul Butler About Progressive Prosecutors*, CRIME STORY PODCAST (Feb. 24, 2020), <https://crimestory.com/2020/02/24/a-conversation-with-paul-butler-about-progressive-prosecutors/>.

76. *Id.* Still, others remain highly skeptical, *see, e.g.*, Seema Gajwani & Max G. Lesser, *The Hard Truths of Progressive Prosecution and a Path to Realizing the Movement's Promise*, 64 N.Y.L. SCH. L. REV. 69 (2019) (arguing that hiring "good prosecutors" who care about criminal justice reforms will not help change the office culture because individuals eventually "became increasingly punitive, and no amount of training could counter this trend").

77. However, hiring for fit can have its darker side, with recruiters unconsciously falling prey to a reflect a "similar-to-me" effect rather than being indicative of actual fit within the organization's culture. Recruiters tend to mistake alignment between themselves and the candidate for alignment between the candidate and the organization. *See, e.g.*, LAUREN A. RIVERA, PEDIGREE: HOW ELITE STUDENTS GET ELITE JOBS, AT 143–147 (2015); Zack Needles, *Big Law Doesn't Have a Pipeline Problem. It Has an Elitism Problem*, LAW.COM (Feb. 15, 2021, 11:00 PM), <https://www.law.com/2021/02/15/law-com-trendspotter-big-law-doesnt-have-a-pipeline-problem-it-has-an-elitism-problem/> (reporting that the conventional notion of "Big Law material" leads to biased and exclusionary hiring practices); Lauren A. Rivera, *Guess Who Doesn't Fit In at Work*, N.Y. TIMES (May 30, 2015), https://www.nytimes.com/2015/05/31/opinion/sunday/guess-who-doesnt-fit-in-at-work.html?_r=1&mtrref=undefined&gwh=17DE4120763365C6B265FA695DC6621E&gwt=pay&assetType=opinion.

78. Antholis, *supra* note 75. In the past Butler said he would have told these students to be public defenders.

About five years ago, I had students who have the same kinds of concerns that I have asking should they be prosecutors? Because they heard prosecutors have all this power and discretion, and they hoped that maybe by creating change from the inside, they could make more of a difference.

Id.

On the power of prosecutor, *see* David A. Sklansky, *The Nature and Function of Prosecutorial Power*, 106 J. CRIM. L. & CRIMINOLOGY 473, 480 (2016) (stating that "[t]he starting point for virtually every discussion of prosecutors in the United States is their tremendous clout."). *See* Liz Oyer, *If Biden Wants to Reform Criminal Justice, He Needs Public Defenders on His Team*, WASH. POST (Jan. 15, 2021, 9:00 AM), <https://www.washingtonpost.com/opinions/2021/01/15/if-biden-wants-reform-criminal-justice-he-needs-public-defenders-his-team/> (on the importance of a different mindset).

Who Wants to Be a Prosecutor?

Others emphasize the need for the “good person” prosecutor. Writing in that 2018-2019 *Fordham Law Review Online* symposium, Professor Jessica Roth, herself a former prosecutor, argued that “we need good people [meaning people committed to social justice] to ensure that investigations, pleas, trials, and sentencing are conducted in a manner that respects people’s rights and who consider the broader context of their work.”⁷⁹ Another commentator in the symposium, Professor Rebecca Roiphe, agrees, saying:

it seems to me that this is a unique moment for prosecutors to move their offices incrementally towards reform We need people inside prosecutors’ offices who will engage in this conversation in a meaningful way and help reform their offices to pursue a more just kind of prosecution with a more nuanced understanding of crime, race, poverty, and the criminal justice system.⁸⁰

And a third symposium participant echoes this sentiment, observing:

There are good people currently serving as prosecutors who are implementing a new model of prosecution — one that seeks to reduce the use of incarceration, eliminate racial disparities, and provide second chances. If we ever hope to fix our broken criminal justice system, we must work to replicate that model throughout the country.⁸¹

This, she argues, “will only happen if good people become prosecutors.”⁸²

We do not intend to enter the debate between Smith and those who disagree with her, or to parse out the variations in Butler’s views over time. Those matters involve differing views of the prosecutorial past, the prosecutorial present, and the possibilities of the prosecutorial future; and as a prosecutor we quoted earlier said, “cultural change is not going to happen overnight.”⁸³ We cannot know what might transpire, but we do know that reform prosecutors are trying to change their organizations and using hiring as a key compo-

79. Jessica Roth, *The Necessity of the Good Person Prosecutor*, 87 *FORDHAM L. REV. ONLINE* 30, 30–31 (2018–2019) (suggesting that it is possible for good people to be good prosecutors).

80. Rebecca Roiphe, *Revisiting Abbe Smith’s Question, Can a Good Person Be a Good Prosecutor, in the Age of Krasner and Sessions*, 87 *FORDHAM L. REV. ONLINE* 25, 29 (2018–2019).

81. Davis, *supra* note 22, at 8.

82. *Id.* at 12.

83. Bies, *supra* note 41.

ment. As that prosecutor also said, “a key part of the culture change in my office involves the way we hire.”⁸⁴

The idea of fit — and the chances of success of hiring for change — requires a link between the organization’s purposes and values on the one hand, and the aspirations of potential hires on the other. In too many discussions those potential hires, the students themselves, are largely left out. They are talked about or talked to, but their views, characteristics, and aspirations are neglected. Or worse, just assumed. It makes little practical sense, however, to ignore students or rely on just so assumptions.

III. THE OTHER SIDE OF THE EQUATION: STUDENT MOTIVATION AND ASPIRATION

A. The Importance of Motivation

Given what reform prosecutors hope to achieve and the importance of hiring people attuned to those goals, we need to go beneath just career aspirations and the question of who might want to work as a prosecutor. We need to look to the more basic idea of motivation to get a better purchase on why someone would want to do this kind of legal work (or not). Beyond the specific area of law or kind of practice, what drives student aspirations? What might lie behind not just the choice of a particular legal career, but the choice of a legal career in the first place? Motivation is important for understanding the pool of potential hires, especially if one’s purpose is some kind of fit and hoping to find not just the skills, but the “right” kind of person.⁸⁵

Work in psychology, organizations, and especially public administration suggests that motivations can be important for understanding the outcomes of legal education, especially graduates’ career aspirations.⁸⁶ In other words, aspirations—what students hope to do—be-

84. *Id.*

85. In other words, the idea of fit suggests that if individuals view the mission and values of the prosecutor’s office as congruent with their own motivations, then they are more likely to be attracted to those organizations. See Gregory A. Mann, *A Motive to Serve: Public Service Motivation in Human Resource Management and the Role of PSM in the Nonprofit Sector*, 35 PUBLIC PERSONNEL MGMT. 33 (2006) (demonstrating the importance of incorporating applicant’s motivation as a selection criterion into public service employment). See generally Rivera, *supra* note 77.

86. See Jacquelynne S. Eccles, *Understanding Women’s Educational and Occupational Choices*, 18 PSYCH. WOMEN Q. 585, 591–92 (1994) (showing that “the motivation for students’ occupational choices thus consists of two main aspects: the students’ expectation of success and the value the students attribute to this particular option.”); see also Jacquelynne S. Eccles & Allan Wigfield, *Motivational Beliefs, Values, and Goals*, 53 ANN. REV. PSYCH. 109 (2002).

come intelligible and meaningful to the extent they are connected to the motivations that may drive them.⁸⁷ Relevant for this paper's interests is the literature surrounding "public service motivation" (PSM), largely from public administration.⁸⁸

Within public administration, PSM is important for understanding why people may seek careers in this arena and why they stay or leave.⁸⁹ The most widely accepted definition of PSM dates to 1990 and the work of James Perry and Lois Wise.⁹⁰ They defined public service motivation as "an individual's predisposition to respond to motives grounded primarily or uniquely in public institutions and organizations;"⁹¹ and given Perry and Wise's interests, "public" means governmental.⁹² More specifically, "public service motivation is most commonly associated with particular normative orientations—a desire to serve the public interest, loyalty to duty and to the government as a whole, and social equity."⁹³

The idea of PSM is important for this article's purposes because of the behavioral implications Perry and Wise see. "The level and type of an individual's public service motivation and the motivational composition of a public organization's workforce have been posited to influence individual job choice, job performance, and organizational effectiveness."⁹⁴ In short, it makes a difference who you hire. The

87. See Stephen Daniels & Shih-Chun Chien, *Beyond Enrollment: Why Motivations Matter to the Study of Legal Education and the Legal Profession*, LSSSE GUEST BLOG (Sept. 24, 2020), <https://lssse.indiana.edu/blog/guest-post-beyond-enrollment-why-motivations-matter/>.

88. See Leonard Bright, *Public Service Motivation and Socialization in Graduate Education*, 34 TEACHING PUBLIC ADMIN. 284, 286 (2016) (suggesting that "public service motivation was originally grounded in an intuitive understanding that some individuals were very motivated by opportunities to help their neighbors and contribute to the well-being of society. It was believed that these inclinations attracted individuals toward certain kinds of organizations and occupations.").

