Received: 2 September 2021 | Accepted: 26 July 2022

DOI: 10.1111/lcrp.12226

the british psychological society
promoting excellence in psychology

FEATURE ARTICLE

Prosecuting from the bench? Examining sources of pro-prosecution bias in judges

Colleen M. Berryessa[1] | **Itiel E. Dror**[2] | **Chief Justice Bridget McCormack**[3]

[1]School of Criminal Justice, Rutgers University, Newark, New Jersey, USA

[2]University College London, London, UK

[3]Michigan Supreme Court, Lansing, Michigan, USA

Correspondence
Colleen M. Berryessa, School of Criminal Justice, Rutgers University, 123 Washington Street, Newark, NJ 07102, USA.
Email: colleen.berryessa@rutgers.edu

Abstract

Although judges may be well intended when taking an oath to be impartial when they reach the bench, psychological and legal literature suggests that their legal approaches, behaviour, and decision-making processes are subconsciously impacted by biases stemming from and influenced by their attitudes, ideology, backgrounds, and previous experiences. Drawing from prior models of sources of bias in legal contexts and existing literature on judges, this paper discusses and models potential sources of pro-prosecution bias in judges with prosecutorial backgrounds. These include (1) professional and self-selection into the judiciary; (2) prosecutorial socialization and attitudes that can shape a prosecutorial mindset; and (3) the effects of common unconscious biases, *confirmation bias* and *role induced bias,* that may shape judicial behaviour through formed beliefs and approaches stemming from the prosecutorial mindset and selection into the judiciary. As the vast majority of judges are former prosecutors in the U.S. as well as in many other countries, this paper considers possible ways to deal with pro-prosecution bias and the potential importance of diversifying judges' professional backgrounds.

KEYWORDS
attitudes, bias, cognitive, judges, prosecution

INTRODUCTION

In the last decade, there have been growing discussions in the U.S. and internationally about the importance of increasing judicial diversity, predominantly focused on increasing representation related to race and gender (Arrington, 2020; Breger, 2018; Hernandez & Navarro, 2018; Johnson, 2017; Sen, 2017; Slotnick et al., 2017; Thurston, 2019). However, less attention has been paid to professional diversity. Notably, Justice Ketanji Brown Jackson has become the Supreme Court's first justice who has previously worked as a public defender, a rarity in judicial backgrounds (Berman, 2022). Although appointments like Justice Jackson's are an important step, a huge disparity in previous professional backgrounds continues to exist in the judiciary (Buchanan, 2020; Neily, 2019).

Data suggest that judges are much more likely to be former prosecutors than defence attorneys (Alliance for Justice, 2016; Iuliano & Stewart, 2016; McMillion, 2014), with four times as many former prosecutors on the U.S. federal bench (Neily, 2019). Since 1970, over three times as many U.S. Supreme Court justices have worked as prosecutors, as compared to defenders (Crespo, 2015; Epps & Ortman, 2020). Although more data are known federally, state trends suggest similar disparities in judicial backgrounds (Acquaviva & Castiglione, 2009; Neily, 2019; Tolan, 2018). Furthermore, this pattern appears typical of the judiciary internationally, including in the U.K. (Murphy, 2020), Canada (Lyon & Sossin, 2014), Australia (Opeskin, 2020), and parts of Europe (Di Federico, 2005).

This lack of professional diversity has garnered criticisms from legal scholars and practitioners about its potential impact on public confidence in the legitimacy of courts (Graham, 2004; Shepherd, 2021; Williams, 2004). The structure and foundation of Anglo-American criminal-legal systems are "defence-oriented," in which the accused are afforded sets of fundamental rights, representation, presumed innocent until proven otherwise, and the burden of proof is placed solely on the government (Smith, 2003). Yet if the judiciary is overwhelmingly made up of individuals who have only ever advocated for the prosecution, public confidence in the system may be questioned (Root et al., 2019). Furthermore, the system's reliance on prosecutors-turned-judges has implications for defendants, case outcomes, and the development of precedent that shapes future practice of law (Shepherd, 2021). Thus, lack of judicial professional diversity also can affect the application of law in real people's lives.

