

Fall 2012

Prosecution in 3-D

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PROSECUTION IN 3-D

KAY L. LEVINE & RONALD F. WRIGHT*

Despite the multidimensional nature of the prosecutor's work, legal scholars tend to offer a comparatively flat portrait of the profession, providing insight into two dimensions that shape the prosecutor's performance. Accounts in the first dimension look outward toward external institutions that bear on prosecutors' case-handling decisions, such as judicial review or the legislative codes that define crimes and punishments. Sketches in the second dimension encourage us to look inward, toward the prosecutor's individual conscience.

In this Article we add depth to the existing portrait of prosecution by exploring a third dimension: the office structure and the professional identity it helps to produce or reinforce. In addition to understanding the office's explicit policies, new prosecutors must discover the unwritten social rules, norms, and language of the profession and of their particular offices. These informal instructions do more than simply define how a prosecutor acts; they define who a prosecutor is. Our theory of prosecution also explains how different dimensions of the role interact. The structure of a prosecutor's office helps determine and bolster the professional identity of the attorneys who work there; that identity, in turn, has the capacity to

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powerfully shape the prosecutor's outputs.

To investigate this third dimension of criminal prosecution at the state level, we conducted semi-structured interviews with misdemeanor and drug prosecutors in three offices during the 2010 calendar year. Our discussion here focuses on two particular features of office structure—the hierarchical shape of the organization's workforce and the hiring preference for experience—to examine differences they can make in a prosecutor's professional identity. In particular, the prosecutor's basic attitude toward autonomy (or, conversely, the team) produces ripple effects on her relationships with other lawyers and police and on the value she places on achieving consistency across cases. By viewing prosecution through this lens, we hope to offer managers of prosecutors' offices greater power to shape the work of their attorneys and to give the public deeper insight about the work done in its name in the criminal courts.

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I. INTRODUCTION

The criminal prosecutor works in many different professional environments: in community meetings, in consultations with the police, in misdemeanor and felony courtrooms, in sentencing commission and legislative hearings, and in budget meetings. The professional experiences of this courtroom actor extend far beyond the courthouse doors.

Despite the multidimensional nature of the prosecutor's work, many legal scholars paint a comparatively flat portrait of the profession, providing insight into two dimensions that shape the prosecutor's performance. Accounts in the first dimension look outward toward external institutions that shape prosecutors' case-handling decisions. These external checks come from the legislative codes that define crimes and punishments, jury and judicial review of the evidence, and the ethics enforcers within the legal profession, among others. When scholars assess prosecutorial behavior along this first dimension, they usually conclude that external institutions offer too much space for the prosecutor to roam and too little control over prosecutorial discretion.

Sketches in the second dimension encourage us to look inward, toward the prosecutor's individual conscience. In these portrayals, the lawyers who work in the prosecutor's office over the long haul are idealistic people, willing to accept a reduced salary for the opportunity to serve the public. Personal experience and morality guide them in prioritizing among crimes and in designing prosecution strategies to promote public safety. This internal and individualized account, while true in some respects, offers little explanation for why prosecutors in some places seem to do the work differently than prosecutors in other places, and no guidance for chief prosecutors looking to improve results or the workplace environment in their offices.

In this Article we add depth to the existing portrait of prosecution by exploring a third dimension: the office structure and the professional identity it helps to produce or reinforce. Looking to institutional forces within the office itself can show us in greater detail how a prosecutor experiences her professional role and the rule-of-law implications of that role.¹ This deeper look at prosecution examines more than just the contents

¹ Some of our earlier work began this inquiry into the effects of office structure on prosecutors, a topic suggested to us by the time each of us spent working in prosecutors' offices. For an exploration of the power of leaders in a prosecutor's office to shift the practices of line prosecutors, even on a matter as integral to the job as the use of plea bargaining, see Ronald F. Wright & Marc L. Miller, *The Screening/Bargaining Tradeoff*, 55 STAN. L. REV. 29 (2002). For an account of policies concerning the enforcement of the range of statutory rape cases, see Kay L. Levine, *The Intimacy Discount: Prosecutorial Discretion, Privacy and Equality in the Statutory Rape Caseload*, 55 EMORY L.J. 691 (2006).

of explicit office policies. In addition to understanding the official policies, new prosecutors must discover the unwritten social rules, norms, and language of the profession and of their offices. Newcomers learn these expectations informally, whether through lunchtime chats or through careful observation of how veterans behave and speak. These informal instructions do more than simply define how a prosecutor *acts*; they define who a prosecutor *is*.

Our theory of prosecution also explains how different dimensions of the role interact. The structure of a prosecutor's office helps determine or reinforce the professional identity of the attorneys who work there; that identity, we believe, has the capacity to powerfully shape the prosecutors' outputs, including choices about charges, dispositions, and relationships with police.

By invoking the concept of office structure, we refer not to the physical edifice in which the prosecutor's office sits.² Instead, we have the *social* architecture of the workplace in mind: those alignments and routines inside the workspace that organize the staff to handle its caseload. When the chief prosecutor decides whom to hire, how much to pay them, how to divide the work, how to train newcomers, how to monitor the work, and how to respond when staff prosecutors exercise poor judgment, attorneys learn from these choices what it means to be a good prosecutor.

In an effort to investigate this third dimension of criminal prosecution at the state level,³ we carried out fieldwork in two metropolitan areas in the Southeast during the 2010 calendar year. We conducted 121 semi-structured interviews with line prosecutors and supervisors in locations that we call the Metro County District Attorney's Office, the Midway County Solicitor General's Office, and the Ring County District Attorney's Office. In this first Article in a forthcoming series, we concentrate on a subset of forty-two interviews—those of the misdemeanor prosecutors and the drug

For a description of other scholarly inquiries into the influence of the office, see *infra* Part II.B.

² For works exploring the impact of physical space on human behavior in a legal context, see, e.g., LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* (1999); CORNELIA VISMANN, *FILES: LAW AND MEDIA TECHNOLOGY* (Geoffrey Winthrop-Young trans., Stanford University Press 2008); Neal Kumar Katyal, *Architecture as Crime Control*, 111 *YALE L.J.* 1039 (2002).

³ Given the distinctive caseloads and professional environments of federal prosecutors, we concentrated on state prosecutors' offices, where the great majority of criminal prosecutions happen. For an insightful discussion of how structural issues can affect the decisionmaking of federal prosecutors, see Rachel Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 *STAN. L. REV.* 869, 913–21 (2009) (arguing that the investigation and adversarial functions in federal prosecution offices should be split between two distinct sets of employees, so as to make charging and trial decisions more objective).

prosecutors—because those attorneys perform comparable jobs in three different office environments and therefore illuminate the structural questions that concern us here. Our work is theory-generating, allowing us to formulate and sharpen theories about the culture of prosecutors' offices, the professional identities of those who work there, and the potential impacts of those professional identities on office outputs.⁴

What we heard in those interviews sometimes surprised us, and at other times confirmed familiar assumptions about the prosecutor's work. Two particular features of office structure drew our attention: the flat or pyramidal shape of the organization's workforce and the preference for hiring experienced attorneys or recent graduates into entry-level positions. These features of the office's social architecture correlate with distinctive professional identities of the prosecutors who work there. For example, attorneys who work in pyramidal offices and who are hired without experience (as in Metro County) tend to accept bureaucratic and group values. A strong team spirit marks their professional identities. On the other hand, attorneys in an office such as Midway County, characterized by a flatter structure and more experienced hires, display professional identities that are decidedly more independent; they feel no particular obligation to match their own outputs to the decisions of their peers or to the policies of their superiors. These are autonomous, rule-defying prosecutors. Surprisingly, an attorney's team-member-versus-autonomous-actor identity correlates more strongly with his office's social architecture than with his gender or race.

We also found that the prosecutor's basic orientation toward autonomy or the team produced ripple effects on his relationships with other lawyers and police. Attorneys with a more autonomous professional identity tended to report more interest in the work of prosecutors outside their own office; they also dealt with the police in a more self-assured way. Lastly, our data suggest that a prosecutor's professional identity might affect, or be reflected in, the outcomes she achieves in criminal cases and the consistency of those outcomes.

The argument proceeds as follows. After briefly reviewing the standard two dimensions of prosecutorial behavior in Part II.A, we turn in Part II.B to the third dimension of prosecution—office structure. We introduce there our theory, which traces the connections between office

⁴ As with other theory-generating work, a great deal of work remains to elaborate and test the theories we develop here. Cf. Samuel Bloom, *Socialization for the Physician's Role: A Review of Some Contributions of Research to Theory*, in *BECOMING A PHYSICIAN: DEVELOPMENT OF VALUES AND ATTITUDES IN MEDICINE 3* (Eileen Shapiro & Leah Lowenstein eds., 1979); Ester Carolina Apesoa-Varano, *Educated Caring: The Emergence of Professional Identity Among Nurses*, 30 *QUALITATIVE SOC.* 249 (2007).

structure, professional identity, and prosecutor outcomes. Part III describes our research methodology, as well as the three research sites for this study. In Part IV we present qualitative evidence from our research sites to support our hypothesis about the relationship between office shape and hiring preference and the professional identities of prosecutors. Part V considers the potential effects of the prosecutor's self-identity on the output of the office.

By viewing prosecution through the lenses of social architecture and professional identity, we hope to make managers of prosecutors' offices more effective in shaping the work of their attorneys. Our analysis also gives journalists, academic commentators, and other observers a basis for evaluating prosecutors in systemic and policy terms, rather than second-guessing prosecution choices in particular cases. Ultimately, an appreciation of the effects of office structure can give the voting public deeper insight about the work done in its name in the criminal courts.

The effects of the third dimension are sometimes difficult to notice, particularly for legally trained observers who tend to look for explicit rules as behavioral guideposts. This Article thus provides readers with a new way of seeing the state prosecutor. It is not the only way: studies of external institutional constraints and individual prosecutor character also offer valuable insights about prosecutors. We offer here (to invoke a famous metaphor) only one view of the Cathedral. To fully understand the institution of criminal prosecution, "one must see them all."⁵

II. THREE DIMENSIONS OF CRIMINAL PROSECUTION

In an effort to understand the fascinating and multifarious work of criminal prosecutors, one could invoke several different perspectives, or units of analysis. Much of the legal scholarship focuses on the external environment of the prosecutor's office, tracing the interaction between the prosecutor's office and various other legal institutions, including the judiciary, legislatures, sentencing commissions, and others. The unit of analysis in this sort of work is a complete justice system, including all of its interlocking institutions. In contrast, the professional-development perspective on criminal prosecution takes the individual prosecutor as the unit of analysis, looking inward to the moral responsibility of the line prosecutor for the wise use of discretion. While external institutional relations and individual integrity offer two useful vantage points on the work of criminal prosecutors, there is a third possibility that receives surprisingly little attention: the effects that flow from the internal structure

⁵ See Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1089 n.2 (1972).

of the prosecutor's office.

A. THE EXTERNAL AND INDIVIDUAL DIMENSIONS OF PROSECUTION

Prosecutors have broad powers, and one might measure that breadth by mapping the outer boundaries that various legal actors and institutions set for prosecutorial discretion. Whether considered separately or together, those external institutions leave enormous room for prosecutors to shape criminal justice outcomes.⁶

The first place to look for external regulations on prosecutorial behavior is the criminal code crafted by the state legislature. Crime definitions and statutes authorizing penalties, however, tend over time to multiply—not restrain—the legal tools available to prosecutors. Legislators amend criminal codes to cover more behavior, to increase the range of punishments that apply to criminal behavior, and to intensify the overlap among criminal code provisions.⁷

Like the legislature, the judiciary usually does not temper the decisions of criminal prosecutors.⁸ When criminal defendants invite judges to override prosecutors' choices about filing or dismissing charges, judges view those requests through the lens of the separation of powers doctrine. In that light, prosecutorial decisions appear to be quintessential executive choices.⁹ Applying the formal law of due process, the judge considers only

⁶ For more complete reviews of the practical limits on strategies for control of prosecutor discretion, see ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* (2007); Stephanos Bibas, *Prosecutorial Regulation Versus Prosecutorial Accountability*, 157 U. PA. L. REV. 959 (2009); Donald A. Dripps, *Overcriminalization, Discretion, Waiver: A Survey of Possible Exit Strategies*, 109 PENN ST. L. REV. 1155 (2005).

⁷ See Rachel E. Barkow, *Federalism and the Politics of Sentencing*, 105 COLUM. L. REV. 1276 (2005); Sara Sun Beale, *The Unintended Consequences of Enhancing Gun Penalties: Shooting Down the Commerce Clause and Arming Federal Prosecutors*, 51 DUKE L.J. 1641 (2002); Paul H. Robinson & Michael T. Cahill, *The Accelerating Degradation of American Criminal Codes*, 56 HASTINGS L.J. 633 (2005). In settings where the criminal law regulates business practices or where the pool of potential criminal defendants is already well organized, legislatures do sometimes repeal criminal statutes. See Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 225 (2007).

⁸ Of course, judges can control prosecutorial *behavior* inside their courtrooms. See, e.g., JAMES EISENSTEIN & HERBERT JACOB, *FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS* 21 (1977).

⁹ See *United States v. Batchelder*, 442 U.S. 114, 125 (1979) (explaining that when there are two overlapping firearms statutes with different penalty schemes, the Government may choose which one to include in the indictment). As Judge Gerard Lynch famously phrased it, we now operate an “administrative” criminal justice system, where the important decisions typically happen in charging and plea negotiations, before the case ever makes it to trial. Gerard E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117, 2118 (1998).

whether the charges have some minimal factual support in the available evidence; there is no “least restrictive alternative” requirement.¹⁰

While the willingness of legislatures and judges to shape the choices of prosecutors is muted, further potential checks might come from the voters who elect the chief prosecutor¹¹ or from state bar authorities who license all prosecuting attorneys in the jurisdiction.¹² Like the legislators and the judges, though, these institutions deliver less accountability for prosecutors than one might hope. Prosecutorial elections are marked by heavy incumbency advantages and empty rhetoric, and meaningful disciplinary sanctions from bar authorities tend to be few and far between.¹³

Taken together, these external institutions probably have some cumulative regulatory effects on prosecutors. They help to ensure that prosecutors’ actions comply with the law and with current public priorities. They do not, however, fully explain why prosecutors act the way they do. To understand prosecutorial actions, we have to consider more than the breadth of the power granted to prosecutors by other legal actors.

Some authors therefore have articulated a second dimension to prosecution, one that focuses on the individual prosecutor’s internal moral compass. According to this account, when it comes to exercising judgment, an attorney’s conscience keeps her in line. As an individual, and without prompting from others, she will behave responsibly despite the adversary pressures of her role. “A prosecutor is expected to possess moral and ethical principles, integrity, and the courage to do the right thing.”¹⁴ The

¹⁰ Judges, however, have reserved the right to overturn a prosecutorial decision in the rare case where a defendant stumbles upon proof that the decision was based on race, gender, or some other prohibited ground. See *Oyler v. Boyles*, 368 U.S. 448, 456 (1962) (stating that a prosecution may not be based on “an unjustifiable standard such as race, religion, or other arbitrary classification”).

¹¹ See STEVEN W. PERRY, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PROSECUTORS IN STATE COURTS, 2005, at 3 (2006); Ronald F. Wright, *How Prosecutor Elections Fail Us*, 6 OHIO ST. J. CRIM. L. 581, 589–91 (2009) [hereinafter *Prosecutor Elections*]; Ronald F. Wright, *Public Defender Elections and Popular Control over Criminal Justice*, 75 MO. L. REV. 803 (2010).

¹² Bar authorities bring few disciplinary proceedings against prosecutors, and light punishments are commonplace in the exceptional cases finding prosecutorial misconduct. See Angela J. Davis, *The Legal Profession’s Failure to Discipline Unethical Prosecutors*, 36 HOFSTRA L. REV. 275, 292 (2007); Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. REV. 721, 725–43 (2001). The notable exception to this trend is the recent disbaring of Durham, North Carolina Prosecutor Mike Nifong, following his unsupported prosecution of three Duke University students for rape of an exotic dancer. Lara Setrakian & Chris Francescani, *Former Duke Prosecutor Nifong Disbarred*, ABC NEWS (June 16, 2007), <http://abcnews.go.com/TheLaw/story?id=3285862&page=1>.

¹³ See DAVIS, *supra* note 6, at 282–92; Wright, *Prosecutor Elections*, *supra* note 11, at 591–606.

¹⁴ Joseph Cassily, *A Prosecutor Is a Lawyer with Convictions*, NAT’L DISTRICT ATT’YS

prosecutor “may strike hard blows” but “is not at liberty to strike foul ones.”¹⁵

Such familiar quotes speak to the professional integrity of the prosecutor as an individual, and they may well characterize many of the professionals who hold this role. Indeed, for many prosecutors, one’s personal background, training, and professional experiences help to form and ground this internal moral compass, providing stability and guidance over time.¹⁶

But prosecutors—as professionals—are more than (or perhaps less than) the sum total of these individual traits and experiences.¹⁷ Observations about the individual character of a prosecuting attorney do not address the institutional environment in which she works or acknowledge

ASS’N MAG. Apr.–June 2009, at 4, 10.

¹⁵ *Berger v. United States*, 295 U.S. 78, 88 (1935). For a critique of the individualistic view of prosecutors underlying a recent Supreme Court decision, see Susan A. Bandes, *The Lone Miscreant, the Self-Training Prosecutor, and Other Fictions: A Comment on Connick v. Thompson*, 80 FORDHAM L. REV. 715 (2011).

¹⁶ A lawyer’s original ethnic, religious, and socioeconomic community has been found relevant to his place in the profession, *see, e.g.*, JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982). Political party preference, job experience, and gender have been found to be significantly related to attitudes about punishment and courthouse reputation. ROY B. FLEMMING, PETER F. NARDULLI & JAMES EISENSTEIN, THE CRAFT OF JUSTICE: POLITICS AND WORK IN CRIMINAL COURT COMMUNITIES 75 (1992) [hereinafter THE CRAFT OF JUSTICE]. Recent studies of lawyers have paid special attention to the development of connections to outsiders to gauge the depth and breadth of professional networks. *See, e.g.*, JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005); ROBERT L. NELSON ET AL., AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS (2009), available at <http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf>; John P. Heinz & Edward O. Laumann, *The Constituencies of Elite Urban Lawyers*, 31 LAW & SOC’Y REV. 441 (1997); Anthony Paik, John P. Heinz & Anne Southworth, *Political Lawyers: The Structure of a National Network*, 36 LAW & SOC. INQUIRY 892 (2011).

