

PROGRESSIVE PROSECUTORS: WINNING THE HEARTS AND MINDS OF LINE PROSECUTORS

Laurie L. Levenson*

*“The difficulty lies, not in the new ideas, but in escaping from the old ones”*¹

ABSTRACT

The progressive prosecutor movement offers many critical proposals to reform our criminal justice system. However, it has not been able to fully accomplish its goals in many jurisdictions because the newly elected prosecutors have faced pushback, not just from hardline opponents to their reforms, but from the deputy prosecutors in their own offices. For there to be real change in prosecutors’ offices, progressive prosecutors must win the hearts and minds of their own staff. Progressive prosecution is a cultural change that requires working with, not against, the rank and file of prosecution offices. To accomplish this, it is not enough that new directives are issued. Prosecutors must engage all their stakeholders, especially the line prosecutors who will be expected to implement the new directives. This requires educating the line prosecutors about the reasons reforms are needed, listening to their concerns, being open to modifying new policies depending on the operations and laws of the jurisdiction, and finding common ground with groups that have not yet joined the progressive prosecutors’ movement. To meet this challenge, prosecutors would be well advised to learn how the business world successfully navigates onboarding new leadership teams.

| | |
|--|------|
| INTRODUCTION | 1496 |
| I. LOS ANGELES: A CASE STUDY IN “PROGRESSIVE PROSECUTION” | 1503 |
| A. <i>Gascón’s Reform Agenda</i> | 1506 |
| B. <i>Changing the Culture of a District Attorney’s Office</i> | 1510 |
| II. A NEW APPROACH FOR PROGRESSIVE PROSECUTORS | 1513 |
| A. <i>Create Alliances and Helpful Dialogue</i> | 1514 |
| B. <i>Practical Steps for Success</i> | 1514 |
| CONCLUSION | 1515 |

* Professor of Law & David W. Burcham Chair in Ethical Advocacy, Loyola Law School, Los Angeles. Professor Levenson served as an Assistant United States Attorney from 1981-89 and founded the Loyola Project for the Innocent in 2010. I want to thank the organizers of this symposium and my amazing colleagues who regularly write in the area of progressive prosecution: Professors Justin Murray, Cynthia Godsoe, Angela Davis, Bruce Green, Steve Zeidman, Ellen Podgor, Brooks Holland, Abbe Smith, Catherine Hancock, Ronald Wright, Rebecca Roiphe and Maybell Romero. I also am grateful to the editors, organizers, and staff of the *American Criminal Law Review*. © 2023, Laurie L. Levenson.

1. JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY 4 (1936).

INTRODUCTION

It is not enough to have good ideas. It is not even enough to be committed to fairer prosecutions. And it certainly is not enough to be labeled a “progressive prosecutor.” To make real change, someone presenting themselves as a “progressive prosecutor” must have the leadership abilities and management skills to inspire and guide their rank-and-file prosecutors in embracing and implementing their proposed reforms.²

While there is no one definition of a “progressive prosecutor,” certain criteria have become associated with that term. They are presented in more detail in this Article. Briefly, however, the description is most often applied to prosecutors who understand how the criminal justice system has been used in unfair ways and has resulted in injustices, especially to defendants of color. “[Progressive prosecutors] are committed to doing whatever they can, consistent with public safety, to make the system fairer for all.”³ As recent events have shown,⁴ to be effective in reforming a prosecutor’s office, it is critical that the leadership of that office win the hearts and minds of their own staff. Directives from above do not work unless the rank-and-file prosecutors who are in the courtrooms are committed to the proposed reforms.

A prime example of the problems faced by prosecutors who fail to gain the support of their line prosecutors is what occurred in the Los Angeles County District Attorney’s Office. On December 7, 2020, George Gascón became the District Attorney for Los Angeles County. He ran as a reform candidate⁵ against two-term

2. There have been many fine and dedicated reform prosecutors in the last two decades. To learn more about them, their visions, their struggles, and their accomplishments, see generally MIRIAM ARONI KRINSKY, *CHANGE FROM WITHIN: REIMAGINING THE 21ST-CENTURY PROSECUTOR* (2022); KIM TAYLOR-THOMPSON & ANTHONY C. THOMPSON, *PROGRESSIVE PROSECUTION: RACE AND REFORM IN CRIMINAL JUSTICE* (2022); see also EMILY BAZELON, *CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION* 147–73 (2019).

3. Angela J. Davis, *The Benefits of the Progressive Prosecutor Movement*, *THE CHAMPION*, May 2022, at 12, 13.

4. Since 2020, reform prosecutors have faced a series of challenges. Los Angeles District Attorney George Gascón faced recall efforts; Chesa Boudin, District Attorney of San Francisco, was actually recalled; Florida State Attorney Andrew Warren was suspended from his position; Manhattan District Attorney Alvin Bragg was threatened with removal; and Philadelphia District Attorney Larry Krasner was initially impeached by the Pennsylvania House of Representatives. See generally Brooks Holland & Steven Zeidman, *Progressive Prosecutors or Zealous Defenders, From Coast-to-Coast*, 60 AM. CRIM. L. REV. 1467 (2023) (detailing actions taken against Gascón, Boudin, Bragg and Warren); see also Jacey Fortin, *Pennsylvania House Votes to Impeach Philadelphia’s Progressive D.A.*, *N.Y. TIMES* (Nov. 16, 2022), <https://www.nytimes.com/2022/11/16/us/krasner-impeached-pennsylvania.html>.

5. Gascón’s four pillars of reform included: (1) holding the police accountable, (2) ending the prosecution of children as adults, (3) abolishing the death penalty, and (4) limiting outdated sentencing enhancements. He also endorsed clearing of marijuana convictions, removing cash bail for misdemeanor and nonserious or nonviolent felony offenses, and generally addressing mass incarceration, racism, and social systemic inequities. See *STAND WITH DIST. ATT’Y GEORGE GASCÓN*, <https://standwithgascon.org/> (last visited Feb. 2, 2023); *GEORGE GASCÓN L.A. DIST. ATT’Y*, <https://georgegascon.org/> (last visited Feb. 2, 2023); *GEORGE GASCÓN L.A. CNTY. DIST. ATT’Y*, https://da.lacounty.gov/sites/default/files/pdf/DA-Bio_English_03_2022.pdf (last visited Feb. 2, 2023).

incumbent Jackie Lacey, the first woman and first African-American District Attorney in Los Angeles.⁶ Lacey was home-grown.⁷ She had served as a Los Angeles County District Attorney (“LADA”) for over thirty years and rose up the ranks to head the Office after her predecessor, Steve Cooley, retired from the position.⁸ Cooley, who had been a hard-nosed prosecutor, endorsed Lacey as his successor.⁹ Although she initially followed in his footsteps as a “tough on crime” prosecutor, she slowly implemented reforms in the Office.¹⁰ For example, she created a Conviction Review Unit to investigate and work on cases brought to the office—either through innocence projects or directly from clients—that raised questions of whether there had been a wrongful conviction.¹¹

But Lacey was caught up in the 2020 storm calling for dramatic reforms in prosecution offices. Lacey failed to move quickly enough in instituting needed reforms, such as curtailing excessive use of force by police.¹² Like other prosecutors across the country,¹³ Lacey was swept out of office and new leadership took hold. In an office of over 900 prosecutors—many of whom were working remotely because of

6. See Jack Leonard, *Jackie Lacey Takes Office as County's First Female, Black DA*, L.A. TIMES (Dec. 3, 2012, 5:59 PM), <https://www.latimes.com/archives/blogs/la-now/story/2012-12-03/jackie-lacey-takes-office-as-countys-first-female-black-d-a>; *Full Coverage: Jackie Lacey and George Gascón Face Off in L.A. County District Attorney Race*, L.A. TIMES (Nov. 11, 2020, 1:18 PM), <https://www.latimes.com/california/story/2020-09-18/district-attorney-race-jackie-lacey-george-gascon>.

7. While George Gascón rose in the ranks of the Los Angeles Police Department from patrol officer to Assistant Chief of Police, Gascón never served in the Los Angeles District Attorney's Office and left to serve as the Chief of Police in Mesa, Arizona. From there, he was appointed the San Francisco District Attorney in 2011. See GEORGE GASCÓN L.A. CNTY. DIST. ATT'Y, https://da.lacounty.gov/sites/default/files/pdf/DA-Bio_English_03_2022.pdf (last visited Feb. 2, 2023).

8. See *Office History*, L.A. CNTY. DIST. ATT'Y'S OFF., <https://da.lacounty.gov/about/history?page=4> (last visited Feb. 2, 2023); Lori Craig, *District Attorney Jackie Lacey: Born to Be an Advocate*, USC NEWS (Oct. 28, 2014), <https://news.usc.edu/70188/district-attorney-jackie-lacey-born-to-be-an-advocate/>.

9. Leonard, *supra* note 6.

10. See The Times Ed. Board, *Editorial: The Evolving Reform Efforts of L.A. County Dist. Atty. Jackie Lacey*, L.A. TIMES (July 14, 2014, 5:19 PM), <https://www.latimes.com/opinion/editorials/la-ed-jackie-lacey-mentally-ill-inmates-20140715-story.html>. For more on Lacey's background, see Jason McGahan, *L.A.'s Controversial DA Jackie Lacey Takes on Her Critics: 'I Think Prosecutor Is an Honorable Job'*, L.A. MAG. (Jan. 6, 2020) <https://www.lamag.com/mag-features/jackie-lacey-interview/>; see also Matthew Ormseth, *Candidates for L.A. County District Attorney Trade Punches in Lively Debate*, L.A. TIMES (Jan. 30, 2020), <https://www.latimes.com/california/story/2020-01-30/district-attorney-debate>.

