

Place Matters in Prosecution Research

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I. INTRODUCTION

How do prosecutors understand their own professional self-identities? Do they change their images of the prosecutor's ideal role over the course of their careers? If so, is there a correlation between the place in which the prosecutor works and changes in that professional self-image?

We think these questions are important for two reasons, separate and apart from the prosecutor's impact on the outcomes in individual criminal cases. First, while defendants, victims, and advocates care intensely, maybe even exclusively, about their own case outcomes, the goals of scholars ought to be more complex: our task is to explain the nuances of the living criminal justice organism, not just its end products.¹ For that reason, we should examine various aspects of the system—including the prosecutor's role—from different angles, using different methodologies, to answer more layered inquiries. Second, although prosecutors hold unmatched power in criminal justice, they do not unilaterally determine outcomes in a straightforward sense. Many factors outside of the prosecutor's control have a bearing on criminal case outcomes: the triadic relationship between the prosecutors' office, the bench, and the bar; the political conservatism of the underlying jurisdiction; and the rate of serious crime in the jurisdiction, to name just a few.² These exogenous features shape the space in which prosecutors work; they influence what prosecutors value, and what they are willing to sacrifice or

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¹ In emphasizing the importance of institutional fabric as a subject of study, we build on the insights of Peter Nardulli and his co-authors, who proclaimed nearly three decades ago, that limiting research on criminal justice institutions to case outcomes “would be like limiting research on Congress to votes.” PETER F. NARDULLI, JAMES EISENSTEIN & ROY B. FLEMMING, *THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS* 368 (1988).

² See JAMES EISENSTEIN, ROY B. FLEMMING & PETER F. NARDULLI, *THE CONTOURS OF JUSTICE: COMMUNITIES AND THEIR COURTS* (1999); ROY B. FLEMMING, PETER F. NARDULLI & JAMES EISENSTEIN, *THE CRAFT OF JUSTICE: POLITICS AND WORK IN CRIMINAL COURT COMMUNITIES* (1992); PAMELA UTZ, *SETTLING THE FACTS: DISCRETION AND NEGOTIATION IN CRIMINAL COURT* (1978); Leonard R. Mellon, Joan E. Jacoby & Marion A. Brewer, *The Prosecutor Constrained by His Environment: A New Look at Discretionary Justice in the United States*, 72 J. CRIM. L. & CRIMINOLOGY 52 (1981).

argue for. Scholarship that explores the professional self-image and working environment of prosecutors can reveal how prosecutors use the space available to them, how they respond to or push against local constraints. In short, the prosecutor's philosophy of the job, beyond just case outcomes achieved, merits sustained scholarly attention in the form of rigorous empirical study.

Toward that end, in our recent article, *The Cure for Young Prosecutor's Syndrome*,³ we suggested that a common path of professional development seems to exist for many prosecutors working in state courts in the United States. We interviewed hundreds of state prosecutors in the Southeastern and Southwestern United States, asking about their professional selves, their colleagues, their bosses, their adversaries, and their future plans. Based on what we heard, we posited that most state prosecutors appear to become more balanced, rather than more zealously adversarial, over the course of their careers. They start off their careers as gung-ho, hot-headed warriors but over time learn to embrace pragmatism and proportionality. While we heard stories about seasoned prosecutors who were unbalanced zealots and learned about offices that fanned the flames, our contention—that balance appears to be the ordinary career development path of most prosecutors—was based on the dominant narrative in our interviews.

Professor Laurie Levenson disagrees with us about the natural career arc of prosecutors. In *The Problem with Cynical Prosecutor's Syndrome*,⁴ she describes experienced prosecutors who are highly cynical and callous about defendants. A sense of balance—as we describe it—is nowhere in sight. The prosecutors in Los Angeles she met in an adversarial post-conviction setting were uninterested in distinguishing between defendants or in considering the substantive justice concerns that emanated from certain case files. For these prosecutors, unquestioned loyalty to comrades, certainty of guilt, and finality of prosecution were the ruling values.

Certainly it is possible that our interviews produced unreliable information,⁵ or that the post-conviction setting of Professor Levenson's work influenced the prosecutors there in ways that do not reflect the general prosecutor population.⁶

³ Ronald F. Wright & Kay L. Levine, *The Cure for Young Prosecutors' Syndrome*, 56 ARIZ. L. REV. 1065 (2014); see also Kay L. Levine & Ronald F. Wright, *Prosecutor Risk, Maturation, and Wrongful Conviction Practice*, 41 L. & SOC. INQUIRY (forthcoming 2017), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705553.

⁴ Laurie L. Levenson, *The Problem with Cynical Prosecutor's Syndrome: Rethinking a Prosecutor's Role in Post-Conviction Cases*, 20 BERKELEY J. CRIM. L. 335 (2015).

⁵ See Levine & Wright, *supra* note 3 (describing the limitations of our research design and defending our data on reliability grounds).

⁶ The post-conviction setting could explain much of what Levenson reports about prosecutorial cynicism, for a number of reasons. For example, post-conviction claims are not regularly reviewed by a judge who might influence the expression of excessive zeal by the prosecutor's office. Moreover, the claims are not subject to procedural mechanisms that force cooperation—such as reciprocal discovery rules—and are handled in a practice setting that is based on the presumption of guilt, rather than the presumption of innocence.

But is there any way for both of these portraits of prosecution to reveal some truth, each manifesting an important but different slice of reality? We think there is, but only if one considers the importance of place in each study.

In this essay, we explore the reasons why studies of offices of different sizes, located in demographically and culturally different regions, might reveal different truths about how prosecutors behave. No doubt there is some degree of isomorphism among prosecutors' offices, so it makes sense at times to draw general lessons about the work of prosecutors. But state prosecution offices in the United States are insular, sometimes idiosyncratic entities. We believe that large urban offices in particular are not typical of the working environment for most state prosecutors. In other words, because "American prosecution is highly localized,"⁷ practices in one office (particularly a large urban office) may not be the norm in other places, such as mid-sized or smaller offices in suburban and rural settings. In light of this insularity, researchers and readers should tread cautiously before they generalize about American prosecutor behavior based on studies of single offices, particularly when those offices are large and operate in big cities. While we believe it is possible to apply findings or recommendations from one prosecutor research context to another, such applications should demonstrate awareness of the differences between places. To put it simply, place matters in prosecution research.

The observation that place matters has been a mainstay of sociological and political science research for decades.⁸ More particularly, scholars have recognized the link between organizational size and organizational culture in related criminal justice contexts, such as policing⁹ and courts.¹⁰ In this respect, as in many others, the scholarly treatment of prosecutors lags behind that of other

⁷ Marc L. Miller & Samantha Caplinger, *Prosecution in Arizona: Practical Problems, Prosecutorial Accountability, and Local Solutions*, in *PROSECUTORS AND POLITICS: A COMPARATIVE PERSPECTIVE* 265, 267 (Michael Tonry ed., 2012). Loïc Wacquant has argued that American government as a "bureaucratic field" is highly decentralized, fragmented and therefore localized; we should expect nothing different in the sub-specialty of prosecution. See LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009).

⁸ See PETER DREIER, JOHN H. MOLLENKOPF & TODD SWANSTROM, *PLACE MATTERS: METROPOLITICS IN THE TWENTY-FIRST CENTURY* (2014); JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* (1987); ROBERT E. PARK, ERNEST W. BURGESS & RODERICK D. MCKENZIE, *THE CITY: SUGGESTIONS FOR INVESTIGATION OF HUMAN BEHAVIOR IN THE URBAN ENVIRONMENT* (1925); ROBERT J. SAMPSON, *GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT* (2012); Thomas F. Gieryn, *A Space for Place in Sociology*, 26 *ANN. REV. SOC.* 463 (2000).

⁹ See David Eitle, Stewart J. D'Alessio & Lisa Stolzenberg, *The Effect of Organizational and Environmental Factors on Police Misconduct*, 17 *POLICE Q.* 103 (2014); but see David A. Klingler, *Environment and Organization: Reviving a Perspective on the Police*, 593 *ANNALS AM. ACAD. OF POL. & SOC. SCI.* 119, 126 (2004) (explaining why more research should be done on police culture).

¹⁰ See EISENSTEIN ET AL., *supra* note 2 (explaining importance of correlations between the size of courts and the communities they govern for how well the courts function).

criminal justice organizations.¹¹ In this essay, we try to fill one small part of this remarkable gap by suggesting some reasons why the combination of office size and organizational culture—the place where the prosecutor works—might matter to the prosecution function. In so doing, we aim to accomplish more than simply observing that data from large and small offices might be irreconcilable; we hope to advance a conversation about the feedback loop between institutional design and prosecutorial culture.