¹⁷ *See* Howard S. Becker & James Carper, *The Elements of Identification with an Occupation*, 21 AM. SOC. REV. 341 (1956); Meryl Reis Louis, *Surprise and Sense Making: What Newcomers Experience in Entering Unfamiliar Organizational Settings*, 25 ADMIN. SCI. Q. 226 (1980). The literature examining professional socialization has concentrated on newcomers to the medical profession and for-profit business executives. For examples of the former, *see* DONALD LIGHT, *The Moral Career of the Psychiatric Resident*, in BECOMING PSYCHIATRISTS: THE PROFESSIONAL TRANSFORMATION OF SELF 241, 241–58 (1980); Apeso-Varano, *supra* note 4; Brenda L. Beagan, “*Even If I Don’t Know What I’m Doing I Can Make It Look Like I Know What I’m Doing*”: *Becoming a Doctor in the 1990s*, 38 CAN. REV. OF SOC. & ANTHROPOLOGY 275 (2001); Bloom, *supra* note 4. For examples of studies in the for-profit business sector, *see* LINDA A. HILL, BECOMING A MANAGER: MASTERY OF A NEW IDENTITY (1992); Herminia Ibarra, *Provisional Selves: Experimenting with Image and Identity in Professional Adaptation*, 44 ADMIN. SCI. Q. 764, 769 (1999); Abraham Sagie & Jacob Weisberg, *A Structural Analysis of Behavior in Work Situations Shared by Group Members*, 130 J. PSYCHOL. 371 (1996).

the interplay between the pressures of this environment and her personal values.¹⁸ Like most professionals who work in organizations, prosecutors shape and filter their backgrounds to reinforce the professional image they want to achieve, in light of the expectations of the people around them. In short, while the internal dimension may reveal some personal truths, it does not account for structural aspects of the profession or illuminate geographic or temporal trends.

B. THE THIRD DIMENSION: THE INFLUENCE OF THE OFFICE

The portrait of the prosecutor we find in the legal literature thus appears two-dimensional: not incorrect, but incomplete. When deciding how to do their jobs, prosecutors do more than simply listen to their own consciences or respond to (or ignore) outside legal, environmental, or policy pressures. They also work within the particular social architecture of their office and immerse themselves in attitudes about the job that come with membership in an organization. For scholars interested in understanding why prosecutors think and behave the way they do, the office is an important but previously understudied third dimension of prosecution.

Various organizational features of the prosecutor's office—size of the workforce, status hierarchies, hiring strategies, job assignments, promotional ladders, access to the boss, and the like¹⁹—structure the professional identities and work lives of the attorneys in the office. These aspects of the social architecture inside the office combine with aspects of the office's external professional environment, such as the proximity to the

¹⁸ Academics frequently adopt this perspective when praising the willingness of prosecutors to consider more than wins and losses at trial. See David Luban, *The Conscience of a Prosecutor*, 45 VAL. U. L. REV. 1 (2010). Many published memoirs of state prosecutors affirm the role of individual conscience, but emphasize the challenges that tend to prevent prosecutors from following that guidance consistently. See DAVID HEILBRONER, *ROUGH JUSTICE: DAYS AND NIGHTS OF A YOUNG D.A.* (1990) (Manhattan); SARENA STRAUS, *BRONX DA: TRUE STORIES FROM THE SEX CRIMES AND DOMESTIC VIOLENCE UNIT* (2006); JOHN SUTHERS, *NO HIGHER CALLING, NO GREATER RESPONSIBILITY: A PROSECUTOR MAKES HIS CASE* (2008) (Colorado).

¹⁹ For example, others have documented the particular impact of specialized prosecution units on the exercise of prosecutorial discretion, see Dawn Beichner & Cassia Spohn, *Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit*, 16 CRIM. JUST. POL'Y REV. 461 (2005); David C. Pyrooz et al., *Gang-Related Homicide Charging Decisions: The Implementation of a Specialized Prosecution Unit in Los Angeles*, 22 CRIM. JUST. POL'Y REV. 3 (2011), and on the inverse relationship between office size and rate of declination, see Michael Edmund O'Neill, *Understanding Federal Prosecutorial Declinations: An Empirical Analysis of Predictive Factors*, 41 AM. CRIM. L. REV. 1439, 1447–48 (2004). For a discussion of the general impact of combined prosecution functions on the objectivity of filing and plea-bargaining decisions, see Barkow, *supra* note 3.

courthouse, relationships with the defense bar, relationships with the judiciary, stability of courtroom personnel, and docket size and diversity, to produce the overall institutional environment.

1. *The Office as a Unit of Analysis in Prior Literature*

More than a generation ago a handful of socio-legal scholars set out to explain the influence of the prosecutor's office on the individual prosecutor's job. More specifically, they looked for external relationships or environmental factors that might affect a prosecutor's willingness to plea bargain. For example, in her classic work *Settling the Facts*, Pamela Utz identified a number of institutional conditions responsible for producing variability in plea-bargaining rates in two California jurisdictions: Alameda County and San Diego County.²⁰ She concluded that Alameda's comparatively higher rates of negotiated pleas resulted from the interaction of legal institutions in that county, along with aspects of the broader political and social climates. First, she pointed to the relatively strong public defense bar and the active role of the Alameda County judiciary in twisting arms to secure pleas in advance of trial.²¹ Second, she reported that Alameda had long suffered from high rates of violent crime, while San Diego had only recently experienced an upsurge in those crimes.²² San Diego also had a more conservative population than Alameda,²³ which left the office leadership unwilling to appear soft on crime through negotiations with defendants.²⁴

A few years later Leonard Mellon, Joan Jacoby, and Marion Brewer studied ten jurisdictions across the United States, looking for structural features that "affect the uniformity, the quality, and the equality of justice administered by local prosecutors."²⁵ The authors concluded that in some

²⁰ PAMELA J. UTZ, *SETTLING THE FACTS: DISCRETION AND NEGOTIATION IN CRIMINAL COURT* (1978).

²¹ See UTZ, *supra* note 20, at ch. 9; see also *THE CRAFT OF JUSTICE*, *supra* note 16, at 24–37 (arguing that chief prosecutors choose one of three political styles—courthouse insurgent, policy reformer, or office conservator—based on strategic concerns over their status vis-à-vis the bench and the defense bar and personal views about the expected value of creating conflict by changing this status).

²² See UTZ, *supra* note 20, at xi. Utz also discussed the management styles of the office leadership—San Diego tightly supervised its deputies, while Alameda was more loosely organized and allowed its employees to exercise independent judgment—but these factors were peripheral to the question she intended to study. The core question of her study was why one office allowed more discretion in case handling than the other. Her insights about control from the top will, however, be useful to us in our discussion of internal structural features that influence professional identity.

²³ UTZ, *supra* note 20, at 43–44.

²⁴ *Id.* at 51–67.

²⁵ Leonard R. Mellon, Joan E. Jacoby & Marion A. Brewer, *The Prosecutor Constrained*

places, “the external environment imposes substantial limits on a prosecutor’s ability to act.”²⁶ For example, they found that caseload size, prosecutors’ trust in the local police force, the demographic character of the jurisdiction, funding sources, and the values of the underlying community can all influence policies adopted by the prosecutor’s office.²⁷

These first-generation works catalogued the myriad ways that the external environment constrains or enables work in the prosecutor’s office. Because the prosecutor’s office is only one institution in a much larger community of socio-legal actors with competing interests, these external relationships bear heavily on the results that prosecutors tend to get with their discretionary power.

Our theory of prosecution, like this earlier work, treats the office as an important unit of analysis, but we take the institutional insights in a different direction. Rather than focusing on the extrinsic influences on prosecutorial decisionmaking, we suggest that *internal* features of the prosecutor’s office frame the *professional identities* of prosecutors in substantial ways. By professional identities, we mean those “attributes, beliefs, values, motives, and experiences in terms of which people define themselves in a professional role.”²⁸ Furthermore, while the earlier generation of studies sought direct connections between environmental features and case outputs, our theory proceeds in two stages rather than one. We do not leap directly from internal office characteristics to prosecutorial outputs. We instead theorize that office features primarily affect or reinforce the professional identities of the prosecutors who work there; the influence of this identity might then be refracted, like light through a prism, to alter prosecutorial choices about plea bargaining, relationships with police and other attorneys, approaches to disclosure obligations, and the

by His Environment: A New Look at Discretionary Justice in the United States, 72 J. CRIM. L. & CRIMINOLOGY 52, 52 (1981); see also JOAN E. JACOBY, THE PROSECUTOR’S CHARGING DECISION: A POLICY PERSPECTIVE 2, 4 (1977). All were large offices, but the sample contained regional diversity, including Detroit, Brooklyn, Miami, San Diego, Seattle, New Orleans, Gary, Salt Lake City, Norfolk, and Boulder. Mellon et al., *supra*, at 52–53 n.1, 77 n.58.

²⁶ Mellon et al., *supra* note 25, at 53.

²⁷ *Id.* at 60–65; see also JACOBY, *supra* note 25, at 2, 4. For more recent work on the correlation between community poverty levels, community political conservatism, and prosecutorial dismissals, see Travis W. Franklin, *Community Influence on Prosecutorial Dismissals: A Multilevel Analysis of Case- and County-Level Factors*, 38 J. CRIM. JUST. 693 (2010). For recent work documenting the correlation between community demographics and prosecutorial willingness to file charges with mandatory minimum sentences, see Jeffrey T. Ulmer et al., *Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences*, 44 J. RES. CRIME & DELINQ. 427 (2007).

²⁸ Ibarra, *supra* note 17, at 765 (citing EDGAR H. SCHEIN, CAREER DYNAMICS: MATCHING INDIVIDUAL AND ORGANIZATIONAL NEEDS (1978)).

like. In other words, the architectural features we discuss do not themselves *cause* prosecutors to handle cases a certain way. Rather, they incline prosecutors to think of themselves and their professional role in a certain way, and this role orientation can motivate prosecutors to make certain professional decisions.

In support of our hypothesis that structures within the prosecutor's office matter to our understanding of the prosecutor's job, we take seriously the insights of Roy Flemming, Peter Nardulli, and James Eisenstein, who first brought attention to the relationship between the organization of a prosecutor's office and the political style of its leader.²⁹ In their focus on more than just the work product of the organization's employees, Flemming and his coauthors advocated for studies of criminal justice institutions that address more than the "bottom line" of outputs. They warned that limiting research on criminal institutions to case outcomes "would be like limiting research on Congress to votes."³⁰ In other words, to understand fully an institution that operates through seemingly independent units, scholars must do more than simply observe and record the end products generated by the individual units. When institutional fabric ties individuals together, what appear to be independent choices may in fact be decisions colored by institutional roles and expectations. For that reason, the institutional fabric itself deserves study, separate and apart from the institutional outputs. We wholeheartedly agree, and thus have designed a study of the prosecutor's organization, as distinct from the outcomes that prosecutors produce.

We part ways with Flemming and his coauthors when it comes to the significance of social architecture in a prosecutor's office. They treated office structure as a concrete embodiment of the chief prosecutor's political style and personality.³¹ Because our concern is the professional identity of the workforce rather than of the boss, we are interested more in identifying the downstream effects of these structures than in tracing their sources.

The connection between office structures and professional identity is not unique to criminal prosecutors; it is a common feature of professional life. Coining the phrase "moral career" to describe the dialectical

²⁹ THE CRAFT OF JUSTICE, *supra* note 16, at 37–38. For Flemming and his co-authors, the structure of the prosecutor's organization mostly reflects the political style of its leader as an insurgent, a reformer, or a conservator.

³⁰ PETER F. NARDULLI, JAMES EISENSTEIN & ROY B. FLEMMING, THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS 368 (1988).

³¹ We agree that these features may motivate the chief prosecutor's choices when it comes to office structures, although the social architecture in an office also reflects exogenous features of the landscape that might override the leader's personality. Exogenous features—such as annual funding allocated by the county, the decision to split the handling of misdemeanors and felonies into two offices, or the views of career prosecutors in the office—may not vary with electoral outcomes or leadership styles.

relationship between one's personal values and the interests or expectations of one's professional community,³² sociologists have demonstrated in various settings that internal routines within an office can have a profound effect on the professional identities of the workers.³³ Moreover, one's professional identity is likely to change over time, particularly for professionals who make career transitions that require them to display new skills and attitudes as they adjust to new colleagues and new work environments.³⁴

Applying this insight to lawyers, the moral career (or professional identity) of the attorney results from the interplay between that attorney's personal values and the professional environment in which he works. The professional environment, which includes the office environment but extends further into the norms and practices of the legal profession itself, is thus one major driver of the attorney's professional identity. Studies of legal aid, criminal defense, and nonprofit lawyers, with their distinctive motivations and professional goals, provide vivid examples of this moral career unfolding.³⁵ We offer here a close-up look at the moral career of the

³² Erving Goffman, *The Moral Career of the Mental Patient*, in ASYLUMS 125, 169 (1961); DONALD E. SUPER, *THE PSYCHOLOGY OF CAREERS: AN INTRODUCTION TO VOCATIONAL DEVELOPMENT* (1957); LIGHT, *supra* note 17, at 241–58.

³³ For example, studies of health-care professionals show how a person's career "takes place in and is shaped by the structure" of the professional community. LIGHT, *supra* note 17, at 244. The literature examining professional socialization is particularly well developed in the fields of medicine and business. For examples of the former, see LIGHT, *supra* note 17, Apesoa-Varano, *supra* note 4, and Beagan, *supra* note 17. For examples in the for-profit business sector, see HILL, *supra* note 17, and Ibarra, *supra* note 17.

³⁴ See Nigel Nicholson, *A Theory of Work Role Transitions*, 29 ADMIN. SCI. Q. 172 (1984); Ibarra, *supra* note 17, at 765. In the socialization process, people assume new roles and learn the appropriate "display rules" that accompany their new roles; they do so in order to assimilate into their new environment and eventually to internalize the proper identity, whether "custodial" (accepting of the status quo) or "innovative" (inclined to make changes). John Van Maanen & Edgar H. Schein, *Toward a Theory of Organizational Socialization*, in RESEARCH IN ORGANIZATIONAL BEHAVIOR 209, 228–29 (Barry M. Staw ed., 1979) (describing the difference between custodial orientation, content innovative orientation, and role innovative orientation as fostered by office culture); Robert Sutton, *Maintaining Norms about Expressed Emotions: The Case of Bill Collectors*, 36 ADMIN. SCI. Q. 245 (1991). Otherwise, they risk losing effectiveness or authority. See Mark R. Leary & Robin M. Kowalski, *Impression Management: A Literature Review and Two-Component Model*, 107 PSYCHOL. BULL. 34, 38 (1990).

³⁵ For studies of lawyers who work with disadvantaged populations, see, e.g., Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31, 33 (Austin Sarat & Stuart Scheingold eds., 1998); Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 J. CRIM. L. & CRIMINOLOGY 1195 (2005); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short*

state prosecutor, placing a spotlight on particular aspects of the office environment that might influence or reinforce the professional identities of the prosecutors who work there.

2. *Explicit Policies as Office Structures*

Which office structures correlate with the prosecutor's professional identity? A study of the third dimension of prosecution might naturally start with explicit policies, announced by the Elected³⁶ or the chief assistant,³⁷ that restrict the discretion of individual line prosecutors.³⁸ Such policies exist in most places, at least as to certain crimes or certain courtroom issues.³⁹ To be sure, bureaucratic life gives an employee plenty of ways to evade the commands of the boss.⁴⁰ Nevertheless, it is

Life and Fractured Ego of the Empathic, Heroic Public Defender, 37 U.C. DAVIS L. REV. 1203 (2004); Marina Zaloznaya & Laura Beth Nielsen, *Mechanisms and Consequences of Professional Marginality: The Case of Poverty Lawyers Revisited*, 36 LAW & SOC. INQUIRY 919 (2011). For a study of lawyers who work for politically conservative organizations, see ANNE SOUTHWORTH, *LAWYERS OF THE RIGHT* (2008); Anthony Paik, Ann Southworth & John P. Heinz, *Lawyers of the Right: Networks and Organization*, 32 LAW & SOC. INQUIRY 883 (2007).

³⁶ Throughout this Article, we refer to the chief prosecutor of the office (the District Attorney or the Solicitor General) as "the Elected" because this is the term prosecutors commonly use to refer to their bosses.

³⁷ The chief assistant in a prosecutor's office is akin to the chief operating officer of a corporation; she is the leader of the trial line attorneys, as well as the administrative decisionmaker on most day-to-day matters. Her work in this regard frees up the Elected to focus on political duties or external relationships. For the office to function well, she must be a highly trusted and loyal associate of the Elected. See THE CRAFT OF JUSTICE, *supra* note 16, at 38.

³⁸ See Rachel E. Barkow, *Organizational Guidelines for the Prosecutor's Office*, 31 CARDOZO L. REV. 2089 (2010); Alissa Pollitz Worden, *Policymaking by Prosecutors: The Uses of Discretion in Regulating Plea Bargaining*, 73 JUDICATURE 335, 335 (1990) (describing the prevalence of internal office policies). Note, though, that prosecutorial policies may be somewhat primitive; as Norman Abrams put it, "most often they amount to elementary instruction books for junior prosecutors . . ." Norman Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 29 UCLA L. REV. 1, 8 (1971).

³⁹ See Roy B. Flemming, *The Political Styles and Organizational Strategies of American Prosecutors: Examples from Nine Courthouse Communities*, 12 LAW & POL'Y 25, 26 (1990) ("Prosecutors, when compared to the other major actors in the courthouse, face few constraints in constructing offices that will follow their policies . . . Prosecutors have more freedom and less compunction in restricting the autonomy of their assistants."). The policies might also establish monitoring and enforcement mechanisms to learn about departures from the announced policies and to discourage them. See George T. Felkenes, *The Prosecutor: A Look at Reality*, 7 SW. U. L. REV. 98, 108 (1975) ("The characteristics of his work environment which greatly shape his own concept of the role he plays must include the nature of the organization which employs him, the methods used for the measurement of success, and his position in the judicial system.").

⁴⁰ See AMITAI ETZIONI, *MODERN ORGANIZATIONS* 68–69 (Alex Inkles ed., 1964)

commonplace for a chief prosecutor to declare a policy on an important topic and to make the policy stick.⁴¹ Such formal bureaucratic controls are a routine part of the prosecutorial services in many other countries.⁴²

Yet explicit policies in state prosecutors' offices form only a thin visible crust on a deep set of office structures that shape or reinforce attorney identity. To understand why this is so, compare the shallow reach of a state prosecutor's office policies to the deeper policies at work in other organizations that employ lawyers, such as administrative agencies or large private law firms. Administrative agencies generate an enormous volume of internal directives for how employees should interpret and enforce agency rules, in order to regularize their employees' behavior.⁴³ The proliferation of these documents is likely a result of the enormous size of the agency staff and the funding and sophistication of the opposition.⁴⁴ These factors do not come into play for the typical state criminal prosecution.

In the private law firm setting, the amount of client money at stake, the sophistication of negotiating or litigating counterparts, and the comparatively light caseload leads to closer supervision for junior attorneys than the typical state prosecutor's office can provide for its new prosecutors.⁴⁵ Unlike the decisions of a new prosecutor, any work product

(proposing that because "a high percentage of the deviant acts are committed by a small percentage" of the participants, organizations should devote extensive resources to screening new recruits); THE CRAFT OF JUSTICE, *supra* note 16, at 62–65 (describing how prosecutors work around policies they feel are too restrictive).

⁴¹ The Elected can even force change on a significant issue, like plea bargaining, that is central to the daily work of the office. See Mary P. Brown & Stevan E. Bunnell, *Negotiating Justice: Prosecutorial Perspectives on Federal Plea Bargaining in the District of Columbia*, 43 AM. CRIM. L. REV. 1063, 1080–83 (2006); Wright & Miller, *supra* note 1, at 57.

⁴² See David T. Johnson, *The Organization of Prosecution and the Possibility of Order*, 32 LAW & SOC'Y REV. 247 (1998) (comparing American and Japanese prosecutors in their emphasis on consistency). See generally Kay Levine & Malcolm Feeley, *Prosecution*, in THE INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 12224 (2001) (comparing various countries on the degree of discretion possessed by individual prosecutors in the bureaucracy).