89. See Jacqueline Carpenter, Dennis Doverspike & Rosanna F. Migue, *Public Service Motivation as a Predictor of Attraction to the Public Sector*, 80 J. VOCATIONAL BEHAV. 509–23 (2012) (showing that PSM is associated with individuals' perceptions of fit and attraction to public sector organizations); see also Leonard Bright, *Does Public Service Motivation Really Make a Difference on the Job Satisfaction and Turnover Intentions of Public Employees?* 38 AM. REV. PUB. ADMIN. 149 (2008); Philip E. Crewson, *Public-Service Motivation: Building Evidence of Incidence and Effect*, 7 J. PUB. ADMIN. RSCH. & THEORY 499 (1997).

90. James Perry & Lois Wise, *The Motivational Bases of Public Service*, 50 PUB. ADMIN. REV. 367 (1990); Joanna O'Riordan, *Public Service Motivation: State of the Public Services Series*, 12 INST. PUBLIC ADMIN. (June 2013), https://www.ipa.ie/_fileUpload/Documents/PublicServiceMotivation.pdf.

91. Perry & Wise, *supra* note 90, at 368.

92. *Id.* at 367, 372.

93. PSM combines "a variety of rational, norm-based, and affective motives." *Id.* at 369. For a review of various definitions of PSM, see Barry Bozeman & Xuhong Su, *Public Service Motivation Concepts and Theory: A Critique*, 75 PUB. ADMIN. REV. 700, 701–702 (2015).

94. Perry & Wise, *supra* note 90, at 370.

PSM literature suggests that there are people better suited to work in the criminal justice system, as prosecutors or alternatively as public defenders, and others better suited to work in different arenas like business-oriented practices in a private practice setting. The challenge is in finding and attracting people whose motivations are more in the direction of service, and service of a particular kind.⁹⁵

We should expect to find a public service motivation among at least some law students. Law is a profession that is likely to attract people with what might be called a broad public or social interest motivation. The idea, of course, goes to the profession's sense of itself and its place and role in our society. It can be seen in official statements of professional ethics and obligations.⁹⁶ Importantly, the broad idea of public or social interest has a deeper resonance, one beyond professional rules and appropriate professional behavior. As one commentator says, it is "a sense of duty as an officer of the court and responsibility as a part of a system in our society that is engaged in upholding the rule of law."⁹⁷ Francis Zemans and Victor Rosenblum called it a "morality of aspiration" that speaks to upholding "standards above those enforceable through a code, standards that take cognizance of a lawyer's and the legal system's role in achieving justice."⁹⁸

One can, of course, be affected by such a broad idea in deciding on law school and a career in law and not be driven by a more specific motivation to pursue a career within law in the public service arena. This may be a result of the intensity of one's commitment to that idea, which can run from weak to strong. A career interest in public service could reflect a commitment on the strong end of the continuum, while a career interest in private practice (with minimal pro bono-related activity) could reflect commitment on the weak end.

95. See Jennifer A. Chatman, *Matching People and Organizations: Selection and Socialization in Public Accounting Firms*, 36 ADMIN. SCI. Q. 459, 460 (1991) (suggesting that person-organization fit can be established either by attracting and hiring appropriate individuals or by influencing individuals through socialization once they are hired).

96. The Preamble of the American Bar Association's Model Rules of Professional Conduct, for instance, describe lawyers, among other things, "as a public citizen having special responsibility for the quality of justice. *Model Rules, Preamble & Scope, Preamble: A Lawyer's Responsibilities*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/, (last visited Oct. 29, 2021).

97. David Thomson, "Teaching" *Formation of Professional Identity*, 27 REGENT UNIV. L. REV. 303, 315 (2015).

98. FRANCIS ZEMANS & VICTOR ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 170 (1981).

B. What *Do* Students Have to Say About Motivation?

The earliest studies bearing on law student motivation go back to the 1960s and 1970s when the landscape of legal education and the legal profession looked very different than today.⁹⁹ This limits the usefulness of many of their specific findings, but they set the stage for later efforts and their influence is still being felt. Specifically, all legal motivations studies, from a 1961 NORC survey to the 2017 AALS/Gallup surveys,¹⁰⁰ share an interest in a small but varied set of themes surrounding what might drive people to choose law: making money; prestige and professional advancement; serving the public good; the influence of others, especially family; the intellectual side of the profession; independence; and catch-all categories for those with no substantive motivation, like waiting out the poor job prospects in the sluggish economy or the military draft in an earlier time.

Importantly, and consistent with Perry and Wise, all find no unitary factor. Individuals have a mixture of motivations—some more intrinsic, others more extrinsic¹⁰¹—with different degrees of importance or intensity. There are some basic consistencies; money and prestige are always important. Yet, so are motivations that speak to altruistic commitments and the kind of broad public and social inter-

99. See generally Stephen Daniels, *The Perennial (and Stubborn) Challenges of Affordability, Cost, and Access*, in MEERA E. DEO, MINDIE LAZARUS-BLACK & ELIZABETH MERTZ, *POWER, LEGAL EDUCATION, AND LAW SCHOOL CULTURES* (2020), 140–45. Writing in 1965, the author of the introduction to a book reporting on a study of would-be lawyers noted, “the study shows that in its attraction and appeal to young people the law seems to do its fishing in restricted waters stocked largely with the product of professional families, private schools, and the upper social strata.” SEYMOUR WARKOV & JOSEPH ZELAN, *LAWYERS IN THE MAKING*, xviii (1965). The “Introduction” also asked, “Why does a random example of 1,800 law-inclined students include so few Negroes (sic) that they cannot be systematically studied?” *Id.* at xv. To note the gendered composition of the profession at the time, the book’s authors tell the reader, “Since more than 90 percent of all students selecting law are men, women are excluded from consideration throughout the report.” *Id.* at 1. They add, as if for emphasis, that “law is a masculine field.” *Id.* at 8.

100. WARKOV & ZELAN, *supra* note 99; ASSOCIATION OF AMERICAN LAW SCHOOLS/GALLUP, *BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL* (2018) [hereinafter *Before the JD*]; ASSOCIATION OF AMERICAN LAW SCHOOLS/LSAC/GALLUP, *BEYOND THE BACHELOR’S: UNDERGRADUATE PERSPECTIVES ON GRADUATE AND PROFESSIONAL DEGREES* (2018); see also LEONARD BAIRD, *THE GRADUATES: A REPORT ON THE CHARACTERISTICS AND PLANS OF COLLEGE SENIORS* (1973); Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973); Barry Boyer & Roger Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 243–254 (1974).

101. See Richard M. Ryan & Edward L. Deci, *Intrinsic and Extrinsic Motivations: Classic Definitions and New Directions*, 25 CONTEMP. EDUC. PSYCH. 54, 55 (2000) (defining intrinsic motivation as “doing something because it is inherently interesting or enjoyable” and extrinsic motivation as “doing something because it leads to a separable outcome.”).

est notions discussed above. The picture is a nuanced one, not just for students in general, but also for individual students.¹⁰²

The extant studies do not, unfortunately, allow us to explore connections among motivations (the nuanced why question) or to explore the connections between motivations and aspirations (the what question, meaning what do I want to do as a lawyer). They weren't designed to do so, but the connections are what's important if we are considering the idea of hiring in the service of organizational change. A unique set of questions in the 2010 LSSSE survey allow us to explore the connections among different motivations, among those motivations and aspirations, and among both and student characteristics.¹⁰³

The 2010 LSSSE survey included a distinctive set of seven motivation questions, posed to a subset of law students in the survey, well within the themes found in the extant literature. The results are not so far in the past that they are irrelevant to understanding more recent findings from annual LSSSE surveys on student aspirations.¹⁰⁴ Importantly for those hoping to hire the right kind of person and not just hiring based on skills alone, the students' responses to the seven questions provide insight into what students value and what might drive them.

The 2010 LSSSE motivation questions asked students (on a 7-point scale running from not at all influential to very influential) how important each of seven motivations was for their decision to go to law school. Given that students may have a mixture of motivations, they were not asked to choose among them. Instead, they were asked to rate each one independently. Table 1 presents the percentage of students indicating that each motivation was "more influential" (choosing 5, 6, or 7), the percentage indicating that each was less influential (choosing 1, 2, or 3) as well the percentage indicating very influ-

102. For instance, a given student may highly rate both contributing to the public good and prestige, while another student may rate one high and the other low. There are studies that take a very different approach to motivation, one that is driven by a "rational actor" conceptualization of motivation. These studies start with a unidimensional rational actor assumption rather than exploring the possibility of a mix of differing motivations. See Ronald Ehrenberg, *An Economic Analysis of the Market for Law Students*, 39 J. LEGAL EDUC. 627 (1989); Ronald Ehrenberg, *American Law Schools in a Time of Transition*, 63 J. LEGAL EDUC. 98 (2013); Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249 (2014); Christopher J. Ryan, *Analyzing Law School Choice*, UNIV. ILL. L. REV. 583 (2020).