11. See *District Attorney Jackie Lacey's Conviction Review Unit Exonerates Wrongfully Convicted Man*, L.A. CNTY. DIST. ATT'Y'S OFF. (Oct. 6, 2020), <https://da.lacounty.gov/sites/default/files/press/100620-District-Attorney-Jackie-Laceys-Conviction-Review-Unit-Exonerates-Wrongfully-Convicted-Man.pdf>.

12. See Marisa Gerber, *The Pressure Is on for Jackie Lacey, L.A.'s First Black District Attorney, After High-Profile Police Killings*, L.A. TIMES (Dec. 26, 2016), <https://www.latimes.com/local/lanow/la-me-jackie-lacey-police-shootings-20161226-story.html>.

13. By the time Gascón sought office as a “progressive prosecutor,” several other prosecutors had taken office under this mantle, including, for example, Rachel Rollins of Suffolk County, Massachusetts and Kim Foxx of Cook County, Illinois. The same year that Gascón took office, Chesa Boudin was elected District Attorney of San Francisco. By 2021, Data for Progress had identified 19 progressive prosecutors. See PRERNA JAGADEESH, ISA ALOMRAN, LEW BLANK & GUSTAVO SANCHEZ, DATA FOR PROGRESS, A NEW GENERATION OF PROSECUTORS IS LEADING THE CHARGE TO REIMAGINE PUBLIC SAFETY 1 (2021), <https://www.filesforprogress.org.memos.new-generation-of-prosecutors-reimagine-public-safety.pdf>.

the global pandemic—the change in top leadership did not change the culture of the office, mainly because Gascón failed to engage his rank and file.¹⁴ Instead, he tried to issue “Directives” that left no room for his prosecutors to use their judgment on a case or to argue that while it might be best to generally refrain from imposing unnecessary sentencing enhancements, the facts of a particular case—or the position of the victims—required a closer look.¹⁵ Gascón tried to rule by fiat in an office where, because of civil service laws, he could not dismiss Lacey’s hires and replace them with his own.¹⁶ He was stuck with an office full of prosecutors hired and loyal to his predecessor.¹⁷ They had not had an opportunity to get to know him or even ask questions about his new policies.¹⁸ As should have been evident, this was not a recipe for success.

The result of Gascón’s approach is that many practicing in the LADA’s Office have been in open rebellion since Gascón and his team took over.¹⁹ Dozens of experienced prosecutors have left, including some who wanted reforms but were concerned about Gascón’s extreme positions and the abrupt manner in which he

14. See Jeremy B. White, *Los Angeles Prosecutors Overwhelmingly Want to Oust Their Progressive Boss*, POLITICO (Feb. 2, 2022), <https://www.politico.com/news/2022/02/22/los-angeles-prosecutors-progressive-dagascoson-00010798>. One reason Gascón may have failed in seeking the support of his prosecutors is that for the beginning of his term, he worked remotely to limit his exposure to COVID-19. See Jason McGahan, *A Media Savvy Deputy DA is Leading a Noisy Crusade Against George Gascón*, L.A. MAG. (Apr. 15, 2021), <https://www.lamag.com/citythinkblog/gascon-jon-hatami-district-attorney/>.

15. See Emily Bazelon & Jennifer Medina, *He’s Remaking Criminal Justice in L.A. But How Far Is Too Far?*, N.Y. TIMES MAG. (Nov. 17, 2021), <https://www.nytimes.com/2021/11/17/magazine/george-gascon-los-angeles.html>.

16. See Times Ed. Bd., Editorial, *George Gascón Can’t Fire Prosecutors for Opposing His Vision. Can He Win Them Over?*, L.A. TIMES (Nov. 30, 2020), <https://www.latimes.com/opinion/story/2020-11-30/los-angeles-county-district-attorney-george-gascon-civil-service>.

17. Before Gascón took office, Jackie Lacey had been the head of the office for eight years. She was responsible for the hiring of all prosecutors during that time. Moreover, prior to becoming the head of the office, Lacey had served in the office for nearly thirty years. She was such a popular District Attorney among her own prosecutors and prosecutors nationally that an award was named after her for other women prosecutors. See *Jackie Lacey Award for Aspiring Women Prosecutors*, NAT’L DIST. ATT’YS ASS’N, <https://nda.org/jackie-lacey-award-for-aspiring-women-prosecutors> (last visited Feb. 5, 2023).

18. See Bazelon & Medina, *supra* note 15. Gascón’s decision to announce changes without first discussing them with his lawyers was, according to some, his “original sin.” James Queally, *L.A. County D.A.’s Office Under Gascón Is at War with Itself. How Does Anything Get Done?*, L.A. TIMES (May 3, 2022, 6:35 AM), <https://www.latimes.com/california/story/2022-05-03/la-da-internal-strife>. “The move hardened [his lawyers’] view of Gascón as an idealist with a limited grasp of how to run the office on a practical basis.” *Id.*

19. The schism in the office continues to this day. Prosecutors are represented by a union that has opposed Gascón’s management style and directives since the beginning of his term. They have a bully pulpit and use it at every opportunity. For example, every week, the Los Angeles Association of Deputy District Attorneys issues news@laadda.com. It is a weekly attack on Gascón and his policies, eager to highlight missteps by his administration and how his directives have led to the release of dangerous offenders who then commit new crimes. See, e.g., THE MONDAY MORNING MEMO (Aug. 15, 2022), https://myemail.constantcontact.com/Monday-Morning-Memo-for-August-15-2022.html?soid=1120011172453&aid=Zdrb_rSJK8s; Ryan Erlich, *Gascón’s Decision to Gut Special Victims Unit Is Study in Incompetence*, CITY WATCH (Mar. 19, 2023), <https://www.citywatchla.com/index.php/cw/voices/26645-gascon-s-decision-to-gut-special-victims-unit-is-case-study-in-incompetences>.

sought to institute his reforms.²⁰ The new “Conviction Integrity Unit” that Gascón created,²¹ although staffed by some incredibly dedicated lawyers,²² did not receive the resources and type of support it needed to tackle the long list of defendants who claimed they have been wrongfully convicted. In fact, it was only able to resolve two cases in two years, and both of those cases were brought to them by outside lawyers who had investigated the innocence claims.²³ Gascón has been

20. See Queally, *supra* note 18 (roughly 120 prosecutors left during Gascón’s first year and a half in office). Richard Ceballos, who had also run as a reform candidate against D.A. Lacey, was a consistent voice for reform. In March 2019, Ceballos announced that he would run as the first Latino, LGBT candidate for District Attorney with distinctly progressive proposals for the office. See James Queally, *Veteran Prosecutor Aims to Become L.A. County’s First Latino, LGBT District Attorney*, L.A. TIMES (Mar. 7, 2019, 7:45 PM), <https://www.latimes.com/local/lanow/la-me-ln-richard-ceballos-jackie-lacey-20190307-story.html>. Yet, he has joined other current and former deputies in criticizing the *manner* by which Gascón has sought to implement his reforms. Like others, Ceballos believed that “[Gascón acted] almost like, ‘I’m the savior, the messiah of LA’s criminal justice system and I’m going to do this without really consulting anyone That was probably one of the dumbest things he could have done.’” Brian Melley, *Los Angeles DA Faces Resistance for Criminal Justice Reforms*, BUSINESS JOURNAL (Mar. 25, 2021, 2:03 PM), <https://thebusinessjournal.com/los-angeles-da-faces-resistance-for-criminal-justice-reforms/>. Senior deputies who had tried to guide Gascón on his reforms, but were retaliated against, have now filed lawsuits. See *Complaint, Ramirez v. Cnty. of Los Angeles*, No. 22STCV08110 (Cal. Super. Ct. Mar. 7, 2022). It was particularly troubling that Gascón referred to prosecutors who merely questioned how they were to implement Gascón’s reforms as “internal terrorists.” See Scott Schwebke, *Another Prosecutor Defies DA Gascón, Sues for Retaliation over Demotion*, L.A. DAILY NEWS (June 7, 2022, 1:57 PM), <https://www.dailynews.com/2022/06/07/another-prosecutor-defies-da-gascon-sues-for-retaliation-over-demotion>. While some have questioned whether transferred and demoted deputies were truly committed to reform, prosecutors like Deputy District Attorneys Brian Schim and Margo Baxter had headed up the Conviction Review and appellate units, working collaboratively with the Loyola Project for the Innocent to secure the release of wrongfully convicted defendants.