⁴³ See Robert A. Anthony, *Interpretive Rules, Policy Statements, Guidances, Manuals, and the Like—Should Federal Agencies Use Them to Bind the Public?*, 41 DUKE L.J. 1311 (1992); Peter L. Strauss, *The Rulemaking Continuum*, 41 DUKE L.J. 1463, 1446 (1992).

⁴⁴ See Peter L. Strauss, *Publication Rules in the Rulemaking Spectrum: Assuring Proper Respect for an Essential Element*, 53 ADMIN. L. REV. 803, 805–06 (2001) (describing reasons for development of detailed guidance at the Nuclear Regulatory Commission).

⁴⁵ Some state prosecutors' offices, including a few described to us in the course of this research, have crafted charging and sentencing grids to restrain individual prosecutors in their charging and plea offers. But even in those offices, there is no parallel structure for supervisors to review letters written to victims, much less to sign off on motions or opposition briefs submitted to the court. That scarcity of oversight would be unheard of in most law firms, who worry about the ways in which junior associates represent the firm's

of a junior attorney at a large law firm receives multiple internal reviews before it goes out the door.⁴⁶ The bare-bones funding available for state prosecutors and for their usual adversaries creates an environment different from the large law firm or the administrative agency. The structural features of criminal justice work make formal policies less frequent, and less salient, for new prosecutors at the state level.

3. *Organizational Shape and Hiring Preference as Office Structures*

Given the scarcity of explicit instructions or direct oversight by the Elected or her chief assistant, our concept of the third dimension of prosecution must be more layered, accounting for unarticulated forces as well as explicit office policies.⁴⁷ We could consider, among other things, how the leadership articulates the organization's priorities,⁴⁸ the provision of internal training opportunities, the size and diversity of the docket, the supervisory structure, the typical progression (if any) of assignments in the office, and the ways in which the physical layout divides or joins employees.⁴⁹ While these are all rich topics, we highlight here⁵⁰ two

interests to outsiders. We suspect this is at least partly the result of caseload size. In many firms, junior associates work on a handful of matters at any given time; in contrast, the junior prosecutor is likely to have 75–100 cases on her desk.

⁴⁶ Moreover, the lawyers in private law firms devote considerable energy to the salary structures in the firm and insist on detailed and transparent monitoring and evaluation systems for the work of each attorney on the payroll. See MICHAEL J. KELLY, *LIVES OF LAWYERS REVISITED: TRANSFORMATION AND RESILIENCE IN THE ORGANIZATIONS OF PRACTICE* (2007) (comparing law firm cultures and emphasizing transparent compensation structures as a key determinant of office values); Elizabeth Chambliss, *Measuring Law Firm Culture*, 52 *STUD. L. POL. & SOC'Y* 1 (2010).

The large size of the federal prosecutorial bureaucracy and the relative sophistication and funding available to at least some federal defendants also help to explain why that prosecutorial service is so different from the typical state prosecutor's office and is subject to more well-developed written policies. Assistant U.S. Attorneys (AUSAs) also face discipline from a well-developed monitoring and enforcement operation within the Department of Justice. E-mail from Jennifer Collins, former AUSA, to Kay Levine & Ronald Wright (Jan. 4, 2012, 4:51 PM EST) (on file with authors).

⁴⁷ See Felkenes, *supra* note 39 (providing an anecdotal account of the socialization of new prosecutors); Jeffery T. Ulmer & John H. Kramer, *The Use and Transformation of Formal Decision-Making Criteria: Sentencing Guidelines, Organizational Contexts, and Case Processing Strategies*, 45 *SOC. PROBS.* 248, 262–65 (1998).

⁴⁸ See *THE CRAFT OF JUSTICE*, *supra* note 16, at 25.

⁴⁹ Thomas Winfree Jr. and his coauthors, in their study of the socialization of law student interns in prosecutors' offices, also examined structural aspects of the office, but they were concerned with those features that affected the interns' experiences, such as the appointment of an intern supervisor and prosecutors' willingness to give substantive assignments to law students. See L. Thomas Winfree, Jr., et al., *On Becoming a Prosecutor: Observations on the Organizational Socialization of Law Interns*, 11 *WORK & OCCUPATIONS* 207 (1984). Those are not the features that concern us here.

features whose relationship to professional identity may seem less obvious: organizational shape and hiring preference.

Shape: The “organizational shape” variable refers to the division of labor among line prosecutors in one office. It is customary in the legal and sociological literature to treat hierarchical office structures and specialization among attorneys as the environmental norm for criminal prosecutors.⁵¹ This Weberian version⁵² of the prosecutor’s office is overinclusive and leads us to ignore important differences among offices. There are thousands of independent state prosecutors’ offices in the country, most of which contain only a few prosecutors in addition to the Elected.⁵³ Given their small size, the opportunities for hierarchical supervision and specialization in most offices are severely limited. Even among the midsize and larger prosecutor’s offices, we suspect one can find meaningful variety in organizational shape because the shape of each office reflects the unique combination of environmental forces and the personal priorities of the Elected.

We see organizational shape as a variable that captures both the level

⁵⁰ In the discussion that follows in Part III, we discuss some of these other architectural features of each office as they become relevant.

⁵¹ See, e.g., DAVID T. JOHNSON, *THE JAPANESE WAY OF JUSTICE: PROSECUTING CRIME IN JAPAN* 119 (2002) (“On the surface, organizations of prosecutors in Japan and in America may look much alike: they are bureaucratic; they distinguish between operator, manager, and executive roles; . . . they promote workers on the basis of some combination of merit and seniority . . .”); Jerald W. Cloyd, *The Processing of Misdemeanor Drinking Drivers: The Bureaucratization of the Arrest, Prosecution, and Plea Bargaining Situations*, 56 *SOC. FORCES* 385, 385 (1977) (observing, based on empirical research in San Diego, that prosecution has become “immersed in large bureaucratic structures that emphasize standardized procedures, specialization of activities, hierarchical decisionmaking, and the sanctity of written reports and records”); Felkenes, *supra* note 39, at 115–16 (observing, based on surveys of prosecutors in California and Alabama, that the “office of the prosecuting attorney as an ideal bureaucratic structure is characterized by the hierarchy of authority, the complete elimination of personalized relationships, the high degree of specialization within the office, and the elimination of nonrational considerations such as hostility, anxiety, and affectual involvements”). The only two contrary treatments we found in the literature (that is, studies that acknowledge the existence of alternative shapes) are *THE CRAFT OF JUSTICE*, *supra* note 16, at 40–47, and Mellon et al., *supra* note 25, at 74–77.

⁵² See MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 329–41 (A.M. Henderson & Talcott Parsons trans., 1947).

⁵³ Among the 2,344 felony state prosecutors’ offices in existence in 2005, half served jurisdictions containing fewer than 37,000 people, and more than 85% served populations of 250,000 or less, what researchers regard as a “small” jurisdiction. See PERRY, *supra* note 11, at 2; Ronald F. Wright, Padilla and the Delivery of Integrated Criminal Defense, 58 *UCLA L. REV.* 1515, 1523 (2011). Small offices typically have very small staffs; for example, in 2001, offices serving populations of 250,000 or less averaged only three assistant prosecutors plus one elected DA. CAROL J. DEFRANCES, *BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PROSECUTORS IN STATE COURTS* 2 tbl.2 (2001).

of supervision and the specialization of assignments in an office.⁵⁴ It runs from the flat to the gently hierarchical to the steeply pyramidal. The flat office is marked by egalitarianism and the absence of specialization among the staff.⁵⁵ The line attorneys in a flat office are subordinate to the Elected (and possibly to a chief assistant) but are essentially coequals to each other. They do not work under midlevel supervisors; they do not jockey for promotions because there are no promotional ladders for them to climb. Where specialized units exist, they are nothing more than alternative assignments, without conveying any sense of “moving up” in the office. Any articulated office policies tend to apply to the entire office, rather than to subgroups.

While egalitarianism and generalization are the hallmarks of the flat office, pyramidal offices show high levels of hierarchy and specialization.⁵⁶ When it comes to hierarchy among the prosecutors in such offices, the most steeply pyramidal offices use several levels of supervision, including close monitoring at the unit level and culminating with the Elected and his chief assistant at the very top. The attorney assignments in the most pyramidal offices also reinforce the hierarchy. Seriousness of crime and prestige of assignment increase the higher up the pyramid one goes. Line attorneys at the lowest level of the pyramid have the least experience in the office and consequently receive the least desirable (and least risky) assignments; they are subject to at least one level of review for decisions of any consequence. Each attorney earns more plum jobs and more freedom from surveillance through success in the office over time.

With regard to specialization, designated groups of prosecutors handle certain types of cases (misdemeanors, drugs, and so forth) or certain phases of the adjudicatory process (such as screening, preliminary hearings, and trials). Specialization allows the attorneys to develop relationships with defense attorneys and police who regularly handle those sorts of cases.

⁵⁴ We do not believe that this property is an exclusive function of the office docket. While offices with mixed (felony and misdemeanor) caseloads may be more inclined toward hierarchy, offices with homogeneous caseloads might fall anywhere on the shape axis. That is, an office that exclusively handles misdemeanors might be flat or might be hierarchical, depending on the preference and leadership style of the Elected. See *THE CRAFT OF JUSTICE*, *supra* note 16, at 39.

⁵⁵ This is akin to the “clan” office described by Flemming and his colleagues and the “unit” style office described by Mellon and his colleagues. *THE CRAFT OF JUSTICE*, *supra* note 16, at 45; Mellon et al., *supra* note 25, at 74.

⁵⁶ This organizational configuration calls to mind Max Weber’s rational legal bureaucratic structure, which emphasized “division of labor, centralized hierarchical channels of communication and decisionmaking, impersonal utilitarian forms of interaction and a generalized respect for records and record-keeping.” Cloyd, *supra* note 51, at 395 (referencing MAX WEBER, *ON LAW IN ECONOMY AND SOCIETY* (1922)).

Moreover, team members can regularly share information about emerging defense tactics, enabling them to create a shared strategic response.⁵⁷ A supervisor leads each group and develops group-specific policies to supplement the office-wide policies. Team supervisors create a middle level of management for the office,⁵⁸ although in smaller offices the Elected might personally supervise each of the specialty units.

We hypothesize that the differences in office shape one finds among offices correlate with strikingly different professional identities and values among prosecutors. An attorney working in an office subunit, distinguished by attorneys with similar skills assigned to handle similar assignments, will tend to look to her peers in that subunit, rather than to attorneys in other units with distinct responsibilities, for advice and role models. Attorneys in this setting will treat prosecution as an exercise of group wisdom. Additionally, the prosecutor who is monitored by multiple levels of supervisors, who enforce a combination of team-specific and office-wide policies, is likely to be more comfortable with the burden of justification and accountability (those who are uncomfortable with these restrictions will likely seek work elsewhere). In contrast, an attorney who works in a flat office is more likely to bristle at the possibility of horizontal and vertical controls on the exercise of her individual judgment.

Hiring Preference: Turning to our second structural feature, an Elected must choose a hiring strategy for the office to keep the staff at full strength.⁵⁹ Those hiring preferences could be based on alumni networks (e.g., for graduates of certain law schools) or on geography (e.g., for lawyers who grew up within the jurisdiction). Here we focus on a particular kind of preference, for *experience*—that is, for entry-level applicants who possess prosecutorial experience at the time of hiring. Electeds on one end of this axis prefer to hire experienced prosecutors (veterans) whenever possible; Electeds on the other end recruit exclusively from the ranks of recent law school graduates (newbies).

⁵⁷ See Cloyd, *supra* note 51, at 395–96. Whether the creation of a specialized unit actually affects filing decisions is up for debate. See, e.g., Beichner & Spohn, *supra* note 19, at 490; Pyrooz et al., *supra* note 19, at 17.

⁵⁸ There may even be multiple levels of supervisors, as Bruce Frederick and Dan Stemen found in their study of the Midwestern County District Attorney's Office. See BRUCE FREDERICK & DAN STEMEN, THE ANATOMY OF DISCRETION: AN ANALYSIS OF PROSECUTORIAL DECISION-MAKING, FINAL REPORT TO THE NATIONAL INSTITUTE OF JUSTICE 5 (Grant No. 2009-IJ-CX-0040 Sept. 2011) (describing an office with a three-tiered management system).

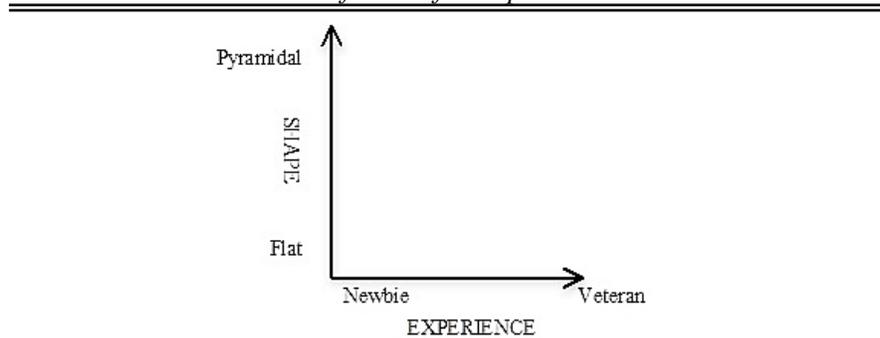
⁵⁹ Of course, what type of attorney an office hires is not driven exclusively by office policy. There is some self-selection bias involved in who applies for the job in the first place. In the succeeding pages, we describe some aspects of this selection and the ways it might limit the choices of an Elected when it comes to establishing the social architecture of her office.

There are costs associated with both approaches. Veterans command larger salaries than newbies, but taking on newbies requires a commitment to train them and to endure months or years of underdeveloped judgment. There are also benefits associated with both approaches: veterans can “hit the ground running” when it comes to case management and courtroom technique, but newbies are easier to mold and may develop longer-term loyalty to the office, regarding themselves as home-grown talent who should repay the investment in their professional development.⁶⁰

We hypothesize that an office with a hiring preference for experience is more likely to employ prosecutors who think of themselves as self-sufficient, who see relatively little reason to look to others in their current office for guidance, and who are relatively reluctant to accept close supervision from team leaders or others. Offices stocked with newbies are more likely to employ prosecutors who are comfortable with, and perhaps even comforted by, multiple levels of control over their decisionmaking both horizontally (by peers) and vertically (by supervisors).

Putting the pieces together, the two structural options we have described can be organized as in Figure 1.

Figure 1
Interaction of Office Shape and Hiring Preference for Experience



In theory, an Elected might combine any particular point on the shape axis with any given preference on the experience axis, although leadership style, budgets, docket diversity, applicant-pool limitations, and other practical restraints make some combinations more likely than others to arise in certain places.

⁶⁰ See DOUGLAS T. HALL, CAREERS IN ORGANIZATIONS 48 (1976) (noting that a person’s career “stage” can influence his or her behavior at work; a professional in his first job “will probably be concerned about advancement and establishing a reputation among colleagues,” while an older person who started her career 20 years earlier is likely to have “quite a different set of concerns”).

For example, although the management style and personality of the Elected in even the smallest office might add some pyramidal elements to an otherwise flat structure,⁶¹ we suspect there is some correlation between large office size and pyramidal structure, even though the structure itself performs the critical role in our theory. That is, given the inevitable specialization and levels of supervision that large organizations tend to require,⁶² we predict that larger prosecutors' offices in the United States would be located in the upper half of Figure 1.⁶³ Varied dockets may also push an office toward a more pyramidal shape. An Elected with jurisdiction over both misdemeanors and felonies is more likely to require some specialization among the staff attorneys, and diverse caseloads will increase the benefits of specialized work and midlevel supervision to assure quality control.⁶⁴

There may also be a weak correlation between office shape and hiring preference. For example, although some larger offices may have the funds to hire the occasional expensive veteran to perform a specialized training or supervisory role, we surmise that offices in the top right-hand corner of the graph (pyramid plus a preference for hiring veterans into entry-level positions) are few and far between at the state level. An Elected who hires veterans into the bottom levels of a steeply pyramidal office can expect high turnover.⁶⁵ Veterans are inclined to be "chiefs," rather than "Indians," to borrow an impolitic analogy from one of our interviewees.⁶⁶ For that

⁶¹ More active day-to-day supervision by the Elected in a smaller office, combined with more stable assignments to specialty areas, could push a smaller office up into the midrange of the pyramidal axis, even without a set of midlevel supervisors. *THE CRAFT OF JUSTICE*, *supra* note 16, at 39 (noting that even smaller offices can possess bureaucratic features because "bureaucracy evolve[s] out of political styles and their related policy needs as much as from the problems associated with increasing size").

⁶² See WEBER, *supra* note 52.

⁶³ This is consistent with the findings of Flemming and his colleagues in *THE CRAFT OF JUSTICE*, *supra* note 16, at 39 ("[T]he bigger offices . . . were centralized, hierarchical, and formally supervised.").

⁶⁴ On the other hand, offices with less diverse dockets may need to adopt flatter shapes in order to promote attorney job satisfaction, particularly if the Elected has a hiring preference for experienced attorneys. See Nicholson, *supra* note 34, at 178–79 (explaining that positions of high discretion keep employees from becoming unhappy and frustrated at work). We thank Darryl Brown for this insight.

⁶⁵ Given the pay and prestige associated with that position in a pyramid office, the job is not particularly attractive to attorneys who have gained experience and salary elsewhere. Even in the Manhattan DA's office, regarded as one of the most prestigious state offices in the country, David Heilbroner was nearly the only member of his 50-person cohort who had taken the bar more than a few months before starting the job. See HEILBRONER, *supra* note 18, at 17.

⁶⁶ Prosecutor 955. Trends at the federal level are of course completely different, given the prestige of the office itself, the emphasis on hiring experienced attorneys to handle the

reason, they may be more trouble than they are worth in organizations that value close control and consistent outcomes.

Conversely, we believe that the features described in the lower-left-hand corner of the graph (flat shape plus a preference for newbies) are commonly found in smaller rural prosecutors' offices,⁶⁷ which tend to offer lower pay and lighter caseloads than midsize or urban offices.⁶⁸ New lawyers with lesser financial needs can earn a decent living there while gaining some experience. Professional growth potential is limited, though: because rural jurisdictions have less varied and less serious crime than urban areas, fewer specialized prosecutors are needed and direct oversight by the Elected is common.⁶⁹ With no need for midlevel supervisors or specialized units, the job becomes routine after a while for all but the most senior members of the staff.

In sum, one previously understudied architectural feature that might correlate with prosecutorial identity is the degree of hierarchy and specialization, what we call the *organizational shape*. Likewise, the tendency of an office to hire experienced prosecutors to fill entry-level staff positions, referred to above as a *hiring preference for experience*, may also affect or reinforce how prosecutors understand their professional roles. Pyramidal offices with a hiring preference for newbies, we believe, manifest an environment that encourages prosecutors to coordinate with one another and to think of their work as a joint enterprise. In contrast, relatively flat offices that recruit mostly veterans are likely to attract and foster a greater sense of independence among the line staff. In the following section, we describe our efforts to flesh out these insights through the use of qualitative interview data.

federal docket, and the hierarchy structure imposed by the Department of Justice.