103. See *supra* note 20.

104. The basic connections between particular motivations and particular aspirations are unlikely to change. What could change is the percentage of students driven by a particular motivation (e.g., the percentage of students motivated by the public good, or prestige, and so on).

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ential (choosing 7) and the percentage indicating not at all influential (choosing 1).

Table 1.
Law Students: Importance of Each of Seven Motivations
for Choosing Law

	% More Influential	% Less Influential	% Very Influential	% Not at all Influential
Challenging & Rewarding Career (n=4595)	90%	5%	50%	1%
Furthering Academic Development (n=4607)	85%	7%	43%	2%
Financial Security (n=4583)	81%	11%	39%	4%
Prestige in Profession (n=4610)	69%	18%	29%	6%
Contributing to the Public Good (n=4616)	60%	28%	27%	13%
Unsure of Next Steps so Continue in School (n=4611)	34%	54%	13%	31%
Living up to Other's Expectations for Career (n=4604)	27%	62%	10%	37%

The patterns are clear. Most important for students are the intrinsic motivations of a challenging career and academic development along with the extrinsic motivation of financial security (reform prosecutors may take some solace with regard to a challenging career, but perhaps not so with financial security). These three motivations are near constants, and this shouldn't be surprising. The academic background required for any post-graduate or professional training and the challenges and nature of the work will attract some and not attract others.¹⁰⁵ We would be surprised if such intrinsic motivations did not

105. Among other matters, a 2017 survey of undergraduates asked what might prevent them from attending law school. The top five reasons were: high cost/debt (63%), poor work-life balance (51%), too hard would not do well academically (25%), too few jobs paying enough money (17%), and work not creative enough/too confined/too stringent (16%). The sixth reason was lawyers are seen as corrupt/conniving (15%). See Before the JD, *supra* note 100, at 48. On the other side, the top five reasons for choosing law were: pathway for career in politics/government/public service (44%), passionate/high interest in the work (42%), being useful to others/society (35%), advocate for social change (32%), and high-paying jobs (31%). *Id.* at 44. Respondents were not asked to choose among the possibilities, but instead were asked to choose their three top reason reasons for law school or not law school.

play a key role.¹⁰⁶ The same is true for financial security given the investment most students make in pursuit of legal training and the fact that they are choosing a career, a livelihood.

Prestige and the public good are less important in general, but certainly not unimportant. In light of some motivations as near constants, these two motivations help to differentiate things because the two are statistically unrelated.¹⁰⁷ Additionally, the two have quite different statistical relationships with financial security. One, prestige, is positive and the other, public good, is negative.¹⁰⁸ These two motivations give us at least a fuller sense of what students, especially different groups of students, value and how intensely they value it. If one is looking for organizational fit, this differentiation is important.¹⁰⁹

Even though the remaining two motivations seem to lack any meaningful substance in terms of what students might value, they are still important for fit. These two motivations are significantly related, and they too may help to differentiate among students.¹¹⁰ Both have significant but *weak* and *negative* relationships with challenging careers and with public good.¹¹¹ Both have very weak relationships with academic development, but only unsure is significant.¹¹² Each has somewhat stronger, positive relationships with financial security and

106. As we would expect, the two intrinsic motivations are strongly correlated, Spearman's rho = .58, sig. 000. The correlation for each with financial security is more moderate but still significant: for challenging career and financial security, Spearman's rho = .38, sig. 000; for academic development and financial security, Spearman's rho = .30, sig. = .000. Spearman's rho is a commonly used statistic for ranked (ordinal level) data and ranges from -1.0 to 1.0, with -1 reflecting a perfect negative relationship and 1.0 a perfect positive relationship. Moving forward only those statistical relationships that are significant at .05 or better will be used and so no subsequent significance levels will be reported. As we stated in earlier in the text, unless otherwise footnoted with a citation, all statistical analyses reported in the text or in the footnotes are the results of the authors' analyses of LSSSE survey data. See text immediately following note 19.

107. Spearman's rho = 0, and a correlation of 0 means no relationship. Each is significantly related to challenging career (for prestige, Spearman's rho = .44; for public good, Spearman's rho = .21) and academic development (for prestige, Spearman's rho = .37, for public good, Spearman's rho = .28).

108. For prestige and financial security, the relationship is strong, Spearman's rho = .56. For public good, the relationship is more moderate but negative, Spearman's rho = -.18.

109. As reported in published form, data from the AALS/Gallup survey do not allow the analysis of these kinds of connections. See Association of American Law Schools/LSAC/Gallup, *supra* note 100.

110. For unsure and others' expectations, Spearman's rho = .47.

111. For the relationship of each to challenging career, Spearman's rho = -.05. For unsure and public good, Spearman's rho = -.05; and for others' expectations and public good, Spearman's rho = -.07.

112. For unsure and academic development, Spearman's rho = .04. The relationship for others' expectations and academic development is not significant.

with prestige.¹¹³ These two motivations remind us that there are, and have been, some who choose to attend law school for reasons, in whole or part, that may have little to do with the actual practice of law.

Those more driven by these last two motivations may be attractive for and attracted to some legal jobs and not others. The same would be the case for those driven less by these motivations and more by the public good. We would expect to see students who value different things, generally speaking, to have different occupational aspirations.¹¹⁴

Given the concern with diversity, with regard to reform prosecutors and in general, we looked for any differences by gender and by race. The patterns for gender look very similar to those in Table 1.¹¹⁵ There are statistically significant differences between men and women with regard to each of the motivations for all but prestige. Those relationships, however, are weak.¹¹⁶ Despite this, there are some differences in intensity that are worth noting. A larger percentage of women rate public good as more influential (5-7 on the 7-point scale), 66% v. 53% for men; and a larger percentage rate public good as very influential (7 on the 7-point scale), 35% v. 20% for men. Larger percentages of women also rate challenging career and academic development as very influential, 56% v. 45% for challenging career and 49% v. 37% for academic development.¹¹⁷

Differences regarding race are harder to deal with statistically because of the skewed distribution. There is a very high percentage of

113. For unsure and prestige, Spearman's rho = .13; for other's expectations and prestige, Spearman's rho = .26. For unsure and financial security, Spearman's rho = .14; for others' expectations and financial security, Spearman's rho = .18.

114. Bright, *supra* note 89 (showing that mixtures of different motivations attract individuals to particular types of organizations that best match incentive structures to individuals' preferences).

115. The gender breakdown in the 2010 LSSSE motivation data is 50%/50%. American Bar Association figures for the academic year 2009-2010 show a gender breakdown of 53% male, 47% female. See *First Year and Total J.D. Enrollment by Gender: 1947-2010*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf (last visited Oct. 29, 2021).

116. The strongest of those weak relationships are public good (Cramer's V = .19), academic development (Cramer's V = .14), and challenging career (Cramer's V = .12). For the others Cramer's V is <.10. Cramer's V is a commonly used statistic for categorical (nominal level) data and ranges from 0 to 1.0, with 1.0 reflecting a perfect relationship. Again, only those relationships significant at .05 or better (using Fisher's Exact for 2x2 tables and chi square for all other tables) will be used.

117. There is little difference between women and men with regard to prestige and financial: prestige rating 7-9, women 70% v. men 69%; financial rating 5-7, 79% v. 82%.

white respondents in the 2010 LSSSE motivation data and much lower percentages for the other groups: White = 74%; African American and AAPI (Asian-American or Pacific Islander), each = 7%; and Hispanic and Other, each = 6%.¹¹⁸ If we look at the data in terms of the percentage of each group, there are some notable differences. White respondents stand out for one motivation in particular — public good. They stand out because only 57% rated it as more influential, while the other groups ranged from 78% for African American to 62% for AAPI. White respondents also had the lowest percentage rating public good as very influential — 25%; in contrast, 44% of African American respondents rated it as very influential. For Hispanic respondents it was 34% and for AAPI respondents it was 28%.¹¹⁹

C. Connections for Students: Motivations to Aspirations

What are the connections between motivation and aspiration? In general, only 12% of the students responding to the 2010 motivation questions indicated criminal law as their desired area of legal specialization.¹²⁰ Just over one-half of these criminal law students indicated wanting to work in the criminal justice system as a prosecutor or as a public defender: 34% prosecutor and 18% public defender.¹²¹ More generally, 75% of the criminal law students wanted to work in some kind of a public service setting and only 20% in private practice.¹²²

118. The respective N's are: White 3,111; African American 309; Hispanic 271; AAPI 282; and Other 259. Figures from the Fall 2010 ABA 509 disclosures for accredited law schools (not including the schools in Puerto Rico) show for those students indicating a race/ethnicity (n=133,288): White, 74%; Non-White, 26% (calculations done by the authors).

119. All rate academic development and challenging career as more influential, 85%-87% for the former and 86%-92% for the latter. For prestige as more influential the range runs from 69% for White and for African American; 71% for Hispanic; to 78% for AAPI. For financial the range is quite narrow, from 78% to 81%. Collapsing into two groups, White and Non-White, shows statistically significant relationships for the two groups and each of the seven motivations, but all are weak. The strongest of them is for public good, Cramer's V = .14.