21. In Special Directive 20-13, issued on December 7, 2020, Gascón explained that the new Conviction Integrity Unit (“CIU”), like its predecessor, the Conviction Review Unit (“CRU”), would conduct reviews of cases and take remedial measures necessary to remedy wrongful convictions. See Memorandum from George Gascón, Dist. Att’y, on Conviction Integrity Unit to All Deputy Dist. Att’y’s 1 (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/Special-Directive-20-13.pdf>. However, the new unit would go beyond the CRU’s prior role by also studying and collecting data on wrongful convictions and informing office- wide policies and procedures to prevent such injustices. *Id.* The Directive formalized the intake criteria to be used, dictating that the unit pay special attention to cases where the applicant claims any high-risk factors or causes of their wrongful conviction, including faulty eyewitness identifications, coerced confessions, recanted testimony, official misconduct, law enforcement personnel who had been subject to discipline, faulty forensic evidence, jailhouse informant testimony and other paid witnesses, the use of gang allegations that are no longer admissible, or representation by a disbarred or disciplined attorney. *Id.* at 3–5. Special emphasis was placed on the independence of the unit. *Id.* at 9–10. Pursuant to the Directive, the CIU is supposed to post biannual updates on number of cases submitted, under review, rejected, and outcomes. *Id.* at 11. However, those statistics have not been posted. See *Conviction Integrity Unit*, L.A. CNTY. DIST. ATT’Y’S OFF., <https://da.lacounty.gov/operations/ciu> (last visited Feb. 23, 2023).

22. The new unit has been headed by Deputy D.A. Martha Carrillo who has reached out to work with the defense bar and Innocence Projects to address their concerns. See Los Angeles County District Attorney’s Functional Organization Chart, L.A. CNTY. DIST. ATT’Y’S OFF., <https://da.lacounty.gov/operations/ciu> (last visited Mar. 10, 2023); David Greenwald, *Innocence Project and LA DA’s Conviction Integrity Unit Worked Together to Free Torres After 21 Years of Wrongful Incarceration*, DAVIS VANGUARD (June 3, 2022), <https://www.davisvanguard.org/2022/06/innocence-project-and-la-das-conviction-integrity-unit-worked-together-to-free-torres-after-21-years-of-wrongful-incarceration/>.

23. See Greenwald, *supra* note 22; *Alexander Torres*, CAL. INNOCENCE PROJECT, <https://californiainnocenceproject.org/read-their-stories/alexander-torres/> (last visited Apr. 1, 2023); Zoe Sottile, *After Serving 38 Years for a Murder he Didn’t Commit, Maurice Hastings Has Finally Been Declared Innocent*, CNN (Mar. 6, 2023), <https://www.cnn.com/2023/03/05/us/maurice-hastings-wrongful-conviction-trnd/index.html>.

sued by his own prosecutors (and their union)²⁴ and judges have ruled against him on the question of whether he had the authority to issue some of the Directives or whether some of them violated state law.²⁵ He was also the target of two unsuccessful recall campaigns, which failed to qualify for the ballot but nevertheless provided stark evidence that a large segment of Gascón's constituency²⁶ was dissatisfied with his leadership.

This Article is more than a tale of woe about George Gascón. He is an individual who may have had the best of intentions. As a former police officer and later District Attorney of San Francisco (appointed by then-San Francisco Mayor Gavin Newsom to replace now-Vice President Kamala Harris), his supporters touted him as someone who could bring important change to the LADA's Office.²⁷ The Office needed reform, and Gascón promised to bring it. But he and his team did not anticipate the challenges of stepping in as outsiders to attempt major reform of a large prosecuting office,²⁸ even though progressive prosecutors elsewhere had faced similar challenges.²⁹

Each prosecution office has its own culture and institutional history. As this Article discusses, the first step for effectuating reform must be to try to persuade those who will be responsible for implementing such reforms about why they should be committed to them. Instead of taking this approach, some progressive prosecutors have taken a less effective approach—they have chosen to purge their offices of as many old guard prosecutors as possible, thereby frightening and alienating those who remain.³⁰ Civil service laws limited how many of his own people

24. See Nathan Solis, *LA County Prosecutors Sue DA Gascón Over Criminal Justice Reforms*, COURTHOUSE NEWS SERV. (Dec. 30, 2020), <https://www.courthousenews.com/la-county-prosecutors-sue-da-gascon-over-criminal-justice-reforms>.

25. See Ass'n of Deputy Dist. Att'ys for L.A. Cnty. v. Gascón, 295 Cal. Rptr. 3d 1, 37 (Cal. Ct. App. 2022), review granted, 515 P.2d 657 (Cal. 2022).

26. There have been two recall efforts against D.A. George Gascón since he defeated then-incumbent Jackie Lacey with 53.5% of the vote on November 3, 2020. See *George Gascón Recall, Los Angeles County, California (2021-2022)*, BALLOTPEDIA [https://ballotpedia.org/George_Gasc%C3%B3n_recall,_Los_Angeles_County,_California_\(2021-2022\)](https://ballotpedia.org/George_Gasc%C3%B3n_recall,_Los_Angeles_County,_California_(2021-2022)) (last visited Jan. 31, 2023). A recall attempt against Gascón in 2021 was terminated before the filing deadline. *Id.* In 2022, the recall effort submitted 715,833 signatures for recall, but the L.A. County Registrar's Office announced that only 520,000 signatures had been validated, which fell short of the required 566,857 signatures required for the recall effort to qualify for the ballot. *Id.* Even so, more than a half-million constituents supported this recall effort. *Id.*

27. Gascón had strong endorsements from everyone from the California Governor and Senators to community organizations. See *Endorsements*, GEORGE GASCÓN L.A. DIST. ATT'Y, <https://georgegascon.org/endorsements/> (last visited Jan. 31, 2023); *About*, PROSECUTORS ALL. CAL., <https://prosecutorsalliance.org/about> (last visited Feb. 3, 2023); *About Our Advisory Board*, FAIR AND JUST PROSECUTION, <https://fairandjustprosecution.org/about-fjp/our-advisory-board> (last visited Feb. 3, 2023).

28. See sources cited *supra* notes 19–20.

29. For example, “[w]hen Larry Krasner took over the district attorney’s office in Philadelphia in 2017, more than 100 lawyers and employees walked out the door; Krasner also dismissed 31 others. (Gascón, by contrast, couldn’t clean house: In Los Angeles, prosecutors have the rare benefit of civil-service protections and a union.)” Bazelon & Medina, *supra* note 15, at 3.

30. See, e.g., *id.*

Gascón could bring into the Office,³¹ meaning that his leadership team would be outnumbered from day one by skeptics. It certainly did not help his cause when, in selecting his leadership team, Gascón brought in outsiders from other jurisdictions and even lawyers from the public defender's office.³² When he did select an internal deputy to assist his administration, this individual was relatively junior³³ and not generally supported by his colleagues.³⁴ Moreover, because this individual had initially been a rival of Gascón in the District Attorney election, his selection was viewed as a political maneuver to pay off a putative competitor for dropping out of the race.³⁵ Finally, Gascón ignored the perspectives of a wide range of individuals who supported reform, including academics and members of the bench who had been prosecutors, but who were not specifically identified with his campaign.³⁶ Regretfully, Gascón chose the path of becoming insular, just at the time when he most needed allies.

Regardless of whether Gascón (or any other specific District Attorney)³⁷ stays in office, there are important lessons to be learned from this episode of the prosecution reform movement. While a tremendous amount has been written about the goals of the progressive prosecutor movement,³⁸ there is a significant chasm between reform ideas and their implementation. That is why there needs to be an

31. See Times Ed. Bd., *supra* note 16.

32. See Scott Schwebke, *Prosecutors Move to Block George Gascón from Hiring Public Defenders to DA's Office*, L.A. DAILY NEWS (Oct. 19, 2021, 3:06 PM), <https://www.dailynews.com/2021/10/14/prosecutors-move-to-block-george-gascon-from-hiring-public-defenders-to-das-office>. Gascón chose his Chief Deputy, Sharon Woo, from the San Francisco District Attorney's Office, after Joseph Iniguez was elevated as the office's interim chief deputy prosecutor. See James Queally, *Top Aide to Los Angeles D.A. George Gascón Arrested on Suspicion of Public Intoxication*, L.A. TIMES (Dec. 21, 2021, 5:55 PM), <https://www.latimes.com/california/story/2021-12-21/l-a-d-a-george-gascons-chief-of-staff-arrested-for-public-intoxication>.

33. Joseph Iniguez was a Deputy District Attorney II at the office. See Joseph Iniguez, OPENGOVBASE, <https://opengovbase.com/payroll/los-angeles-county/1403761> (last visited Mar. 10, 2023); *Gascón Blacklists Judge for Non-Adherence to His Policy*, METRO. NEWS-ENTER. (Dec. 18, 2020) <http://www.metnews.com/articles/2020/blacklisting12182020.htm>. Generally, management attorneys have the rank of Deputy District Attorney IV or V.

34. Iniguez's appointment "drew the ire of some longtime deputy district attorneys." Queally, *supra* note 32.

35. See *id.*; METRO. NEWS-ENTER., *supra* 33.

36. Gascón recruited a broad group to serve on his transition team, see *George Gascón Announces Transition Team*, GEORGE GASCÓN L.A. DIST. ATT'Y (Nov. 19, 2020), <https://www.georgegascon.org/campaign-news/george-gascon-announces-transition-team>, but very few of them were brought into the office to implement his policies. Moreover, supporters, such as retired judges and alumni of that office, who had an appreciation of the office's culture, and respect from the deputies, were not put into place to handle the new reforms. Cf. James Queally, *Change or Cronyism? D.A. George Gascón's Executive Team Met with Mix of Praise and Suspicion*, L.A. TIMES (Mar. 8, 2021), <https://www.latimes.com/california/story/2021-03-08/district-attorney-george-gascon-advisors-under-scrutiny>; Scott Schwebke, *Unions Blast District Attorney George Gascón's Hiring of Controversial Prosecutor*, L.A. DAILY NEWS (Feb. 25, 2021), <https://www.dailynews.com/2021/02/25/unions-blast-district-attorney-george-gascons-hiring-of-controversial-prosecutor/>.