⁶⁷ It might also be found in military prosecutorial organizations (the JAG Corps). As described to us by a former Navy JAG officer, most of the trial attorneys in the unit were newbies who would spend only two years in the office before moving on, while senior trial counsel provided advice and assistance. Trial attorneys held substantial autonomy in case management, although pretrial agreements had to be approved by the convening authority. Interview with Mario Barnes, Senior Associate Dean for Academic Affairs, University of California at Irvine Law School, in Irvine, Cal. (Nov. 4, 2011).

⁶⁸ See PERRY, *supra* note 11. Based on a nationwide dataset, the average budget of a small office, defined as serving 250,000 people or fewer, is approximately one-third the size of the average budget of a large office, defined as serving a population of 1 million or more. *Id.* at 4 tbl.4. The caseload disparity is significantly greater: small offices annually close about 3% of the number of felony and misdemeanor cases closed by a large office. *Id.* at 6 tbl.8 (reporting median figures). Of course, the median 141 prosecutors working in the large office can handle far more cases than the median three attorneys working in the small office.

⁶⁹ Many attorneys in our research sites indicated that they began their prosecutorial careers in one of these flat rural offices yet chose to move to a more urban and diverse environment after a couple of years to acquire more experience.

III. RESEARCH DESIGN

We turn now to our preliminary empirical test of the variables that our theory of the third dimension predicts will correlate with the formation of a professional identity. In this section we describe the methodology of this study. We also provide background information on our three research locations and explain the shape and hiring preference characteristics of each one.

A. METHODOLOGY

In an effort to study state prosecutors' professional development, we interviewed prosecutors in three offices in two metropolitan areas in the Southeast during the 2010 calendar year.⁷⁰ The first office, the Metro County District Attorney's Office (Metro), handles all felony and misdemeanor prosecutions for a major metropolitan area of more than one million residents. The prosecutorial district includes major urban areas, suburban municipalities, and rural areas.⁷¹ Our two other offices are situated in another major metropolitan area: one midway between the urban center and the furthest reaches of the suburbs and the other a bit further outside the urban center in the suburban ring. The Midway County Solicitor General's Office (Midway) prosecutes only misdemeanors,⁷² while the Ring County District Attorney's Office (Ring) handles only cases filed as felonies.⁷³

We interviewed 121 attorneys in three offices, following a semi-structured format that produced interviews lasting between sixty and ninety minutes in a majority of cases.⁷⁴ Among the 11 narcotics prosecutors and

⁷⁰ We are now expanding this research into other regions of the country to assess whether the patterns we observed are generalizable beyond this region. Since this Article went into production, we have completed approximately one hundred additional interviews at four other offices, including two in the American Southwest.

⁷¹ Metro experienced rapid population growth in the first decade of this century, growing 32% during this time. Its population is roughly two-thirds Caucasian and one-third minority, most of whom are African-American. The Metro County DA's office employs roughly 80 attorneys who file approximately 10,000 felony and 50,000 misdemeanor cases each year.

⁷² The population in Midway in 2010 was about 700,000, with 54% African-American and 5% Asian residents. The county grew about 4% between 2000 and 2010. The Midway Solicitor General's office employs approximately 15 full-time attorneys (as well as two or three part-time attorneys); they file approximately 13,000 misdemeanor cases each year. The Midway District Attorney's Office files approximately 5,000 felony indictments and accusations each year.

⁷³ The population in Ring in 2010 was approximately 700,000, with 25% African-American and 5% Asian residents. The population grew 13% between 2000 and 2010. The Ring DA's office employs approximately 35 attorneys and files between 4,500 and 5,000 indictments and accusations each year.

⁷⁴ All of the interviews occurred in 2010. The shortest interview lasted less than thirty

31 misdemeanor prosecutors whose interviews we analyze here, 26 worked in Metro, 14 in Midway, and 2 in Ring.⁷⁵ Four of the prosecutors had formal supervisory responsibility for other attorneys in the office. There were 22 females and 11 persons of color among these prosecutors.⁷⁶

Our interviews covered many aspects of the prosecutors' educational and professional development. For example, we asked our respondents about their reasons for becoming prosecutors, the influence of office policies on their day-to-day work, and their future career plans. They described their relationships with supervisors, peers, defense counsel, and police, and discussed the relevance of law school, professional associations, and mentors on their current professional lives. They discussed the tools and skills needed to do the job well and their philosophies of prosecution.⁷⁷ We coded the transcripts to identify common themes in the responses of the prosecutors and recurring patterns among subgroups.⁷⁸

This qualitative research method is well suited (and perhaps necessary) to explore our hypothesis that a prosecutor's professional identity mediates between office structures and office outputs. While quantitative research

minutes; the longest covered more than four hours. For a discussion of the semi-structured interview, a standard research method in the social sciences, see Beth L. Leech, *Asking Questions: Techniques for Semistructured Interviews*, 35 POL. SCI. & POL. 665 (2002). Scholars recognize that interviews are a critical technique for grounded theory studies such as this one. Normally at least twenty to thirty interviews are necessary for a scholar to develop a reliable model or theory that can adequately characterize the findings. See, e.g., JOHN W. CRESWELL, *QUALITATIVE INQUIRY AND RESEARCH DESIGN: CHOOSING AMONG FIVE TRADITIONS* 56 (1998).

⁷⁵ Our method, like most qualitative work based on interviews, emphasizes depth over numerosity in the dataset. See Zaloznaya, *supra* note 35, at 924. We recognize that two employees from Ring is a very small number on which to base claims about that office. However, because we are comparing structures, we were limited to practice groups that could be found in more than one site. The only practice group in Ring that is duplicated in Metro is the drug unit. We have been careful to check the sentiments about the office voiced by our Ring drug unit attorneys against the comments of their colleagues in other units to make sure that the drug unit attorneys are not idiosyncratic in their views of how the office functions.

⁷⁶ Midway employed a larger proportion of racial minorities than the other two offices: 7 of the 14 attorneys interviewed there were non-Caucasian; 6 of those 7 were African-American, and 1 was of Asian descent. The 26 prosecutors in Metro were evenly divided between males and females, while 9 prosecutors in Midway were women. The two Ring attorneys in the drug unit were male. While we mention here the gender and race breakdown of the offices, we did not find any salient differences in result based on either of these variables.

⁷⁷ Our semi-structured interview questionnaire is available upon request.

⁷⁸ We used NVivo, a standard qualitative research software package, to facilitate this sorting of interview statements into thematic categories. The software also facilitates word frequency searches and similar exercises to isolate connections among interviewees. Each of us coded some interviews conducted at each of the three offices.

might capture something about office characteristics and case outcomes, qualitative methods offer more insight about the connective tissue of professional identity.

B. SHAPE AND HIRING PREFERENCE IN OUR RESEARCH SITES

Each of the three offices—Metro, Midway, and Ring—is characterized by a particular combination of shape and hiring preference.⁷⁹ Metro is moderately pyramidal⁸⁰ in shape and mostly hires newly minted lawyers right out of law school. New hires start off in the misdemeanor unit, first doing bench trials before moving up to jury trials.⁸¹ After about two years, successful misdemeanor jury trial prosecutors graduate into one of three different units: the narcotics unit, the crimes against property unit, or the juvenile unit. Prosecutors stay in this second assignment for about eighteen months; after that, they might make a lateral move to another second-stage unit or they might move up to crimes against persons or the habitual felon unit.⁸² The homicide unit is regarded as the pinnacle assignment. A supervisor runs each unit or “team” and generates team policies to supplement office-wide standards. Team supervisors serve as both channel and buffer between the levels; policies are communicated downward and problems are communicated upward through the team leaders to the Elected and the chief assistant, resulting in relatively little direct contact between the Elected and his line staff.⁸³

Midway, which prosecutes only misdemeanors, is located on the lower end of the shape axis and on the right end of the experience axis: all employees are coequal misdemeanor trial lawyers and all are veterans at the time of hiring. In fact, the Solicitor General of Midway likes to brag to other officials that he has the most experienced misdemeanor staff in the state.⁸⁴ There is one specialized unit for domestic violence, but the three

⁷⁹ The description here offers a structural snapshot of each office as it operated in 2010 and does not account for organizational changes that have appeared since that time.

⁸⁰ We call Metro “moderately pyramidal” because there is only one layer of supervision between the line attorneys and the administration. Steeply pyramidal offices, such as the Midwestern office studied by FREDERICK & STEMEN, *supra* note 58, boast multiple levels of supervisors.

⁸¹ See Prosecutors 266, 272, 281.

⁸² See Prosecutors 110, 236, 239.

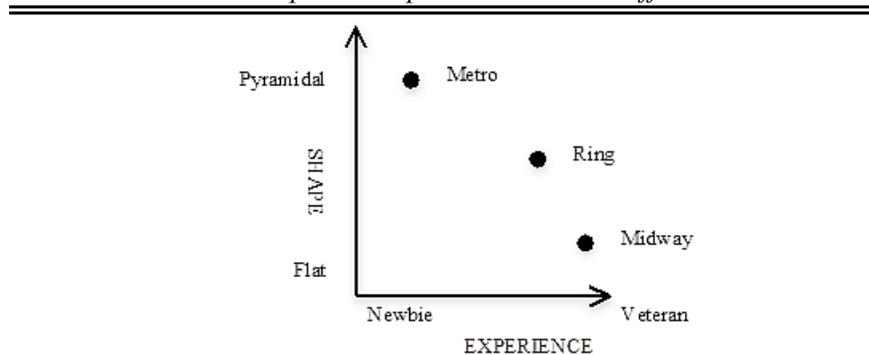
⁸³ See Prosecutor 326 (when office adopts new policy, “usually, if – especially if it’s team specific, [attorneys will] hear from their supervisor”; if an attorney objects to an office policy, the Elected and chief assistant “hope the team supervisor can deal with it”).

⁸⁴ See Prosecutor 910 (“I think the general consensus is [the Midway Solicitor] tends to think that he needs to hire people with experience, like two years, three years, four years, five years experience, and depending on who you talk to, it’s either so he doesn’t have to be bothered with training them or answering a lot of stupid questions, or so he can go around

attorneys in that unit hold those spots more or less on a permanent basis. There is no midlevel supervision or policymaking.⁸⁵ The line staff bundle together the chief assistant and the Elected as “the administration,” a unit they consider a breed apart from the trial line.

Ring, which prosecutes only felonies, sits between the other two offices on both dimensions. With regard to experience, most attorneys in the office are hired from other prosecutors’ offices; Ring occasionally hires newbies, but only those who were exceptional graduates of its internship program.⁸⁶ With regard to structure, there are a handful of specialized assignments (narcotics, white collar, and so forth), but they do not serve as points of rotation or promotion. The people currently staffing those jobs have held them for years, and expect to continue for years to come.⁸⁷ While there are supervisors in charge of the specialized units and the line attorneys, they don’t supervise their teams much at all: they assist new hires with adjustment issues and serve as conduits for information from the Elected or as backups in case of emergency.⁸⁸ In sum, Ring presents a shallower pyramid shape than Metro does. Figure 2 captures the differences among our research sites.

Figure 2
Shape and Experience in Three Offices



the state and talk about how he has the most experienced office.”).

⁸⁵ See Prosecutor 900 (remarking that she runs the domestic violence unit, but because that unit only handles a portion of the domestic violence cases that come into the office, its policies apply to the whole office, not just to the unit).

⁸⁶ See Prosecutor 775.

⁸⁷ None of the felony trial attorneys expressed a desire to move into the specialized units, although they deeply appreciate the work done by their colleagues in those units.

⁸⁸ One nominal supervisor in Ring describes the assignment like this: “[O]ur supervisors don’t supervise. I mean, they don’t sit and look over our shoulders. We’re professionals; you should be doing your job. If they are in your office all that often, you’ve got bigger problems than whatever they’re in your office about.” Prosecutor 785.

Having articulated two properties of the state prosecutor's office and described their relevance to our three research locations, we turn in Part IV to the connections we observed between these structural office features and the professional identities of prosecutors who work there. We pay particular attention to the prosecutor's sense of autonomy as a decisionmaker. In Part V we consider the second part of the theory: how structural features, operating through the prism of self-identity, might affect the prosecutor's trade-off of values between consistency of decisions and individualization of treatment, as well as other outputs.

IV. EFFECTS OF THE THIRD DIMENSION ON PROSECUTORS' PROFESSIONAL ORIENTATION

The structural variations among our research sites allow us to track the correlation between organizational shape, hiring preference, and prosecutors' professional identities in two settings: misdemeanor units and drug units. The moderately pyramid-shaped, newbie-oriented Metro office has both a discrete misdemeanor unit (located at the bottom of the pyramid and staffed mostly by newbies) and a discrete drug unit (located one level up). Midway is a flat office that employs veterans to prosecute a steady diet of misdemeanors, while Ring is a gently pyramidal, veteran-oriented felony office that has a discrete drug unit. In the discussion that follows, we compare comments of Metro misdemeanor prosecutors and felony drug prosecutors with comments of Midway misdemeanor prosecutors and Ring felony drug prosecutors.

These comments first reveal that a prosecutor's tendency to think of herself as either a member of an organization or an autonomous actor correlates with structural conditions of her office, including shape and hiring preference. A prosecutor's orientation on the question of autonomy also plays out in her relationships with teammates, supervisors, the whole office, and the larger legal profession.

A. THE DEVELOPMENT OF AN AUTONOMOUS OR TEAM SPIRIT

The sociology of organizations literature suggests that individuals respond in predictable ways to socialization forces on the job. The three most common responses are rebellion (rejecting all organizational norms and values), creative individualism (accepting important norms and values but rejecting the less crucial ones), and conformity (accepting organizational norms and values uncritically).⁸⁹ Our interviews with

⁸⁹ See HALL, *supra* note 60, at 71. In this study, autonomous spirit correlates with individualism or rebellion, while team orientation correlates with conformity.

prosecutors reveal that an employee's response to socialization forces is not entirely a matter of individual choice. Instead, the office's particular combination of shape plus hiring preference correlates with the degree of autonomy that the attorneys feel on both horizontal and vertical dimensions. By horizontal autonomy, we mean the degree of independence each prosecutor feels from his colleagues when it comes to making decisions on his own cases. By vertical autonomy, we mean the degree of independence each prosecutor feels from his boss (or supervisor) when it comes to making decisions on his own cases. Prosecutors who work in hierarchical, newbie-oriented offices will be inclined toward group values and low measures of autonomy on both scales; they internalize the perspective embedded in the Weberian bureaucratic model of the office⁹⁰ and exhibit a "custodial orientation" that prizes the organization's current values.⁹¹ In contrast, veteran attorneys in flatter offices exhibit high levels of horizontal autonomy and at least moderate levels of vertical autonomy; they conceive of themselves and each other as independent agents, more prone to individualism and resistance.⁹²

Our three offices exemplify these tendencies. In both the misdemeanor and drug unit context, Metro prosecutors see themselves as members of a single organization unified by group values under the office leadership; Ring and Midway prosecutors present as independent contractors who happen to work in the same office. Metro prosecutors are less likely than their counterparts in Ring and Midway to acknowledge or to approve of resistance to office policies and are more deferential to supervisors. In Metro, even the attorneys with more experience appear more amenable to professional value formation from the leadership.

Turning now to specifics in our data, we begin with a thick description of Metro, the office most inclined toward hierarchy and specialization, staffed mostly by newbies. We then discuss the opposite extreme, Midway, and save Ring for last, given its middle-of-the-road position on both structural variables.

The team imagery emanating from Metro is palpable in the comments

⁹⁰ See WEBER, *supra* note 52.

⁹¹ See Van Maanen & Schein, *supra* note 34, at 243 (opining that in organizations with hierarchical boundaries and "sequential socialization" (the premise that an employee must fulfill one role before passing to another), "custodial orientation" is more likely to result than innovation because recruits remain locked into the conforming demands of others in the organization for a long period of time).

⁹² See Mellon et al., *supra* note 25, at 75. A strong commitment to individualism may not be endemic to this form, though. In the "clan" offices identified by Flemming and his colleagues, which were similarly marked by a lack of oversight and few official policies, attorneys worked with each other "horizontally" to "maintain some degree of consistency." THE CRAFT OF JUSTICE, *supra* note 16, at 45.

of our interviewees. Whether junior, midlevel, or senior,⁹³ male or female, Caucasian or non-Caucasian, the Metro prosecutors referred to themselves as members of teams and described their work lives and their social lives⁹⁴ as bound up with one another.⁹⁵ They display very low levels of horizontal autonomy in their professional decisionmaking.

The team identity is manifest in the physical movements of the normal workday. The desks for all Metro misdemeanor attorneys are located in cubicles (not separate offices) on a single floor in the District Attorney's Office. They spend most of each day together across the street in the courthouse, coming and going at roughly the same time, while most felony attorneys spend at least two weeks out of every three working on pretrial matters in their own offices.⁹⁶ In addition, all of the Metro misdemeanor attorneys start every workday together in one room, sorting files and going over cases and current issues. They use these morning sessions to discuss, question, confirm, and otherwise monitor each other's decisions in individual cases. A misdemeanor prosecutor explained the reason for these discussions: "It's important that teammates have faith in you. And that they can know . . . you're going to be in a position to do the work the correct way and . . . make the right decisions."⁹⁷

Beyond having faith in each other, team members hope to become interchangeable with one another as a way to create stability and

⁹³ Among the 26 prosecutors on the Misdemeanor and Drug Teams in Metro, 9 had less than three years of experience in legal practice of any type at the time of the interview (our designation for a "junior" prosecutor, based on common attrition rates in prosecutors' offices), 10 had between three and four years of experience in practice ("midlevel" prosecutors), and 7 had five years or more ("senior" level). Of those 7 senior attorneys in Metro, 3 were supervisors. Among the attorneys in Midway, 2 were junior, 3 were midlevel, and 9 were senior. The 2 Ring drug prosecutors were both senior.

⁹⁴ The camaraderie that characterizes the work sphere in Metro spills over into the social sphere. The misdemeanor lawyers get together at a local bar every Friday evening and often see each other on weekends and holidays. Prosecutors 155, 191, 197, 308. There is an annual team Christmas party hosted by the team supervisor, and the attorneys play softball together outside of work. Prosecutors 272, 302. Similarly, the Drug Team lawyers describe going to lunch together nearly every day and hanging out together after work; one even commented that team members see each other more than they see their spouses, so it's a good thing they all get along. Prosecutor 251.

⁹⁵ The peer group is commonly considered the employee's main connection to the organization; it can provide "emotional support, coaching, and identification models to help the new recruit manage identity changes, difficult problems, and critical turning points." HALL, *supra* note 60, at 80 (citing Douglas T. Hall, *The Impact of Peer Interaction During an Academic Role Transition*, 42 SOC. EDUC. 118 (1968), and Edgar H. Schein, *Organizational Socialization and the Profession of Management*, 9 INDUS. MGMT. REV. 1 (1968)).

⁹⁶ See Prosecutor 134 (describing trial week, administrative week, and weeks in office).

⁹⁷ Prosecutor 170.

consistency in busy courtrooms marked by frequent staffing changes. The Misdemeanor Team is organized on a horizontal prosecution basis, such that various attorneys will handle a single case at different stages of the proceeding.⁹⁸ In addition to frequent prosecutor reassignments, there is no established roster of judges who staff the misdemeanor courtrooms. Hence, ensuring that every prosecutor on the team will handle the case in the same way eliminates the risk of variation that might otherwise occur with judicial rotation or prosecutor rotation.