II. THE ACADEMIC PREFERENCE FOR LARGE URBAN OFFICES

Legal scholars have published a torrent of books and articles in the past fifty years on the subject of prosecutorial behavior, many of them based on field studies of large urban offices. Chicago, Los Angeles, Washington, Philadelphia, and the various boroughs of New York are all favorite spots for academics to research, observe, and critique. It is no wonder these locations are popular choices: they are the home of many prominent universities, and many criminal law and procedure scholars began their legal careers practicing in these cities. For those wanting to add a quantitative component to their study, these jurisdictions offer large numbers of cases to review. Given the scholarly emphasis on criminal justice outcomes, these offices are likewise appealing because they account for a significant percentage of the felony convictions each year in the United States.¹² Familiarity, personal networks, proximity, and the opportunity for large-scale data collection make these cities natural sites for research.

But has this emphasis on outcome-based research led legal scholars to focus *disproportionately* on large city prosecutor offices in their published research? To find a tentative answer to this question, we conducted an informal review of the academic literature published in the United States since 1966 to see if we could detect a bias in favor of large urban research locales in works that rely on empirical data about state prosecutors.¹³

¹¹ See *supra* note 2. The works previously cited, produced by prominent sociologists several decades ago, stand out as a counter-trend.

¹² We generated a rough estimate of office output based on data from the Bureau of Justice Statistics (BJS). Although the BJS does not report the percentage of felony convictions obtained by the twenty largest prosecutor offices, it did estimate that state court prosecutors obtained 1,078,920 felony convictions in 2004; the same researchers also estimated that the seventy-five largest counties generated 29,727 felony convictions in May 2004. See SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS tbl.5.44.2004, <http://www.albany.edu/sourcebook/pdf/t5442004.pdf> [https://perma.cc/7Z YJ-HZEQ] & tbl.5.58.2004, <http://www.albany.edu/sourcebook/pdf/t5582004.pdf> [https://perma.cc/8P9D-F7EN] (2016). By multiplying the May figure by twelve, we estimate that 356,724 felony convictions derived from the seventy-five largest offices, about 33% of the national total. The twenty largest offices generated some fraction of that total; for our rough purposes in this article, we estimate the proportion to be something less than 25%.

¹³ By empirical data about prosecutors, we mean works that use survey data, interviews, systematic observation, or analysis of case file data to report on patterns of prosecutor behavior.

Our definition of large urban offices derives from a national survey, conducted by the Department of Justice and published in 2005.¹⁴ The twenty largest offices employed as few as 163 and as many as 886 full-time attorneys; they handled felony prosecutions for districts with populations ranging from 600,000 to 10,400,000 people.¹⁵

Having identified the twenty largest state prosecution offices, we searched various databases of legal and social science scholarship, using different combinations of search terms along the lines of “empirical,” “prosecutor,” and “office.”¹⁶ The searches turned up works published in student-edited law reviews and peer-reviewed academic journals, as well as books and book chapters. Overall, we found 123 works that included empirical analysis of state prosecutor’s offices.¹⁷

It does appear that large urban offices get disproportionate attention in prosecutor research. As Table 1 indicates, 75 of the 123 articles we found included some empirical analysis of prosecutor behavior in the twenty largest urban offices. These large offices represent less than one percent of the total number of state prosecutors’ offices handling felonies; they employ less than one-quarter of the felony prosecutors in the country and file less than one-quarter of the felony matters in state court each year.¹⁸ Yet, as Table 1 shows, they form the basis of over 61% of the empirical studies of prosecutors in the United States.

¹⁴ See BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NATIONAL PROSECUTORS SURVEY 2005 (2007), <http://doi.org/10.3886/ICPSR04600.v1>.

¹⁵ The locations on the list, in descending order of number of prosecuting and supervising attorneys employed as of 2005, are: Los Angeles County, California (886); Cook County, Illinois (830); New York County, New York (441); Kings County, New York (375); Maricopa County, Arizona (324); Bronx County, New York (306); Miami-Dade County, Florida (288); Queens County, New York (283); Philadelphia County, Pennsylvania (278); District of Columbia (250); Orange County, California (227); Harris County, Texas (226); Riverside County, California (223); Broward County, Florida (213); Baltimore, Maryland (213); San Bernardino County, California (206); King County, Washington (193); Wayne County, Michigan (180); Suffolk County, New York (166); and Sacramento County, California (163). *Id.*

¹⁶ We conducted eleven distinct searches in five electronic databases of scholarship (Westlaw, Lexis, HeinOnline, Google Scholar, and Web of Science), supplementing those searches with works already familiar to us from our routine reading files. Details of the searches are available from the authors upon request.

¹⁷ Our searches also turned up ten works that focused exclusively on federal prosecution offices. Because the federal prosecution bureaucracy is an entirely different animal than the localized state prosecutor’s office—both in terms of laws applied and norms of adherence to rules promulgated by a centralized national authority—we excluded federal prosecution research from our analysis here. We made an exception for the prosecutor’s office in Washington, D.C., which prosecutes misdemeanors and lesser felonies, much the same as any other urban office in a state system.

¹⁸ See STEVEN W. PERRY, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PROSECUTORS IN STATE COURTS, 2005 (2006), <http://www.bjs.gov/content/pub/pdf/psc05.pdf> [<https://perma.cc/7QA6-N6NT>]. Table 1 shows total employment of approximately 26,520 assistant prosecutors and chief prosecutors; total 2005 employment of twenty largest offices was 6,410

A number of the studies we identified were based on statewide or nationwide data regarding the processing of cases. Perhaps these studies artificially inflated the presence of large offices: these studies necessarily included the largest offices, not because the researcher chose the office over other possible research locations, but because the large city simply counted as one member of a broader group of offices.¹⁹ If we exclude these statewide or nationwide studies to focus only on the analyses that reflected the researcher's selection of particular offices to study, the percentage of studies that address the largest urban offices remains oversized, at 57%.

Table 1. Proportion of Empirical Prosecutor Studies Devoted to the Twenty Largest Urban Offices

Type of Jurisdiction Studied	Number of Studies	Percent
Large Urban Offices, among all studies	75	61% of total
Large Urban Offices, among selective studies	56	57% of subgroup

We also wondered whether data about large offices holds outsized influence in ongoing scholarly conversations about prosecutorial behavior. To explore this question, we performed a citation study to gauge how often scholars and judges cited each of these 123 empirical works. Our measure of citation power for each empirical study started with the number of citations to the work in Westlaw's law review database, the Lexis law review database, and Google Scholar.²⁰ After normalizing and averaging the scores from these three sources, we ranked the 123 published studies.

Among studies in the top half of the citation rankings, 65% included analyses of the largest urban offices.²¹ The twenty articles that are cited most frequently

attorneys, which amounts to roughly 22% of total employment. *Id.* For details about our estimate of the proportion of felony filings generated in these twenty offices, see *supra* note 12.

¹⁹ See, e.g., David Bjerck, *Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing*, 48 J. L. & ECON. 591 (2005) (nationwide study processing statistics from 75 large urban counties); Jo Dixon, *The Organizational Context of Criminal Sentencing*, 100 AM. J. SOC. 1157 (1995) (statewide study of Minnesota prosecution).

²⁰ For the precise search terms we employed to generate the citations, contact the authors. We also calculated the number of citations in the HeinOnline, HeinOnline Scholar Check, and Web of Science (formerly known as the Institute for Scientific Information Citation Index). Because none of these latter sources provided coverage for all publication types that we included in our study, we did not include these citation totals in our final index. Those results, however, were broadly consistent with the results from other databases in those instances where citations were available.

²¹ Full results of the citation study are available upon request from the authors.

include analyses of Chicago,²² Philadelphia,²³ Baltimore,²⁴ Seattle,²⁵ Manhattan,²⁶ and Los Angeles.²⁷ An appendix to this essay lists the 123 empirical works and their citation rankings.

Putting the publication and citation indices together, it appears that the largest prosecutor offices garner the most attention in academic circles. Based on the overall number of offices, the number of attorneys employed, and the number of felony cases filed in those offices, it appears to us that prosecutor offices outside the top twenty deserve more study and discussion than they have received from scholars looking to understand prosecutorial behavior and decision-making on a broad scale.

III. OUTCOME DIFFERENCES BETWEEN LARGER AND SMALLER PROSECUTOR OFFICES

The scholarly works based on large urban prosecutor offices have been invaluable; they have given us reams of information about case outcomes and vividly portray the impact of volume on a justice system.²⁸ But as researchers interested in how prosecutors think about themselves and their careers, our work often takes us into mid-sized and smaller prosecutor offices. Based on our research experiences in these locations, we fear that the publication emphasis on large urban centers may have skewed the published portrait of the profession as a whole.

The issue is typicality. If the patterns that scholars have observed in Chicago, Los Angeles, and New York are likely to be found elsewhere, then the concerns they raise and the reforms they suggest are likely to make sense elsewhere, too. However, there are more than 2,300 state prosecution offices in the United States that handle felony cases, and most of them serve populations of fewer than

²² See Albert Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50 (1968).

²³ See Welsh S. White, *A Proposal for Reform of the Plea Bargain Process*, 119 U. PA. L. REV. 439 (1971).

²⁴ See JAMES EISENSTEIN & HERBERT JACOB, *FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS* (1977).

²⁵ See Wallace D. Loh, *The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study*, 55 WASH. L. REV. 543 (1980).