37. For example, the progressive prosecutor in San Francisco, Chesa Boudin, was removed last year by recall. See Janie Har, *San Francisco Ousts Liberal DA Chesa Boudin in Heated Recall*, AP NEWS (June 8, 2022), <https://apnews.com/article/2022-california-primary-san-francisco-district-attorney-29f92d448a0281fd6d8e647e4edb3ede>.

38. See Bruce A. Green & Rebecca Roiphe, *When Prosecutors Politick: Progressive Law Enforcers Then and Now*, 110 J. CRIM. L. & CRIMINOLOGY 719, 736–38 (2020); Jeffrey Bellin, *Expanding the Reach of Progressive Prosecution*, 110 J. CRIM. L. & CRIMINOLOGY 707, 707, 709 (2020); Maybell Romero, *Rural Spaces, Communities of Color, and the Progressive Prosecutor*, 110 J. CRIM. L. & CRIMINOLOGY 803, 804 (2020).

examination of *how* progressive prosecutors should approach their new positions. Prosecutors seeking to change their offices must build into their plans an approach for learning about old practices of their offices and be prepared to explain why those practices no longer serve the needs of the community. Importantly, new prosecutors must recognize that their proposals will almost certainly generate some resistance by line prosecutors but that such resistance can be overcome with collaborative approaches toward change. Progressive prosecutors must have a plan that will transform their offices so that those prosecutors who have the daily responsibility of implementing their new policies will embrace these reforms.

This Article suggests a three-step program for making progressive prosecution reforms a reality:³⁹

Step 1: Identify areas of needed reform, research current practices in the office, and engage the line prosecutors in a discussion of the reasons for and benefits of the reforms.⁴⁰

Step 2: Get to know your people. This is particularly important for a prosecutor who is coming in from another jurisdiction. A reform prosecutor must anticipate that there will be objections to new approaches and not take such objections personally. To be successful, progressive prosecutors must be able to communicate with their team and address any objections to reforms on the merits. The prosecutor should also appreciate that it may be necessary to tailor reforms to meet the operations of the office. Coming in on day one with new policies that mandate how prosecutors will operate is likely to be met with more resistance than an orientation period in which the office is educated on, and has a chance to respond to, the new approaches by its new leadership.

Step 3: Engage all the stakeholders. Progressive prosecution is a complex matter. While much of progressive prosecution is focused on how defendants, especially those of color, should be treated more fairly, a prosecutor's constituency includes law enforcement, victims, other organizational groups, and, to a certain extent, the courts and pretrial and probation services. To successfully enact their proposed reforms, progressive prosecutors must reach out to all concerned groups and give them an avenue to voice their concerns. If done properly, this

39. Although framed differently, several of these ideas are also supported by other contributors to this symposium. For example, Professors Bruce Green and Rebecca Roiphe have written an important paper on how it is important that once progressive prosecutors articulate a new vision of criminal justice, they avoid implementing this vision with categorical imperatives and blanket policies. To be effective, a reform prosecutor must "implement their substantive vision of justice without abdicating the fiduciary role and opening themselves up to pushback from judges, police, and subordinate lawyers." See Bruce A. Green & Rebecca Roiphe, *A Fiduciary Theory of Progressive Prosecution*, 60 AM. CRIM. L. REV. 1431, 1435 (2023).

40. See Madison McWithey, *Taking a Deeper Dive into Progressive Prosecution: Evaluating the Trend Through the Lens of Geography*, 61 B.C. L. REV. E. SUPP. I-32, 35 (2020) ("[S]uccessful progressive prosecutors must understand the underlying motivations of their subordinates."). While some progressive prosecutors receive a great deal of information from persons outside an office about needed reforms, the key to a smooth transition is to solicit candid replies from those within the office as well. See *id.*

approach will reduce the backlash of hardliners, judges, and victims' groups who oppose reforms.

After decades of tough-on-crime policies, it is challenging to demonstrate that reforms will not only be fairer to defendants but also generally work in favor of the community. To be a successful progressive prosecutor, an individual must be extremely forthright about the nature of the reforms, the risks they pose, how success will be achieved, and the length of time it will take for them to have an impact. Without such transparency, a progressive prosecutor will constantly be battling the perception that the reforms are helping increase criminal activity, without having any positive long-term impact on the criminal justice system.

Part I of this Article provides a case study of a progressive prosecutor who entered the office with excellent ideas but quickly faced obstacles in integrating new policies into the operations of the office. The approach of issuing mandated directives led to enormous pushback by rank-and-file prosecutors and thereby made the success of proposed reforms more difficult. Part II, drawing on the lessons learned from that case study, then suggests a different approach for reform—one that focuses on collaborative approaches with both the personnel in the prosecution office and the constituencies seeking reform.

I. LOS ANGELES: A CASE STUDY IN “PROGRESSIVE PROSECUTION”

In 2020, voters swept a new District Attorney into office based upon his promise of reforming the Los Angeles District Attorney's Office. Indeed, George Gascón and his team had many good ideas. After many years of “tough-on-crime” prosecutors, there was a call for a different approach to address a range of perceived problems, from racial injustice to over-policing.⁴¹ Gascón's campaign was part of the “progressive prosecutor” movement.

While there is no fixed definition of a “progressive prosecutor,”⁴² the following are often considered as policies that these prosecutors will embrace:⁴³

41. For a background on the history of the Los Angeles District Attorney's Office and its “tough-on-crime” approach, see Bazelon & Medina, *supra* note 15.

42. While there is no universal definition for a “progressive prosecutor,” see Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415, 1417–18 (2021), “progressive prosecution” was recently defined as “the model of prosecution committed to truth-telling about systemic racism, shrinking mass criminalization, addressing root causes of crime, and bringing the criminal legal system in line with basic notions of justice and humanity,” see Avanindar Singh & Sajid A. Khan, *A Public Defender Definition of Progressive Prosecution*, 16 STAN. J. C.R. & C.L. 475, 476 (2021). Previous definitions have included, for example, prosecutors “committed to both public safety and reducing mass incarceration” and who have “pursued a range of policies, including using diversion and treatment programs as alternatives to drug related crimes, refusing to prosecute cases brought by officers with a history of dishonesty and unreliability, and reducing prosecutions of lower-level crimes.” *The Facts on Progressive Prosecutors*, CTR. FOR AM. PROGRESS (Mar. 19, 2020), <https://www.americanprogress.org/article/progressive-prosecutors-reforming-criminal-justice/>. Some have suggested that rather than use the term “progressive prosecutor,” it might be more helpful to use the term “reform-minded prosecutor” because it embraces a greater range of individuals seeking reforms, including those who come from the conservative side of the political spectrum. See Miriam Aroni Krinsky, Justin Murray & Maybell Romero, *Preface: New Directions in Prosecutorial Reform*, 60 Am. Crim. L. Rev. 1369, 1371 (2023). For an excellent

1. Reduction of mass incarceration;⁴⁴
2. Changing the role of police to be one of public service, rather than aggressive over-policing;⁴⁵
3. Willingness to confront, discipline, and prosecute police officers who engage in misconduct or excessive force;⁴⁶
4. Commitment to ending explicit and implicit racial bias in the criminal justice system;⁴⁷
5. Adoption of restorative justice approaches;⁴⁸
6. Embracing transparency in prosecutorial decision making;⁴⁹
7. Cooperating with civilian oversight;⁵⁰
8. Diversifying prosecution offices;⁵¹
9. Recalibrating sentencing and eliminating mandatory minimum sentences, unnecessary sentence enhancements, and use of three-strikes laws;⁵²
10. Eliminating the death penalty;⁵³
11. Treating defendants and their counsel with dignity;⁵⁴
12. Working with community groups and their representatives;
13. Complying with discovery rules and moving toward open discovery;⁵⁵
14. Embracing bail reform initiatives;⁵⁶

history of the background of the progressive prosecutors' movement and its goals, see Green & Roiphe, *supra* note 38, at 741–46.

43. Nearly all of these policies are listed in BRENNAN CTR. FOR JUST., FAIR AND JUST PROSECUTION & THE JUST. COLLABORATIVE, 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_21st_century_prosecutor.pdf [hereinafter 21 PRINCIPLES REPORT].

44. *Id.* at 4; see generally BAZELON, *supra* note 2, at 315–25; Seema Gajwani & Max G. Lesser, *The Hard Truths of Progressive Prosecution and a Path to Realizing the Movement's Promise*, 64 N.Y. L. SCH. L. REV. 69, 72–77 (2019).

45. See 21 PRINCIPLES REPORT, *supra* note 43, at 19.

46. See Note, *The Paradox of "Progressive Prosecution"*, 132 HARV. L. REV. 748, 754–55 (2018).

47. See 21 PRINCIPLES REPORT, *supra* note 43, at 14–16.

48. See Bruce A. Green & Lara Bazelon, *Restorative Justice from Prosecutors' Perspective*, 88 FORDHAM L. REV. 2287, 2288–90 (2020); Gajwani & Lesser, *supra* note 44, at 86–91.