120. N=529. The LSSSE survey asked students to choose from a list of 26 areas of legal specialization for their preferred area of specialization upon graduation and criminal law was the most popular. They are the most likely source of students wanting to work as prosecutors, or alternatively as public defenders (74% and 69%, respectively). For students in the 2010 motivation data wanting to work as prosecutors, n=244: as public defenders, n=137. For non-criminal law students, only 2% indicated wanting to work as a prosecutor and 1% as a public defender.

121. Another 21% indicated private practice; and 17% indicated some other government agency (federal or state). No other type of work accounted for more than 4% of those interested in criminal law. Some have argued that progressive prosecutors would do well to recruit would-be public defenders, who are likely to bring a different take on the criminal justice system. See Oyer, *supra* note 78.

122. Consistent with Perry and Wise public service includes, in addition to prosecutor and public defender, other public employment work (e.g., work in an agency at any level. Perry & Wise, *supra* note 90.

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The obvious and important take-away is that most students are not interested in criminal law and even fewer want to work in the criminal justice system. The pool of potential hires for reform prosecutors is small and maybe smaller if we are talking about those who want to work as prosecutors.

As we might expect, those who are interested in criminal law saw the public good as more influential than did their peers interested in some other area of legal specialty (72% more influential v. 59% more influential)¹²³ and the relationship is statistically significant.¹²⁴ Their non-criminal law peers saw financial security as more influential (non-criminal law 81% more influential v. criminal law 73% more influential) and again the relationship is statistically significant.¹²⁵ None of the relationships for the other motivations and these two groups of students (criminal and non-criminal) are statistically significant and the comparable percentages for the two groups are within six percentage points or less for the other motivations.¹²⁶

We can say, then, that those interested in criminal law tend to be driven somewhat more by the public good and somewhat less by financial security than their peers, but otherwise they are not generally that different. Meaning, for instance, that they are not that different regarding furthering their academic development, wanting a challenging career, or prestige. To show a sharper contrast, we can look at students interested in corporate and securities as their area of legal specialty and what may drive them compared to their criminal law peers. They are, in a sense, mirror opposites, with corporate students driven much less by the public good, much more by financial security, and somewhat more by prestige. The two groups of students clearly value different things.

The starkest difference between these two groups of students, criminal law and corporate, is the percentage seeing public good as more influential. Only 39% of those interested in corporate see public good as more influential compared to 72% for those interested in criminal law; and the relationship is statistically significant, and strong,

123. As in Table 1, “more influential” means choosing 5, 6 or 7 on the 7-point scale.

124. Using the full 7-point scale, the relationship, however, is weak, Cramer’s $V = .10$, suggesting that students motivated by the public good had an array of more specific aspirations when it comes area of legal specialization.

125. As with public good, using the full 7-point scale the relationship is weak, Cramer’s $V = .11$.

126. This is because the relationships do not show much variation between the two groups of students. In other words, those relationships do not help differentiate among students.

when comparing the two groups on public good. As important, more of the corporate group see public good as *less* influential than see it as *more* influential (45% less compared to the 39% more noted above). Only 18% of the criminal law students see public good as less influential.¹²⁷

Financial security looms large for the corporate students with 91% seeing it as more influential compared to 73% for criminal—a significant but moderate relationship.¹²⁸ There is also a significant, but weak, relationship for prestige with 77% of the corporate students see it as more influential compared to 64% for the criminal law students.¹²⁹ None of the relationships for the other motivations are statistically significant and the comparable percentages for the two groups are within six percentage points or less.

Having shown that the criminal law students stand out, the next question goes to the similarities and/or differences between the criminal law students wanting to work as prosecutors and those wanting to work as public defenders. Specifically, do the two groups have a similar profile regarding what is valued? As we would expect, they are functionally the same in seeing academic development and challenging career as more influential.¹³⁰ They do differ somewhat with regard to prestige and financial security. A higher percentage of criminal law/prosecutors see each as more influential (prestige, 64% v. 54% and financial security, 74% v. 66%). They also differ in the intensity of importance (7 on the 7-point scale) for these two motivations, with prosecutors the more intense (prestige, 27% v. 17% and financial security, 34% v. 18%). However, only the difference for financial security is statistically significant and the relationship is still on the weaker side.¹³¹

The more interesting and important difference involves public good. A higher percentage of the criminal law/public defenders see public good as more influential, 87% v. 74%. The relationship is significant, but on the surface not that strong.¹³² What really stands out within the comparison is the intensity, the depth of commitment on the part of the public defender group (seven on the seven-point scale).

127. Using the full 7-point scale (*see* text surrounding Table 1) and chi square, the relationship is moderate relationship with Cramer's V = .36.

128. Cramer's V = .30.

129. Cramer's V = .18.

130. Academic development, both 83-84%; challenging career, both 90-91%.

131. Cramer's V = .02.

132. Cramer's V = .27.

Far more public defenders rated public good at the very top of the scale as very influential, 60% v. 34%. In terms of what they value, their greater commitment to public good is enhanced by their lower (and less intense) concern with prestige and financial security. Perhaps these are the students reform prosecutors should look to, but it may be difficult to overcome an “us v. them” outlook among many wanting to work as public defenders.¹³³

This becomes clearer when we compare that group to those who are interested in criminal law but want to work in private practice, the criminal law non-public service people. The most noticeable difference between the public defender group and the criminal law/private practice group is the one for public good. It is substantially less important for the private practice group—just a bit over one-half (56%) rate it as more influential compared to 87% for the public defender group (for the prosecutor group it is 74%). It is statistically significant and relatively strong.¹³⁴ And the level of intensity is far lower with just 19% of the private practice group rating public good as very influential (seven on the seven-point scale) compared to 60% for the public defender group.

Financial security is also more important for the criminal law/private practice group. Over 80% rated it as more influential (83%) and 45% as very influential. This is much higher than for the public defender group (see above). The relationship is statistically significant, though not as strong as the one for public good.¹³⁵ Financial security is also more important than for the prosecutor group, but the relationship is not statistically significant. The only statistically significant difference for the private practice compared to the prosecutor group is for public good. Again, the private practice group sees it as less important (56% v. 74%).¹³⁶ Perhaps these are the students reform prosecutors might hesitate on.

Finally, only one group sees public good as more influential than the criminal law/public defender group, but not by much. That group

133. A recent law school graduate, interviewed for a separate study by one of the co-authors, Daniels, is working as a public defender. They said they were not “an authority person and didn’t want to work on the prosecution side . . . (instead) it’s the David v. Goliath thing and helping out the underdog.” (interviewed on Mar. 20, 2020). That separate study is still in progress and is one interested in experiential learning in law school. See David Thomson & Stephen Daniels, *Looking Back: A Case Study of Career Interest and Experiential Learning in Law School*, 56 WILLAMETTE L. REV. 283 (2020).

134. Chi square .000, Cramer’s V = .45.

135. Cramer’s V = .04.

136. Cramer’s V = .29.

consists of students wanting to work with a public interest group. Ninety-three percent of these students see public good as more influential, but the relationship by group is not significant.¹³⁷ Their commitment to public good is even more intense than the public defender group, 71% v. 60% rating public good at seven on the seven-point scale. However, and important from the reform prosecutor's perspective, these students are not much of a target of opportunity. Only 3% of the public interest group chose criminal law as their legal practice area.

IV. THE POOL

A. Criminal Law

Contributing to the public good is an important motivation for students interested in criminal law and working in the criminal justice system. It helps to differentiate them from their peers with other values and interests. As we noted above, however, they appear to represent only a small proportion of students, and a small proportion of a shrinking law student body at that. On the other hand, some anecdotal evidence might lead one to think there is substantial pool of interested students, especially at more elite law schools and that it is a lake rather than just a puddle.

Paul Butler suggests that the progressive prosecutors and their goals may attract students interested in criminal justice with a more progressive orientation.¹³⁸ One can find reports of Larry Krasner making recruiting visits to elite law schools and finding large crowds of enthusiastic students.¹³⁹ Maybe the rise, and especially the visibility, of progressive prosecutors is helping to offset or blunt the consequences of declining law school enrollment, at least at certain kinds of schools.¹⁴⁰

137. The only significant difference between the two groups is for financial security, chi square .009, Cramer's V = .20. Just over one-half (51%) of the public interest group sees financial security as more influential compared to two-thirds for the public defender group.

138. Antholis, *supra* note 75.

139. See Ben Austen, *In Philadelphia, a Progressive D.A. Tests the Power—and Learns the Limits—of His Office*, N.Y. TIMES MAG. (Oct. 30, 2018), <https://www.nytimes.com/2018/10/30/magazine/larry-krasner-philadelphia-district-attorney-progressive.html>; Chris Palmer, *Larry Krasner's First Year as Philly DA: Staff Turnover, Fewer Cases, Plenty of Controversy*, PHILA. INQUIRER (Jan. 6, 2019), <https://www.inquirer.com/news/larry-krasner-philadelphia-district-attorney-staff-reform-cases-first-year-20190106.html>.