²⁶ See Carolyn B. Ramsey, *The Discretionary Power of "Public" Prosecutors in Historical Perspective*, 39 AM. CRIM. L. REV. 1309 (2002).

²⁷ See Cassia Spohn, John Gruhl & Susan Welch, *The Impact of the Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges*, 25 CRIMINOLOGY 175 (1987).

²⁸ See *supra* note 12.

100,000 people.²⁹ Offices serving these smaller communities employ an average of 10 prosecutors.³⁰ Crime rates, criminal justice funding, and levels of hostility or cooperation between the prosecutor's office, the defense bar, and the judiciary all vary significantly from place to place.³¹ In light of the differences among locales and the centrifugal forces that encourage chief prosecutors to focus on community priorities, scholars should rein in their instinct to generalize.

There could be systematic differences between urban, suburban and rural lawyers and their practice environments.³² To begin with, small and large offices can produce persistently different outcomes, even when applying the same state law. Defendants prosecuted in large urban jurisdictions sometimes receive more lenient outcomes than people prosecuted in smaller regions for the same violation (we therefore should not assume that small necessarily means beautiful).³³ The District Attorney in King County, Washington (Seattle), for example, treats low-level drug and property crimes more leniently than smaller offices in the state.³⁴ In North Carolina, large offices are more likely than small offices to dismiss felony assault cases outright in order to focus on more violent crimes.³⁵

These differences in outcomes, however, do not indicate whether prosecutors in urban offices embrace a more or less adversarial concept of the prosecutor's role than their counterparts in smaller offices. The pattern of outcomes might reflect prosecutor office policy or the attitude of individual prosecutors, but the outcome differences could just as easily occur *despite* the prosecutors' preferences, rather than because of them. For example, prosecutors in urban offices might see their proper role as trying to resist downward pressures on criminal charges or calls for lenient punishments sought by an active defense bar and liberal judiciary. Judicial tendencies might in turn be related to jurisdictional features, like low levels of

²⁹ See STEVEN W. PERRY & DUREN BANKS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PROSECUTORS IN STATE COURT, 2007 – Statistical Tables 1 tbl.1 (2011), <https://www.bjs.gov/content/pub/pdf/psc07st.pdf> [<https://perma.cc/FJ25-46DV>].

³⁰ See *id.*, at 4 tbl.2.

³¹ See UTZ, *supra* note 2; Mellon et al., *supra* note 2.

³² See Jill R. Horwitz & Austin Nichols, *Rural Hospital Ownership: Medical Service Provision, Market Mix, and Spillover Effects*, 46 HEALTH SERV. RES. 1452 (2011) (arguing that the marked divergence between rural and urban health care cautions against applying findings from one research context across-the-board).

³³ We thank Loïc Wacquant for pointing this out and for suggesting that scholars guard against this sort of bias.

³⁴ See David Boerner, *Prosecution in Washington State*, in PROSECUTORS AND POLITICS: A COMPARATIVE PERSPECTIVE 167, 201–03 (Michael Tonry ed., 2012).

³⁵ See Ronald F. Wright, *Persistent Localism in the Prosecutor Services of North Carolina*, in PROSECUTORS AND POLITICS: A COMPARATIVE PERSPECTIVE 211, 221 (Michael Tonry ed., 2012). Large North Carolina offices also tend to be more selective in their use of the habitual felon law, whereas small offices tend to file the charge whenever the defendant's prior record meets the statutory criteria. *Id.* at 222.

political conservatism or high rates of serious crimes in cities. In such an environment, high levels of adversariness in prosecutor attitudes would produce only muted effects on case outcomes. Likewise, if smaller jurisdictions with lower rates of serious crime and more political conservatism elect judges who are inclined to sentence harshly, prosecutors may be more open to behaving proportionately and pragmatically when filing charges and making plea offers because they regard the judiciary as a supportive backstop, rather than as a hazard to avoid. If case outcomes in these smaller jurisdictions are more severe than in large urban jurisdictions, judicial attitudes, rather than the prosecutors' embrace of adversariness, might be responsible.

In sum, jurisdictions can differ along both outcome and prosecutorial self-image dimensions, and both of these features might have something to do with the size of the office, its geographic location, its location in the local political sphere, and features of the community. An infatuation with outcomes could lead scholars to miss some important truths about the profession of prosecution itself. For that reason, we ought not to assume that large offices—just because they contribute the most data to nationwide outcome trends—have cornered the market on how prosecutors think and behave in the professional sphere.

We discuss below two features of prosecutor offices in the largest urban settings that might shape adversarial culture in fairly predictable ways: the relatively weak influence of courtroom workgroups, and the relatively high turnover rates among prosecutors. Without the incentives for cooperation provided by working groups and with the lure of a lucrative defense career on the horizon, attorneys in these offices seem less inclined to collaborate with judges and defense attorneys as they set normal expectations for resolving criminal cases. In short, these features of an office are likely to make the prosecutors there more adversarial. These two characteristics offer theoretical reasons to treat large offices as a separate “place” category from medium and smaller offices for scholarly analysis.

IV. EXTERNAL PRESSURE FROM COURTROOM WORKGROUPS

There are some places that push prosecutors to look inward for their signals about how to approach the job; other places encourage prosecutors to look outside their own offices for clues about what works. The literature is replete with evidence that courthouse personnel who know each other and work together on a regular basis will form stable relationships with one another and define their professional success according to how well they keep the courtroom's caseload

moving. For the working group, a case is not simply a case; it is instead part of a workflow that the same judge and attorneys resolve in tandem.³⁶

In an environment built around courtroom workgroups, excessive adversariness does not amount to good lawyering. Instead, it signals the breakdown of valuable courtroom relationships. For that reason, prosecutors in stable working groups tend to moderate their adversarial stance to accommodate relationship concerns. They share with the defense attorney and the judge a history, ethos and collective expectation of collegial relations and respect for one another's place in the system. In courtrooms that lack stable workgroups, where strangers rather than colleagues handle the cases, there is no need for such moderation. There is no past or future relationship to preserve and no set of expectations to guide behavior or to nourish an environment of respect.

In offices where productive, stable workgroups are the norm, the leadership of the prosecutor's office can signal behavioral expectations to line attorneys. When the chief prosecutor gets word from the judge or the local public defender that a prosecutor assigned to one courtroom makes unreasonable plea offers or acts in a disrespectful way, she is likely to call the errant prosecutor into her office and tell him to tone it down. She might also ask more seasoned prosecutors to pre-clear or audit this prosecutor's plea offers. She could also move the prosecutor into a different courtroom. We even heard some stories about prosecutors losing their jobs for refusing to get along with the other courtroom actors. In this sort of office, prosecutors get the message that balance, rather than adversariness, is the path to success.

Certainly cooperation can become pathological when taken to excess. Journalist Amy Bach unearthed appalling practices in a few jurisdictions in the United States, such as a city in upstate New York where no lawyer was willing to complain about a city judge who accepted guilty pleas from defendants who were not even present in the courtroom.³⁷ In some locations in Georgia, prosecutors and judges turned a blind eye to troubling public defender practices, such as allowing defendants to take plea deals after brief conversations and no investigation, or failing to appear in the courtroom when pleas were taken.³⁸ Practices such as these remind us that too much cooperation among working group members can lead to injustice in the name of efficiency.

Is there a correlation between prosecutor office size and the stability of courtroom working groups? We think there is. Large urban offices tend not to

³⁶ See EISENSTEIN & JACOB, *supra* note 24; MILTON HEUMANN, PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES, AND DEFENSE ATTORNEYS (1978); FLEMMING, NARDULLI & EISENSTEIN, *supra* note 2.

³⁷ AMY BACH, ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT (2009).

³⁸ *Id.* at ch. 1.

staff courtrooms with a stable slate of prosecutors.³⁹ The line prosecutors rotate through dozens of courtrooms without learning the local rules of the road. Moreover, the size of the defense bar in large urban jurisdictions is enormous. Prosecutors may see a particular defense attorney only sporadically—perhaps only once every few years—if she is not a public defender. The attorneys thus have less incentive to bargain civilly with each other, because they neither draw on past goodwill nor care about building future trust.

Furthermore, in places that value cooperation between prosecutors and other courtroom actors, innovative methods of case resolution can spring up. For instance, while the two largest Arizona offices resemble the urban prosecutors' offices commonly described in the scholarly literature, the smaller counties rely on an interesting variety of methods to resolve cases.⁴⁰ In one small county, all plea bargaining conferences happen at a designated time in one small room (known as the “Sharkfest”), so that parties to other cases can observe, hear, and even chime in on suggested case resolutions.⁴¹

The following commentary from one of our interviewees explicitly links the size of the legal community to the presence of stable working groups, and to the concomitant effects on working relationships. When the community was small, she reminisced, there was a sense of closeness among colleagues in the prosecutor's office but also among criminal justice actors more generally, and those interactions created an informal means of social control. But with significant growth in the jurisdiction that sense of closeness and control became impossible to maintain, because prosecutors and defense attorneys no longer knew each other. Adversariness increased as a result.