Iuliano and Stewart (2016) argue that professional diversity is key to long-lasting, "deep-level" diversity which enriches and expands judicial decision-making processes by not only varying attributes, but also attitudes, values, and experiences. Neily (2019) argues that although judges may take an oath to be impartial, their legal approaches, behaviour, and decision-making may be subconsciously limited by their previous professional backgrounds. If certain perspectives and backgrounds dominate judging, this may lead to legal doctrine and precedent that is biased toward the prosecution (a "pro-prosecution bias"), which can have repercussions for case outcomes and public faith in the criminal-legal system (Root et al., 2019; Swisher, 2010). Given these concerns, it is unsurprising that some scholarship suggests that judges with prosecutorial backgrounds can exhibit pro-prosecution bias in trial decision-making, including in decisions of guilt, sentencing, evidentiary, and procedural rulings (Davis, 2007; Gray, 2016; Kronick, 2020; Neily, 2019; Oliva & Beety, 2017; Smith, 2003, 2017; Truesdale, 2016; Uphoff, 2006).

Empirical studies on the issue, however, are sparse and limited in scope to specific courts, case types, or case outcomes. Nagel (1962), examining U.S. federal and state rulings on criminal law and procedure, found former prosecutors were 15% more likely to rule against the defence. Tate (1981) and Tate and Handberg (1991) found that U.S. Supreme Court justices with prosecutorial backgrounds from the early-to-late 20th century were significantly more likely to rule in favour of the prosecution in financial and civil liberties cases. Shepherd (2021), using U.S. District Court data, found judges with prosecutorial backgrounds were less likely to decide employment cases in favour of claimants. Robinson (2011) found no relationship between prosecutorial background and judges' final rulings in criminal cases, but that study was only limited to the U.S. Supreme Court and Court of Appeals. Robinson (2011) acknowledges that results may not extend to state judges, other federal judges, or other legal decisions or behaviours.

Furthermore, judges with prosecutorial backgrounds might exhibit pro-prosecution bias in their legal approaches. Literature suggests that judges with prosecutorial backgrounds may be more likely to

rely on existing guidelines, narrow legal interpretations, precedent, and defer to prosecutors' recommendations that likely use similar approaches, as compared to judges with defence backgrounds (Fox & Van Sickel, 2000; Spohn, 1990; Steffensmeier & Hebert, 1999). For example, a study of U.S. District Court rulings on the constitutionality of federal sentencing guidelines found that judges with prosecutorial backgrounds were significantly less likely to rule against guidelines, as compared to judges with defence backgrounds (Cohen, 1991). Similarly, federal judges, who are much more likely to be former prosecutors, have shown significant hesitation to diverge from sentencing precedent in order to conform to 18 U.S.C. § 3553(a)(6) that "avoid[s] unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" (Ponzetto & Fernandez, 2008). As opinions affirming pro-prosecution sentencing decisions constitute almost all binding precedent, judges essentially defer to the prosecution when deferring to precedent in federal sentencing (Truesdale, 2016).

SOURCES OF PRO-PROSECUTION BIAS IN JUDGES WITH PROSECUTORIAL BACKGROUNDS

The idea that judges, like all humans, can show biases because of prior life experiences is now well-established in research (Harris & Sen, 2019; Wistrich & Rachlinski, 2017). Even so, there has been a lack of theoretical models that examine psychological and social factors that may help to explain how particular judicial biases, such as pro-prosecution bias, arise. Although *attitudinal models* and *social background models* of judicial decision-making have been widely studied (Harris & Sen, 2019), they most often examine if and how specific judicial demographics (i.e., gender, age, political ideology) predict or explain variation in decision-related outcomes, such as voting patterns (Rachlinski & Wistrich, 2017). Such models, although helping to explain differences in case outcomes, do not necessarily focus on examining varying *sources* of biases, as well as how and why they may influence a range of legal behaviours, approaches, and rulings.

Although not yet applied to judges, literature has previously modelled sources of bias in other legal contexts and by a variety of expert decision-makers. This literature has presented models to show psychological and social sources of bias as stemming from case-specific factors, as well as structural- and individual-level factors: personal and background factors (i.e., education, professional training, pre-existing values), organizational factors (i.e., nature and structure of the criminal-legal system), and commonly exhibited biases that stem from and are shaped by one's background, experiences, and attitudes (Dror, 2018, 2020; Dror et al., 2021).