140. The LSSSE data do not allow us to probe the possible influence on enrollment and/or motivation of very specific events or movements in the broader environment, such as the rise of Black Lives Matters and what drives it. Still, given the earlier discussion of motivation in this

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The broader range of LSSSE survey results over time allow us to look for basic changes or trends to explore who wants to work as a prosecutor, as a public defender, or as a lawyer working in private practice (one interested in criminal law). First, however, we need a clear idea of just how much interest there has been and is among law students for these kinds of work. The short answer, as Table 2 below shows, is not much. It displays the percent of all students in the LSSSE surveys over time who chose criminal law as their preferred area of legal specialization.¹⁴¹ While there is a very slight increase in percentage over time, there is an important caveat. The *number* of students in the LSSSE surveys decreased over time, as did law school enrollment generally.¹⁴² In other words, while there may be a bit more interest in criminal law among those in law school, the absolute number is lower.

Table 2.
Criminal Law as Preferred Area of Specialization: Percent
of All Students

	% Criminal
2007–09	9%
2010–12	12%
2013–15	14%
2016–18	14%

article, one should be skeptical of unitary factor explanations, while not dismissing a given factor's possible influence. Again, motivation is nuanced and multifaceted.

141. On the LSSSE data used in this part of the paper, *see* LSSSE *supra* note 19. There is no difference in the percentages comparing public schools to private schools. Table 2 and later tables and figures stop at the 2016-18 time period because LSSSE did not ask a preferred area of legal specialization question in 2019 and 2020. The annual ABA disclosures on employment outcomes do not provide specific data on area of legal specialization; *see* ABA SECTION OF LEGAL EDUCATION, EMPLOYMENT OUTCOMES, <http://www.abarequireddisclosures.org> (last visited Dec. 27, 2021).

142. *See* DANIELS, *supra* note 99, at 140–45. As overall law school enrollment declined after 2010, so did the number of LSSSE respondents in our data. For 2007-09, the first years in Table 2, there is a total of 28,992 respondents in our data set (2,356 criminal); for 2010-12, 29,392 (3,136 criminal); for 2013-15, 25,305 (2,938 criminal); and 2016-18, 18,076 (2,092 criminal).

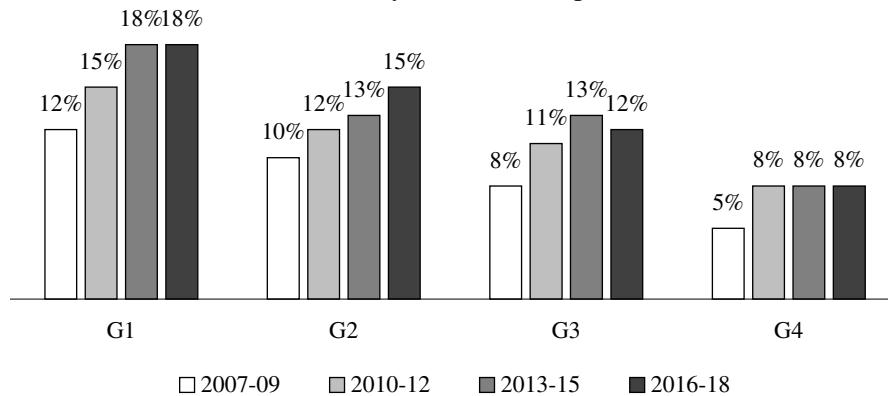
There are, however, some variations among schools when we organize them into four groups based on median LSAT.¹⁴³ Figure 1 shows the percentage of students choosing criminal law by LSAT group over time: G1 LSAT <153, G2 LSAT 153-155, G3 LSAT 156-160, and G4 >160.¹⁴⁴ Generally speaking, we see the percentage of students choosing criminal law decreasing going from the lowest group, G1, to the highest group, G4. For the first two groups, G1 and G2, the percentage increase a bit over time. For G3, the pattern is only slightly different, and for G4 the pattern is slight increase followed by stability at a comparatively lower level.¹⁴⁵ More elite schools, at least in the LSSSE data, do not appear to be a hot bed of interest in criminal law. While there may be more interest in criminal law proportionally over time in less than elite schools, the absolute number again is lower given the decline in the actual numbers.

143. LSAT for each school determined by calculating the overall median LSAT of a school's LSSSE 1L respondents for the years 2005 to 2020, calculations done by authors. Four groups constructed by obtaining from annual ABA 509 disclosures the median 1L LSAT for each accredited law school for 2005 through 2020; next calculating the mean of the median for each school over the years they filed a 509 disclosure between 2005 and 2020, and then calculating quartiles for the entire distribution of those means.

144. Undoubtedly, some readers may want to know more about the schools in Figure 1, even their identities. To protect the identity of schools and respondents, LSSSE provides us with de-identified data. Additionally, our agreement with LSSSE requires us to avoid reporting on the data in any way that might allow for the deductive identification of a school. See LSSSE *supra*, note 19.

145. The relationship between LSAT Group and whether a student choosing criminal law or something else is statistically significant for each of the four time periods, but extremely weak with Cramer's V being <.10 for the first three time periods and .11 for the last period. Though very weak, the pattern is one of increasing LSAT and decreasing interest in criminal law.

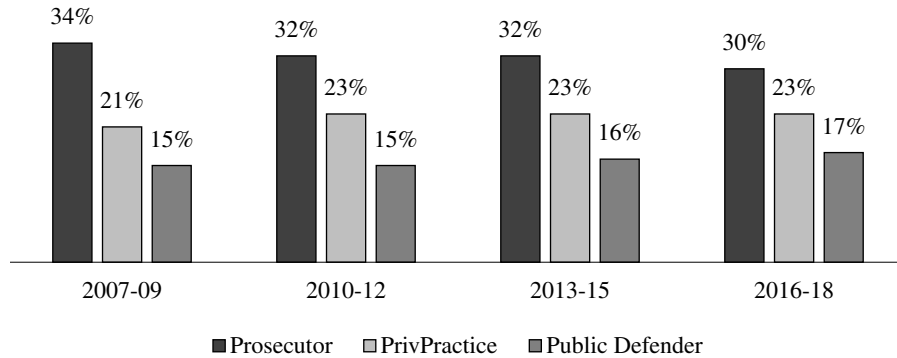
Figure 1
Criminal Law as Preferred Area of Specialization: Percent of All Students by LSAT Group Over Time



B. Criminal Law and Type of Work

Figure 2 shows the percentage of those students choosing criminal law wanting to work as prosecutors, in private practice, or as public defenders. The patterns are relatively stable, although with a very slight but noticeable decrease in the percent wanting to work as a prosecutor and a very slight but noticeable increase in those wanting to work as a public defender. The largest percentage want to work as prosecutors. Those wanting to work in private practice are the second-largest percentage, with those wanting to work as public defenders being the lowest (which may give those concerned about social justice issues some pause). It is worth noting the difference between prosecutor and public defender, with the prosecutor percentage being twice that for the public defender figure except for the last time period (and that difference not being all that different).

Figure 2
Percentage of Criminal Law Students Choosing Each Working Setting



If we look at the patterns over time by LSAT group as in Figure 1, there are some notable variations comparing groups as Table 3 shows. The percentage of criminal law students wanting to work in private practice gets somewhat lower going from G1 to G4 (reading from left to right in Table 3), with the difference at each point in time between G1 and G4 being the clearest.¹⁴⁶ There is no clear pattern over time for prosecutors over time, nor is there for public defenders. Within groups, G1 and G2 have slightly declining percentages of criminal law students wanting to work as prosecutors (again, one should keep in mind the general decline in law school enrollment).

Table 3.
Percent of Criminal Law Students Preferring Each Work Setting: by LSAT Group Over Time

	G1			G2			G3			G4		
	Pros	PD	Priv	Pros	PD	Priv	Pros	PD	Priv	Pros	PD	Priv
2007-09	30%	14%	26%	41%	13%	18%	32%	18%	19%	32%	18%	17%
2010-12	29%	15%	29%	36%	11%	21%	32%	20%	15%	42%	18%	11%
2013-15	27%	17%	29%	36%	15%	21%	33%	17%	18%	35%	18%	18%
2016-18	26%	15%	31%	32%	15%	19%	30%	22%	18%	35%	21%	16%

146. The relationship between LSAT Group and whether a criminal law student is choosing Private Practice or something else is statistically significant for each of the four time periods (Chi square <.05 for each); but the relationships are extremely weak with Cramer's V being <.10 for all but the second period for which V = .15).

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In general, although there is some increase over time in the percentage of students interested in criminal law in all but G4 schools, the interest diminishes going from G1 to G4. Most students have not been and are not especially interested in criminal law. Among those who are interested, the largest proportion do want to work as prosecutors and the smallest proportion want to work as public defenders. No LSAT group stands out as one in which working as a prosecutor is especially prominent and the same is true for public defender; and as noted above, G1 and G4 stand out for private practice.