Interviewee: I think that back then we had a much closer relationship with the defense bar and the court. And the court was much more likely to just say, “Don't do that,” whereas now, they might report you to the state bar. And defense attorneys, we had a much closer relationship with the defense bar and everybody knew that your reputation was everything and you better not screw up because then you would've burnt a bridge with the public defender's office or the private defense bar or the court. And everybody just kind of kept each other in check. But it's now such a

³⁹ There are surely exceptions to this trend; the District Attorney of Alameda County, an office of about 120 attorneys, is one that has already been documented. See UTZ, *supra* note 2; David Johnson, *The Organization of Prosecution and the Possibility of Order*, 32 LAW & SOC'Y REV. 247 (1998).

⁴⁰ See Miller & Caplinger, *supra* note 7, at 272.

⁴¹ *Id.* at 280; see also Nancy J. King & Ronald F. Wright, *The Invisible Revolution in Plea Bargaining: Managerial Judging and Judicial Participation in Negotiations*, 95 TEX. L. REV. 325 (2016) (describing multi-attorney conferences in small or mid-sized jurisdictions in Michigan, California, and Florida).

big system that it seems like people don't just—well, we didn't have email. People don't just pick up the phone any more and call each other.

Interviewer: Do you think the size is the primary factor that's influenced the change from how it was? . . .

Interviewee: I think that's a large part of it because when I visit smaller counties, they still have that open communication. They are all in the same building. They go out to lunch together. They do things that are much more difficult to do in a larger environment.

Interviewer: Do you think that there were benefits to that environment versus the current—

Interviewee: I think there are more. I mean for one thing, you can have 20 cases and 20 different defense attorneys and never have met them before, whereas 25 years ago, when I was in court on a daily basis, there was a finite group of defense attorneys; there was a finite group of judges. You can have 25 trials now and have 25 different judges. . . . It's just so big you don't even have the capacity to know all the players anymore.⁴²

It is difficult to know how typical this pattern is. Still, comments such as these suggest that prosecutor empirical research grounded in places that lack stable workgroups may yield conclusions about prosecutor behavior that do not resonate in locations where the effects of working groups are stronger.

To be clear, we do not claim that working groups only appear in smaller, non-urban jurisdictions. It is possible to organize courtroom assignments in large cities to promote stable working groups that call for prosecutors to look outside their offices for signals about best practices. We do think, however, that large urban prosecutor offices present a set of default presumptions that might guide a researcher at the start of an examination of any particular office. Exceptions, where they exist, deserve attention and explanation.

V. TURNOVER RATES

Compounding the general influence of working group relationships, we think the turnover rate of the prosecutor's office might influence the general level of adversariness among the lawyers who work there. If large urban offices have

⁴² Interview with Prosecutor 1405, Parton District Attorney's Office. To protect the confidentiality of our source, we can only reveal that interviews in this office took place during the fall of 2013.

higher turnover rates than offices in smaller locales, the high level of adversarial conduct observed in at least some large offices might be attributable, at least in part, to the relatively short prosecution careers of many of the staff.

Taking the first point—the connection between turnover and adversariness—a prosecutor who enters the office intending to stay for only a few years, rather than to make a career there, might focus on making a reputation as a star litigator. His goal is to catch the eye of future employers; he suspects that defense attorneys want to hire lawyers who are not afraid of trial, who display supreme levels of confidence, who do not back down from a fight. An alternative hypothesis would be that prosecutors score points with future defense employers when they are balanced rather than adversarial.

Which hypothesis is closer to the truth? The limited empirical evidence on this topic appears to confirm the first hypothesis, that one's value on the defense job market derives more from adversariness than from balanced behavior. For instance, David Zaring found that prosecutors in New York with higher caseloads and more trials appeared to be more successful in the defense market.⁴³ Where turnover is high, we can expect a greater percentage of the prosecutors in an office to be concerned with their future marketability, and thus to prioritize adversary conduct over balanced behavior.

As for the second point—the correlation between turnover and office size—we suspect that large urban offices have higher turnover rates than smaller offices in less populous areas for two primary reasons.⁴⁴ First, the cost of living in large urban areas is higher than the cost of living in mid-size cities, suburban areas, or rural outposts. Given the cost of living and the typical prosecutor salary, the lucrative appeal of private practice would be greater for prosecutors in large cities than it is in less expensive areas. Secondly, there may be more professional opportunities for lawyers in large urban settings.⁴⁵ While criminal defense practice is often fairly specialized in small or solo firms, prosecutors looking for new experiences and more money consider other types of practices too—insurance, civil litigation, and the like. Fewer of those opportunities are likely to exist in smaller locales.

⁴³ The empirical evidence on this point comes from the federal prosecution sphere and thus might have limited relevance in the state criminal practice world. Zaring tracked the prosecution activity and subsequent career movements of the people who worked as AUSAs in the Southern District of New York in 2001. He defined success in the defense attorney market as securing highly paid partner positions in major firms. See David Zaring, *Against Being Against the Revolving Door*, 2013 U. ILL. L. REV. 507 (2013); Richard T. Boylan & Cheryl X. Long, *Salaries, Plea Rates, and the Career Objectives of Federal Prosecutors*, 48 J. L. & ECON. 627, 627 (2005) (higher trial rates in federal court districts located in cities with more active and lucrative defense hiring markets).

⁴⁴ We limit our hypothesis to the largest urban offices. Limited evidence suggests that there is not much difference in turnover percentage between mid-sized and smaller offices. See Wright, *supra* note 35, at 257 tbl.8.

⁴⁵ See Boylan & Long, *supra* note 43.

Putting the pieces together, the turnover rate of the prosecutor's office can affect the formation of relationships with defense attorneys. In an office with a high turnover rate, prosecutors may invest less in cooperative relationships with opposing counsel. If large offices have higher turnover rates than smaller offices, this would partially explain why large office prosecutors do not tend to embrace the sort of balanced behavior we heard about in our mid-size and smaller offices.

VI. OFFICE SIZE AS A SIGNAL OF BALANCE OR CYNICISM?

We believe that office size, and the features that correlate with size and location, could explain some of the disparity between what our interviewees reported and what Professor Levenson experienced. Professor Levenson's argument stems from her litigation experience against one office: the Los Angeles County District Attorney, an office that employs almost 1,000 attorneys and is situated in a major urban district. In contrast, our study in *The Cure for Young Prosecutor's Syndrome* was based on structured interviews with prosecutors in eight small to mid-size offices in the American Southeast and Southwest. Many of our interviewees from these small to mid-sized offices described the formation of stable workgroups, to greater or lesser degrees, as key to their practices. Moreover, limited personnel data from eight of the offices that we studied suggest that those small and mid-sized offices deal with only modest turnover rates.⁴⁶ Prosecutors in all of our offices indicated that their office leaders cared about relationships with the judiciary and the defense bar—again, in varying amounts—and it's likely that the history of these relationships was just as important as the size of the offices involved.

Notably, the two largest offices in our study—both located in metropolitan areas—showed the most variation in terms of prosecutors' acceptance of the balance narrative and the importance of relationships with defense attorneys. Both offices assigned most of their felony lawyers to specialized units, causing them to rotate through courtrooms and judges rather than to remain in permanent courtroom assignments.

Would we have found a more extreme pattern, and more cynicism, if we interviewed prosecutors in a larger urban office, the kind that employs hundreds rather than dozens of prosecutors, in a dense urban environment? The preliminary

⁴⁶ Although we did not explore turnover rates for purposes of our 2014 article, we researched this question for purposes of this essay. We tracked the number of attorneys who left each office to practice law elsewhere as of June 2015. The Atkins and Harris District Attorney offices experienced 17% and 15% departure rates during the three years since the interviews. The Dean State Attorney's Office, located in a relatively far-removed suburban county, registered 25% turnover over a two-year period. The remaining offices, all located close to or entirely within major cities (but with populations smaller than Los Angeles, Chicago, and the other cities that typically receive scholarly attention), mostly had turnover rates between 30% and 36%. The exception was the Brooks County Attorney's office, with a 50% turnover rate, probably explained by a change in office leadership.

data from our ninth office, which is a large urban office with high turnover, suggests that the portrait of prosecution in that setting is more mixed than we found elsewhere, but also more varied than what Professor Levenson experienced in Los Angeles. The balance narrative did not predominate but neither was it completely absent. The fifty prosecutors we interviewed in our largest urban office identified several features consistent with zealotry, callousness, and cynicism in the office leadership and among their co-workers, thus buttressing the portrait of prosecution that Professor Levenson and others have articulated. But the interview transcripts from our ninth office also include statements that support the career path toward balance—for at least some of the people who work there.

This heterogeneity suggests to us that even in a large urban office, a single set of expectations does not dictate how everyone behaves. Just as we acknowledge that our research design leaves open the possibility of selection bias among those who agreed to an interview—and in what the interviewees chose to reveal—studies of large urban offices ought to watch for sub-currents or even counter-currents among prosecutors who work there.⁴⁷

VII. CONCLUSION:

THE PROSPECTS FOR GENERALIZABLE KNOWLEDGE IN PROSECUTOR RESEARCH

In light of this variation in prosecutor offices, is it possible for scholars ever to generalize about the prosecution world based on field studies of particular offices? Once we acknowledge that prosecutor offices differ from one another across size and other variables, must we limit ourselves to single observations, producing case studies with little relevance beyond their idiosyncratic setting?