I think we all kind of feed off one another and [want to know that] . . . every other person would do [the same] in the same situation. If they were in our shoes, that they would also try this case, that they would also offer this plea deal. . . . [T]here's about 20 of us on the misdemeanor team—and we all, I think we could all change rooms, in trial courtrooms, and all make the same decisions basically in the long run, and try the case to the same degree and skill.⁹⁹

The interchange among the attorneys on the team, each of whom brings a distinctive personal approach to the prosecutor's work, also expands the perspectives of everyone involved, creating a "think tank" environment that "opens up a lot of thoughts . . . on how we should be working as a DA."¹⁰⁰

More formal mechanisms to promote consistency and discourage horizontal autonomy operate in the Metro Drug Team. First, because drug cases are handled horizontally, the team members "roundtable" every case to make sure every prosecutor knows the relevant facts and criminal history and could appear on any case if asked.¹⁰¹ As one drug prosecutor reports,

⁹⁸ Note that horizontal autonomy is a distinct concept from horizontal prosecution; the former refers to a prosecutor's sense of independence from his colleagues when it comes to making decisions, while the latter refers to an office's tendency to pass cases around between prosecutors at various stages. For an explanation of the differences between horizontal prosecution and vertical prosecution, see Kay L. Levine, *The New Prosecution*, 40 WAKE FOREST L. REV. 1125, 1134 n.18, 1153 n.79 (2005). The only units in Metro organized on a horizontal prosecution basis are Misdemeanors and Drugs, both of which exhibit low levels of horizontal autonomy. There may thus be an inverse correlation between the level of horizontal autonomy prosecutors feel and the use of a horizontal prosecution model in the unit.

⁹⁹ Prosecutor 128.

¹⁰⁰ *Id.* ("I think when you get so many different ideals in a room together, and people start hashing out decisionmaking skills and why they are deciding on a case, you really get great input on how these other people think and how they would have decided something. Maybe [we] get the same conclusion, but [it is] done so in a different way to get there. And I think for us, that really opens up a lot of thoughts and kind of ideas on how we should be working as a DA."); see also Prosecutor 251 (referring to Misdemeanor Team colleagues as the relevant source of new ideas and perspective: "Pretty much anybody on the Misdemeanor Team who I could talk to especially the first four months I was here, I wanted to learn from as many people as people [sic], get as many perspectives as possible.").

¹⁰¹ See Prosecutor 266.

“what the higher ups want is consistency . . . they want each team to be consistent among each other.”¹⁰² The Drug Team also stresses the importance of consistency by concentrating the “papering” decision (that is, whether to file a case in the first place) in the hands of just three attorneys, typically the most experienced on the team.¹⁰³ Lastly, the Drug Team employs a detailed case-tracking computer program, giving the team supervisor rich information about the choices made by each line attorney.¹⁰⁴ These combined techniques of team “self-monitoring”¹⁰⁵ make adherence to group norms a salient goal for each individual on the team.¹⁰⁶

“Structured assistance”¹⁰⁷ for new prosecutors in Metro goes beyond just team norms and expectations. Policies and rules, promulgated by the team supervisors and the Elected, simultaneously discourage both horizontal autonomy and vertical autonomy. For example, new Metro prosecutors receive a forty-page manual, updated routinely, which sets forth guidelines for misdemeanor court behavior and “defaults” for case resolutions (that is, standard plea offers).¹⁰⁸ Within this diverse group of office policies, a few amount to hard-and-fast rules, while others are more tentative. Metro lawyers learn pretty quickly that there is no room for discretion when it comes to the hard-and-fast rules (e.g., DUI “refusal” cases must never be bargained down).¹⁰⁹ Deviation will yield a reprimand and could ultimately lead to serious discipline, including loss of one’s job,

¹⁰² Prosecutor 161; *see also* Prosecutor 203 (“It’s very much a teamwork approach, we make individual decisions but it’s very much, we try to be as consistent as we can.”); Prosecutor 125 (“Talking with my supervisor and the senior members of the team, it does change the decisions you make on the cases because you want to be consistent with everyone else on the team.”).

¹⁰³ Prosecutor 266.

¹⁰⁴ *Id.*

¹⁰⁵ Prosecutor 197. This sort of team self-monitoring differs from the tight top-down control Utz found in the tightly pyramidal San Diego office. *See* UTZ, *supra* note 20, at 47. This leads us to observe that hierarchical structure does not automatically generate hierarchical control to the exclusion of other forms of control.

¹⁰⁶ Deviation can be interpreted as a sign of laziness or lack of commitment, as evidenced by this comment from a drug prosecutor, in response to a question about whose opinion of his work matters: “My whole team. I want to know that I’m pulling my weight. And, that if I am not, I want to be told, and if I’m not doing it the right way I want to be told.” Prosecutor 110. This comment was echoed by misdemeanor Prosecutor 188, in response to the same question: “My fellow ADAs, I really do care what they think because so much of their job is wrapped up in mine . . . if I’m doing something that is making things more difficult it makes their job hard . . .”

¹⁰⁷ *See* MILTON HEUMANN, PLEA BARGAINING 93 (1978). Heumann notes that “[s]ince the newcomer’s actions reflect on the office as a whole, it is not surprising that this effort is made.”

¹⁰⁸ Prosecutor 272.

¹⁰⁹ *Id.*

although such punishment rarely becomes necessary. When it comes to the looser rules, more flexibility is allowed as long as attorneys seek approval from the team supervisor in advance or offer a persuasive explanation after the fact.¹¹⁰

Resistance to these policies is rare. When asked about employees' reluctance to follow office policies, Metro prosecutors had a hard time remembering any examples, and most opined that no one in the office would disobey general policies or buck direct instructions.¹¹¹ They told us that supervisors make themselves available to discuss employee questions about office policies, but at the end of the day, policies stand and attorneys must follow them out of respect for the organization.¹¹² As explained by Prosecutor 302: "[W]hen you agree to work here, you agree to abide by the policies. And if you don't like the policies . . . then you should probably seek employment elsewhere."

Attorneys on the Misdemeanor and Drug Teams also respond favorably to their supervisors because of their newbie status. As one supervisor puts it, "[t]hey don't have enough experience" to complain or to be attached to old ways of doing things.¹¹³ When Drug Team members start to speak up regularly and to voice contrary opinions, the supervisor tells them jokingly that it's time for them to move out of her team and into Crimes Against Persons, the next level up the pyramid.¹¹⁴ Regular rotations upward thus ensure a steady stream of new recruits into the team, prosecutors who are excited to tackle a new challenge yet too naïve to resist leadership.

Even though their autonomy is curbed by both team-level and office-level structures, Metro prosecutors experience their office architecture as promoting sound discretion and professional growth. They feel that their supervisors trust them to develop and exercise judgment, and they generally want to satisfy their bosses. One misdemeanor prosecutor observed fondly that this was akin to a parent-child relationship, in which the line attorneys

¹¹⁰ Prosecutor 188 ("A lot of the rules you can depart from in your discretion. . . . You better have a damn good reason, but you can.").

¹¹¹ Prosecutor 272 ("Very few folks coming into the office are going to say 'I'm not going to do it.' Nobody's going to say they're not going to do it.").

¹¹² Prosecutor 239 ("Only thing I know is that outside the door, the door to this building doesn't have my name on it. It has his. . . . [You] make your arguments and you advise as best as possible. But at a certain point, either I abide by the decisions that are made by a person whose name is on the door, or I quit.").

¹¹³ Interview with Supervising Attorney, Metro County, in Metro County (June 17, 2010); *see also* Prosecutor 128 (describing the role of inexperience in suppressing independence and observing that "all the guys on the misdemeanor team feel young").

¹¹⁴ Interview with Supervising Attorney, Metro County, in Metro County (June 17, 2010).

want to please their supervisor.¹¹⁵ Consistent with this portrayal, Metro line prosecutors were genuine and lavish in their praise of their team leaders and the Elected, whom most described as incredibly knowledgeable, “full of integrity,” and “proud of the work we do.”¹¹⁶

If the Metro pyramid office manifests a strong *esprit de corps* and a high level of deference to respected authority, the opposite holds true in flat-topped, experience-laden Midway. The Midway misdemeanor prosecutors regard themselves as independent contractors, each assigned a private roster of cases to charge and resolve as she sees fit.¹¹⁷ They also express a strong sense of independence from their boss, whom they regard as less experienced than themselves and detached from the day-to-day stress of the office’s caseload. In this environment, expressions of team imagery or deferential attitudes were few and far between.¹¹⁸

The lack of conformity does not mean that Midway attorneys are alienated from each other. To the contrary, they regularly chat with their colleagues about potential strategies and seek advice on thorny issues, and many experience this regular contact as a sense of camaraderie.¹¹⁹ But there is no framework, formal or otherwise,¹²⁰ for the constant checking and cross-checking that goes on in Metro; self-monitoring by the office staff is simply not part of the job.¹²¹

There seem to be two factors, beyond the flat office structure, that reinforce this heightened sense of horizontal autonomy at Midway: the stability of courtroom assignments and the prior experience level of the staff.¹²² The Midway judicial center houses seven misdemeanor

¹¹⁵ Prosecutor 128.

¹¹⁶ See, e.g., Prosecutor 152.

¹¹⁷ This office resembles the “unit style” office described by Mellon et al., *supra* note 25, at 74–77, and the reactive clan office described by THE CRAFT OF JUSTICE, *supra* note 16, at 45.

¹¹⁸ This finding proved equally true for attorneys of different races in the Midway office.

¹¹⁹ Prosecutor 915.

¹²⁰ By some reports, there is an office manual for charging and bargaining that older generations sometimes pass on to younger generations; it is not provided by the administration at the time of hiring and no subject in Midway was able to locate his or her copy when we asked. Even those who referred to the existence of the manual saw its terms as provisional, at best. No one regarded it as anything other than a starting point for prosecutorial decisionmaking. See, e.g., Prosecutor 905.

¹²¹ To borrow a phrase from Mellon, Jacoby, and Brewer, “there was little integration of the staff into an ‘office’ . . . as each assistant operated his own policy-making unit.” Mellon et al., *supra* note 25, at 75.

¹²² There is also less cohesiveness based on social life compared to Metro. The Midway prosecutors tend to be older and subject to more family responsibilities than the Metro prosecutors; they are eager to leave at the end of the workday to see their spouses and children, and they are far more likely to attend family or neighborhood events on the

courtrooms, each with its own permanently assigned judge. “Each courtroom is its own universe,” says Prosecutor 930. Two prosecutors staff each courtroom on a long-term basis, and they must learn and tolerate the whims of their particular judge to succeed in that environment. These regularly assigned prosecutors follow their judge’s lead more than the lead of any colleagues in the office, treating consistency *within* each courtroom as a higher priority than consistency *between* courtrooms.¹²³ Moreover, because many prosecutors came to Midway from other jurisdictions, they brought with them certain approaches (views of “what’s appropriate”¹²⁴) that they learned elsewhere. For example, one prosecutor who previously worked in another county in which banishment¹²⁵ was a common term of probation imported that requirement into several of her plea deals in Midway. While the defense attorneys complained about it, no one in the Midway office told her she should not negotiate for such conditions.¹²⁶ More generally, experience in other systems gives the Midway prosecutors a stabilizing sense of “the court system as a whole and a pragmatic model of the professional prosecutor.”¹²⁷

Just as the stability of courtroom assignments and prior experience render the Midway prosecutors horizontally independent of each other in important ways, those factors also reinforce their sense of vertical autonomy, or detachment from the administration. In contrast to the Metro prosecutors, who spoke with admiration about their supervisors and the Elected, our Midway subjects frequently commented on the inexperience of the Solicitor General and his chief assistant. Before the election, neither had prosecuted misdemeanors or supervised other prosecutors.¹²⁸ After taking office, neither maintained an independent caseload or appeared in court except in unusual circumstances. For this reason, the experienced line attorneys tend to discount the administration’s policies and instructions.¹²⁹

weekends than to socialize with coworkers.

¹²³ The lack of consistency between courtrooms with similar dockets led one of the Midway prosecutors to refer to the courtrooms as casinos. Prosecutor 920.

¹²⁴ Prosecutor 955.

¹²⁵ This probation requirement prohibits the defendant from residing in the county during the period of probation.

¹²⁶ Prosecutor 945.

¹²⁷ UTZ, *supra* note 20, at 105; *see also* THE CRAFT OF JUSTICE, *supra* note 16, at 45 (describing the Elected of a reactive office as hiring people he trusted so that he would not have to “look over their shoulders” and signaling to assistants “that they were on their own”).

¹²⁸ Prosecutor 965.

¹²⁹ This situation embodies the bureaucratic dilemma of authority in the absence of expertise, first highlighted by Talcott Parsons in the introduction to his translation of Max Weber’s *The Theory of Social and Economic Organization*. Talcott Parsons, *Introduction: The Institutionalization of Authority*, to MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC*

In the words of Prosecutor 960, “[t]hey are too far removed from the gunfire . . . too comfortable in their offices with the air conditioning on” to give advice that makes sense.

The line prosecutors’ experience of vertical autonomy also leads in some situations to outright resistance of office leadership. As the Solicitor General settled into his post during the year after his election, the Midway line attorneys began to witness the slow encroachment of office policies onto what was otherwise a wide-open landscape, characterized by the original command, “Here are your cases, go forth and prosecute them.”¹³⁰ The Midway prosecutors experienced this gradual layering of office policies as an unwelcome intrusion on their previously unlimited discretion. As a result, resistance to these policies happens “all the time.”¹³¹ As Prosecutor 935 says, “There are a lot of rules, but people pick and choose which ones to follow.” Nearly every person we interviewed in Midway admitted not just to knowing about the resistance techniques of others, but to personally using such techniques on a regular basis.¹³²

Compounding the general disregard for these rules is the near absence of consequence for violation. Despite frequent threats that disobedience would lead to termination, not one subject could recall an attorney being fired for insubordination and most commented that the administration remained ignorant of all violations that did not produce publicity or defense attorney complaints. Due to the absence of credible enforcement, there appear to be no general policies that the Midway line attorneys uniformly follow.

In sum, the Midway office is the antithesis of the Weberian bureaucracy that scholars conventionally use to describe the prosecutor’s office. This office instead presents an absence of hierarchy and specialization, and its veteran attorneys manifest a high degree of independence on both horizontal and vertical dimensions.¹³³ Prosecutors express a strong desire (and a high level of confidence in their ability) to run their courtrooms without oversight from their officemates or boss. Interventions from the administrators are seen as ill-advised, inspiring line

ORGANIZATION 59 n.4 (1947).

¹³⁰ Prosecutor 950.

¹³¹ Prosecutor 920.

¹³² Sometimes the resistance is overt (e.g., flatly ignoring an office rule about issuing witness subpoenas or doubling fines after appeal) and other times it is more hidden (e.g., using body language to signal to the judge and/or defense attorney the prosecutor’s disagreement with the office plea offer, so as to provoke the judge to reject the deal), but there is little doubt resistance is a regular feature of the office.

¹³³ This level of autonomy may be tolerated due to the relatively low stakes in the misdemeanor caseload and the relatively low visibility of the municipal court docket. See UTZ, *supra* note 20, at 104 (describing low visibility decisionmaking in municipal court).

attorneys' frequent conversations "about how to get around protocols, in order to make life workable."¹³⁴

In Ring, experience blends with elements of a shallow pyramidal structure to encourage a hybrid of autonomy and team spirit. The two drug prosecutors in Ring occupy adjacent offices, yet they don't refer to themselves as a team. They function instead like tenants in common, each managing his half of the caseload with a common goal in mind. Each has specialized in drug cases for about a decade, and they are two of the most experienced prosecutors in the Ring office. Both have a highly developed base of knowledge and both serve as instructors to police and other prosecutors regarding the law of search, seizure, and asset forfeiture. In this two-person unit, one is officially the supervisor, but that supervisory status makes no apparent difference in how the prosecutors relate to each other or divide their work.¹³⁵

Although each Ring drug prosecutor is a self-sufficient senior attorney, the degree of autonomy we witnessed in Midway does not manifest itself in Ring, either horizontally or vertically. Horizontally, a spirit of collaboration exists within the drug unit, the result of a deliberate choice. Years ago these two prosecutors decided that each should stay up-to-date on what was happening in the other's cases, enabling either of them to take emergency phone calls from officers involved in clandestine investigations.¹³⁶ Although they are not interchangeable to the same extent as the Metro attorneys, the drug prosecutors in Ring realize that the unit functions better if they share knowledge, and each treats the other as a sounding board.

Vertically, the level of deference they exhibit toward the Elected is more reminiscent of Metro than Midway, despite the boss's lack of prior experience as a felony prosecutor. The Ring drug prosecutors consistently express deep respect for the DA's position and for his hands-off approach to the office caseload. For example, Prosecutor 785 says, "He's a good boss—he trusts us and leaves us alone." Trust is essential because the core component of the prosecutor's job is discretion: "I can teach a chimpanzee how to try a case. You're paying me for my discretion. If you don't trust

¹³⁴ Prosecutor 950. Not one of our interviewees in Midway expressed any concern over or disapproval for the widespread disrespect for authority in this office. Even the relatively junior attorneys just seemed to accept that as part of the office culture.

¹³⁵ To the extent that asymmetry exists in this unit, it seems to result from age disparity: the younger of the two goes out more frequently on middle-of-the-night raids and brings the older attorney up to speed on how to use technology for research and courtroom presentations. Prosecutor 735.

¹³⁶ Prosecutor 735.

my discretion, then why hire me?”¹³⁷ For Prosecutor 735, prosecution is a “structured business.” Individual prosecutors certainly have autonomy within that structure, but they can’t “flaunt” it, because “. . . you’ve got to remember [that] you work for the guy whose name’s on the door, at the end of the day . . . we’re soldiers in this army.”¹³⁸

The deferential posture slips a bit, though, when the Ring attorneys discuss quality-of-life issues. Both men refer to their boss as a formal, starched-shirt person who insists too strongly on dress codes and early arrivals at the office every morning.¹³⁹ They describe his physical removal from the rest of the prosecutors in an office “upstairs,” reaching out to them mostly by e-mail.¹⁴⁰ But on the whole, they treat their boss’s formality and remoteness as a sign of trust, not a management problem.

Reflecting on the comments of attorneys in all three offices about their professional roles, it seems that autonomy has two dimensions, which we might call objective and subjective.¹⁴¹ Objectively, a prosecutor’s actual level of autonomy is circumscribed by the structures imposed at both the office and the team levels. Every office installs some of these basic structures—wooden beams in our architectural metaphor—but some offices supplement these basics with additional layers of review or protocols that further restrict attorney movement inside the space. The number of these objective constraints, however, does not alone determine how employees understand their own independence on the job. Prosecutors instead experience autonomy based on how *salient* these objective structures become in their day-to-day lives. Moreover, the past experiences of an attorney set her expectations for the appropriate level of autonomy prosecutors should have. Thus, for some attorneys working in some places, the architectural constraints become more visible, while for others they recede from view and become less important.

¹³⁷ Prosecutor 785.

¹³⁸ Prosecutor 735.