Although such models have been mainly applied to experts in legal contexts, its framework might also extend to judges (Dror, 2020; Murrie et al., 2013). Biases are not only a universal human phenomenon (Kahneman et al., 2021), but judges and experts likely share similar sources of bias. Both actively participate in the legal process, their work is set in the same criminal-legal system, and they may even be participants in the same case (Vidmar, 2005). Although the nature and specific sources of biases may differ due to their roles and duties, sources of judicial biases, like experts, likely stem from a combination of similar case-specific, structural-, and individual-level factors (Harris & Sen, 2019; Wistrich & Rachlinski, 2017).

To date, no literature has examined potential sources of pro-prosecution bias and how it may develop. Yet, given data on professional backgrounds of the judiciary, examining potential sources of pro-prosecution bias influenced by previous prosecutorial backgrounds can help to support calls for diversifying judicial backgrounds and formulate strategies to minimize its effects (Neily, 2019). Of course, judges with defence backgrounds may also exhibit a "pro-defence bias" and literature by no means suggests that they are immune from or not influenced by similar sources of bias based on their own backgrounds. Indeed, diversifying judiciary backgrounds may contribute to minimizing overall bias in the criminal-legal system, but may not minimize biases for specific judges or in specific cases. However, given the overrepresentation of prosecutorial backgrounds, this paper focuses on examining sources of bias that could stem from this most common judicial professional background.

Drawing from prior models on sources of biases in legal decision-making and existing literature on judges, this paper presents a theoretical model of psychological and social sources of pro-prosecution bias in judges with prosecutorial backgrounds. These include (1) professional and self-selection into the judiciary; (2) prosecutorial socialization and preexisting attitudes that can shape a prosecutorial mindset; and (3) the effects of common unconscious biases, *confirmation bias* and *role induced bias*, that may shape judicial behaviour through formed beliefs and approaches stemming from the prosecutorial mindset and selection into the judiciary. Although case-specific factors likely also bear on the exhibition pro-prosecution bias, this model specifically focuses on potential individual- and structural-level sources of bias that may be more broadly applicable to understanding the development and exhibition of pro-prosecution bias in judges with prosecutorial backgrounds. As with existing models, Figure 1 and the discussion here illustrate how these sources of bias likely interact with and "snowball" off each other to perpetuate pro-prosecution bias on the bench.

A prosecutorial mindset

For judges who have previous prosecutorial backgrounds, literature suggests that particular aspects of prosecutorial attitudes and training might lead to a prosecutorial mindset that can later lead to biases that influence their approaches as judges on the bench. Psychological literature has considered more general attitudes about norm violations as key to understanding a "prosecutorial model" of thinking about detecting and punishing offending behaviour (Goldberg et al., 1999). "Intuitive prosecutors" are focused on safeguarding their lives, safety, and their communities through a set of core norms: first, they dedicate their thoughts to detecting and understanding norm violators; then, after identifying norm violators, they use their energies and actions, via existing socio-legal structures, to adequately punish their violations (Singh & Rai, 2021; Tetlock et al., 2007). According to these models, these intuitive attitudes only wane when norm violators are proportionately punished (Goldberg et al., 1999).

Drawing from these and similar beliefs, prosecutors may consider themselves "crime fighters" whose primary objective is to protect society by getting defendants convicted (Lidén et al., 2019). Later, as judges, these values may extend to the bench via the widely-supported *attitudinal model* of judicial-decision-making, in which judges are thought to approach and decide cases in light of their beliefs and values as juxtaposed against the structural environment and specific facts of the case they are weighing