Our answer, in classic lawyerly fashion, is that it depends. While some observations probably carry across place to a large number of prosecutor offices, office size and location should set preliminary boundaries on the generalizability of other research findings. That is, we should think about prosecution offices as a collection of types,⁴⁸ where each group is characterized by a set of default presumptions based on a recurring set of features, with some features common to all groups and others that are more group-specific. Still other features would be site-specific. This multi-layered orientation seems more authentic than treating any single prosecutor's office as a generic setting with essential characteristics that operate on all prosecutors alike, wherever they happen to work. Under this framework, large urban offices present one type of office, mid-size offices another,

⁴⁷ See Wright & Levine, *supra* note 3, at 1078–80; Levine & Wright, *supra* note 3; Kay L. Levine & Ronald F. Wright, *Prosecution in 3-D*, 102 J. CRIM. L. & CRIMINOLOGY 1119, 1142–44 (2012).

⁴⁸ See HOWARD S. BECKER, *TRICKS OF THE TRADE: HOW TO THINK ABOUT YOUR RESEARCH WHILE YOU'RE DOING IT* (1998) (on the importance of using typologies).

and small offices still another.⁴⁹ Similarly, offices in different regions might share some characteristics that cut across office size.⁵⁰ Once we recognize that variation in prosecution practice and attitude may correlate with office size and other qualities connected to a place, we should watch closely our claims about the generalizability of any observations made in one office setting.

Distinguishing between different criminal justice environments to promote clarity and precision is not a radical idea. It has surfaced in the courtroom process literature lately, with scholars showing how different norms and problems attend to misdemeanor processing than to felony processing.⁵¹ For that reason, the reform proposals that emerge from felony studies do not make much sense in misdemeanor land. Distinct reform proposals are appropriate for each division; reforms should account for the peculiarities, resources, and constraints present in each setting.

We suggest that the same wisdom applies to the study of prosecutors. Attention to the place—including the size of the office and the relationships both inside and outside the office—should guide our conclusions and ideas about how to generate more justice in the future.

⁴⁹ Setting a defensible dividing line between these tentative categories is beyond the scope of this essay.

⁵⁰ Other characteristics, such as the political styles of the leadership, might create their own categories that do not overlap neatly with office size. See Roy B. Flemming, *The Political Styles and Organizational Strategies of American Prosecutors: Examples from Nine Courthouse Communities*, 12 LAW & POL'Y 25 (1990).

⁵¹ See Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 101 (2012); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277 (2011).

Appendix. Empirical Studies of Prosecutor Offices⁵²

	Article Title	Authors	Citation
1	<i>The Prosecutor's Role in Plea Bargaining</i>	Albert Alschuler	36 U. CHI. L. REV. 50 (1968)
2	<i>Plea Bargaining's Triumph</i>	George Fisher	109 YALE L.J. 857 (2000)
3	<i>Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System</i>	Albert Alschuler	50 U. CHI. L. REV. 931 (1983)
4	<i>Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda</i>	Paul G. Cassell & Bret Hayman	43 UCLA L. REV. 839 (1996)
5	PLEA BARGAINING: THE EXPERIENCES OF PROSECUTORS, JUDGES, AND DEFENSE ATTORNEYS	Milton Heumann	1978
6	FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS	James Eisenstein & Herbert Jacob	1977
7	<i>The Screening/Bargaining Tradeoff</i>	Ronald Wright & Marc Miller	55 STAN. L. REV. 29 (2002)
8	<i>A Proposal for Reform of the Plea Bargaining Process</i>	Welsh S. White	119 U. PA. L. REV. 439 (1971)
9	<i>The Black Box</i>	Marc Miller & Ronald Wright	94 IOWA L. REV. 125 (2008)
10	JUSTICE BY CONSENT: PLEA BARGAINS IN THE AMERICAN COURTHOUSE	Arthur I. Rosett & Donald R. Cressey	1976
11	<i>The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study</i>	Wallace D. Loh	55 WASH. L. REV. 543 (1980)
12	<i>Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute</i>	Josh Bowers	110 COLUM. L. REV. 1655 (2010)
13	THE POLITICS OF STREET CRIME: CRIMINAL PROCESS AND CULTURAL OBSESSION	Stuart A. Scheingold	1991
14	THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS	Peter F. Nardulli et al.	1988
15	<i>The Discretionary Power of "Public" Prosecutors in Historical Perspective</i>	Carolyn B. Ramsey	39 AM. CRIM. L. REV. 1309 (2002)
16	<i>The Effect of Sexual Stratification by Race on Official Reactions to Rape</i>	Gary D. LaFree	45 AM. SOC. REV. 842 (1980)
17	<i>Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking</i>	Lisa Frohmann	31 LAW & SOC'Y REV. 531 (1997)
18	<i>The Impact of the Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges</i>	Cassia Spohn et al.	25 CRIMINOLOGY 175 (1987)
19	<i>Prosecutorial Discretion: The Effects of Uncertainty</i>	Celesta A. Albonetti	21 LAW & SOC'Y REV. 291 (1987)

⁵² Data in this Appendix represent search counts as of April 6, 2016. These databases constantly add new material, and content may change on any given day without notice to database users. See D. Daniel Sokol, *News on the Lack of Westlaw Access for Oxford University Press Journals*, ANTITRUST & COMPETITION POLICY BLOG (Aug. 10, 2012), http://lawprofessors.typepad.com/antitrustprof_blog/2012/08/news-on-the-lack-of-westlaw-access-for-oxford-university-press-journals.html [https://perma.cc/6PLZ-3K2Q]; Jia You, *Just How Big is Google Scholar? Ummm . . .*, SCIENCE (Sept. 30, 2014), <http://www.sciencemag.org/news/2014/09/just-how-big-google-scholar-ummm> [https://perma.cc/U226-LBU8].

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	318	123	251	122	869	123	479	123	10 cities	0	1	0	0	0
2	313	122	301	123	345	120	320	122	Middlesex, MA (historical)	0	0	0	0	1
3	194	120	175	119	329	119	233	119	Philadelphia, Pittsburgh	0	1	0	0	0
4	194	120	181	120	318	118	231	119	Salt Lake County DA Office	0	0	0	0	0
5	123	117	108	117	357	121	196	118	3 CT cities	0	0	0	0	0
6	114	116	95	116	820	122	343	118	Baltimore, Chicago	0	1	0	0	0
7	168	118	163	118	253	115	195	117	New Orleans	0	0	0	0	1
8	86	113	58	111	159	108	101	111	Philadelphia and New York DA Offices	0	1	0	0	0
9	83	112	63	112	117	99	88	108	New Orleans, Milwaukee, Charlotte & San Diego DA offices	0	0	0	0	0
10	38	102	35	102	306	117	126	107	CA statewide	0	1	1	0	0
11	49	108	41	107	131	106	74	107	King County WA	0	1	0	0	1
12	72	111	64	113	94	88	77	104	Iowa statewide, NY statewide, NYC	0	1	1	0	0
13	41	104	39	105	126	102	69	104	King County WA	0	1	0	0	1
14	41	104	33	98	144	107	73	103	9 Midwestern jurisdictions	0	1	0	0	0
15	61	110	54	110	95	89	70	103	New York County	0	1	0	0	1
16	31	92	34	100	257	116	107	103	Large Midwestern city	0	0	0	0	0
17	34	97	31	95	185	110	83	101	"Center Heights" branch office of DA office, major metro West Coast	0	0	0	0	1
18	34	97	27	91	183	109	81	99	Los Angeles	0	1	0	0	1
19	31	92	27	91	227	113	95	99	DC Superior Court	0	1	0	0	1

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| 7) Average of 1, 3 & 5 | 8) Average of 2, 4 & 6 | 9) Jurisdiction(s) Studied |
| 10) Federal | 11) Large | 12) Statewide |
| 13) Nationwide | 14) Single Office | |