¹³⁹ The Elected seems to ignore the variety of roles line prosecutors must take on (e.g., dressing to execute a search warrant is not the same as dressing for a court appearance). Their boss does not just swing by one’s office to chat, and he does not organize or explicitly promote socializing among officemates. They attribute this level of formality and remoteness to his rural background, his experience in the military, and his lack of personal familiarity with the drug unit’s daily pressures (e.g., the midnight raids and the 24/7 availability to police).

¹⁴⁰ The drug attorneys noted that they have more access to the DA than other assistants due to his involvement in the multi-agency drug task force. Prosecutor 785.

¹⁴¹ See Marc L. Miller & Ronald F. Wright, *The Black Box*, 94 IOWA L. REV. 125, 166–72 (2008) (discussing objective and subjective views of prosecutorial discretion). Additionally, autonomy (or discretion) might be exercised differently at different points in a case; autonomy to file charges is not the same as autonomy to make plea offers or to offer diversion, for example.

In the Metro office, supervisors create team norms and habits that constrain prosecutors in meaningful ways. Yet the newbie prosecutors feel trusted and able to exercise discretion as they learn to develop professional judgment. They feel that supervisors give them room to make mistakes and give them input into office policies they don't quite understand. Their subjective perception suggests that the formal constraints, though numerous, are not onerous. The Midway prosecutors objectively possess far more discretion than the Metro prosecutors. There is no team consultation built into the daily routine, no standard manual to follow, no tradition of deference to the boss. But subjectively, they experience each new office policy as an encroachment on their discretion, as a sign of distrust in their abilities. The Ring prosecutors fall somewhere in between. They acknowledge that they work for an Elected who makes the large policy choices. Most of the time, though, this element of control is hidden; they feel responsible for their own caseloads and expect the boss to contact them only about unusual problems.

A prosecutor's perception of her level of autonomy is not just symbolic, and not just about handling cases. It can also shape how she views her place in the larger office and in the legal profession more generally. In the remaining subsections of Part IV, we examine the connections between a prosecutor's self-identity and these professional relationships.

B. DEVELOPMENT OF CONNECTIONS TO THE LARGER OFFICE

The structural features we have identified, and the degree of autonomy they suggest, can affect an attorney's view of office functions beyond the attorney's immediate assignment. Pyramidal features in an office obscure the vision of line prosecutors about how the office operates, due to the barriers between levels.¹⁴² Attorneys in flat offices, with no teams to speak of and no midlevel supervisors between themselves and their Elected, have better access to the overall workings of their offices. Moreover, the prosecutor's level of experience can exacerbate the insular or transparent tendencies that the office shape creates. Unsophisticated staff members tend to feel less confident than their more experienced colleagues when it comes to questioning superiors' decisionmaking.

The pyramidal shape of the Metro office, with its strong team associations and team-specific supervisors at each level, creates solid

¹⁴² Van Maanen and Schein describe this phenomenon in organizations more generally. They contend that the more "included" a person is in the organization, the more that person will have access to organizational secrets, operational rhetoric (not just presentational rhetoric), and unofficial yet recognized norms of the organization. See Van Maanen & Schein, *supra* note 34, at 222.

borders between hierarchical levels. While those borders generate powerful team loyalty and affiliation, they also block the sight lines around the office, preventing attorneys from getting a good look at the work of others outside their team.

The Metro attorneys profiled here experience both physical and psychological separation from colleagues working elsewhere in the office. Physically, the misdemeanor attorneys are removed from the felony attorneys both inside their own office space (creating a “huge separation” between the two groups)¹⁴³ and in court, because misdemeanor attorneys work in the district court while felony attorneys try cases in the superior court.¹⁴⁴ The psychological distance is evident when misdemeanor attorneys identify their teammates and their team supervisor as their *sole* sources of information about the job. One prosecutor commented that, after nine months on the job, he didn’t even know the name of anyone in the office who was not one of his teammates!¹⁴⁵

This sense of separation is not unique to the misdemeanor crew. The heavier workload for the Drug Team (compared to the other felony units) prevents those attorneys from joining others for lunch or other group activities. They might even overlook the relationship between the drug docket and other felonies, a point brought home to one drug prosecutor when she attended homicide bond hearings one day: “When you’re on your team, you’re sucked into that world. All I deal with is drug stuff, so I kind of forget [about] armed robberies.”¹⁴⁶

The team borders also shield the line attorneys from the Elected and the world he inhabits. While the elected DA of Metro personally interviews every new hire—in a session that leaves a profound imprint on most of them, in terms of value transmission—he has only sporadic contact with his line staff after that point. The attorneys feel his presence in the office

¹⁴³ Prosecutor 185.

¹⁴⁴ Prosecutor 236:

I think maybe when I move to another team, like I would kind of have a farther reaching approach, like everybody knows district court is like a one to two year gig and everybody knows once one to two years ends, you are going to move to another team. So it’s not like I feel stuck there but you are just . . . you are really involved in your district, like we don’t really see other people at the office, like we are almost always in court.

¹⁴⁵ Prosecutor 185. Each new attorney arriving on the team is assigned a “trainer” for the first few months in misdemeanor court, and that trainer often has only a few months more experience than a newcomer. That trainer’s advice is formative—second only to that of the team supervisor.

¹⁴⁶ Prosecutor 165. The tendency towards introspection diminishes when prosecutors mix with outsiders: one interviewee emphasized that when Metro prosecutors attend statewide gatherings, attorneys from every branch of the office socialize together and are remarkably cohesive. Prosecutor 272.

through repetition of his mantra, “Do the right thing,” but they rarely see him in court or in their offices.¹⁴⁷ New office-wide policies stem from meetings between the Elected and the supervisors, and the supervisors communicate those policies downward to their respective teams in later team meetings.¹⁴⁸ Supervisors explain the policy, take questions, and eventually assume enforcement responsibilities. Likewise, if a line attorney has an issue, she will bring it to her supervisor, who will raise it with the DA.

As a result of this buffer provided by the supervisors, Misdemeanor and Drug Team attorneys in Metro believe that the Elected operates in rarified air and is not connected to what they do on a daily basis.¹⁴⁹ He deals with politics, the press, and other county officials. But their distance from his handling of political issues seems to them a natural result of their junior status; new prosecutors feel unqualified to question realms beyond their experience.¹⁵⁰

As offices flatten out, the nearsightedness diminishes, at least on the horizontal dimension; there are fewer obstacles between attorneys to block one prosecutor’s view of what others are doing. In Midway, for example, there are no definitional borders between line prosecutors. Each of them plays on a level field with all the others—they all do essentially the same job, just in different courtrooms.¹⁵¹ Their offices are all located on the same floor, albeit on opposite sides of the main elevator, and office assignments appear to be random. There is no clustering based on seniority, courtroom assignment, or any other variable. Due to the similarity in job descriptions and close physical proximity, any attorney can consult with any other attorney for advice on how to handle a case. One prosecutor mentioned that he talks to whoever happens to be around at 4:30 on a Friday afternoon,¹⁵² although most express preferences for a small number of confidantes.

Without midlevel supervisors to serve as buffers or conduits for information, the role of the administration becomes more apparent to the

¹⁴⁷ Appearances, when they happen, are memorable surprises. Prosecutor 152 (recalling that when the Elected inquired about a new assignment, the prosecutor reacted with pleasure and surprise: “But I appreciate it. I was like, ‘Wow he knows what I’m doing.’”).

¹⁴⁸ Prosecutor 164; Prosecutor 272.

¹⁴⁹ Prosecutor 296 (“[A]t my level we’re kind of, kind of down the chain of command. I don’t have a good idea a lot of times who’s making the decisions or where the decisionmaking authority is for a certain policy, and so forth.”).

¹⁵⁰ Prosecutor 188 put it like this: “I’ve been here less than a year. . . . I don’t feel like I have the knowledge to tell a huge decision that affects the whole office, to be able to go and say, ‘You shouldn’t be doing this because of this.’ I just don’t have the expertise yet.”

¹⁵¹ The only exceptions are the domestic violence attorneys and the one attorney who drafts complaints for all in-custody defendants.

¹⁵² Prosecutor 915.

staff attorneys. The Midway prosecutors see that their boss handles political and press issues, corresponds regularly with the public defender's office and the local bench, and represents their office to county budget committees. That is not to say they comprehend everything he does. Certain decisions—such as hiring new attorneys—remain shrouded in secrecy (much to the chagrin of the staff, who believe they should have input).¹⁵³ More generally, the line prosecutors complain when they are the last to learn about policy changes, particularly when outside sources inform them about something that is about to happen in their own office.¹⁵⁴ Unlike their counterparts in Metro, who accept that there are larger issues in the office about which they do not have enough knowledge to criticize their boss, the Midway prosecutors resent being excluded.

The sense of removal, or “disconnect,”¹⁵⁵ between the administration and staff also derives from physical separation in the office space that the Midway Elected created shortly after he became the Solicitor General. He set the administrative offices apart from the line attorneys' offices, and he began to require line attorneys to schedule appointments with his secretary to see him. Based on their level of experience and familiarity with the job, the line attorneys in Midway regard these physical and temporal barriers as signs of the Elected's egotism,¹⁵⁶ not professionalism.

Ring, which contains some pyramid features superimposed on an experienced staff, balances transparency and opacity at both the horizontal and vertical levels. Horizontally, the line attorneys are experienced folks who (with the exception of those assigned to specialized units) all do the same job, albeit in different courtrooms. Their offices are spread over two floors, and (again with the exception of the specialized units) office assignments randomly mix prosecutors with different backgrounds, experience levels, and courtroom assignments. This allows attorneys to consult each other regularly for advice, although (as in Midway) each attorney seems to have developed a small cadre of particularly trusted associates.

Contrasting with the open environment of the general courtroom attorneys, Ring's specialized units have solid borders and resemble the Metro teams in terms of their self-referential quality.¹⁵⁷ Members of a specialized unit share the unit's total caseload, but each manages a defined portion of the cases. This arrangement gives them regular reasons to raise

¹⁵³ See, e.g., Prosecutors 900, 910.

¹⁵⁴ Prosecutor 930.

¹⁵⁵ Prosecutor 905.

¹⁵⁶ Prosecutors 910, 960.

¹⁵⁷ They may be even more tightly controlled, given the long-term nature of the specialized assignments in Ring compared to the rotational nature in Metro.

case-specific questions with each other, both during informal hallway conversations and in occasional unit meetings. While most unit attorneys also consult non-unit prosecutors for strategic advice, the work performed in each specialized unit remains somewhat hidden from the rest of the office, due to the distinctive skills the unit attorneys develop.

Looking vertically, the line attorneys' vision of the Ring Elected is somewhat limited, although not to the same extent as in Metro. The Ring supervisors shield the boss from the regular headaches of the trial line and shield the trial line from the administrative or public relations concerns of the boss. They meet periodically with the DA and interview prospective new hires. The supervisors communicate office policies down to the line attorneys and encourage their attorneys to approach them before the Elected gets word of any problems. Several years ago, when the line attorneys were ready to mutiny over the dress-code issue, supervisors arranged an office-wide meeting and communicated these frustrations to the boss; when he relented, they shared the good news with the staff.¹⁵⁸

However, in contrast to their Metro counterparts, the Ring supervisors do not impose an additional layer of policymaking or guidance that the line attorneys must follow. This sort of intervention is unnecessary, and would likely be unwelcome, given the experienced nature of the trial attorneys in the Ring DA's office.¹⁵⁹

To sum up, the existence of intra-office borders—between teams and between the line staff and the administration—can foster a sense of nearsightedness that keeps the attorneys largely uninformed about their coworkers. These internal divisions might appear natural and benign or needless and insulting, depending on the experience level of the prosecutors who notice them. The breadth of awareness of other attorneys in an office helps determine the professional role models that a prosecutor chooses. The transparency and perceived legitimacy of the leadership in the eyes of line prosecutors influence whether the Elected and supervisors can shape the professional identity of the staff attorneys.

C. DEVELOPMENT OF RELATIONSHIPS WITH THE LARGER LEGAL PROFESSION

Professionals who work in private organizations must show some respect for their employers while remaining faithful to the external

¹⁵⁸ Prosecutor 785.

¹⁵⁹ Recall the comment: "We're professionals; you should be doing your job. If [the supervisors] are in your office all that often, you've got bigger problems than whatever they're in your office about." Prosecutor 785.

standards and traditions of their professions.¹⁶⁰ This problem of competing loyalties exists in the field of criminal justice, too: an attorney in a prosecutor's office assumes the dual roles of employee and member of a larger profession, a duality that can influence both how she thinks of herself and how she exercises discretion in particular cases.¹⁶¹ Moreover, the structures in a prosecutor's home office can create either fertile or rocky soil for professional values to bloom. In some offices, the line prosecutors identify with attorneys who work elsewhere; in others, prosecutors think of themselves as members of a distinct profession, with no salient professional ties elsewhere in the legal field.

The team orientation of the Metro misdemeanor attorneys—reinforced by solid borders within the office hierarchy—keeps prosecutors attuned to the views of their peers within the same unit, but it also leads them to show less interest in the views of legal professionals outside their office, whether they be prosecutors from other offices, defense lawyers practicing in the county's criminal courts, or other members of the legal profession. Prosecutors in Midway and Ring, by contrast, more frequently cultivate professional ties with prosecutors in other offices, and they value outsider opinions about practicing in the criminal courts. The prior experiences and autonomous outlook of prosecutors in Midway and Ring lead them to identify more strongly with the prosecutorial profession as a whole.

1. *Prosecutors Elsewhere*

Members of the same profession typically share common training and values, allowing them to identify with other professionals even when they work in different organizations. Defense attorneys, for instance, often build their professional identities around role models who are found outside their own offices.¹⁶² The development of ties between prosecutors in different

¹⁶⁰ See CHARLES PERROW, *COMPLEX ORGANIZATIONS: A CRITICAL ESSAY* 44–46 (3d ed. 1986) (describing the dual focus of scientists who hold jobs in bureaucratic organizations compared to those who hold academic positions at universities).

¹⁶¹ See ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 361–62 (1953).

A profession presupposes individuals free to pursue a learned art so as to make for the highest development of human powers. The individual servant of a government exercising, under supervision of his official superiors, a calling managed by a government bureau can be no substitute for the scientist, the philosopher, the teacher, each freely applying his chosen field of learning and exercising his inventive faculties and trained imagination in his own way, not as a subordinate in an administrative hierarchy, not as a hired seeker for what he is told to find by his superiors, but as a free seeker for the truth for its own sake, impelled by the spirit of public service inculcated in his profession.

Id.

¹⁶² See Etienne, *supra* note 35, at 1209.

offices, however, seems to vary with the social architecture of their own offices.

Hiring preference for experience seems particularly salient in this regard. Few Metro prosecutors had prosecution experience before taking their current job,¹⁶³ while eleven of sixteen Ring and Midway prosecutors previously worked full-time in another prosecutor's office.¹⁶⁴ Based on this history, prosecutors in Midway and Ring tended to invoke experiences in other offices when reflecting on their current status; reflections of this sort were a rarity in our interviews with Metro prosecutors.

Some Ring and Midway prosecutors fondly spoke of mentors in other offices who contributed to their professional skills. One misdemeanor prosecutor in Midway said:

It wasn't uncommon for us to be in trial and he would just be whispering in your ear, telling you what to do, and honestly . . . that's where my training came from. Because he knew his stuff, he knew his law, and he was always there telling you, even if you didn't want to be told.¹⁶⁵

Likewise, Prosecutor 735, who worked in three offices before coming to Ring, told several stories about the first lawyers who trained him, noting that their professionalism and "zeal" for the job made him want to be a career prosecutor:

I mean these guys all were career prosecutors and they were my mentors. And I felt that because they did it, they never made a lot of money, they never dressed well, and they drove old cars. I admired their career . . . and I sort of subconsciously emulated it.¹⁶⁶

¹⁶³ Of the twenty-six Metro prosecutors working in the Misdemeanor and Drug Teams, only four previously had been employed full-time at another prosecutor's office. Another twelve interned with a prosecutor's office during law school before taking the full-time job in Metro.

¹⁶⁴ For all but one of these remaining five, the job in the prosecutor's office was not the first job out of law school. Most had worked elsewhere in government (e.g., a public defender's office, a state agency, a state judge's chambers), and one had been a private defense attorney for more than 10 years.

¹⁶⁵ Prosecutor 900; *see also* Prosecutor 910 ("[T]hey ran a very clean and tight ship down there [in the office where I interned]. It was very fair, . . . everyone treated everyone else the same way."); Prosecutor 925 ("Traffic court was . . . the time I was there was a time of transition, so it was a whole lot going on and my boss there was more concerned about me getting the experience I needed, versus anything else. You know, he would come to me with a trial.").

¹⁶⁶ Consider these additional comments:

These guys were ADAs when I was there and they're legends, you know, but they came to you and you could go to them, and they always had the time to talk to you and help you. . . . That was always nice, that some of the guys, you know, had they been rude, had they been pricks to me, I don't know if I ever would have stayed in the game.

Prosecutor 735.

Aside from recalling specific role models, Ring and Midway attorneys offered comments about the organizational features of their prior offices that affected their work lives. For example, a few recalled bosses from other offices who drafted all of the accusations, an approach that reduced the line prosecutor's level of discretion¹⁶⁷ but also freed up time for the line prosecutor to focus on preparing her cases for trial.¹⁶⁸ Whether they evaluate their prior offices in a positive or negative light (or some mixture of the two),¹⁶⁹ the point is that Midway and Ring attorneys generally have experience with prosecutors elsewhere, and this experience informs their perspectives on the contours and possibilities of the prosecutor's role.

Beyond the office's approach to hiring, aspects of the larger institutional environment can influence a prosecutor's connection to prosecutors elsewhere. For example, consider the effect of bifurcation of the prosecution function. Midway County and Ring County each have two prosecutorial offices led by different elected officials: one for felonies and one for misdemeanors. In contrast, a unitary Metro prosecutor's office handles all felonies and misdemeanors for the jurisdiction. The bifurcated approach seems to facilitate and inspire more awareness of and respect for prosecutors in other offices, because the felony office sometimes hires directly from the misdemeanor office. Misdemeanor attorneys who want to make the leap upwards therefore need to develop a reputation with assistant district attorneys they meet in the courthouse, while assistant district attorneys need to stay aware of the up-and-comers in the misdemeanor office. In a unitary system, there are no other local-area state prosecutors whom one should either impress or learn about.

This structural arrangement also produces a disparity in office size. Unitary offices may be significantly larger than bifurcated offices because they need to handle both portions of the criminal caseload. Size is regarded as a significant benefit in Metro, as prosecutors there were inclined to think of themselves as a resource for other, smaller offices, not as a recipient of services. But the suggestion that size equals professional prowess is not supported by our data from Ring. The Ring DA's office has a very strong reputation, even though it is not the largest district attorney's office in the state. For example, Ring attorneys are often asked to teach at statewide seminars and to lead workshops for prosecutors, and attorneys across the

¹⁶⁷ Prosecutor 905 (“[T]here were certainly standards there because they were all his standards.”).

¹⁶⁸ Prosecutor 960.