C. Criminal Law, Type of Work, Diversity, and Debt

The final aspect of the pool is diversity, important for whether reform prosecutors can use hiring to diversify their organizations as a part of their goal of change. In general, Table 4 shows little difference between men and women generally regarding the percentage of each choosing criminal law.¹⁴⁷ The one interesting difference is the consistent but slight increase for women from 2007-09 to 2016-18 (from 9% to 15%). While the LSSSE survey data set, as well the law student body overall, became smaller over time, it did become more female.¹⁴⁸ With regard to male students choosing criminal law, this means a smaller percentage of a smaller number choosing criminal law. For females choosing criminal law it means an increasing percentage of a smaller number.¹⁴⁹

147. Overall (ignoring time and LSAT Group), the relationship between gender and choosing criminal law or something else is extremely weak, Cramer's $V = .011$.

148. For the years 2019-20, the gender breakdown in the LSSSE survey data was 55% female and 45% male.

149. In addition, the LSSSE survey data (like the student body overall) became less white over time, from 71% white (not Hispanic) in 2007-09, to 61% in 2016-18. For AAPI students, the percentage of the survey respondents remained stable over time (between 6%-7% for each time period). For African Americans, the percentage also remained relatively stable between, 6% for the first two time periods, 9% in 2013-17, and then dropping again to 7% in 2016-18. Hispanic was the only group to show a consistent, but modest, increase over time, from 7% in 2007-09 to 12% in 2016-18. For the years 2019-20: White (not Hispanic) = 62%; Hispanic = 13%; African American = 7%; AAPI = 5%.

Table 4.
Percent of Each Group Choosing Criminal Law

	Female	Male	White	Black	Hispanic	AAPI
2007-09	9%	10%	10%	9%	11%	6%
2010-12	12%	13%	13%	12%	14%	9%
2013-15	14%	14%	14%	14%	14%	9%
2016-18	15%	12%	13%	17%	16%	8%

In contrast to White and AAPI students, Table 4 shows increases, but only modest ones, for the percentage of Black and Hispanic students choosing criminal law. Still, the percentage of these two sets of students choosing criminal law is not large at the final time period.

Table 4 provides a general context for the more interesting patterns at the intersection of race and gender, particularly for Black females and Hispanic females. For each there is a consistent pattern of increase for 2007-09 to 2016-18 in the percentage choosing criminal law.¹⁵⁰ Hispanic females choosing criminal law increased consistently from 11% to 14% to 15% to 17%. Black females choosing criminal law increased a bit more dramatically from 9% to 11% to 14% to 19%. Again, the caveat that these are increasing percentages of a decreasing number of students for both groups of women.

By focusing on criminal law students in the last two time periods pooled together, 2013-15 and 2016-18, we can go into more detail in looking at that intersection and the percentage of criminal law students choosing to work as prosecutors, public defenders, or in private practice.¹⁵¹ Table 5 presents the patterns for the kinds of work chosen by 2013-18 criminal law students by gender and race. Most noticeable is the difference between the prosecutor and the public defender columns. With the exception of African American males, the percentage wanting to work as a prosecutor is much higher than that for public defender. In fact, a larger percentage of African American males chose private practice than either of the other choices in Table 5.

With the exception of AAPI criminal law students, the percentages of those wanting to work as prosecutor is higher for women than

150. Asian women had the lowest percentage at each point time, going from 6% in 2007-09 to 9% in 2010-12 and staying at 9%. For White women, the percentage started at 10% in 2007-09, went to 15% in 2013-15 and stayed at 15%.

151. Given the declining number of LSSSE survey respondents over time, the small number of respondents in some categories militate against using the 2016-18 period alone.

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for men, but as Table 4 shows AAPI student were less likely to choose criminal law as an area of practice.¹⁵² For each of the other groups, women are more likely to want to work as a prosecutor than their male counterparts.¹⁵³ The gender differences within groups for those wanting to work as a public defender are more minimal.¹⁵⁴ Generally, female criminal law students are less likely to choose private practice.¹⁵⁵

Table 5
Percent of 2013-2018 Criminal Law Students Choosing
Different Types of Work

	% Choosing Prosecutor	% Choosing Public Defender	% Choosing Private Practice
AAPI Female	33%	19%	15%
African American Female	26%	16%	22%
Hispanic Female	33%	19%	19%
White Female	36%	17%	18%
AAPI Male	35%	19%	25%
African American Male	16%	19%	27%
Hispanic Male	23%	17%	31%
White Male	30%	14%	28%

The LSSSE data do not allow us to probe the possible reasons underlying the patterns just outlined. Although not directly on target a unique set of materials from Texas may at least provide some insight as to why some people of color shy, or run, away from work as a prosecutor. Under the heading Diversity the website of the Texas District & County Attorneys Association (TDCAA) recently published two items providing the views of prosecutors of color (women and men)

152. The gender difference for prosecutor by gender among AAPI students is not statistically significant.

153. The differences are weak: Cramer's V = .11 for African American and Hispanic and .06 for White.

154. The only statistically significant difference is for White criminal law students: Cramer's V = .04.

155. The gender differences for White and for Hispanic criminal law students for private practice are statistically significant but weak (White, Cramer's V = .09; Hispanic, Cramer's V = .10). The others are not statistically significant.

on their jobs and the challenges they face.¹⁵⁶ For instance, an assistant district attorney in Polk County, TX, said:

I have great difficulty with being accused by other members of my community of harming men and women of my race due to the number of minorities incarcerated. It's as if I'm responsible for every African-American person who has been incarcerated. It is assumed that every term of incarceration is unjustified and that I, in my position, am responsible for this injustice to my people. Oftentimes, I have been asked how I sleep at night.¹⁵⁷

She is not alone. An assistant district attorney in Harris County, TX, said:

As a Black woman prosecutor, I have received criticism for joining a flawed, carceral system that seeks to punish more Black and Brown people than anywhere else in the world. It is difficult trying to be an effective advocate for the community and county I serve when the default is a flawed criminal justice system rooted in institutional racism.¹⁵⁸

And still another, an assistant district attorney in Dallas County, TX, said, “We are often seen by other people of color as “sell-outs” or “the man.”¹⁵⁹ While these prosecutors stayed in the job, their remarks give some truth to the David Wilkins speculation from over 20 years ago: “To the extent that these lawyers perceive that the black community disapproves of certain lawyering roles or particular actions, they may be less likely to follow that particular path.”¹⁶⁰

One should not discount the psychological challenges. Adam Geer, from Philadelphia, calls this “our albatross.”¹⁶¹ In his experience,

Being a Black prosecutor can be emotionally and spiritually draining. I experience vicarious trauma in nearly every aspect of the job—whether when reviewing videos of mostly young Black men in

156. See Tiana Jean Sanford, *Courageous Conversations About Race*, TEX. DIST. & CNTY. ATT'Y ASS'N (Sept.–Oct. 2020), <https://www.tdcaa.com/journal/courageous-conversations-about-race/>; Denise Hernandez, *Raising the Voices of Prosecutors of Color (Extended Version)*, TEX. DIST. & CNTY. ATT'Y ASS'N (Sept.–Oct. 2020), <https://www.tdcaa.com/journal/raising-the-voices-of-prosecutors-of-color-extended-version/>.

157. Hernandez, *supra* note 156. Beverly Armstrong, responding to the question, what are the greatest difficulties in being BIPOC (Black, indigenous, and people of color) within the criminal justice system? quoted in Hernandez.

158. *Id.* Kenisha Day, responding to the same question.

159. *Id.* LaQuita Long, responding to the same question. For a non-Texas voice saying the same thing. See Geer, *supra* note 39. Geer works in Philadelphia.

160. David B. Wilkins, *Straightjacketing Professionalism: A Comment on Russell*, 95 MICH. L. REV. 795, 805 (1997).

161. Geer, *supra* note 39.

the last moments of their lives, comforting their grief-stricken mothers, and seeing the defendants (who look like me) shackled and sentenced, at my request, to sometimes decades in prison.¹⁶²

Geer and the Texans are reflecting on their experiences as prosecutors and not talking about students. Strictly speaking they are talking about issues that may affect retention and keeping prosecutors from leaving. Nonetheless, they do tell us about some important obstacles in attracting a diverse pool of people.

The patterns above for private practice raise the issue of debt. Some students may not want to work as a prosecutor or public defender for monetary reasons.¹⁶³ The LSSSE survey data, which include a basic question on debt, allow us to explore this idea at least to a degree.¹⁶⁴ Only 14% of 2013-18 respondents said they expected no debt and 12% of them chose criminal law. Of the 86% with debt, 17% chose criminal law.¹⁶⁵ More generally, the increasing size of the expected debt does not appear to be an obstacle to choosing criminal law for those with debt.¹⁶⁶

Still, debt may or may not be an issue for choosing the type of work, especially considering the Public Service Loan Forgiveness Program.¹⁶⁷ In general for criminal law students, there is no statistically significant relationship between having or not having debt and choosing any one of the types of work in Table 5. The lack of a relationship with private practice would suggest that debt is not a significant obstacle even in a situation in which loan forgiveness would not be available. If we look at the amount of debt and the choice between prosecutor and private practice, there is not a significant relationship; nor is there on for choosing between public defender and private practice.¹⁶⁸

Of course, for particular groups of students the relationship with debt may be different. For female criminal law students, there is no

162. *Id.*

163. See Marilyn Yarbrough, *Minority Students and Debt: Limiting Career Options*, 35 J. LEGAL EDUC. 697 (1989). But see McGill, *supra* note 1.