	Article Title	Authors	Citation
20	<i>Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing</i>	David Bjerk	48 J. L. & ECON. 591 (2005)
21	<i>The New Prosecution</i>	Kay Levine	40 WAKE FOREST L. REV. 1125 (2005)
22	<i>The Organizational Context of Criminal Sentencing</i>	Jo Dixon	100 AM. J. SOC. 1157 (1995)
23	<i>Local Immigration Prosecution: A Study of Arizona Before SB 1070</i>	Ingrid Eagly	58 UCLA L. REV. 1749 (2011)
24	<i>The Abolition of Plea Bargaining: A Case Study of El Paso County, Texas</i>	Robert Weninger	35 UCLA L. REV. 265 (1987)
25	<i>The Eighth Amendment, the Death Penalty, and Ordinary Robbery-Burglary Murderers: A California Case Study</i>	Steven F. Shatz	59 FLA. L. REV. 719 (2007)
26	<i>Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute</i>	Milton Heumann & Colin Loftin	13 LAW & SOC'Y REV. 393 (1979)
27	<i>The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants</i>	Adam Gershowitz & Laura Killinger	105 NW. U. L. REV. 261 (2011)
28	<i>The Intimacy Discount: Prosecutorial Discretion, Privacy, and Equality in the Statutory Rape Caseload</i>	Kay Levine	55 EMORY L.J. 691 (2006)
29	<i>Federalism and Criminal Law: What the Feds can Learn from the States</i>	Rachel Barkow	109 MICH. L. REV. 519 (2011)
30	<i>The Practice of Law as a Confidence Game</i>	Abraham Blumberg	1 LAW & SOC'Y REV. 15 (1967)
31	<i>Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining</i>	Anne Heinz & Wayne Kerstetter	13 LAW & SOC'Y REV. 349 (1979)
32	<i>The Decision to Prosecute</i>	George F. Cole	4 LAW & SOC'Y REV. 331 (1970)
33	<i>Prosecutorial Waiver: Case Study of a Questionable Reform</i>	Donna M. Bishop et al.	35 CRIME & DELINQUENCY 179 (1989)
34	<i>Is a Ban on Plea Bargaining an Ethical Abuse of Discretion? A Bronx County, New York Case Study</i>	Roland Acevedo	64 FORDHAM L. REV. 987 (1995)
35	<i>The Prosecutor: A Look at Reality</i>	George T. Felkenes	7 SW. U. L. REV. 98 (1975)
36	<i>The Impropriety of Plea Agreements: A Tale of Two Counties</i>	David Lynch	19 LAW & SOC. INQUIRY 115 (1994)
37	THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT	Malcolm Feeley	1979
38	<i>The Power to Punish: Discretion and Sentencing Reform in the War on Drugs</i>	Rodney Engen & Sara Steen	105 AM. J. SOC. 1357 (2000)
39	<i>An Empirical Study of Kent Style Juvenile Transfers to Criminal Court</i>	Robert O. Dawson	23 ST. MARY'S L.J. 975 (1992)
40	<i>Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement</i>	Ingrid Eagly	88 N.Y.U. L. REV. 1126 (2013)

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20	32	95	39	105	103	93	58	98	BJS 75 urban counties	0	1	0	1	0
21	40	103	44	108	66	80	50	97	CA	0	1	1	0	0
22	26	83	26	89	252	114	101	95	MN 73 counties	0	0	1	0	0
23	43	106	35	102	52	74	43	94	Phoenix	0	1	0	0	1
24	37	101	34	100	63	79	45	93	El Paso County, TX	0	0	0	0	1
25	45	107	38	104	35	60	39	90	Alameda County CA	0	0	0	0	1
26	29	89	18	75	129	104	59	89	Detroit	0	1	0	0	1
27	34	97	33	98	50	73	39	89	Houston TX and other largest prosecutor offices	0	1	0	0	0
28	33	96	30	94	53	75	39	88	CA	0	1	1	0	0
29	36	100	31	95	44	69	37	88	Multiple states, interviews	0	1	0	1	0
30	111	115	87	115	9	33	69	88	"Metropolitan Court"	0	0	0	0	1
31	27	85	21	83	102	92	50	87	Dade County FL	0	1	0	0	1
32	16	66	20	80	216	112	84	86	Kings County WA	0	1	0	0	1
33	28	88	19	78	97	90	48	85	Florida, two urban counties	0	1	0	0	0
34	30	91	32	97	39	66	34	85	Bronx	0	1	0	0	1
35	52	109	52	109	10	35	38	84	CA 2 southern counties, AL 1 county	0	0	0	0	0
36	26	83	26	89	56	76	36	83	2 pseudonyms, 350K each	0	0	0	0	0
37	180	119	183	121	1	7	121	82	New Haven	0	0	0	0	1
38	18	73	18	75	107	96	48	81	WA statewide	0	1	1	0	0
39	28	88	22	85	47	71	32	81	DC Superior Court	0	1	0	0	1
40	31	92	27	91	35	60	31	81	LA, Phoenix, Houston	0	1	0	0	0

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| 10) Federal | 11) Large | 12) Statewide |
| 13) Nationwide | 14) Single Office | |

	Article Title	Authors	Citation
41	<i>Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences</i>	Jeffery T. Ulmer et al.	44 J. RES. CRIME & DELINQ. 427 (2007)
42	<i>Prosecuting Sexual Assault</i>	Cassia Spohn & David Holleran	18 JUST. Q. 651 (2001)
43	THE AMERICAN PROSECUTOR: A SEARCH FOR IDENTITY	Joan E. Jacoby	1980
44	<i>The Impact of Victim Assessment on Prosecutors' Screening Decisions</i>	Elizabeth Anne Stanko	16 LAW & SOC'Y REV. 225 (1981)
45	<i>Prosecutorial Discretion in Filing Charges in Domestic Violence Cases</i>	Janell Schmidt & Ellen H. Steury	27 CRIMINOLOGY 487 (1989)
46	<i>Policymaking by Prosecutors: The Uses of Discretion in Regulating Plea Bargaining</i>	Alissa Pollitz Worden	73 JUDICATURE 335 (1990)
47	<i>Plea Bargains, Concessions and the Courts: Analysis of a Quasi-Experiment</i>	Thomas W. Church, Jr.	10 LAW & SOC'Y REV. 377 (1976)
48	<i>A Theoretical and Empirical Analysis of the Prosecutor</i>	Brian Forst & Kathleen Brosi	6 J. LEG. STUD. 177 (1977)
49	<i>Crime and Parenthood: The Uneasy Case for Prosecuting Negligent Parents</i>	Jennifer M. Collins	100 NW. U. L. REV. 807 (2006)
50	<i>The Prosecutor Constrained by His Environment: A New Look at Discretionary Justice in the United States</i>	Leonard R. Mellon et al.	72 J. CRIM. L. & CRIMINOLOGY 52 (1981)
51	<i>Managerial Justice and Mass Misdemeanors</i>	Issa Kohler-Hausmann	66 STAN. L. REV. 611 (2014)
52	<i>Grassroots Plea Bargaining</i>	Josh Bowers	91 Marquette L. Rev. 85 (2007)
53	<i>Institutional Coordination and Sentencing Reform</i>	Daniel Richman	84 TEX. L. REV. 2055 (2006)
54	<i>The Federal/State Criminal Prosecution Nexus: A Case Study in Cooperation and Discretion</i>	Lisa L. Miller & James Eisenstein	30 LAW & SOC. INQUIRY 239 (2005)
55	CRIMINAL JUSTICE IN A METROPOLITAN COURT	Harry Subin	U.S. DEP'T OF JUSTICE 1966
56	<i>Criminality, Prosecutorial Screening, and Uncertainty</i>	Celesta A. Albonetti	24 CRIMINOLOGY 623 (1986)
57	PLEA BARGAINING OR TRIAL? THE PROCESS OF CRIMINAL-CASE DISPOSITION	Lynn Mather	1979
58	<i>Prosecutors and Early Disposition of Felony Cases</i>	Donald McIntyre & David Lippman	56 ABA J. 1154 (1970)
59	<i>Homicide and Bargained Justice: The Agenda-Setting Effect of Crime News on Prosecutors</i>	David Pritchard	50 PUBLIC OPINION Q. 143 (1986)
60	<i>The Organization of Prosecution and the Possibility of Order</i>	David T. Johnson	32 LAW & SOC'Y REV. 247 (1998)
61	<i>Exercising Discretion: A Case Study of Prosecutorial Discretion in the Wisconsin Department of Justice</i>	Michael Kades	25 AM CRIM. L. REV. 115 (1997)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
41	18	73	16	72	110	97	48	81	PA statewide	0	1	1	0	0
42	17	68	14	69	128	103	53	80	Kansas City and Philadelphia	0	1	0	0	0
43	97	114	85	114	2	12	61	80	New Orleans, Kansas City, Boulder	0	0	0	0	0
44	17	68	12	66	125	101	51	78	Manhattan Prosecutor's office	0	1	0	0	1
45	12	60	15	71	117	99	48	77	Milwaukee	0	0	0	0	1
46	23	79	22	85	38	65	28	76	Georgia statewide	0	1	1	0	0
47	17	68	12	66	106	95	45	76	Midwestern state, suburban county	0	0	0	0	1
48	16	66	17	74	81	85	38	75	Washington DC	0	1	0	0	1
49	28	87	20	80	31	58	26	75	National survey, state courts	0	1	0	1	0
50	21	77	19	78	40	67	27	74	10 offices	0	1	0	0	0
51	24	81	22	85	29	56	25	74	New York City	0	1	0	0	1
52	25	82	21	83	29	56	25	74	New York City	0	1	0	0	1
53	23	79	23	88	26	53	24	73	New Orleans	0	0	0	0	1
54	17	68	20	80	46	70	28	73	Big City	1	1	0	0	0
55	21	77	9	60	66	80	32	72	DC office	0	1	0	0	1
56	8	47	11	64	129	104	49	72	DC office	0	1	0	0	0
57	8	47	18	75	86	87	37	70	Los Angeles	0	1	0	0	1
58	20	76	7	48	79	83	35	69	Chicago, LA, Brooklyn, Detroit, Baltimore, Houston	0	1	0	0	0
59	11	56	8	54	99	91	39	67	DA office, Milwaukee County, Wisconsin	0	0	0	0	1
60	17	68	16	72	35	60	23	67	"Laconia" CA (146) and Japan	0	0	0	0	1
61	19	75	11	64	11	39	14	59	WI state AG office	0	0	0	0	1