¹⁶⁹ *See, e.g.*, Prosecutor 955 (“I think that at X county, we had a number of policies and things we could do, and things we couldn't do. . . . [W]e had more layers of supervision there, so they communicated verbally a lot more. I think, quite frankly . . . we probably feared [the District Attorney of X County] more than we fear [the Solicitor General here].”).

state flood the office with resumes when openings are posted on the statewide website. Yet Ring attorneys see value in developing cross-county relationships and in asking for advice from prosecutors elsewhere.¹⁷⁰

Metro prosecutors also correlated size with discretion, opining that they are permitted to exercise judgment more frequently than their counterparts in smaller jurisdictions. One attorney summed up the relationship between size and judgment like this:

[We] are the largest office in [the state], and in smaller counties . . . you have fewer cases, so the DA could make a decision about every speeding ticket that is over 95 miles an hour, because there just are not that many. . . . Here we are just too big to do that.¹⁷¹

This correlation between size and discretion does not hold across jurisdictions, though, as other research reveals large offices that impose much tighter controls on individual decisionmaking than is characteristic of Metro.¹⁷²

The divergent views in the three offices about the relevance of prosecutors elsewhere cannot easily be attributed to disparities in outside training opportunities.¹⁷³ For example, all three offices operate in states where there is one annual, statewide conference for prosecutors. Most prosecutors report that they attend this conference,¹⁷⁴ and most of the regular attendees report that they receive valuable instruction, insight, or rejuvenation from these meetings. But whereas the Metro attorneys who attend this conference form their own social group and don't mingle with outsiders,¹⁷⁵ Ring and Midway prosecutors report that they swap war stories during the conference with attorneys from other regions. Moreover, several of the Ring prosecutors regularly teach at these statewide conferences (and at the national boot camp for prosecutors in South Carolina). They therefore remain abreast of the good work done by prosecutors in other offices and express willingness to call on outsiders to serve as resources in

¹⁷⁰ Prosecutor 735.

¹⁷¹ Prosecutor 272; *see also* Prosecutor 173; Prosecutor 197 (“[W]e have an amazing amount of discretion and there just really are not those rules.”).

¹⁷² *See* FREDERICK & STEMEN, *supra* note 58. Our preliminary data from a Southwestern state are in accord.

¹⁷³ In all three offices, internal training opportunities were too sparse or infrequent to make an impression on any of our respondents. However, we suspect that in offices with meaningful internal training programs, this would be an important component of the office's social architecture.

¹⁷⁴ Midway, in fact, organized the first-ever solicitor general's conference in the state the year before these interviews were conducted. This conference was the brainchild of the Elected, as part of an effort to assume a leadership position among other solicitors general in the state.

¹⁷⁵ Prosecutor 272.

difficult or novel cases.¹⁷⁶

2. *Other Attorneys*

While interviewees in our three offices differed regarding their knowledge about outside prosecutors, they all took a similar posture toward defense attorneys who practice alongside them and toward civil litigators and transactional attorneys. For prosecutors in each of the offices, defense attorneys help define their professional roles through either negative example or cooperation in moving cases along. Civil attorneys exert next to zero influence on the work or professional identities of prosecutors.

At first blush, prosecutors in Metro, Midway, and Ring seem to minimize the importance of the defense bar's opinion about the quality of their work, saying that "[they] don't think it matters as much" as the opinion of judges or other prosecutors.¹⁷⁷ In fact, the training for Metro newcomers emphasizes that the good opinion of defense attorneys is not necessary for professional self-esteem.¹⁷⁸

Yet most prosecutors admit that they want defense attorneys to see them as fair and prepared, rather than as aggressive or game-oriented. "[W]hen they have a case with me I want them to, and I think I do have this reputation, that [I'm] going to be fair. 'He's going to fight, but he's going to be fair.'"¹⁷⁹ The emphasis on being perceived as fair and "straightforward"¹⁸⁰ is partly a matter of ethics (in the words of Prosecutor 735, "at the end of the day we're all lawyers and we all should have the same ethics in the profession"), and partly a matter of common sense, because the caseload will not move otherwise. "You get along with them so you can kind of get what you need and they do the same."¹⁸¹

As predicted by the literature on criminal court working groups,¹⁸²

¹⁷⁶ Ring Prosecutor 735, for example, said if he were facing a difficult issue he wouldn't hesitate to call the Prosecuting Attorney's Council, the statewide professional organization for prosecutors, to get advice.

¹⁷⁷ Prosecutor 182; *see also* Prosecutor 152 (keeping defense at arms' distance). In accord, in response to the question whether "the opinion of defense attorneys matter[s] to you," Prosecutor 128 said: "For me, no. They might get mad or they might get angry, but it doesn't bother me."

¹⁷⁸ Prosecutor 272. Similarly, in Midway, prosecutors tend to say that "the more comfortable I became with myself and the more I knew myself, the more I was okay with being, 'Take it or leave it. We could try it, I don't care.'" Prosecutor 960.

¹⁷⁹ Prosecutor 955; *see also* Prosecutor 152 ("I'm well respected. I guess the way that—I do care in a sense the way that they perceive me. A lot of them perceive me as being fair. And that's what I've always wanted.").

¹⁸⁰ Prosecutor 965.

¹⁸¹ Prosecutor 287.

¹⁸² *See* JAMES EISENSTEIN, ROY B. FLEMMING & PETER F. NARDULLI, *THE CONTOURS OF*

prosecutors in all the jurisdictions place more stock in the opinion of defense attorneys who are repeat players in the local courts. They attribute the most extreme and unwelcome forms of adversarial behavior to “outsiders”—those defense attorneys who normally pursue a civil litigation practice, are new to the practice, or are not familiar with the jurisdiction.¹⁸³ Prosecutors also generally distinguish between attorneys they respect and other defense attorneys: only the opinions of the former carry any weight. As one Midway attorney put it, “There are the defense attorneys that I think are idiots. I could care less whether they think I’m working hard or what, because I know what people are saying about them.”¹⁸⁴

Prosecutors in all three counties also share the sense that they have a responsibility to keep defense attorneys within the bounds of acceptable courtroom behavior.¹⁸⁵ Prosecutors see the need for “education” as especially pronounced for defense attorneys who are new to the profession and to the jurisdiction:

[We] know that we’re going to have to mold [the new defender in the courtroom] because he’s going to come in here, he’s going to be a firecracker, he’s going to want to try everything. . . . [There] are just certain things that we’re kind of like, “Okay, if

JUSTICE: COMMUNITIES AND THEIR COURTS 19–39 (1988) (describing the components of the courthouse community); EISENSTEIN & JACOB, *supra* note 8; *see also* UTZ, *supra* note 20, at 95 (describing the system in Alameda County where, because DAs and public defenders are permanently assigned to courtrooms, “they get to know each other [and] the judge . . . and learn what to expect as they work together” and observing that in this environment, “[f]ormalism, partisanship and ‘unreasonable’ claims tend to be discouraged . . .”).

¹⁸³ *See, e.g.*, Prosecutor 910; Prosecutor 182 (“[T]here’s a lot of solo practitioners out there who are just figuring out things as they go along, which can make it a little difficult for prosecutors in the courtroom.”). This is consistent with the literature about courtroom working groups. *See, e.g.*, Jerome H. Skolnick, *Social Control in the Adversary System*, 11 J. CONFLICT RESOL. 52, 58–61 (distinguishing cooperative defense attorneys who are experienced enough to know that most cases need to be plea bargained and those inexperienced or uncooperative attorneys who slow things down by being excessively adversarial).

Some prosecutors observe that many defense attorneys qualify as insiders because of professional ties that go back as far as law school: “You know, a lot of us went to law school together, a lot of us started practicing law around the same time and you know, so if I wanted the defense attorney to say, ‘Hey, you know, she’s a good attorney,’ it’s only because that means we have that mutual respect for each other.” Prosecutor 925. *See also* comments by Prosecutor 955 that he has a number of friends in the defense bar and thus tries “to keep work at work and outside work outside work.”

¹⁸⁴ Prosecutor 905; *see also* Prosecutor 197; Prosecutor 236.

¹⁸⁵ Prosecutor 287. A drug prosecutor in Ring (Prosecutor 785) noted that office policy requires a prosecuting attorney to attend every meeting between the police and a potential cooperating witness if the witness is represented by counsel because the defense attorney might “take advantage” of the officer and extract a promise that the officer has no authority to make.

you want to keep the judge happy, this is what you need to do.”¹⁸⁶

Across all three jurisdictions, prosecutors expressed a sense of responsibility to shape defense attorneys’ conduct, much as they might feel obliged to train new attorneys in their own offices.¹⁸⁷

In contrast to the defense bar regulars, civil attorneys exercise little influence in prosecutors’ minds. The attorneys in Metro express frustration about the expensive dues they must pay to the county bar association, which offers no programming or services that they find relevant.¹⁸⁸ Midway attorneys asserted that after court responsibilities, meetings with victims, and stacks of cases to charge, they had little time left over to attend lunchtime Bar meetings (even if they wanted to).¹⁸⁹ Similarly, Ring attorneys express no interest in meeting civil attorneys. Because the civil and criminal bar “don’t really cross that much,” prosecutors never practice against those attorneys and have no motivation to attend meetings or otherwise to connect with the broader bar.¹⁹⁰ To be sure, attorneys newer to

¹⁸⁶ Prosecutor 965. She additionally commented, “[H]e’s a rookie and he’s just enjoying himself in court at our expense. We’re like, ‘It’s 4:30—are you still arguing?’” This is consistent with the legal environment observed by Pamela Utz in California, where “the failure of negotiation is ordinarily more attributable to unreasonable, often inexperienced defense attorneys than to excessive prosecutorial demands.” *UTZ, supra* note 20, at 117.

¹⁸⁷ *See* Prosecutor 900 (“When you’re new, as an attorney, because we are in an adversarial system, you think that you’re supposed to be mean and come with an attitude and come with, you know, this ‘I’m not going to agree with you,’ and that is totally the opposite. . . . We teach them. . . . I talk to them first and then if they don’t get it, I take them to trial and as I say, I beat up on them, I show them.”). When pressed, she admitted that “newer prosecutors, they probably come the same way, quite honestly.” *Id.* A similar point of view about new prosecutors was expressed in the other counties too. *See* Midway Prosecutor 735 (“A lot of young prosecutors, and a lot of young defense lawyers, they really get ‘it’s us against them’ mentality, and I don’t think that’s healthy for our profession. I think we need to be able to respect each other.”); Metro Prosecutor 287 (“I think a lot of people, particularly younger people when they start right in the DA’s office, they want to, they’re all fired up and they just think that, go to the wall with these people and you’re going to fight with them and hate each other. That’s not the way it is.”).

¹⁸⁸ Prosecutor 239:

Our interest, our mission, our charge is a lot different and very distinct from what everyone else does. It’s kind of a small anecdote, but we had the [Metro] County Bar meeting the other day, and [Metro] County raised its bar dues from \$150 to \$225. And compare that with bar dues in every other county. This is ridiculous anyway, \$150, but to raise it even more? And we had probably four-fifths the office out there, just voting against it and being pretty vocal about it. And just effortlessly most of the members of the private bar just go like, whatever. . . . It’s just so different that I have absolutely nothing—I have very little in common with most members of the County bar.

¹⁸⁹ *See, e.g.*, Prosecutor 960.

¹⁹⁰ Prosecutor 735. This prosecutor further noted that he did attend bar meetings and network with civil attorney colleagues earlier in his career when he was in civil practice.

the profession maintain social ties with friends from law school,¹⁹¹ and more experienced prosecutors know lawyers from previous jobs who now practice outside the criminal courts. In both cases, though, their opinions are rarely relevant to prosecutors as they think about how to do their jobs.

3. *Accounting for the Disparity*

Why do our respondents from different offices seem consistent in their attitudes toward defense attorneys and other members of the bar but vary in their attitudes toward outside prosecutors? As the courtroom working group literature suggests, the presence of repeat players is one key variable in prosecutors' relationships with other attorneys.¹⁹² Contacts with civil attorneys are just too infrequent to make a difference, and this holds across jurisdictions. As for prosecutorial perspectives on the criminal defense bar, the comments of prosecutors focused on courtroom behavior of the advocates, an environment in which variations in prosecutor office structure may exert less influence. Nonetheless, structural choices—particularly stability of assignments¹⁹³—may play some role in generating variation between offices. Permanent courtroom assignments lead prosecutors to develop stronger relationships with defense attorneys they see every day; rotating assignments do not foster these sorts of connections. Looking outside the boundaries of the office itself, the structure of the jurisdiction's defense bar would affect how often even permanently assigned courtroom prosecutors encounter specific defense attorneys.¹⁹⁴

When it comes to building ties with prosecutors from other jurisdictions, the training practices of the office can drive or limit the opportunities for junior prosecutors to meet their colleagues from other offices, on both a state and a national basis. Offices that sponsor mostly in-house trainings limit these opportunities, while offices that regularly send

¹⁹¹ Prosecutor 155 said, "I have friends that I went to law school with, that I interact with. But they don't know—if you file liens for construction workers on property, we're not going to come into contact with each other probably." In contrast, Prosecutor 735 was unusual in stating that he would call "friends outside the prosecution game" for advice because he trusts their judgment and sometimes doesn't want people in the office to know that he's struggling with an issue.

¹⁹² See Skolnick, *supra* note 183. Where prosecutors encounter other attorneys on a routine basis, they are more likely to make distinctions within the group and to account for and value the opinion of some repeat players as they make charging and disposition choices.

¹⁹³ Stability of courtroom assignments is not inherently related to either shape or hiring preference; it is a distinct feature of an office's social architecture. Future work should investigate the independent relationship, if any, between this architectural choice and professional identity.

¹⁹⁴ See generally UTZ, *supra* note 20 (finding that the poorly organized defense bar in San Diego was unable to exert significant pressure on the district attorney's office).

their attorneys to large gatherings promote the development of professional networks. Additionally, if the leadership in the office periodically mentions practices in other jurisdictions as relevant to addressing similar problems at home, connections to other prosecutors become more salient for everyone in the office.

V. EFFECTS OF THE THIRD DIMENSION ON OFFICE OUTPUTS

The previous section used qualitative data from our research sites to offer preliminary support for the first part of our central claim: that the social architecture of a prosecutor's office can leave its mark on the professional identities of attorneys who work there. We turn now to the second part of our theory, asking whether this identity, in turn, has the capacity to influence the results that an individual attorney will obtain in criminal cases and, by extension, the results that the entire office will achieve in the criminal docket for the jurisdiction. In Subpart A, we address this question by focusing on consistency in handling cases. We discuss what prosecutors in our research sites say about the importance of consistency in their offices, and then describe the limitations of this study when it comes to assessing data on this question. In Subpart B, we turn to other outputs that might bear the imprint of an office's social architecture and the professional identities of the attorneys who work there, including career vision, relationships with police, and a "culture of mercy."

A. CONSISTENCY IN CASE HANDLING

The public expects the professionals who work in American criminal justice to pursue two contradictory aims: to treat in the same way every person who commits the same crime and to treat each suspect and each defendant as an individual.¹⁹⁵ These paradoxical expectations—treat every person the same, except for those who should be treated differently—also shape our views about prosecutorial discretion.¹⁹⁶ Not surprisingly, then,

¹⁹⁵ These twin impulses lead us to ask police officers to bring a sense of proportion to their work and to decline to arrest some suspects, even if probable cause would support charges, without showing favoritism. *See* DAVID ALAN SKLANSKY, *DEMOCRACY AND THE POLICE* 135–41 (2008). Similarly, we ask sentencing judges to avoid "disparity" in sentences, but only if that disparity is "unwarranted" in light of the individual circumstances of the case. *See* KATE STITH & JOSE A. CABRANES, *FEAR OF JUDGING: SENTENCING GUIDELINES IN THE FEDERAL COURTS* 121–26 (1998).

¹⁹⁶ *See* Felkenes, *supra* note 39, at 99 ("The work environment of the prosecutor places on him demands that are often ambiguous and conflicting. The strains of maintaining public support and acting effectively in prosecuting suspects make this highly visible government position vulnerable to numerous compromises."). We note that in the Vera Institute study of two prosecutors' offices (Midwestern and Southeastern), prosecutors offered a mixed portrayal of the value of consistency. While in surveys they regularly highlighted the value

one theme that arose during our interviews was the need for consistency among different prosecutors who work in the same office.¹⁹⁷

While interviewees in all of our research locations raised this point, some attorneys gave a higher priority to consistency than others, and this variation seemed to correlate with their office environments.¹⁹⁸ Line prosecutors in Metro, an office whose structures promote a strong team spirit, explained that they encourage each other to produce consistent outcomes in the cases they each handle.¹⁹⁹ Conversely, prosecutors in our flat office stocked with veterans (Midway) placed value on individualized outcomes rather than on consistency. Ring prosecutors fell somewhere in between.

This correlation between social architecture and consistency is not surprising. In offices where attorneys conceive of themselves as team members who can substitute for each other whenever the need arises, the desire for interchangeable results is understandable.²⁰⁰ Offices that foster autonomy are less likely to place a premium on consistency of outcomes for several reasons. First, a prosecutor who is not subject to regular cross-checking by teammates or monitoring by a supervisor can reach her own conclusions about what is appropriate in her caseload, without having to account for her decisions to anyone other than the judge in the courtroom. Second, if she seeks advice about her cases, the absence of intra-office borders allows her to collect multiple and diverse opinions. Through these contacts, she is likely to hear multiple different approaches from many people. Third, an office that tends to hire veteran prosecutors increases the

of consistency across cases, in focus groups they acknowledged that competing values and limited resources often make consistency hard to achieve. FREDERICK & STEMEN, *supra* note 58, at 9.

¹⁹⁷ Cf. Michael Tonry, *Functions of Sentencing and Sentencing Reform*, 58 STAN. L. REV. 37 (2005) (treating consistency of outcomes as one of the “functions” of sentencing, as distinguished from the normative “purposes” to be achieved by criminal sentences).

¹⁹⁸ The findings of Mellon and his colleagues were in accord; across 10 cities, they found high levels of variation in the commitment to consistency. See Mellon et al., *supra* note 25, at 77.

¹⁹⁹ Prosecutors in pyramidal, newbie-oriented Metro, for example, frequently commented about the importance of consistent outcomes in both the drug and misdemeanor caseloads. See, e.g., Prosecutor 251 (“[We] want to remain consistent as a whole because otherwise it looks like one person is off in the field, where everyone else is doing one thing and they’re doing the other. . . . [So] there is a lot of, ‘Oh, what would you do he[re]?’ then you kind of come to a consensus together of what is appropriate sometimes.”); Prosecutor 128 (“[We] hold each other accountable for how we are going to try a case, and what’s a good case, and what’s a good decision in that case.”).

²⁰⁰ We acknowledge that this theory may suffer from a chicken–egg problem; that is, it might be that Electeds who value consistency construct architectural features to support that value, while Electeds who value individualized justice make other architectural choices.

pluralism of the office's discourse, assembling attorneys with different experiences and views about filing strategies, standard plea offers, and sentence recommendations.²⁰¹ Thus, a flatter office structure combined with a veteran hiring preference gives attorneys access to a wider menu of legitimate options.