49. Transparency is a key issue for progressive prosecutors. See generally *Accountability, Transparency and Measuring Success*, FAIR & JUST PROSECUTION, <https://fairandjustprosecution.org/issues/accountability-transparency-and-measuring-success/> (last visited Feb. 24, 2023).

50. See Laurie L. Levenson, *Do Prosecutors Really Represent the People? A New Proposal for Civilian Oversight of Prosecutors*, 58 DUQ. L. REV. 279, 280 (2020).

51. Cf. KATHERINE J. BIES, DARRYL G. LONG JR., MEGAN S. MCKOY, JIMMY S. THREATT & JOSHUA D. WOLF, DIVERSITY IN PROSECUTORS' OFFICES: VIEWS FROM THE FRONT LINES 11–19 (2016), <https://law.stanford.edu/wp-content/uploads/2015/07/Diversity-Case-Studies-Final-3.12.16.pdf>.

52. Some prosecutors' offices have instituted resentencing units to reconsider previously imposed sentences because they were too harsh. Gascón instituted such a unit in Special Directive 20-14. Memorandum from George Gascón, Dist. Att'y, on Resentencing to All Deputy Dist. Att'ys (Dec. 7, 2020).

53. See 56 Prosecutors Issue Joint Statement Calling for End of "Broken" Death Penalty, DEATH PENALTY INFO. CTR. (Feb. 21, 2022), <https://deathpenaltyinfo.org/news/56-prosecutors-issue-joint-statement-calling-for-end-of-broken-death-penalty>.

54. Cf. CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION standard 3-3.3(d) (AM. BAR. ASS'N 2017) ("The prosecutor should develop and maintain courteous and civil working relationships with . . . defense counsel.").

55. See 21 PRINCIPLES REPORT, *supra* note 43, at 17–18; Laurie L. Levenson, *Working Outside the Rules: The Undefined Responsibilities of Federal Prosecutors*, 26 FORDHAM URB. L.J. 553, 554, 562–63 (1999).

56. 21 PRINCIPLES REPORT, *supra* note 43, at 6.

15. Instituting alternative and creative punishments;⁵⁷
16. Adopting juvenile justice reforms;⁵⁸
17. Decriminalizing lower-level offenses, such as marijuana possession and low-level thefts;⁵⁹
18. Instituting mental health programs as alternatives to criminal prosecution;⁶⁰
19. Instituting robust conviction integrity units to address post-conviction issues, including wrongful convictions;⁶¹
20. Reducing or eliminating the biased use of stop-and-frisks;⁶²
21. Preserving defendants' *Miranda* rights;⁶³
22. Supporting the reduction or elimination of felony murder laws;⁶⁴
23. Reforming or abolishing jails and prisons;⁶⁵
24. Eliminating qualified immunity for police and absolute immunity for prosecutors;⁶⁶
25. Creating *Brady* databases;⁶⁷
26. Insisting on reliable evidence, including forensic evidence;⁶⁸ and
27. Increasing fairness in plea bargaining.⁶⁹

Obviously, this is an ambitious agenda for any prosecutor. It is particularly challenging for a prosecutor who will inherit a large prosecution office staffed by attorneys who were hired by and, therefore, have a certain amount of engrained loyalty to the prior prosecutor.

When evaluating this list of goals for a “progressive prosecutor,” what quickly becomes apparent is that *how* to accomplish these reforms is at least as important as which reforms to institute. That is where new prosecutors have tended to trip up. Lessons learned from these challenges can be useful for the next phase of the reform movement. If the first phase of reform is identifying its goals, the next phase is to consider the most effective way to achieve those goals. Is it effective to just issue new rules, or will it be better in step two to learn more about the people

57. *Id.* at 4.

58. *Id.* at 9–10.

59. *See id.* at 10–11.

60. *See* Darcy Covert, *Transforming the Progressive Prosecutor Movement*, 2021 WIS. L. REV. 187, 215–16 (2021).

61. *See* Chad Flanders & Stephen Galoob, *Progressive Prosecution in a Pandemic*, 110 J. CRIM. L. & CRIMINOLOGY 685, 693 (2020).

62. *Cf.* Steven Zeidman, *Some Modest Proposals for a Progressive Prosecutor*, 5 UCLA CRIM. JUST. L. REV. 23, 38 (2021).

63. *See id.* at 36.

64. Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. REV. 164, 188 (2022).

65. Hana Yamahiro & Luna Garzón-Montano, *A Mirage, Not a Movement: The Misguided Enterprise of Progressive Prosecution*, 46 N.Y.U. REV. L. & SOC. CHANGE 130, 165–66 (2022).

66. Alexander Reinert, Joanna Schwartz & James E. Pfander, *New Federalism and Civil Rights Enforcement*, 116 Nw. U. L. REV. 737, 791–92 (2021).

67. *See* L.A. DIST. ATT’Y’S OFF., LEGAL POLICIES MANUAL 266 (2020).

68. 21 PRINCIPLES REPORT, *supra* note 43, at 22.

69. *Id.* at 5.

of the office, hear their ideas, and enlist their support? Gascón tried to force new practices on the lawyers in his office. It was not a very effective approach because he never got to know his prosecutors and earn their trust.

A. Gascón's Reform Agenda

George Gascón wanted to hit the ground running when he took office on December 7, 2020. He wanted to send the message to the public and his office that he had been elected on the promise of radical change, and there would be no gradual transition in implementing his new policies. While he had the power to act aggressively in changing policies as soon as he started office, several of his initial orders came back to haunt him. First, he issued a series of directives on his first day of office that made significant changes in LADA's policies without seeking feedback or buy-in by the prosecutors in his office.⁷⁰ To the prosecutors in the office, his lengthy memorandum and directives were like "a declaration of war."⁷¹ Many of these directives were mandatory and did not allow for the individual prosecutors handling the case to raise concerns about their implementation.⁷² They included, for example, Special Directive 20-08, which prohibited seeking sentence enhancements that could trigger the three-strikes law, all enhancements in juvenile proceedings, gang enhancements, and all special circumstance allegations that could lead to life imprisonment without parole ("LWOP").⁷³ In addition to barring his prosecutors from seeking these enhancements in future cases, Gascón dictated that such enhancements be removed from pending cases and that defendants sentenced within 120 days of December 8, 2020 be resentenced without the enhancements; no exceptions were allowed.⁷⁴ Special Directive 20-08 also prohibited violations of bail to be filed as part of a new offense and dictated that prosecutors seek probation or the lowest prison term on all sentencings, unless extraordinary circumstances were present.⁷⁵

70. See Bazelon & Medina, *supra* note 15. These directives include: Special Directive 20-06 (Pretrial Release Policy), 20-07 (Misdemeanor Case Management Policy), 20-08 (Sentencing Enhancements/Allegations Policy), 20-09 (Youth Justice Policy), 21-04 (Habeas Corpus Litigation), 20-11 (Death Penalty Policy), 20-12 (Victim Services Policy), 20-13 (Conviction Integrity Unit), 20-14 (Resentencing Policy). *Policies*, L.A. CNTY. DIST. ATT'Y OFF., <https://da.lacounty.gov/policies>. Since the initial directives were issued, there have been amended directives, especially with regard to sentencing enhancements. *See id.*

71. See, e.g., Associated Press, *L.A. County DA George Gascón Faces Blowback in First Months of Launching Ambitious Slate Toward Criminal Justice Reform*, KTLA (Mar. 24, 2021, 10:37 PM), <https://ktla.com/news/local-news/l-a-county-da-george-gascon-faces-blowback-in-first-months-of-launching-ambitious-slate-toward-criminal-justice-reform/>.

72. See, e.g., Memorandum from George Gascón, Dist. Att'y, on Sent'g Enhancements/Allegations to All Deputy Dist. Att'ys 1 (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-08.pdf> (dictating that sentencing enhancements "shall" be dismissed or withdrawn).

73. *Id.* at 2.

74. *Id.* at 4.

75. *Id.* at 2.

In addition to the new directives, Gascón also chose a leadership team composed of outsiders, including public defenders, to run his new office.⁷⁶ His right-hand person was a prosecutor who was fairly junior and limited in his experience.⁷⁷ As a result, Gascón and his team were viewed with suspicion, and there was a great deal of concern about whether Gascón would be capable of effectuating reforms and whether he would value the opinions of his seasoned prosecutors.⁷⁸

Finally, Gascón rejected offers to have well-recognized and respected individuals, including former judges, assist in implementing his office reforms.⁷⁹ He staked out his position as an outsider who would recraft the office regardless of the views of the prosecutors in that office or the judges who would have to sign off on his lawyers' new motions to remove strikes.

The result of this approach was that his own deputy district attorneys—the line prosecutors of the office—sued Gascón, claiming that the new office policies, particularly those that barred prosecutors from pleading and proving strikes under the state's three-strikes law, violated California law.⁸⁰ These opponents won their lawsuit. Los Angeles Superior Court Judge James Chalfant agreed, at least partly, that “[t]he district attorney’s disregard of the Three Strikes ‘plead and prove’ requirement is unlawful, as is requiring deputy district attorneys to seek dismissal of pending sentencing enhancements without a lawful basis.”⁸¹ When Gascón appealed that ruling, the Court of Appeal held that he did not have the authority to override state law with his mandatory Special Directives; at the time of this Article’s publication, the issue was headed to the California Supreme Court.⁸²

It is rather extreme for prosecutors not only to sue their own boss⁸³ but also to have 97.9 percent of their colleagues support his ouster.⁸⁴ Such a move is less

76. Schwebke, *supra* note 32.

77. See METRO. NEWS-ENTER., *supra* note 33.

78. See Schwebke, *supra* note 20; Queally, *supra* note 18 (describing how Gascón relied upon an inner circle against hundreds of other prosecutors in the office). Prosecutors were particularly concerned with the hiring of career public defenders, whose experience was as adversaries to the office, to be put in management positions. See Schwebke, *supra* note 32.