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| 10) Federal | 11) Large | 12) Statewide |
| 13) Nationwide | 14) Single Office | |

	Article Title	Authors	Citation
62	<i>Societal Reaction to Deviants: The Case of Criminal Defendants</i>	Ilene Nagel Bernstein et al.	42 AM. SOC. REV. 743 (1977)
63	<i>The Collateral Consequences of Seeking Order Through Disorder: New York's Narcotics Eviction Program</i>	Scott Duffield Levy	43 HARV. C.R.-C.L. L. REV. 539 (2008)
64	<i>Choosing Those Who Will Die</i>	Isaac Unah	15 MICH. J. RACE & L. 135 (2009)
65	<i>Prosecuting Post-Padilla: State Interests in the Pursuit of Justice for Noncitizen Defendants</i>	Heidi Altman	101 GEO. L.J. 1 (2012)
66	<i>The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases</i>	Jeffrey Spears & Cassia Spohn	14 JUST. Q. 501 (1997)
67	<i>Challenging the Death Penalty with Statistics: Furman, McCleskey, and a Single County Case Study</i>	Steven F. Shatz & Terry Dalton	34 CARDOZO L. REV. 1227 (2013)
68	<i>Plea Bargaining in Oregon: An Exploratory Study</i>	James Klonoski et al.	50 OR. L. REV. 114 (1971)
69	<i>The Disposition of Felony Arrests</i>	Hans Zeisel	1981 AM. BAR FOUND. RES. J. 407 (1981)
70	<i>The Elimination of Plea Bargaining in Black Hawk County: A Case Study</i>	Note	60 IOWA L. REV. 1053 (1975)
71	<i>Prosecution in Arizona: Practical Problems, Prosecutorial Accountability, and Local Solutions</i>	Marc Miller & Samantha Caplinger	41 CRIME & JUST. 265 (2012)
72	<i>Community Prosecution: Portland's Experience, in COMMUNITY JUSTICE: AN EMERGING FIELD</i>	Barbara Boland	David Karp ed., 1998
73	<i>Applying Open Records Policy to Wisconsin District Attorneys</i>	Kim Banks Mayer	1996 WIS. L. REV. 295 (1996)
74	<i>Gender Differences in Informal Processing: A Look at Charge Bargaining and Sentence Reduction in Washington, D.C.</i>	Josefina Figueira- McDonough	22 J. RES. CRIME & DELINQUENCY 101 (1985)
75	<i>Plea Bargaining in North Carolina</i>	James E. Bond	54 NC L. REV. 823(1976)
76	<i>Expressive Enforcement</i>	Avlana Eisenberg	61 UCLA L. REV. 858 (2014)
77	<i>RACIAL AND ETHNIC DISPARITIES IN THE PROSECUTION OF FELONY CASES IN KING COUNTY</i>	Robert D. Crutchfield et al.	WASH. STATE MINORITY & JUSTICE COMM'N (1995)
78	<i>Plea Bargaining Policy and State District Court Caseloads: An Interrupted Time Series Analysis</i>	Malcolm D. Holmes et al.	26 LAW & SOC'Y REV. 139 (1992)
79	<i>Persistent Localism in the Prosecutor Services of North Carolina</i>	Ronald Wright	41 CRIME & JUST. 211 (2012)
80	<i>Variation in Trial Penalties Among Serious Violent Offenses</i>	Jeffrey T. Ulmer & Mindy S. Bradley	44 CRIMINOLOGY 631 (2006)
81	<i>PROSECUTORIAL DECISIONMAKING: A NATIONAL STUDY</i>	Joan E. Jacoby et al.	NAT'L INST. JUSTICE (1982)
82	<i>SETTLING THE FACTS: DISCRETION AND NEGOTIATION IN CRIMINAL COURTS</i>	Pamela J. Utz	1978

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
62	3	21	6	43	193	111	67	58	City in upstate NY	0	0	0	0	1
63	12	60	12	66	16	47	13	58	Manhattan	0	1	0	0	1
64	10	54	8	54	24	51	14	53	Durham, NC	0	0	0	0	1
65	12	60	8	54	13	44	11	53	Brooklyn	0	1	0	0	1
66	4	30	4	30	104	94	37	51	Wayne County, MI	0	1	0	0	1
67	12	60	8	54	11	39	10	51	Alameda County CA	0	0	0	0	1
68	11	56	5	38	27	55	14	50	Survey of OR prosecutors	0	0	1	0	0
69	6	38	10	62	16	47	11	49	New York City	0	1	0	0	1
70	15	65	8	54	7	25	10	48	Rural/industrial county in Iowa	0	0	0	0	1
71	11	56	10	62	7	25	9.3	48	AZ, 9 offices	0	1	0	0	0
72	7	43	7	48	24	51	13	47	Portland, Oregon DA Office	0	0	0	0	1
73	9	51	7	48	12	41	9.3	47	WI statewide survey	0	0	1	0	0
74	4	30	4	30	49	72	19	44	DC office	0	1	0	0	1
75	10	54	6	43	10	35	8.7	44	Survey of all NC elected	0	0	1	0	0
76	8	47	7	48	10	35	8.3	43	52 prosecutors, 23 states	0	1	0	1	0
77	12	60	8	54	4	15	8	43	King County WA	0	1	0	0	1
78	27	85	6	43	0	1	11	43	El Paso, TX	0	0	0	0	1
79	9	51	9	60	6	17	8	43	NC, 13 offices	0	0	0	0	0
80	3	21	2	18	85	86	30	42	PA	0	1	1	0	0
81	5	35	4	30	34	59	14	41	80 urban prosecutors	0	1	0	1	0
82	2	11	4	30	67	82	24	41	San Diego, Alameda	0	0	0	0	0