But our interviews also reveal that the value a prosecutor's office places on consistency or individualism is not uniform; it is instead layered and contextual, depending on source, timing, and audience. For example, while an office's social architecture might be built to emphasize either conformity or individualization, discourses within the office might stress the opposite value. In Metro, for example, where the background daily routines and supervisory structures emphasize a team-based, conformist professional identity and the value of consistency, oral messages from the supervisors encourage employees to use individualized discretion. In fact, the supervisor of the Misdemeanor Team explicitly says that his objective is to promote the confidence of new attorneys in their own judgment.²⁰² Moreover, the overarching office philosophy of the Elected in Metro—to “do the right thing” and to “do justice”—is taken to mean that a prosecutor should consider the case-specific interests (of the particular defendant, victim, and community) when crafting a sentencing recommendation.²⁰³ As Prosecutor 251 put it:

I was told from the beginning we're supposed to do what's right. Do not only what feels right but also just in practice, in seeing kind of what the norm is for certain offenses, . . . but also taking into account the full context of the situation to try to do what's best for everybody involved if possible.

Words of trust and support, in short, can counterbalance or mute the effects of the established architecture.²⁰⁴

²⁰¹ Consider, for example, the Midway prosecutor who introduced a completely new punishment—banishment—into the menu of punishments in the local courts based on her experience in another county. Prosecutor 945. Other prosecutors in the office treated her initiative as a curiosity, but not as a violation of office values. That they chose not to emulate her initiative is not important—her point of view on the suitability of this probation term is simply one of many that coexist in the office.

²⁰² Interview with Supervising Attorney, Metro County, in Metro County (June 17, 2010).

²⁰³ The newbie attorneys on the team believe that their supervisors ultimately expect thoughtfulness from them, not merely compliance. They view different rules as deserving of different levels of compliance.

²⁰⁴ Likewise, distinctive aspects of the social architecture in an office otherwise marked by autonomy might impose “subtle pressure” on its line staff “to be in line with general averages and disposition rates”; that is, an office that exhibits “few outward controls” might have “a good deal of internal consistency” due to a high level of collegiality, small size, and use of a computer system to track case handling. Mellon et al., *supra* note 25, at 76 (describing Salt Lake City).

While messaging from leadership can alter the expected balance between consistency and individualization, the direction of the proposed movement, together with the timing and audience, affect how that message will be received. First, the socialization literature suggests that moving the metaphorical office walls may be particularly difficult when the direction is from independence to conformity.²⁰⁵ This phenomenon arose in Midway, where the line attorneys resisted and resented their Elected's efforts to impose more oversight after an initial *laissez-faire* approach. With regard to timing, a shift in the preferred balance likely becomes more difficult the longer the initial blend of values remains in place.

As for audience, the experience level of the office attorneys might also affect the success of a proposed recalibration. New additions to the architecture will be highly visible to veteran attorneys happy with the original framing and experienced enough to know the difference. On the other hand, newbies entering a well-established edifice for the first time (that is, when they join a smoothly running, highly structured office) take the structures for granted, treating them as permanent rather than transitory, a natural part of the professional landscape.

In sum, the attorneys talk about the relative importance of consistency and individualized treatment of defendants, and their answers correlate with the office structures that surround them, but the correlations are not unidimensional. We thus found ourselves wondering about actual behavior: do prosecutors produce results that reflect the values they espouse, the architecture within which they work, or some combination?

Although logic suggests that more consistent case outcomes will appear in jurisdictions that are built to value consistency, we do not assume that strong consistency-oriented internal office features will, in and of themselves, produce consistent case outcomes. There are several competing pressures. First, while an office might aim for consistency, actual case resolutions depend heavily on judicial and defense attorney responses to prosecutorial overtures;²⁰⁶ this is especially true in jurisdictions that assign judges and prosecutors to courtrooms on a more-or-less permanent basis. If we want to compare across jurisdictions with differing courtroom rotation procedures, prosecutorial bail recommendations, diversion eligibility letters, and plea offers would trump case outcomes as proxies for an office's commitment to consistency.

Secondly, internal office structures interact with statewide features of

²⁰⁵ See, e.g., Nicholson, *supra* note 34 (arguing that when people move from a position of high discretion to a position of lower discretion, they become unhappy and frustrated at work).

²⁰⁶ This was one of Utz's principal findings in her comparison between Alameda and San Diego Counties in the 1970s. See UTZ, *supra* note 20.

the legal environment to place greater or lesser weight on consistency of outcomes in the jurisdiction. For instance, state sentencing laws applicable in Midway and Ring give broad sentencing discretion to each judge, while the sentencing laws applicable in Metro impose stricter guidelines on sentencing judges to promote statewide uniformity of outcomes.²⁰⁷ Moreover, limited court capacity might impose conformist pressures even in offices that otherwise promote autonomy. For example, if there is only one judge available to try all cases in the jurisdiction, that judge's influence will feature prominently in the number of negotiated pleas brought forth by different prosecutors.²⁰⁸

In light of these puzzles, we regret that we cannot test this second part of our theory with the data we have collected to date. None of our research sites employs a charging or sentencing grid that prosecutors are supposed to follow, and none offered us access to their individual case files. If we had such access, we could evaluate like cases (based on offense severity and the offender's prior criminal record) in light of the prosecutorial decisions made: charges filed, bail recommendations, diversion eligibility, and all plea offers.²⁰⁹ Our ongoing research in additional jurisdictions will collect aggregate office outcomes and link that data to surveys asking individual prosecutors to characterize their own charging and case resolution choices based on general principles and on hypothetical cases. This future work will allow us to test the theory that we have developed here regarding the relationship between office structures, professional identity, and consistency of case-handling decisions.

B. OTHER EFFECTS ON OUTCOMES

Beyond inspiring a particular level of consistency in case handling, an office's social architecture and the correlative changes to attorneys' professional identities might affect other individual or office outputs. Our data suggest patterns in two spheres: career vision and relationship with local law enforcement.

²⁰⁷ This is in accord with the findings of Mellon and his colleagues; jurisdictions governed by tight sentencing rules experienced more uniformity in prosecutorial case handling than jurisdictions that lacked such controls. See Mellon et al., *supra* note 25, at 75 ("Determinative sentencing, which is in effect in Indiana, greatly restricted the type of bargain that the court would accept relative to length of sentence.").

²⁰⁸ See Mellon et al., *supra* note 25, at 75–76 (describing the situation in Salt Lake City).

²⁰⁹ Indeed, such case-level information is not accessible for Midway or Ring Counties, and only some of these categories would be available in Metro County. For an example of a study based on a larger number of these variables than is typically available to researchers, see Ilene H. Nagel & Stephen J. Schulhofer, *A Tale of Three Cities: An Empirical Study of Charging and Bargaining Practices Under the Federal Sentencing Guidelines*, 66 S. CAL. L. REV. 501 (1992).

Turning first to the career vision point, an office's particular preference for hierarchy and experience can affect the line prosecutor's sense of her own future as a professional. An office that hires relatively junior attorneys and signals the expected career path through hierarchical organization is likely to promote and expect a future orientation among its prosecutors. New arrivals picture themselves moving up within the office, and ask what steps today will carry them further along the path as growing professionals. For example, the Metro prosecutors view their current activities as an investment in professional skills that will become more important as they gain seniority in the office.²¹⁰ Chief among those skills is the ability to exercise judgment in a way that conforms to the judgment of their peers.²¹¹

By contrast, veteran attorneys who work in offices that adopt flatter structures are more likely to take a more limited, present-oriented approach to the job. Because there are no obvious promotional ladders to climb and fewer incentives to prove oneself as a rising star in an office such as Ring or Midway, attorneys seem more focused on managing their present positions than on trying to secure promotions. While they do ponder potential career paths outside their current offices more frequently than the attorneys in Metro,²¹² they do not express anxiety about supervisors or senior peers evaluating them for possible star qualities or advancement within the office.²¹³ Given that attorneys at later stages of their careers may be drawn to a flatter work environment,²¹⁴ we cannot conclusively say that the office

²¹⁰ See HALL, *supra* note 60, at 48 (describing the career perspectives of newcomers who want to advance in an organization); Ibarra, *supra* note 17 (describing the upward orientation of new managers).

²¹¹ See Felkenes, *supra* note 39, at 112 ("Adherence to [group values] arises as much out of the imitation of superiors as out of peer group conformity. Conformity to this set of attitudes which are of utmost importance to the professional elders and of little importance to the public may guarantee career opportunity.").

This future orientation of the prosecutors in Metro is in line with the office's explicit cultivation of a long-term culture. The Elected asks new hires for a commitment of three years of service (with some flexibility in individual cases) and seeks further commitments before sending an attorney to any major training program. Additionally, the Elected aims to create an environment that remains attractive to prosecutors even after their first few years on the job, hoping to increase the number of attorneys who accept the necessary pay cut and remain in the office as experienced prosecutors. Prosecutor 272.

²¹² See, e.g., comments by Prosecutors 900, 905, 915, 950, 960, 965.

²¹³ One said she could do the job "with [her] eyes closed." Prosecutor 960; see also Prosecutor 900 ("[If] you're still in misdemeanor prosecution after three plus years or after four plus years, there is some type of reason and it's usually because you just choose not to be a felony prosecutor, that you've remained in a solicitor's office.").

²¹⁴ Particularly in Midway, many of our interviewees took their positions precisely because the lack of pressure for upward mobility would allow them to create a better balance between their careers and their families and other life responsibilities. See Prosecutor 945

structure itself dampens their professional drive; it may simply reinforce what is already there.

Another “output” that might be affected by an office’s social architecture and the prevailing professional identities of the attorneys who work there is the interaction between prosecutors and law enforcement officers. A prosecutor works closely with law enforcement, but they are not in a direct hierarchical relationship. In that context, where the prosecutor has to make tough choices about which cases to pursue and which to decline, she often has to assert authority in a face-to-face conversation with the arresting officer. The key challenge is to earn respect from the police without taking cases that compromise ethical or efficiency standards of the office. In the words of one of our respondents, the prosecutor has to be able to “sit across from an officer in the room and say, ‘I’m sorry’ To have that dialogue, it’s a different skill set”²¹⁵

Managing these role conflicts is a challenge for inexperienced prosecutors, since they have yet to earn street credibility with officers or to develop confidence in their own screening abilities.²¹⁶ As one attorney from the Drug Team in Metro put it, “That’s the one hard thing that I had to learn Because I’m the type of person that I like everybody to like me. So of course if I’m rejecting [his] case and the officer doesn’t understand why . . . you’re not going to be their friend.”²¹⁷ It can take years for a prosecutor, assigned to a single unit, to form relationships with police officers that are based on mutual respect and self-assurance, rather than on the need to be liked. The Ring drug unit, for example, has maintained a consistent face for about a decade, and its prosecutors report that they have become like “family” with the officers on their cases.²¹⁸ In this environment, Prosecutor 785 reports that he is regularly consulted before police actions are planned, and that his institutional knowledge of drug-enforcement techniques provides him with a source of authority inexperienced prosecutors do not have. Offices that provide prosecutors with long-term unit assignments rather than frequent rotations, and those

(“Right now someone asked me that [‘What do you see for yourself in the future?’] like recently and I was just like, ‘You know, I’m just good. I’m good right now, you know.’ Like I say, I have a 15-month-old that keeps me really busy. And you know, I don’t know if she’s older if I’ll go back into private practice or not. Right now I’m just really good with where I am and what I’m doing.”).

²¹⁵ Prosecutor 266 (explaining that the prosecutor’s challenge is to decline cases in a way that promotes dialogue with the police about how to improve investigations).

²¹⁶ This is in accord with the findings of Frederick and Stemen, who report that new prosecutors often feel less confident in their abilities to confront police officers or decline cases. See FREDERICK & STEMEN, *supra* note 58, at 11.

²¹⁷ Prosecutor 161.

²¹⁸ Prosecutor 735.

that employ cadres of veterans rather than newbies, thus seem more likely (than offices with contrasting features) to foster stable relationships between prosecutors and police.²¹⁹ Our data reveal an interesting gender dimension to this relationship, too; female prosecutors report that, compared to their male colleagues, they feel less able to develop close and respectful ties with law enforcement officers.²²⁰

Putting aside career vision and relationships to police, there are several other outcomes whose potential relationships to office structure and professional identity inspire us to speculate, in the absence of data. For example, is there any correlation between office structure and the sheer volume of cases that prosecutors expect to handle?²²¹ Economic theory suggests that offices that promote a team mentality of interchangeable attorneys could process more cases in certain high-volume settings, such as drug cases, property crimes, or low-level assaults. On the other hand, office structures that promote autonomy among attorneys might take better advantage of specialized knowledge and overall could save time by not instituting cross-checking, “self-monitoring” procedures.

We also might ask whether an office would respond differently to allegations of wrongful convictions if the employees worked in more hierarchical arrangements or were hired with more experience, as compared to other structural formations. Either possibility is conceivable, but it seems equally likely that on questions dealing with single high-visibility cases, the personality and judgment of the Elected will determine the office response more directly than the office structure or the professional identity it helps to cultivate.

Finally, one might ask whether particular office structures and specific professional identities lead some prosecutors to seek *less severe* outcomes for criminal defendants—a question that is distinct from our earlier question about the consistency of office outcomes. Can a prosecutor’s office create a

²¹⁹ This is not to say that stability is always a positive value; “family”-type relationships with police officers may cause a prosecutor to lose his objectivity.

²²⁰ See, e.g., Prosecutor 161 (stating that police officers “care about it, they worked on it, you know, and then I’m this, you know, little girl that’s sitting in the chair like, [uses high voice] ‘Oh yeah, that doesn’t look good,’ you know.”). We explore the gender angle further in future work using this dataset.

²²¹ Prior scholars have shown a correlation between certain structures and office willingness to plea bargain, but that dependent variable would not get us very far here, since our three research sites all extensively engage in plea bargaining. See, e.g., UTZ, *supra* note 20; Mellon et al., *supra* note 25; Lief Hastings Carter, *The Limits of Order: Uncertainty and Adaptation in a District Attorney’s Office* 18–28 (Sept. 19, 1972) (unpublished Ph.D. dissertation, University of California, Berkeley) (on file with Doe Library, University of California, Berkeley). Of course, as empirical tests of this theory take us (and others) to offices with different combinations of structures, it may be fruitful to test the correlation between office shape, hiring preference, and willingness to plea bargain.

“culture of mercy,” endorsing the idea that prosecutors should at times support the rehabilitation of defendants or endorse comparatively light sentences for deserving defendants? Employees of all three offices profiled here express a strong commitment to doing justice in individual cases, a viewpoint that seems to embody a notion of relativism when it comes to punishment and to allow for mercy in appropriate cases. But that view is far from universal. We have recently spoken with prosecutors in offices with more severely hierarchical shapes than the three sites we examine in this Article, and some prosecutors in those offices told us that they are not personally responsible for rehabilitation or mercy; any lessening of the full weight of the criminal law as written, in their view, is the responsibility of the sentencing judge or some other actor. Is this the result of steep hierarchy, the political style of the Elected, or some other architectural feature of the office? We cannot be sure, but variation on this issue suggests that systematic research is needed to untangle the connections between architectural features, professional identity, and the severity of outcomes that an office actually produces.

Questions such as these become relevant and testable once we spotlight the theoretical connections flowing from office structures to professional identities to prosecutors’ performance. This research frontier is wide open.

VI. CONCLUSION

Previous scholarly attempts to explain prosecutorial behavior have offered us limited views of how prosecutors understand their jobs and complete their work. Some portrayals look only outward (toward external institutions that generally fail to sway prosecutorial behavior) and thus leave us pessimistic about the ability to control prosecutorial discretion. Others look only inward (toward the prosecutor’s individual conscience) and thereby try to reassure us that regulation by external sources is unnecessary.

To understand more fully how the prosecutor experiences her professional role and the rule-of-law implications of that role, we must account for the institutional fabric of the office itself. Our study has focused attention on two key features of that institutional fabric: organizational shape and hiring preference for experience. We have explored correlations between these two aspects of office architecture and a prosecutor’s professional identity. One specific feature of the prosecutor’s professional identity—the development of an autonomous or team spirit—does seem to correlate with the office environment. Consistent with the sociological literature on organizations, we theorize and preliminarily find that attorneys who work in pyramidal offices and who are hired without

experience tend to embrace bureaucratic and group values to a much larger degree than their counterparts in other office environments.

This team or autonomous conception of the prosecutor's role has secondary linkages to a prosecutor's sense of connection to the rest of the office, her relationship to other attorneys in the profession, her development of a career vision, and her relationships with police. Prosecutors in the more traditional bureaucratic offices, who tend to be hired without experience into the lowest level of the organization, are quite nearsighted when it comes to their colleagues in other units in the office and prosecutors in other offices. They express relatively little interest in or connection to people outside their limited spheres, whether they be other prosecutors or police officers. Yet when it comes to career vision, the bureaucratic prosecutors have it in spades—they regularly picture their futures in the office. The experienced prosecutors in flat offices know a lot more about what their colleagues are doing and are more likely to have relationships with prosecutors in other offices and with local law enforcement. But they have a more truncated sense of their career vision.

Lastly, the team-versus-autonomy dimension of the professional identity might affect case-handling decisions. That is, the more an office promotes consistency as a function of team spirit, the more likely its case outcomes will be consistent across prosecutors. That being said, we do not expect this relationship to be a simple correlation, due to the influence of the criminal defense bar, the local judiciary, and the state legislative focus on reducing sentencing disparity. While we do not test the proposition in this Article, our theory points to a correlation between office structure, identity, and case handling that can be tested in the future. Given the limitations of criminal justice information systems, a combination of statistical compilations and surveys of prosecutors will be necessary to measure any effects on case outcomes. We expect to pursue multiple measures of outputs as this research progresses.

Although our dataset in this first Article comprises only three offices, it does reveal new dimensions of the institution of prosecution. First, contrary to a common scholarly assumption, prosecutor's offices are not all hierarchical and specialized. While this structure is likely characteristic of most large offices, when one considers all 2,300 state prosecutor's offices in the United States, organizational shape runs from the flat to the steeply pyramidal. Second, line prosecutors do not simply mimic the professional role that the Elected models for them, and prosecutors do not simply take on the character of the Elected. The structural choices of a chief prosecutor affect and reinforce the professional identities of the line prosecutors in the office, independent of the example that the chief sets.

Indeed, structural changes in the office environment can change the

professional role images at work there rather quickly. In an epilogue to our field study, we note that two of the three offices (Metro and Midway) changed leadership in early 2011. The new District Attorney in Metro kept most of the existing office structures in place, producing only minimal changes in attorney identities and performance.²²² The new Solicitor General in Midway, in contrast, moved the office toward more specialization and midlevel supervision (a modestly more pyramidal shape), and prosecutor conceptions of their roles started shifting after a brief transition period.²²³

Our exploration of office architecture and its correlation with professional identity finally breaks an impasse in scholarly treatments of prosecutorial discretion. A close study of internal office structures, in all their varied forms, moves us past the dead-end observation that external constraints are anemic and inadequate to legitimize modern prosecutorial practices. At the same time, a search for patterns in prosecutorial offices gets beyond the banal observation that every office is its own unique place, every prosecutor her own unique person. Comparative institutional research, with the prosecutor's office as the unit of analysis, opens up a new and generalizable body of knowledge. It reveals to the managers of a prosecutor's office just how profoundly they can shape the professional identities and outputs of their attorneys, based simply on their organizational choices. Most importantly, this research gives the public (along with the journalists, academics, and other observers who serve as their agents) a greater ability to evaluate the work done in their name in the criminal courts.

²²² Interview with Elected and First Assistant of Metro County District Attorney's Office (Oct. 11, 2011).

²²³ Second Interview with Prosecutor 950 (Sept. 12, 2011).