79. Memo on File with Author.

80. See Schwebke, *supra* note 20.

81. See Nathan Solis, *Judge Blocks Key Criminal Justice Reforms of LA District Attorney*, COURTHOUSE NEWS SERV. (Feb. 8, 2021), <https://www.courthousenews.com/judge-blocks-key-criminal-justice-reforms-of-la-district-attorney/>. The prosecutors’ union sued Gascón directly over his enhancement policies. See Matthew Ormseth, *Union Representing Deputy District Attorneys Sues Gascón Over Enhancements Policy*, L.A. TIMES (Dec. 30, 2020, 4:05 PM), <https://www.latimes.com/california/story/2020-12-30/union-deputy-district-attorneys-sues-gascon-enhancements-policy>.

82. Ass’n of Deputy Dist. Att’ys for L.A. Cnty. v. Gascón, 295 Cal. Rptr. 3d 1, 36–37 (Cal. Ct. App.), *review granted*, 515 P.3d 657 (Cal. 2022).

83. The lawsuit against Gascón was brought by the Association of Deputy District Attorneys—the union for the prosecutors in the Los Angeles County District Attorney’s Office. *Id.* at 11. Since then, numerous individual prosecutors have sued Gascón for retaliation. Many of these individuals were among the most successful and notable prosecutors in the office. See Ian Spiegelman, *Top L.A. Prosecutors Claim Retaliation by D.A. Gascon in New LawsUIT*, L.A. MAG. (Mar. 9, 2022), <https://www.lamag.com/citythinkblog/top-l-a-prosecutors-claim-retaliation-by-d-a-gascon-in-new-lawsuit/>; Scott Schwebke, *Another Senior Prosecutor Sues DA Gascón for Demotion, Retaliation*, L.A. DAILY NEWS (Dec. 2, 2022, 9:28 AM), <https://www.dailynews.com/2022/12/01/>

likely to occur if there is open communication with the rank and file. Therefore, step one in adopting reform is to engage in such dialogue. When Gascón started with directives, he skipped a crucial step in ensuring successful reform—listening to his prosecutors. As a result, he created a power struggle between his leadership and a different group—the District Attorney’s union—that regularly listened to and represented prosecutors. He also created an uncomfortable situation in which his prosecutors were left to explain to judges why there were such radical changes without a true understanding or appreciation of the value of such changes. They did not know, or necessarily trust, the outside advisors either. Gascón had not engaged the bench or his line prosecutors in discussions with his new advisors. It was quite clear that he did not welcome their concerns.⁸⁵ It is not surprising that without a robust discussion and education about the changes, doubting prosecutors and judges were reluctant to embrace them.

In identifying numerous proposed areas for reform, Gascón’s advisors had not sufficiently appreciated the legal ramifications of those proposed reforms given long-term practices in the Los Angeles criminal courts. There were three gaps in their planning. First, they did not address why the courts should implement the reforms and whether they had the power to do so.⁸⁶ Although prosecutors have enormous discretion in deciding which cases to bring and what sentences to seek, this discretion may be limited by the laws of the jurisdiction. That was the case in California where the electorate had enacted three strikes laws containing mandatory sentencing and enhancement provisions.⁸⁷ While the district attorney has broad discretion to decide what charges to bring, “[h]e is an elected official who must comply with the law, not a sovereign with absolute, unreviewable discretion.”⁸⁸ Specifically, Gascón did not have the legal authority not to plead and prove serious and violent felony convictions under California law.⁸⁹ His blanket policy directive to his prosecutors not to plead prior strikes put them in an impossible situation with those judges who, like the Court of Appeals, believed that the state

senior-prosecutor-joins-growing-ranks-of-those-suing-da-gascon-for-retaliation/. In one of the suits, Gascón was ordered by a jury to pay \$1.5 million to a former Deputy District Attorney. See Perry Smith, *Cost of Retaliation Allegations Grows for D.A.*, THE SIGNAL (Mar. 17, 2023), <https://signalscv.com/2023/03/cost-of-retaliation-allegations-grows-for-d-a/>.

84. See White, *supra* note 14.

85. As the vice president of the District Attorney’s Association put it “he doesn’t listen to experienced prosecutors.” Schwebke, *supra* note 83. As alleged in a recent lawsuit against him by one of the top prosecutors, “[i]t quickly became apparent . . . that Gascón was not interested in feedback, the law, or opposing views on his policies.” *Id.*

86. See James Queally, *Several of D.A. George Gascón’s Reforms Blocked by L.A. County Judge*, L.A. TIMES (Feb. 8, 2021, 5:37 PM), <https://www.latimes.com/california/story/2021-02-08/several-of-d-a-george-gascons-reforms-blocked-by-l-a-county-judge>. The legal problems with Gascón’s reforms are analyzed in *Ass’n. of Deputy Dist. Att’ys*, 295 Cal. Rptr. at 11–12.

87. *Ass’n. of Deputy Dist. Att’ys*, 295 Cal. Rptr. at 25–26.

88. *Id.* at 16.

89. *Id.* at 36–37.

made such filings mandatory.⁹⁰ Accordingly, it should have come as no surprise to Gascón that some prosecutors would doubt whether they had the legal authority to follow his directives, especially when judges were likewise doubtful.

Second, neither the line prosecutors nor the judges were convinced that Gascón's team had marshaled sufficient legal support for their reforms. The directives cited various articles and opinions by academics.⁹¹ However, some of the cited authorities were national studies regarding sentencing reforms,⁹² leaving the line prosecutors to question whether those studies were directly relevant to California's laws. This gap in support made it more difficult to propose what were viewed as radical changes.

Finally, the new team of prosecutors did not anticipate the response of the bench. In Los Angeles, not unlike other jurisdictions, many of the judicial officers are former prosecutors.⁹³ They had operated for decades based on their understanding of the charging and sentencing systems. Directives that made significant changes to those systems would naturally raise concerns and questions for these judges, especially since they may have to stand for reelection and defend their decisions favoring a defendant over the opposition of victim groups. In large jurisdictions like Los Angeles, judges and local authorities have committees that regularly evaluate legal changes.⁹⁴ Again, one of the three basic steps in ensuring that progressive reforms are adopted is to engage all stakeholders, including the courts. Frank discussions with the bench and taking the opportunity to answer the courts' institutional concerns are likely to be a more productive approach than reacting when an individual judge who is unfamiliar and uncomfortable with the reform is reticent to accept the new policies.⁹⁵

The bottom line is that it takes an enormous amount of coordination to successfully introduce significant reforms to a prosecution office. Gascón's approach of

90. *See id.* at 10–11, 36–37.

91. *See, e.g.*, Memorandum from George Gascón, Dist. Att'y, on Resentencing to All Deputy Dist. Att'ys 3 (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>.

92. *See id.*

93. According to a federal study, forty-one percent of the federal judges nominated during the Obama era were prosecutors. Clark Neily, *Are a Disproportionate Number of Federal Judges Former Government Advocates?*, CATO INST. (May 27, 2021), <https://www.cato.org/study/are-disproportionate-number-federal-judges-former-government-advocates#introduction-summary-findings>. “Trump appointed over *ten times* as many former prosecutors as former defense attorneys.” *Id.* There was similar dominance in the California appointments and elections. *See, e.g.*, Tony Saavedra, *Why Prosecutors Dominate the Races for 9 Open Judicial Seats in Orange County*, ORANGE CNTY. REG. (June 3, 2022, 7:36 AM), <https://www.oregister.com/2022/03/20/why-prosecutors-dominate-the-races-for-9-open-judicial-seats-in-orange-county/>.

94. California courts have a Criminal Law Advisory Committee. *See Criminal Law Advisory Committee*, CAL. CTS., <https://www.courts.ca.gov/clac.htm> (last visited Feb. 25, 2023). In Los Angeles, there is a Countywide Criminal Justice Coordination Committee that evaluates the implementation of changes in criminal law. *See About CCJCC*, COUNTYWIDE CRIM. JUST. COORDINATION COMM., <https://ccjcc.lacounty.gov/> (last visited Feb. 25, 2023).

95. *See* James Queally, *George Gascón's Plans to Overhaul Prosecutions Meet Early Resistance from Judges, Others*, L.A. TIMES (Dec. 18, 2020, 4:46 PM), <https://www.latimes.com/california/story/2020-12-18/george-gascon-reform-bid-meets-resistance>.

simply issuing directives to his prosecutors tended to engender suspicion and resistance. Not surprisingly, prosecutors who have been in an office for decades, and have far more experience than even the new administration, are not eager to embrace a system that eliminates their individual discretion and does not even invite their thoughts or questions.⁹⁶

B. Changing the Culture of a District Attorney's Office

Progressive prosecution—as District Attorney Gascón’s experience has made clear—is about much more than new legal policies and directives. It is about winning the hearts and minds of prosecutors so that they are open to considering new approaches to their mission of properly representing the community in its efforts to respond to criminal behavior and, perhaps, prevent future crime and social disorder. Prosecutors can and should be vehicles for change that will improve the situation for everyone in and out of the courts. For this to be accomplished, there needs to be a concerted effort by incoming progressive prosecutors to educate their deputies about their roles and responsibilities, and the key step in making this happen is for progressive prosecutors to get to know their people and build trust with them.