164. The LSSSE survey asks students how much law school debt they expect to have upon graduation giving the students a range of options, e.g., \$0, \$1-\$20,000, \$20,001-\$40,000, and so on.

165. The difference for having debt/no debt and choosing criminal law or not is statistically significant, Fisher's Exact, .000, but weak, Cramer's V = .05.

166. The relationship between choosing criminal law or not and size of debt is weak, Cramer's V = .04. The median debt for a student choosing criminal law was \$120k to \$140K; for those choosing something else, it was the same.

167. See *Public Service Loan Forgiveness (PSLF)*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service>.

168. Cramer's V for public defender and private practice is a weak at .09.

statistically significant relationship between having or not having debt and choosing any one of the types of work in Table 5. In addition, the relationship between debt or not the choice of prosecutor and private practice is not significant, and neither is the relationship for choosing public defender rather than private practice. The same is true when looking at these choices and the amount of debt. For male criminal law students, there is one significant difference—choosing public defender or not having debt or not, but it is weak. There were no significant relationships for the amount of debt.¹⁶⁹

V. POLICY IMPLICATIONS

Reform or progressive prosecutors know they need to change the culture of their organizations and not just internal policies, protocols, and practices. Hiring is a critical step in reform prosecutors' blueprints for building a new organizational culture, not only the necessary technical skills and competencies for successful job performance as a prosecutor but also a culture component that reflects the organization's values and goals. Indeed, such matching between employees and organizations (or fit) is one of the most salient factors for hiring in professional fields.¹⁷⁰ Hiring new law school graduates is an obvious and crucial part of that effort for reform prosecutors, but they may face very real challenges in trying to recruit the kinds of law school graduates they want.

As discussed above, academe itself may help discourage students from this line of work, especially students of color. Moreover, while there are students motivated by the public good, for most it is to some degree only; and even for those more motivated by the public good not all want to work in the criminal justice area. While students inter-

169. This does not mean that debt is unimportant for retention—for staying on the job. “Retention is equally problematic, as most Black and Brown prosecutors, saddled with crippling student loan debt, often leave the office for more lucrative positions in private practice.” Geer, *supra* note 39.

170. Progressive prosecutors need to reexamine their hiring criteria to ensure that they can properly measure and identify cultural fit during the recruitment process. However, to our knowledge, there is no empirical research that systematically examines the recruitment process in prosecutors' offices and whether existing hiring criteria are sufficient to predict individuals' fit to the office culture. Because recruiters' evaluation of job applicants' cultural fit is often based on limited recruitment materials or interviews, they tend to produce false sense of cultural fit. In fact, it is typical that the recruitment process in prosecutors' offices consists of multiple rounds of interviews that focuses primarily on individuals' trial skills and work ethic, *see, e.g., Memorandum*, GEO. WASH. U.L. CAREER CTR. (July 24, 2017), <https://www.law.gwu.edu/sites/g/files/zaxdzs2351/f/downloads/Prosecution%20Office%20Memo.pdf> (surveying the hiring practices at prosecutors' offices in major U.S. markets).

ested in working as a prosecutor are more likely to be motivated by the public good than their peers generally, those with the most intense interest in the public good and working in criminal justice want to work as public defenders. And again, it cannot be emphasized enough that all our findings are against the background of declining numbers of law students, meaning the challenge for prosecutors is even greater than what the percentages may lead one to think.

Diversity is another major part of prosecutors' efforts to change their organizations but hiring for diversity is an even tougher challenge. The number of those interested is low and progressive prosecutors are not the only ones wanting to hire for diversity.¹⁷¹ Some prosecutors, like Larry Krasner, may have achieved a type of celebrity status that may serve as a powerful recruitment tool to attract diverse candidates. He can visit law schools and personally reach out to candidates, and some will make the decision to become a prosecutor because they are going to work for a celebrity. However, most prosecutors' offices do not have a star or celebrity leader. Those offices will need to make a concerted and deliberate effort to attract diverse candidates in what is a competitive market, one in which prosecutors may start with a handicap because of hostility toward the job. Additionally, the concern about organizational diversity is often intertwined with other competing organizational goals and values.¹⁷²

Despite the increasing interest in diversity, equity, and inclusion in prosecutors' offices,¹⁷³ there is still little systematic and rigorous empirical research on how to effectively accomplish diversity goals. Our findings do help, but only add to that challenge. We found, for instance, that African American students, especially males, are the

171. Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871 (2014); Deborah L. Rhode & Lucy Buford Ricca, *Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel*, 83 FORDHAM L. REV. 2483 (2015); Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079 (2011); see also *Diversity Best Practices Guide*, NAT'L ASS'N L. PLACEMENT (June, 2020), https://www.nalp.org/uploads/2020_DiversityBestPracticesGuide.pdf.

172. See generally Frank Dobbin, Soohan Kim & Alexandra, *You Can't Always Get What You Need: Organizational Determinants of Diversity Programs*, 76 AM. SOC. REV. 386 (2011) (discussing the forces that cause some organizations to embrace diversity programs and suggesting that an organization's culture is a profound predictor for adoption of diversity programs).

173. See, e.g., *FJP/Brennan, 21 Principles*, supra note 8, at 14, 29 (suggesting progressive prosecutors "hire a diverse staff across all levels of seniority" by "developing targeted recruitment to diverse groups (like bar association affinity groups); reassessing hiring criteria to address barriers to hiring people of color; and ensuring that underrepresented groups on staff are appropriately supported, considered for promotion, and involved in office hiring decisions").

least interested in working as a prosecutor. Hispanic male students are also less likely to want to work as a prosecutor. Perhaps there is some consolation that debt may not be a general barrier but recruiting for diversity will require special emphasis and creative approaches.

This article's main interest has been the student side of the equation. In the near term, the percentage (and number) of law students interested in criminal law and working in criminal justice will not change much. Progressive prosecutors will need to work with the pool as it is and that can mean not just looking for those who want to be prosecutors. Given the goals in mind, students wanting to be public defenders may be a fruitful source if the "us v. them" mentality can be overcome. As Larry Krasner said to a group of law students, think of it as "a prosecutor with compassion. Or a public defender with power."¹⁷⁴ This, however, may wind up as a "rob Peter to pay Paul" situation for the criminal justice system because both the percentages and numbers are smaller for those wanting work as public defenders.

Unlike Krasner, most prosecutors will not be traveling the country to elite schools trying to interest and recruit new graduates. Most will be working more locally or maybe regionally. They will need to have more than just a good or inspiring message. Reform prosecutors may generate a demand for candidates interested in reimaging and reshaping the role of prosecutors in American society. But they must act strategically to boost the supply of good candidates.

While messaging is important, strategic messaging is a necessity. Although progressive prosecutors often emphasize their offices' mission to engage in criminal justice reform, the attraction for at least some students working in their organizations cannot be taken for granted. Nothing is obvious. Instead, the attraction must be nurtured through messaging and opportunities that demonstrate how working in that prosecutor's office can align with the motivations driving students' interest in law and their career aspirations.

One area of possibility is the law schools. Reform prosecutors need to reach out to law schools to begin building pipelines.¹⁷⁵ This requires a conversation surrounding the nature of change in prosecu-

174. Austen, *supra* note 139.

175. Perhaps there is value to pipelines that go way back. Responding to the question "what inspired you to choose prosecution as a career," Idris Akinpelu (an assistant district attorney in Dallas County, TX) said, "Seeing certain injustices growing up in my low-income neighborhood and influences from high school led me to this career. I was in the Law Magnet at Townview High School, and each magnet school had classes specifically set aside for immersion in our chosen field. In ours, we were able to intern at the Dallas County DA's Office. I worked in the

tors' offices and how law schools can integrate new pedagogy and teaching methods to interest their students in the changing role of American prosecutors. It starts with teaching students the values, concepts, and tools for understanding prosecutorial reforms. Law professors who teach criminal law, criminal procedure, and evidence need to educate their students not only about black letter law and doctrine, but also about issues like mass incarceration, bias in the criminal justice system, and other power dynamics embedded in the current system. Some of course are already doing this, but it is not enough.

A fruitful strategy involves experiential education. Research suggests that many students, including criminal law students, might be more comfortable with a practice-based or practice-lecture hybrid-based learning style. Few prefer a primarily lecture-based style.¹⁷⁶ And students tend to look for experiential opportunities that align with their career interests—clinics, externships, semester in practice, etc.¹⁷⁷ Experiential education helps law students integrate theory and practice. Through these programs, students can build critical lawyering skills, develop relations with mentors, and cultivate career aspirations, especially around public service. Importantly, those opportunities can also aid the goal of diversity by providing appropriate role models, mentors, and support networks.