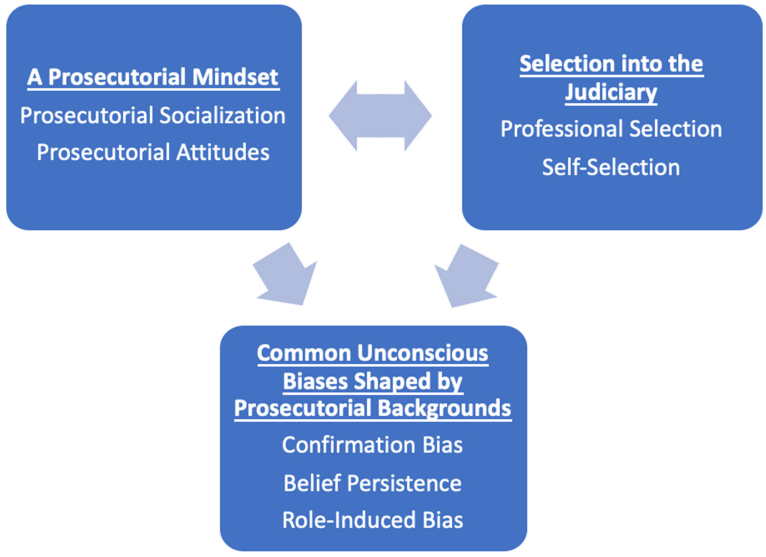

FIGURE 1 Theoretical model of potential sources of pro-prosecution bias in judges with prosecutorial backgrounds

(Segal & Spaeth, 2002). Along with pressures put on them by the job, these attitudes could limit prosecutors' cognitive flexibility in legal approaches and decision-making, during their time as prosecutors and then later as judges (O'Brien, 2009).

Training as a prosecutor might also shape attitudes toward the legal process through a process called *professional socialization*, which then may later affect their approaches and philosophies on the bench. Professional socialization involves the acquiring of values from "ongoing social systems" while a person is formally trained to perform a specific job (Carp & Wheeler, 1972). For prosecutors, *prosecutorial socialization* occurs while being trained and acting as prosecutors (Robinson, 2011). This socialization may lead them to adopt specific schemas about and approaches toward legal contexts, such as distinct views about constitutional protections, precedent, and law's flexibility and limits, which in turn could shape later judicial behaviour and decision-making (Segal & Spaeth, 2002). Bright and Keenan (1995) describe this as prosecuting from the bench.

For example, prosecutors only press charges if they are sufficiently certain that the case is likely to be "winnable," and therefore, at the prospects of a suspect's guilt and conviction; however, based on these expectations, prosecutors are trained to selectively identify and assess evidence in ways that are partial to a suspect's guilt (Bergman Blix & Wettergren, 2016). This *guilt-confirming hypothesis* may lead prosecutors, and later judges, to subconsciously prefer or put weight on evidence that is guilt-confirming, rather than guilt-refuting (Lidén et al., 2019).

Furthermore, not having particular experiences as prosecutors may also contribute to their socialization and later extend to the bench. Harris and Sen (2022) suggest that judges who have been defenders likely have more knowledge about how sanctions can impact defendants' lives, based on interactions with their previous clients, as compared to those that are former prosecutors. Indeed, Justice Jackson stated that her defender background has helped to remind her on the bench that "every person who is accused of criminal conduct by the government, regardless of wealth and despite the nature of the accusations, is entitled to the assistance of counsel" (Cineas, 2022). This could imply that developing this knowledge, or considering potential impacts of sanctions on defendants, may be less apparent to judges with prosecutorial backgrounds (Harris & Sen, 2022).

Interestingly, some scholars have speculated that effects of prosecutorial socialization might be mitigated with judicial experience, and more and more time, on the bench (Carp & Wheeler, 1972; Goldberg, 1984; Tate, 1981; Tate & Handberg, 1991). However, Robinson (2011) found that time on the bench did not affect whether Circuit Court judges with prosecutorial backgrounds sided with the government in their rulings. Furthermore, as the majority of judges are former prosecutors, one's judicial peers may be like-minded; as such, judicial socialization could look somewhat like prosecutorial socialization, suggesting effects of prosecutorial training may potentially last far into judges' careers (Goldberg, 1984).

Selection into the judiciary

Literature suggests that selection into the judiciary as a profession may bias judges toward prosecutorial approaches in two main ways: professional selection through systems of judicial elections and appointments, and self-selection into prosecutorial, and later, judicial roles. First, whether selected by election or appointment, professional systems of judicial selection too often place pressure on judges to be "tough-on-crime" and adopt "pro-prosecution pledges" to become judges in the first place (Swisher, 2010). For judges who have been trained to be prosecutors, "pro-prosecution pledges" may be an extension and confirmation of prosecutorial training into their judicial philosophies and practice.