The science of onboarding may be new to those in the legal field, but there is a considerable wellspring of literature that can help guide newly appointed or elected progressive prosecutors. In the business world, new leaders regularly prepare and implement action plans for their first few months in office.⁹⁷ Take, for example, the classic guide, *The New Leader's 100-Day Action Plan: How to Take Charge, Build Your Team, and Get Immediate Results*.⁹⁸ The recommendations in this book may seem commonsensical, but they are incredibly valuable tools for new leaders of any type of organization. Early on, the list of things to do are: (1) do due diligence on the organization and its operation;⁹⁹ (2) decide how to engage the new culture;¹⁰⁰ (3) consider the nature of your messaging;¹⁰¹ (4) communicate in an effective manner;¹⁰² (5) set milestones;¹⁰³ and (6) “evolve people, plans, and practices” to adjust to changed circumstances.¹⁰⁴ Along the way, a leader should try to

96. Professors Green and Roiphe offer important insights regarding these concerns in their Article. As they state, “subordinate prosecutors are likely to disfavor categorical policies that restrict their ability to participate in the office’s exercise of professional judgment.” Green & Roiphe, *supra* note 39.

97. These plans include: (1) Get to know your people; (2) Seek first to understand, (3) Establish your vision and expectations, (4) Establish key metrics, (5) Monitor and reinforce progress, (6) Celebrate success, (7) Get honest feedback. See Kevin Daum, *Here's What You Need to Consider as You Take Over a Successful Team*, INC. (Feb. 1, 2019), <https://www.inc.com/kevin-daum/heres-what-you-need-to-consider-as-you-take-over-a-successful-team.html>.

98. GEORGE B. BRADT, JAYME A. CHECK & JORGE E. PEDRAZA, *THE NEW LEADER'S 100-DAY ACTION PLAN: HOW TO TAKE CHARGE, BUILD YOUR TEAM, AND GET IMMEDIATE RESULTS* (2d ed. 2009).

99. *Id.* at 35.

100. *Id.* at 93.

101. *Id.* at 103.

102. *Id.* at 106–111.

103. *Id.* at 147.

104. *Id.* at 181 (emphasis omitted).

avoid certain dangerous onboarding risks, such as ineffective delivery of messages and harmful approaches to establishing relationships.

Similarly, another recognized source on becoming a new leader of an organization, *The First 90 Days: Critical Success Strategies for New Leaders at All Levels*, emphasizes the importance of learning as much as possible about the dynamics, culture and organization of an office, creating a compelling vision for those within the organization, embracing a productive working relationship, seeking alignment among those within the organization, “[m]anaging the tension between short-term and long-term goals,” creating coalitions, and “[b]uilding an advice-and-counsel network.”¹⁰⁵

Nearly every handbook on successful management emphasizes the importance of fostering open communication and teamwork, understanding and addressing the culture of an office, and motivating others to embrace the leader’s vision.¹⁰⁶ It is critical to involve employees in setting departmental goals and objectives, and to keep them informed of results. Rather than just punishing employees for failing to follow directives, much success can be achieved by rewarding employees for their contributions to reforms. In other words, a reform prosecutor, as the leader of professionals, must be prepared to listen to those who are being asked to do the day-to-day work of prosecutors, including in their interactions with victims, the courts, and law enforcement.

George Gascón, however, did not appear to embrace these approaches. Instead, he issued nine edicts that seem to be directed at those outside of the office more than his own personnel.¹⁰⁷ While these were significant policy changes directed toward reform, none of these directives addressed some of the most critical needs of his office.

First, Gascón should have avoided the “us versus them” mentality that permeates so many prosecution offices. Specifically, he should have encouraged his prosecutors to work collaboratively with all constituents in the criminal justice system, and he certainly should not have started with an adversarial posture toward his own lawyers. However, his no-questions-asked approach of using directives led

105. See MICHAEL WATKINS, *THE FIRST 90 DAYS: CRITICAL SUCCESS STRATEGIES FOR NEW LEADERS AT ALL LEVELS* viii–ix, 12–14 (2003).

106. See, e.g., BRIAN L. DAVIS, CAROL J. SKUBE, LOWELL W. HELLERVIK, SUSAN H. GEBELEIN & JAMES L. SHEARD, *SUCCESSFUL MANAGER’S HANDBOOK: DEVELOPMENT SUGGESTIONS FOR TODAY’S MANAGERS* 136, 349, 373, 507–09 (2d ed. 1996). Many of the readily accessible primers on successful strategies for new managers recommend the following: being collaborative, emphasizing workplace ethics, improving communication among the team, embracing a diverse and inclusive organizational culture, motivating employees to improve, seeking feedback from the team, opening themselves to new ideas, introducing oneself to as many team members as possible, maintaining transparency in management’s decision making process, and setting team goals. See generally Isaiah Atkins, *Characteristics of a Good Leader: Tips for New Managers*, BUSINESS NEWS DAILY (Jan. 23, 2023), <https://www.businessnewsdaily.com/6456-new-manager-tips.html>. Additionally, new managers are frequently advised to treat each employee with respect, to remain available and visible, and to really get to know their employees. See Dan McCarthy, *15 Tips for New Managers*, LIVEABOUT (July 25, 2019), <https://www.liveabout.com/tips-for-new-managers-part-1-2275957>.

107. See sources cited *supra* note 70.

the rank-and-file prosecutors to believe that if there were going to be fair representation of victims in the criminal justice system, they would have to assume that role themselves because Gascón and his team had abandoned them.¹⁰⁸

Changing the culture of an office requires much more than issuing directives. It requires a series of steps that focus on the ethical obligations of prosecutors; a move toward placing substance over procedure so that prosecutors appreciate the effect their actions have on others; encouraging collaborative working relationships; ending bad habits, especially when they are related to discovery, investigation techniques, and sentencing; and using office communication to address inherent cynicism toward the proposed reforms.¹⁰⁹ In other words, it would have been beneficial for Gascón to start his reform efforts by having meetings with his prosecutors so that he could explain the bases for his reforms and hear any questions or concerns from his rank-and-file. Even though the COVID-19 pandemic made face-to-face meetings challenging, there was no reason that Gascón could not meet virtually with different units, allowing his prosecutors to introduce themselves, learn from Gascón about how the new operations would work, and raise concerns about the proposed reforms. If this had been done, Gascón would have learned—before the courts started ruling against him—about legitimate concerns that his own prosecutors, the courts, law enforcement, and victim groups had about the feasibility and legality of his new directives.

Second, a handful of new individuals in an office, no matter what their status, will not be as effective in instituting change as a broader spectrum of individuals who believe they are stakeholders in the reforms. Gascón took the extreme route of not only displacing very tenured managers, but replacing them with a small cadre of outsiders from the defense bar and a Chief Deputy with relatively little experience. This decision messaged to the rank-and-file that Gascón did not value the experience that his prosecutors had developed over decades of public service and that he did not have confidence in any of them that they could take the office in a new direction. Even if prosecutors have become entrenched in their ways, change will not occur by simply importing a couple of lawyers from the defense bar and putting a political ally with minimal credentials in charge of the office. In fact, such a move is likely to have the opposite effect. The rank-and-file will challenge whether

108. Progressive prosecutors' opposition is often spearheaded by groups claiming to represent the victims who feel unheard by the new District Attorney. See, e.g., Kathy Cady, *District Attorney Gascón Deliberately Obstructs Justice for Victims*, ASS'N OF DEPUTY DIST. ATT'YS (Apr. 26, 2022), <https://www.laadda.com/district-attorney-gascón-deliberately-obstructs-justice-for-victims/>. Ironically, Gascón launched a crime victims advisory board when he took office. *District Attorney George Gascón Launches Crime Victims Advisory Board*, L.A. CNTY. DIST. ATT'YS OFF. (Dec. 17, 2020), <https://da.lacounty.gov/media/news/district-attorney-george-gascon-launches-crime-victims-advisory-board>. However, the Board did not have representatives from prosecutors who had been closely tied to other victims' groups. See *id.* Thus, an "us versus them" paradigm began between victims' groups.

109. For a discussion of the use of these techniques, see generally 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).

longtime adversaries are able to understand the prosecutor's role sufficiently to improve their operations.¹¹⁰ Working with senior prosecutors to help them cultivate a commitment toward making reforms is important.¹¹¹ The rank-and-file will, after all, be more likely to follow them than their former adversaries. And this must be done in concert with outreach efforts to other groups who regularly work with the prosecutor's office, including law enforcement and victims' groups.

Finally, head prosecutors must carefully consider the organizational structure they install. If, as occurred in Los Angeles, the head prosecutor appoints as his principled assistant someone who could provide political benefits to the newly elected prosecutor, then the rank-and-file's focus shifts from how they can learn from this individual's new vision to whether they support what appears to be an act of cronyism. Gascón faced this challenge. His appointments created a barrier between the new managers and the hundreds of deputies reporting to them. It also made it more difficult for the rank-and-file to feel comfortable to give feedback on the new policies and ask questions about their applications. The type of organization one creates can directly impact how easily the head of the office can receive timely feedback regarding the efficacy and shortcomings of the new reforms. Moreover, if there is no safe avenue for the rank-and-file to report concerns within the office, they are likely to take their grievances outside the office—to the media and courts.