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	Article Title	Authors	Citation
83	<i>Guilty Plea Negotiations and the Exclusionary Rule of Evidence: A Case Study of Chicago Narcotics Courts</i>	J.A. Gilboy	67 J. CRIM. L. & CRIMINOLOGY 89 (1976)
84	<i>Leveraging Death</i>	Sherod Thaxton	103 J. CRIM. L. & CRIMINOLOGY 475 (2013)
85	<i>Determinants of Charge Reductions and Final Dispositions in Cases of Burglary and Robbery</i>	Malcolm D. Holmes et al.	24 J. RES. CRIME & DELINQUENCY 233 (1987)
86	<i>Charge Reduction: An Analysis of Prosecutorial Discretion in Burglary and Robbery Cases</i>	Celeste A. Albonetti	8 J. QUANTITATIVE CRIMINOLOGY 317 (1992)
87	<i>Prosecutors' Discretionary Use of the Grand Jury to Initiate or to Reinitiate Prosecution</i>	Janet A. Gilboy	9 LAW & SOC. INQUIRY 1 (2006)
88	<i>Calling Your Bluff: How Prosecutors and Defense Attorneys Adapt Plea Bargaining Strategies to Increased Formalization</i>	Deirdre Bowen	26 JUST. Q. 2 (2009)
89	<i>A Study of Judicial Dominance of the Charging Process</i>	Donald M. McIntyre	59 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 463 (1968)
90	<i>Why Federal Prosecutors Charge: A Comparison of Federal and New York State Arson and Robbery Filings, 2006–2010</i>	Susan R. Klein et al.	51 HOUS. L. REV. 1381 (2014)
91	<i>Prosecutorial Discretion, Hidden Costs, and the Death Penalty: The Case of Los Angeles County</i>	Nicholas Petersen & Mona Lynch	102 J. CRIM. L. & CRIMINOLOGY 1233 (2012)
92	<i>Gender Differences in Felony Court Processing: Three Hypotheses of Disparity</i>	M. Farnworth & R.H.C. Teske	6 WOMEN & CRIM. JUST. 23 (1995)
93	<i>Empirical Analysis of Race and the Process of Capital Punishment in North Carolina</i>	Isaac Unah	2011 MICH. ST. L. REV. 609 (2011)
94	<i>Prosecutorial Discretion—A Re-Evaluation of the Prosecutor's Unbridled Discretion and Its Potential For Abuse</i>	John Lundquist	21 DEPAUL L. REV. 485 (1972)
95	<i>Charge Reduction: An Intermediary State in the Process of Labelling Criminal Defendants</i>	Ilene Bernstein et al.	56 SOC. FORCES 362 (1977)
96	<i>An Experience in Justice Without Plea Negotiation</i>	Sam W. Callan	13 LAW & SOC'Y REV. 327 (1979)
97	<i>The Influence of Politics upon the Office of the American Prosecutor</i>	James Johnson	2 AM. J. CRIM. L. 187 (1973)
98	<i>Continued Racial Disparities in the Capital of Capital Punishment: The Rosenthal Era</i>	Scott Phillips	50 HOUS. L. REV. 131 (2012)
99	<i>Plea Bargaining in Nebraska—The Prosecutor's Perspective</i>	Fred Kray & John Berman	11 CREIGHTON L. REV. 94 (1977)
100	<i>Refusing to Prosecute Minor Offenses: The Relative Influence of Legal and Extralegal Factors</i>	Kenneth Adams & Charles R. Cutshall	4 JUST. Q. 595 (1987)
101	<i>Going for the Gold: Prosecutorial Decision Making in Cases of Wife Assault</i>	David Rauma	13 SOC. SCI. RES. 321 (1984)
102	<i>Rules, Resources, and Relationships: Contextual Constraints on Prosecutorial Decision Making</i>	Don Stemen & Bruce Frederick	31 QUINNIPIAC L. REV. 1 (2013)
103	<i>Just Cause or Just Because?: Prosecution and Plea-Bargaining Resulting in Prison Sentences on Low-Level Drug Charges</i>	K. Jack Riley et al.	RAND CORP. (2005)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
83	7	43	5	38	12	41	8	41	Chicago	0	1	0	0	1
84	7	43	7	48	8	31	7.3	41	Georgia death penalty	0	0	1	0	0
85	3	21	2	18	58	78	21	39	Delaware County and Pima County	0	0	0	0	0
86	5	35	2	18	36	63	14	39	Jacksonville, FL	0	0	0	0	0
87	2	11	14	69	10	35	8.7	38	Chicago	0	1	0	0	1
88	6	38	4	30	16	47	8.7	38	Kings County WA	0	1	0	0	1
89	7	43	1	5	36	63	15	37	Chicago	0	1	0	0	1
90	11	56	6	43	2	12	6.3	37	NY statewide, Federal	1	1	1	0	0
91	8	47	5	38	7	25	6.7	37	Los Angeles	0	1	0	0	1
92	3	21	1	5	79	83	28	36	CA statewide	0	1	1	0	0
93	5	35	3	28	13	44	7	36	NC, death penalty	0	0	0	0	0
94	9	51	5	38	6	17	6.7	35	Los Angeles	0	1	0	0	1
95	0	1	1	5	115	98	39	35	Major city in NY	0	1	0	0	1
96	1	2	7	48	26	53	11	34	El Paso	0	0	0	0	1
97	4	30	3	28	13	44	6.7	34	Nationwide survey	0	1	0	1	0
98	6	38	4	30	9	33	6.3	34	Houston	0	1	0	0	1
99	6	38	6	43	6	17	6	33	Survey of 62 NE prosecutors	0	0	0	0	0
100	2	11	1	5	41	68	15	28	DC office	0	1	0	0	0
101	1	2	1	5	57	77	20	28	Santa Barbara, CA	0	0	0	0	1
102	6	38	2	18	7	25	5	27	Two pseudonyms	0	0	0	0	0
103	4	30	4	30	6	17	4.7	26	AZ, CA	0	1	1	0	0

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104	<i>Felony Plea Bargaining in Six Colorado Judicial Districts: A Limited Inquiry Into the Nature of the Process</i>	Thomas A. Goldsmith	1989 DENV. U. L. REV. 243 (1989)
105	<i>In Search of Racial Justice: The Role of the Prosecutor</i>	Angela J. Davis	16 N.Y.U. J. LEGIS. & PUB. POL'Y 821 (2013)
106	<i>Prosecutors and the Disposition of Criminal Cases: An Analysis of Plea Bargaining Rates</i>	J.B. Jones	69 J. CRIM. L. & CRIMINOLOGY 402 (1978)
107	<i>The Liberation Hypothesis and Racial and Ethnic Disparities in the Application of California's Three Strikes Law</i>	Elsa Y. Chen	6 J. ETHNICITY CRIM. JUST. 83 (2008)
108	<i>Factors Affecting the Plea-Bargaining Process in Erie County: Some Tentative Findings</i>	Karen Rebrovich	26 BUFF. L. REV. 693 (1977)
109	<i>Prosecutor Elections, Mistakes, and Appeals</i>	Bryan C. McCannon	10 J. EMPIRICAL LEGAL STUD. 696 (2013)
110	<i>A Study of Criminal Justice Discretion</i>	J. Langley Miller & John J. Sloan	22 J. CRIM. JUST. 107 (1994)
111	<i>The Cure for Young Prosecutors' Syndrome</i>	Ronald Wright & Kay Levine	56 ARIZ. L. REV. 1065 (2014)
112	<i>Burglary and Robbery Plea Bargaining in California: An Organizational Perspective</i>	J. Fred Springer	8 JUST. SYS. J 157 (1983)
113	<i>The New Prosecutor's Dilemma: Prosecutorial Ethics and the Evaluation of Actual Innocence</i>	Dana Carver Boehm	2014 UTAH L. REV. 613 (2014)
114	THE LIMITS OF ORDER: UNCERTAINTY OF ADAPTATION IN A DISTRICT ATTORNEY'S OFFICE	Lief H. Carter	1974
115	<i>Plea Bargaining: Reform in Two Cities</i>	Raymond Nimmer & Patricia Krauthaus	3 JUST. SYS. J. 6 (1977)
116	<i>Probing the Limits of the Female Advantage in Criminal Processing: Pretrial Diversion of Drug Offenders in an Urban County</i>	Nicholas Alozie & C. Wayne Johnston	21 JUST. SYS. J. 239 (2000)
117	<i>People v. Coughlin and Criticisms of the Criminal Jury in Late Nineteenth-Century Chicago</i>	Elizabeth Dale	28 N. ILL. UNIV. L. REV. 503 (2008)
118	<i>The Cost of Strict Discovery: A Comparison of Manhattan and Brooklyn Criminal Cases</i>	Dan Svirsky	38 N.Y.U. REV. L. & SOC. CHANGE 523 (2014)
119	<i>The Social and Occupational Mobility of Prosecutors: New York City, in THE PROSECUTOR</i>	J.J. Fishman	W.F. McDonald ed., 1979
120	<i>Politics and Criminal Prosecution in New Orleans, in THE POLITICS OF LOCAL JUSTICE</i>	H. Jacob	James Klonoski & Robert Mendelsohn eds., 1970
121	<i>Prosecution of Felony Arrests, 1986: Indianapolis, Los Angeles, New Orleans, Portland, St. Louis, and Washington DC</i>	Barbara Boland et al.	NCJ 113248 (1989)
122	<i>Prosecution in 3-D</i>	Kay Levine & Ronald Wright	102 J. CRIM. L. & CRIMINOLOGY 1119 (2012)
123	PROSECUTION OF ADULT FELONY DEFENDANTS: A POLICY PERSPECTIVE	Peter Greenwood et al.	1976

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
104	3	21	5	38	6	17	4.7	25	6 CO offices	0	0	0	0	0
105	3	21	4	30	6	17	4.3	23	Manhattan, Milwaukee, Charlotte	0	1	0	0	0
106	3	21	1	5	12	41	5.3	22	Illinois	0	1	1	0	0
107	1	2	1	5	18	50	6.7	19	CA statewide	0	1	1	0	0
108	2	11	2	18	7	25	3.7	18	Erie County NY	0	0	0	0	1
109	1	2	2	18	8	31	3.7	17	22 Counties in Western NY	0	0	0	0	0
110	2	11	2	18	6	17	3.3	15	Pseudonym, 130 attys	0	0	0	0	1
111	3	21	2	18	1	7	2	15	8 offices SE and SW	0	0	0	0	0
112	2	11	2	18	5	16	3	15	3 CA Counties	0	1	0	0	0
113	4	30	0	1	2	12	2	14	Dallas TX, Harris Cty TX, NY Cty, Santa Clara Cty CA, Cook Cty IL	0	1	0	0	0
114	2	11	2	18	1	7	1.7	12	Alameda County CA	0	0	0	0	1
115	2	11	1	5	6	17	3	11	Detroit, Denver	0	1	0	0	0
116	1	2	1	5	7	25	3	11	Maricopa AZ	0	1	0	0	1
117	2	11	1	5	1	7	1.3	7.7	Chicago	0	1	0	0	1
118	3	21	0	1	0	1	1	7.7	Brooklyn, Manhattan	0	1	0	0	0
119	2	11	1	5	0	1	1	5.7	New York City	0	1	0	0	1
120	1	2	0	1	1	7	0.7	3.3	New Orleans	0	0	0	0	1
121	1	2	1	5	0	1	0.7	2.7	See title	0	1	0	0	0
122	1	2	1	5	0	1	0.7	2.7	SE and SW offices	0	0	0	0	0
123	1	2	0	1	0	1	0.3	1.3	Los Angeles	0	1	0	0	1

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