"Tough-on-crime" conveys a punitive stance toward defendants to ensure public safety by "locking away" criminals (Swisher, 2010). Empirical data have particularly focused on how judicial elections incentivize judges to appear "tough-on-crime" (Bright & Keenan, 1995; Gordon & Huber, 2007). Nearly 90% of U.S. state court judges face election, in which "tough-on-crime" messages have been found to be the most prevalent messages in ads, speeches, and platforms in state judicial campaigns

(Brandenburg & Schotland, 2008; Sample et al., 2010). One study found that crime control, "cracking down" on criminals, and law enforcement partnerships were the most frequent themes in campaign advertisements during judicial elections (Champagne, 2001).

Champagne (2001) also found that judicial candidates battle to highlight "tough-on-crime" attitudes by explicitly mentioning their prosecutorial backgrounds or preference in campaign rhetoric. Swisher (2010) describes these as "pro-prosecution pledges." For example, Judge McMillan, a county judge in Florida, made campaign remarks that he would "always have the heart of a prosecutor" (In re McMillan, 797 So. 2d p.560, 2001). Similarly, Judge Keller of the Texas Court of Criminal Appeals stated that she was a "prosecution-oriented person" and would see "legal issues from the perspective of the state instead of the perspective of the defense" (Nichols, 1994, p. 45A).

Judges are thought to convey "pro-prosecution pledges" because they believe voters will respond positively to this stance (Swisher, 2010). Media-related research suggests that the public is primed to support harsh criminal-legal responses to crime because of the ways in and extent to which the media covers it (Feld, 2003). For example, the amount of media coverage on violent crime creates an availability heuristic that leads the public to believe that criminals are much more of a pressing societal issue than statistics show (Weiss, 2006). Furthermore, media focus on perpetrators, rather than contexts of criminality, also leads to public support for perpetrator-oriented, rather than more societal-level, responses to crime (Brace & Boyea, 2008).

Although judges often initially run on "tough-on-crime" campaigns, success in re-election may also require them to adopt these stances (Shepherd, 2009). Empirical studies suggest that electoral pressures can lead judges to adopt "a pro-prosecution tilt that translates into judicial acts, such as bail rulings, verdicts, sentences, and even evidentiary rulings" (Swisher, 2010, p. 352). Indeed, state judges often increase sentencing punitiveness leading up to re-election (Baum, 2012; Craig et al., 2008). Huber and Gordon (2004) found 20,000 defendants were cumulatively sentenced to 2000+ years of additional incarceration the year before an election because of a "judicial election effect" in order to appear "tough-on-crime."

Similar situations arise in jurisdictions that appoint judges. Although appointed judges do not directly answer to voters, they at least initially answer to the appointing authority, such as a governor, legislature, or president (Swisher, 2010). If judges believe that appointing authorities are more sympathetic to "tough-on-crime" stances, whether because of a jurisdiction's political leaning or crime rates, they may be more likely to adopt similar stances and legal approaches (Pinello, 1995). For example, studies suggest that federal judges appointed by Republican presidents show more conservative or "pro-prosecution" voting patterns in their rulings (Craig et al., 2008; Lindquist et al., 2007; Maltzman et al., 2000).

Furthermore, data on appointees' backgrounds show that the most typical route for those with judicial ambitions is via a prosecutor's office (Bright & Keenan, 1995), and defence backgrounds have even been considered a liability (Smith, 2003). Judicial nominees may face the risk of being labelled "soft-on-crime" when they have defence experience, which can significantly affect their likelihood of being appointed (Baum, 2012). Indeed, individuals who are positioning themselves to be appointed may adopt certain approaches, rhetoric, or professional backgrounds in order to "fulfil expectations" of what they believe will make them a more attractive choice (Swisher, 2010).

Second, as per self-selection, there has been discussion that individuals who are attracted to becoming prosecutors, and later judges, may already be inclined toward more conservative stances on criminal justice issues in the first place. Although prosecutors come from both political parties, the field may be less likely to attract individuals who possess more liberal stances on legal issues specifically (Heise, 2002). This might lead to a self-selection effect in which those who enter into a prosecutorial career, and later into judgeships, are inherently more conservative in their applications of the law (Robinson, 2011). Furthermore, after self-selecting into the profession, prosecutorial training may further instill and reinforce these stances, which later are then exacerbated during professional selection to the judiciary (Heise, 2002). For judges who have served as prosecutors, being "tough-on-crime" during judicial selection might not only help confirm and solidify their training instilled during their time as prosecutors,

but also confirm their existing stances toward legal issues once on the bench (Swisher, 2010). Although no empirical work has tested the influence of self-selection on later judicial rulings by former prosecutors, anecdotal evidence suggests that it may at least contribute to pro-prosecution bias (Anderson & Stair, 2018; Dharmapala et al., 2016; Engel & Zhurakhovska, 2017; Ramseyer & Rasmusen, 2007).