Clinics may be ideal, but actual prosecution clinics are uncommon. A 2019-2020 survey of law schools by the Center for the Study of Applied Legal Education found that 37 of 185 (20%) of responding schools reported having a criminal prosecution clinic, while 107 (58%) reported having a criminal defense clinic.¹⁷⁸ However, only 17 schools in the survey (9%) had a clinic of any kind (not just a prosecution clinic) that operated off-campus in a host office, suggesting that few

265th Judicial District Court for two years, and my mentor to this day is Judge Keith Dean, who was the presiding judge at the time.” Quoted in Hernandez, *supra* note 156.

176. See Thomson & Daniels, *supra* note 133, at 296–304.

177. *Id.* Experiential opportunities may even help shape career interests. Another of the Texas prosecutors — Chandler Raine, assistant district attorney in Harris County, TX — said, “I knew I wanted to be a prosecutor halfway through my first summer internship at the Harris County District Attorney’s Office That summer internship in 2011 was the first time I realized that the ethical prosecutor fighting to see that justice is done is both the first line of defense for civil liberties—by following the law and never bending the rules—and often the last line of defense for the safety of the community. The two-walk hand in hand only in this profession.” Quoted in Hernandez, *supra* note 156.

178. 2019-2020 SURVEY OF APPLIED LEGAL EDUCATION, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. 7 (2020), https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f8e46e59e39d4dc82e70a54_Report%20on%202019-20%20CSALE%20Survey.10.19.20.pdf.

prosecution clinics actually operate in-house in a prosecutor's office.¹⁷⁹

One that does is Ohio State's Moritz College of Law. The clinic students handle misdemeanor cases in Delaware County, Ohio. The clinic includes "two faculty members who team-teach the clinic and hold appointments as special prosecutors, allowing the clinic members full discretion in handling cases."¹⁸⁰ Students interview victims and other witnesses, develop case strategies, negotiate plea bargains with defense attorneys, and conduct hearings, bench trials, and jury trials In the classroom, students learn basic litigation skills and discuss the criminal justice system. They also reflect on their exercises of prosecutorial discretion and their encounters with ethical challenges."¹⁸¹

Another possible model is for law schools to create a "hybrid" prosecution clinic, where faculty assume full or partial responsibility for case supervision in an external placement. Faculty will work closely with prosecutors but not assume full day-to-day responsibility. The structure and arrangement of such clinics may differ based on the relationship between law schools and their partner offices. However, under this model, faculty can play a critical role to prepare students for the highest level of ethical practice by providing students a safety net that permits them to express disagreement with their office supervisors, or to even back out of a case if their supervisors insist on a course of action a student deems unethical.¹⁸²

Law school clinics, of course, are expensive and few schools are likely to want to add more. Externships are another matter. Many, if not most, law schools have an externship program and coordinators. Many may also have some variant of a semester-in-practice program that allows the student to receive an entire semester of credit for their work. These opportunities give students hands-on experience and allow them to see a particular part of the legal process up close. In doing so, these kinds of programs can also provide an opportunity for

179. *Id.* at 29.

180. See *Criminal Prosecution Clinic*, OHIO ST. UNIV. MORITZ COLL. L., <https://moritzlaw.osu.edu/study/clinics/criminal-prosecution-clinic> (last visited Oct. 29, 2021).

181. *Id.*

182. Stacey Caplow, a well-known leader in the field of clinical education in the legal academy, wrote that is crucial to have "faculty involvement as either supervisors or seminar teachers in order to create a safe space for students to critically question their work, their observations of the work of others and the role of prosecutor altogether." Stacey Caplow, *Tacking Too Close to the Wind: The Challenge to Prosecution Clinics to Set Our Students on a Straight Course*, 74 *Miss. L.J.* 919, 952 (2005).

the entity working with the student to expand the pool of candidates. Many prosecutors may already be collaborating with law schools on experiential opportunities. There is perhaps no better way for progressive prosecutors to show what their offices are about and what it means to work there.

In a similar vein are organizations like Fair and Just Prosecution (FJP). FJP works with reform prosecutors across the country. Beyond their involvement in supporting new thinking around policy and practices in prosecutors' offices, FJP has an interesting educational component. One of their programs is the Summer Fellows Program that essentially leverages the power of experiential learning while also acting as a diversity pipeline:

FJP's Summer Fellows Program places rising 2Ls and 3Ls in summer internship positions in the offices of some of the most inspiring elected prosecutors in the country . . . Summer Fellows, who will be part of a diverse cohort of accomplished law students interested in transforming the criminal legal system, will have a unique opportunity to receive hands-on experience working on criminal cases and other assignments typical of internships in prosecutor's offices, while also undertaking a policy reform project on an issue of interest to that office.¹⁸³

The FJP program has worked with over 30 prosecutors' offices and is continually growing.¹⁸⁴ Perhaps most importantly, FJP has also established a cutting-edge District Attorney/Public Defender Summer Split Program. It enables a few select students to split their internship between a prosecutor's office and a public defender's office. This kind of program can help students decide whether to choose a career path in public service, especially addressing the concerns of those individuals who are skeptical about the idea that serving as a prosecutor can contribute to criminal justice reform.

Allowing students to see first-hand the functioning of the criminal justice system from both sides may also reduce the "us versus them" mentality in our adversarial system. More importantly, such a program may provide a valuable platform for aspiring public defenders to get a taste for working as a prosecutor, which further helps progressive prosecutors to expand the pool of candidates.

183. For further details about the FJP/Summer Fellows Program, see *Program Overview*, FAIR & JUST PROSECUTION, <https://fairandjustprosecution.org/about-fjp/summer-fellows-program/> (last visited Dec. 27, 2021).

184. *Id.* One of us, Chien, was an FJP Summer Fellow.

Through clinics, externships, simulations, boot camps, practicums, policy labs, pro bono opportunities, and partnership with bridge organizations, prosecutors' offices and law schools can work together to better leverage existing resources to advise, mentor, and support interested students. In short, if reform prosecutors want to attract and hire those "good candidates" for organizational change, they need to ensure law schools are not an impediment. This means building long-term relationships with individual law schools, rather than merely visiting the campus occasionally to send an inspiring message. It means doing what will allow that message to resonate and become real.

Given the challenges progressive prosecutors face in hiring, prosecutor may need to rethink their recruitment processes. Beyond the hiring phase, they may also need to think about other issues such as continual socialization,¹⁸⁵ retention, and replacement.¹⁸⁶ The earlier remarks of the Texas prosecutors emphasize the challenges of retention. Changing the values defining an organization is a long-term project and finding appropriate hire is only a first step. Keeping those hires, especially with diversity and inclusion in mind, is a whole other challenge and a subject for another article.

VI. CONCLUSION

Reform prosecutors know that meeting their policy goals requires organizational change. This, in turn, involves hiring—especially new law school graduates. It means finding people who will fit into the organization a prosecutor hopes to create. It is a first step of a longer-term process of socializing the new hires into an evolving organization and then retaining them. But that first step is crucial with all else depending on the success of this task.

Using LSSSE survey data on students' motivations and career aspirations, this article shows that the task is daunting given the small pool of people, and especially so in terms of diversity. It argues that

185. See generally Yaroshefsky & Green, *supra* note 44, at 286 (suggesting that informal socialization has a deeper impact on prosecutors' behaviors); Ronald F. Wright & Kay L. Levine, *The Cure for Young Prosecutor' Syndrome*, 56 ARIZ. L. REV. 1065 (2014) (arguing that as prosecutors gain experience, they are better able to adjust their responses to individual cases and to avoid going to trial just to prove their professional worth).

186. For instance, Kim Ogg, a newly elected Harris County, Texas District Attorney in November 2016, started by firing 37 veteran prosecutors. Ogg said that the firings were part of her vision for an organizational change at the office. See Meagan Flynn, *Incoming DA Kim Ogg Prepares to Fire Dozens of Prosecutors*, HOUS. PRESS (Dec. 16, 2016), <https://www.houstonpress.com/news/incoming-da-kim-ogg-prepares-to-fire-dozens-of-prosecutors-9034289>; see also Levine, *supra* note 50.

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collaborative efforts by schools and prosecutors may prove helpful in expanding the pool, especially collaborations involving experiential opportunities for students including women, students of color, and others.¹⁸⁷

We are aware that there are many issues surrounding the recruitment and hiring processes for prosecutors' offices that are not addressed in this article. This article is our first step in a broader empirical project exploring organizational change and the connections between law students' aspirations and the operation, and possible reform, of the criminal justice system. The students are the raw material. They are the ones who eventually will do a major share of the actual work as prosecutors, public defenders, and activists. Reform prosecutors represent just one key piece.

187. See Hernandez *supra* note 156 (quoting Dallas County Assistant Criminal District Attorney Idris Akinpelu and also quoting Harris County Assistant District Attorney Chandler Raine).