It is unfortunate that a progressive prosecutor like George Gascón faced such an uphill battle in getting his reforms implemented in his office, but that problem was caused more by the manner in which the reforms were enacted than the substance of those reforms themselves. Without open communication and respectful engagement of all stakeholders, significant reforms are likely to get stalled in the personal battles between the new prosecutor and his naysayers.

II. A NEW APPROACH FOR PROGRESSIVE PROSECUTORS

Hopefully, there will be more progressive prosecutors and they will have greater success than some of their recent predecessors. It should be the goal of everyone in the criminal justice system to have a fairer, more equitable, and more effective means of preventing crime and responding to it. However, it has become quite

110. In Los Angeles, the prosecutors moved to block Gascón from hiring public defenders to the District Attorney's Office by claiming such a move violated the county's merit employment system. See Schwebke, *supra* note 32; see also Hillel Aron, *Court Filing Reveals Turmoil Within LA Prosecutor's Office*, COURTHOUSE NEWS SERV. (Sept. 7, 2022), <https://www.courthousenews.com/court-filing-reveals-turmoil-within-la-prosecutors-office/>.

111. This suggestion that progressive prosecutors focus on working with their seasoned prosecutors to reform their approaches does not mean to exclude other important approaches, such as supporting the defense bar in their important work in the adversary system. In fact, as noted by Professors Abbe Smith, Brooks Holland, and Steven Zeidman in their excellent contributions to this symposium, it is naïve to believe that reforming prosecutors will alone lead to a fairer criminal justice system. See generally Holland & Zeidman, *supra* note 4; Abbe Smith, *Progressive Prosecution or Zealous Defense? The Choice for Law Students Concerned About Our Flawed Criminal Legal System*, 60 AM. CRIM. L. REV. 1517 (2023).

clear that politics and prosecution do not always mix well.¹¹² Therefore, it is probably time to develop a new model for progressive prosecutors. As suggested earlier, step one is identifying needed reforms, but those reforms must be constantly reevaluated as the challenges in implementing them become apparent. Additionally, before finalizing any proposed reforms, there must be a critical assessment of the best ways to communicate with those charged with the day-to-day application of these reforms. Finally, step three requires engaging all the stakeholders, including law enforcement, victims' groups, the courts, and organizational groups in open dialogue regarding the proposed changes. With this new approach in mind, this Article proposes some specific suggestions for succeeding as a progressive prosecutor in a large, urban prosecution office.

A. Create Alliances and Helpful Dialogue

If the goal is reform, then pitting groups against each other works contrary to that goal. Dialogue, not domination, should be the goal. In the recent movement toward progressive prosecution, the Prosecutors Alliance has been constantly at odds with the District Attorney's Association. At minimum, this has been confusing for the public; even worse, it asks prosecutors to choose sides in their own offices.

Line prosecutors should be able to do their jobs without taking sides in the political battles between progressive prosecution methods and traditional approaches to criminal enforcement. Rather than using reforms to test prosecutors' loyalties, new approaches should be presented as a way for prosecutors to use their full talents to achieve the best results for all the stakeholders in a case. Prosecutors should feel free to collaborate with both law enforcement and civil rights groups as the need presents itself. Creating alliances between these groups can lead to helpful dialogue and better assessment of whether reforms are succeeding.

There is undoubtedly a need for progressive prosecutors to teach some prosecutors new approaches to their jobs. However, prosecutors are unlikely to absorb these lessons if the way the reforms are presented is as a complete repudiation of the contributions those prosecutors have previously made. In other words, to manage the change into progressive prosecution, a collaborative approach is much more likely to succeed than a dictatorial approach.

B. Practical Steps for Success

Additionally, prosecutors should develop an onboarding manual that gives guidance for helping new leadership in District Attorneys' offices. Certainly, there will have to be adjustments for each office, but there have now been enough instances of progressive prosecutors assuming the leadership of offices that a manual of what has been successful and what has not can be created.

112. See Laurie L. Levenson, *The Politicization of Prosecutors: A Tribute to the Work of Bennett Gershman*, 16 OHIO ST. J. CRIM. L. 325, 325 (2019).

There should be more partnering with groups that have a stake in prosecution reforms. For example, the National District Attorneys Association created a two-part series of educational webinars on Prosecutor-Initiated Resentencing.¹¹³ It is a collaborative effort with the organization For the People that seeks to work in partnership to assist incarcerated people.¹¹⁴

New chief prosecutors should be trained on how to manage other prosecutors. These skills are not ordinarily taught in law school, nor are they intuitive. New prosecutors may have run successful campaigns, but those are not necessarily the same skills that will most resonate with a staff facing new directions. Prosecutors must learn how to lead. And law schools should consider whether there should be more emphasis on providing new lawyers with the organizational and leadership skills they will need in practice.

The public must be educated as to the complexities of reform. Part of the challenge of being a progressive prosecutor is that the public has a relatively short attention span and expects immediate results.¹¹⁵ However, progressive prosecutors may have to work through many cases, and the appeals from them, before bringing proposed reforms to fruition.

Finally, and most importantly, progressive prosecutors must appreciate that bringing reforms is not an academic exercise. It involves individual cases that create their own challenges, emotional responses, and scrutiny. Line prosecutors live with those realities every day in implementing new policies. While they may intellectually understand the need for reforms, changing one's daily behavior and interactions requires trust. Trust is something earned, not created through a policy directive. The most important step progressive prosecutors must take is to keep the lines of communication open and not label prosecutors as adversaries of reform simply because they ask questions or raise concerns.

CONCLUSION

For many reasons, the first wave of progressive prosecutors should be applauded for their efforts. But they have also made mistakes. To keep the progressive prosecution movement on track despite efforts to derail it,¹¹⁶ it is important to learn

113. See *How to Implement Prosecutor-Initiated Resentencing*, NAT'L DIST. ATT'YS ASS'N (Sept. 28, 2022), <https://ndaa.org/training/part-2-how-to-implement-prosecutor-initiated-resentencing-unveiling-the-national-playbook/>.

114. See *id.*; FOR THE PEOPLE, <https://www.forthpepl.org/> (last visited Feb. 25, 2023).

115. See Samantha Michaels, *Blaming Chesa Boudin for Crime Is Empirically Wrong*, MOTHER JONES (May 26, 2022), <https://www.motherjones.com/crime-justice/2022/05/chesa-boudin-crime-rates-false-narratives-progressive-da-george-gascon-kim-foxx/> (discussing how progressive prosecutors are often looking for long-term solutions for problems that have been building in the criminal justice system for decades, but are often blamed for short-term rises in the crime rate).

116. See Wendy N. Davis, *Progressive Prosecutors Are Encountering Pushback*, AM. BAR ASS'N J. (July 21, 2022, 3:50 PM), <https://www.abajournal.com/web/article/progressive-prosecutor-pushback>; see also Thomas Hogan, *A Litany of Failure: Assessing Progressive Criminal-Justice Policies*, CITY J. (Aug. 30, 2022), <https://www.city-journal.org/the-failure-of-progressive-criminal-justice-reforms>; Charles D. Stimson & Zack Smith,

from those mistakes. We have enough case studies now to give reforms a greater chance of success by introducing them in a manner that is more likely to engender support from prosecutors and judges. And we may look to other disciplines to learn from our mistakes. Almost all of the necessary lessons begin with acknowledging our errors and showing the discipline not to make the same mistakes.

Some progressive prosecutors will be lucky enough to have another chance at reforming their offices. Others have already been removed from office.¹¹⁷ For those moving forward, moving away from inflammatory rhetoric and toward more collaborative, conciliatory approaches offers the best promise for lasting change.¹¹⁸

“Progressive” Prosecutors Sabotage the Rule of Law, Raise Crime Rates, and Ignore Victims, HERITAGE FOUND. (Oct. 29, 2020), <https://www.heritage.org/crime-and-justice/report/progressive-prosecutors-sabotage-the-rule-law-raise-crime-rates-and-ignore>; The Times Ed. Board, Editorial, *Anti-Gascón Drive Extends Era of Destructive, Distracting Recall Mania*, L.A. TIMES (Aug. 3, 2022, 5:00 AM), <https://www.latimes.com/opinion/story/2022-08-03/gascon-recall-misdirection>.

117. See Jeremy B. White, *San Francisco District Attorney Ousted in Recall Election*, POLITICO (June 8, 2022, 12:17 AM), <https://www.politico.com/news/2022/06/08/chesa-boudin-san-francisco-district-attorney-recall-00038002>.

118. Gascón’s reaction to avoiding a recall was to refer to it as an “attempted political power grab” and then promise to remain committed to the important work of reform. See George Gascón (@GeorgeGascon), TWITTER (Aug. 15, 2022, 5:57 PM), <https://twitter.com/GeorgeGascon/status/1559298298053177344>; ABC7.com staff, *Gascón Recall Effort Fails to Collect Enough Valid Signatures to Make Ballot, County Says*, ABC7 NEWS (Aug. 15, 2022), <https://abc7.com/george-gascon-recall-los-angeles-district-attorney-da-signatures/12128228/>. This response opened the door for his detractors to emphasize that at least a half-million voters had signed the recall petition. See ABC7.com staff, *supra* note 118.