Ultimately, although professional and self-selection may set the stage for translating stances into later judicial behaviour and decisions, it is still possible that those who adopt or express "pro-prosecution pledges" may still readjust their approaches once they take the bench (Goldberg et al., 2006). However, the fact that "pro-prosecution pledges" and conservative stances to criminal justice issues are often an expected norm to be elected or appointed may affirm that these approaches are favoured or "correct" approaches, giving former prosecutors who enter the judiciary little incentive to reevaluate their own, or consider other, legal approaches (Smith, 2003). This suggests that systems of judicial selection and initial self-selection into prosecutorial roles likely reinforce each other into influencing later judicial behaviour; furthermore, once appointed as a judge, continuing and supporting such stances may be viewed as a way of opening the door to promotion to higher courts (Robinson, 2011).

Common unconscious biases shaped by prosecutorial backgrounds

Judges fall prey to similar forms of biases that impact all of us, including experts, with their preexisting attitudes and experiences likely key in shaping them (Banaji & Greenwald, 2016; Wistrich & Rachlinski, 2017). Particularly, judges with prosecutorial backgrounds may be subconsciously biased by relying on their already formed attitudes and approaches, while also rendering them less able to consider defence approaches to legal issues (Kronick, 2020). This suggests that prosecutors-turned-judges might exhibit common unconscious biases that intersect with and stem from their prosecutorial backgrounds and mindset (built via preexisting attitudes and socialization), and then reaffirmed and even strengthened during selection into the judiciary. We discuss two of these potential biases here.

First, judges who have self-selected into and trained in prosecutorial roles may enter the bench with bias that implicitly confirms that prosecutorial legal approaches are the most appropriate and accurate methods of interpreting law (Kronick, 2020). This may demonstrate a type of prosecutors-turned-judge *confirmation bias*, which is a common phenomenon in which people tend to interpret, process, and favour information in decision-making that confirms or supports prior beliefs, attitudes, or values (Nickerson, 1998). Interestingly, an empirical study by Lidén et al. (2019) found that prosecutors showed a *confirmation bias* that helped to enforce their *guilt-confirming hypothesis*, suggesting that prosecutorial attitudes and training lend to the exhibition of confirmation bias in their decision-making.

Such biases may later extend to the bench as well. In a study of 727 jury trial appeals in Santa Clara County, a group of legal experts identified over 100 instances in which appellate courts found trial judges erred in ways that helped the prosecution (Tulsky, 2007). Although it is unknown if this study controlled for strength of evidence, almost 100 appeals were identified in which trial judges allowed prosecutors to introduce questionable or improper evidence that raised concerns from appellate judges, or failed to give the jury proper direction on the law in ways that either confirmed prosecutorial arguments or weakened the defence's views of the case (Tulsky, 2007). Tulsky (2007) suggests that results may show that judges can be subconsciously less likely to "check the conduct [or arguments] of prosecutors," even if questionable, because they trust and share an inherent predisposition to favouring, and confirming, similar legal approaches on the bench, potentially due to their preexisting values and prosecutorial training. Similarly, Ulmer and Johnson (2017) found that judges, due to limited time and uncertainty in decision-making, may cognitively conform their legal approaches to those that stem from their own previous professional backgrounds or experiences.

Furthermore, confirmation bias can also manifest *belief persistence*, in so that it can be very difficult for people to change or influence their beliefs once formed, even in the face of strong countervailing evidence (Davies, 1997). Particularly, belief persistence can bias the evaluation and interpretation of information that conflicts with preformed beliefs, marking it as questionable or irrelevant to decision-making

even in instances in which it may be important (Ross & Anderson, 1982). This suggests that the defence could face some difficulties in introducing particular evidence or arguments into proceedings involving judges with prosecutorial backgrounds, who might disregard or restrict them as irrelevant (Smith, 2003, 2017). Indeed, in the study of Santa Clara jury trial appeals, appellate justices identified almost 50 cases in which they believed trial judges erroneously restricted the defence from introducing evidence as irrelevant; importantly, this pattern of restricting evidence was not observed for the prosecution (Tulsky, 2007).

Second, judges' prior training and service in prosecutorial roles within an adversarial system may lead to pro-prosecution bias. Psychological research has demonstrated that people's judgements of a given situation can be subconsciously influenced and biased by their own role they play in it, as compared to a competing side; this is known as *role-induced bias* (Simon et al., 2004). Particularly, experimental work using research designs structured as the adversarial criminal-legal system has shown that assigning people to act as either the prosecution or defence, even randomly, triggers skewed judgements, behaviours, and systematic discounting of competing evidence/arguments in favour of one's own, and against the views of the competing, side (Anthonioz et al., 2019; Engel & Glöckner, 2013; Melnikoff & Strohminger, 2020; Simon et al., 2020).

The adversarial trial structure, in which two competing sides argue a case decided by a supposedly impartial decision-maker, theoretically attempts to neutralize bias by maximizing truth-finding and protection from potential governmental oppression, which should lead to fairer decisions (Goodpaster, 1987). Yet Engel and Glöckner (2013) found that role-induced bias stemming from one's role in an adversarial situation can be difficult to overcome. Thus, if judges have spent significant time acting in prosecutorial roles, this suggests that their judgements, behaviours, and synthesis of a case's evidence, even if positioned and required to be impartial decision-makers, are likely still subconsciously influenced by role-induced bias stemming from years in this role. Indeed, role-induced bias, via the "adversarial mindset," can lead to conflict escalation akin to inter-group conflict, which can lead to subconscious behaviours that show favour toward one's preferred role (Simon et al., 2020). Schmid and Fiedler (1998) found that assigning lawyers-in-training as prosecutors led them to subconsciously identify and show in-group favouritism toward members of the prosecution, while also potentially simultaneously triggering out-group bias against the defence.

CONCLUSIONS AND WAYS FORWARD

This paper and larger literature suggest that the decision-making of judges with prosecutorial backgrounds may be subconsciously impacted by psycho-social sources of pro-prosecution bias. Sources of pro-prosecution bias discussed here are by no means an exhaustive list, and there may be other sources. We encourage scholars to examine other sources of pro-prosecution bias, integrate them into the model, and empirically test it using different research designs and judicial samples. Yet this model has important implications for both the public's confidence in the criminal-legal system and treatment of defendants who are processed by it at different court levels.

As there is so little professional diversity on the bench, concerns about public scepticism regarding courts' fairness and credibility appear to be well-founded. The public has progressively seen courts as unfair, especially to underrepresented groups, and to favour governmental interests over public good (Torres-Spelliscy et al., 2008). Furthermore, as noted, the outward public image and expectation has become that judges are advocates for the prosecution (Swisher, 2010). This image is the antithesis of impartiality and exacerbates the potential for it to be viewed as unjust and illegitimate (Root et al., 2019).

Justice Jackson herself stated in Senate hearings that professional diversity like hers is important to the Supreme Court because "it lends and bolsters public confidence in our system" (Mayeux, 2022), as well as increases chances that judges will more wholly consider how their decisions can impact defendants (Root et al., 2019; Shepherd, 2021). Indeed, diversifying the judiciary can bring new epistemic perspectives (Dror, 2022). Defence experience, for example, may help judges practice empathy toward and

perspective-taking with defendants (Harris & Sen, 2022). If defence representation can help to increase "deep-level" judicial diversity to help restore public confidence in the legal process and more deliberate treatment of defendants (Iuliano & Stewart, 2016), former defenders, like Justice Jackson, should be encouraged to bring their backgrounds and perspectives to the bench alongside those from prosecutorial backgrounds. Root et al. (2019, p.37) states, "although [defense] career paths have historically not been pathways to [judgeships], they certainly should be."

Furthermore, professional diversity has also been known to improve the heterogeneity and culture of organizations by increasing the weight that different voices and perspectives have in the interpersonal dynamics of group decision-making (King & Gilrane, 2015). For judges, increased representation of defence perspectives on the bench can be especially important to expanding their voices in the interpersonal dynamics of judicial panels that commonly rule at several levels of federal and state courts. Perspectives utilized in prior legal experience inevitably "exert some influence on a judge's determination of which legal arguments are compelling, convincing, credible, and reasonable" (Shepherd, 2021). As panels include multiple judges that collaborate to decide cases, having multiple perspectives represented, including those with defence backgrounds, may allow judges to learn from each other and lead to more balanced legal approaches, even when such perspectives may not affect majority opinions. Indeed, dissents can be "extremely important because they're a reminder to the public and…court that there's an alternative approach" (Booker, 2022). Thus, expanding professional diversity on the bench may lead to more balanced, socio-cultural perspectives on the law, precedent, and legal philosophy (Gertner, 2021). By doing so, pro-prosecution bias may become less pervasive, and defence backgrounds may be less of a liability for potential judges.

However, this by no means suggests that balancing pro-prosecution bias with pro-defence bias is a solution. The importance of minimizing bias is well recognized by judicial ethics codes that require impartiality and open-mindedness (Geyh et al., 2021). To move forward, judges must first acknowledge that previous professional backgrounds can subconsciously bias legal approaches and decisions, and hence, could attend trainings to make them aware of this. Such trainings should not be only about bias awareness, but also focus on more practical, proven ways of mitigating it on the bench. For example, trainings that involve formal observation and feedback have been known to promote shifts in the organizational culture of trial courts (Findley, 2011; Ostrom et al., 2007). This may be especially helpful for judges, as they rarely receive formal feedback to enable professional development (Kessler, 2009). Although trainings of this type have not yet been applied to judges, one strategy that has been known to successfully combat implicit bias in workplace settings, called *prejudice habit-breaking*, teaches individuals about bias, how it is measured, and how it can influence particular behaviours or harm certain individuals in the workplace (Devine et al., 2012). After being exposed to this information, participants take the Implicit Association Test (IAT) and may be observed in their workplace setting, followed by feedback on their results of the IAT and observations of their own personal biases. This is followed by trainings on how to overcome their personal biases through a combination of strategies, such as how to perspective take with others or consider alternative viewpoints in work interactions, reflect on counter-stereotypical information, and increase experiences or interactions that may help to reduce later biased behaviour. Specifically, individuals are asked to think about and connect strategies to how they can utilize and practice them in their own work lives to reinforce such habits (Devine et al., 2012). Thus, one could imagine how similar bias-reducing trainings could involve these practices and systematically observing judges for potential pro-prosecution bias, followed by feedback for them to better evaluate their own performances and potential bias-reducing strategies.

However, even experts can be blind to their biases and believe that bias training may be relevant to others in their field, but not necessarily them ("bias blind spot") (Pronin et al., 2002). Fix (2020) found that bias training can significantly reduce implicit bias for justice professionals, but effects largely rest on individuals being receptive to training. Thus, these strategies still require judges to be receptive to and reflect on how their performances may be influenced by previous professional backgrounds. As such, other bias-reducing strategies could be more effective for judges who are less receptive to more reflective techniques. Structural interventions, like behavioural nudges, could

bypass conscious reflection as "bias interrupters" that could alter behaviour and decision-making with little effort (Sunstein, 2015). For example, bench cards and information that may bear on decision-making have been theorized as nudges to influence judicial behaviour at different stages (Marder & Pina-Sánchez, 2020). England and Wales include explicit lists of mitigating and aggravating factors on bench cards as written reminders for judges to consider them alongside available guidelines during sentencing proceedings; this has been thought to explain the recent increased use of these factors in sentencing (Roberts et al., 2018). Aharoni et al. (2022) found that when judges were nudged to consider costs in their sentencing rulings (by reading explicit information about costs of incarceration), they were more likely to consider shorter and alternatives to incarceration. Similar interventions could be used to disrupt pro-prosecution bias, such as making bench cards about the availability and benefits of various legal approaches, or those that may be considered beneficial or biased to the prosecution, offered or required for judges to read alongside guidelines and case materials used at different criminal-legal stages.

Furthermore, people who share backgrounds are likely in the best position to change others' biased behaviours. One study showed that White participants' more strongly rejected the exhibition of racially prejudicial statements when they were also rejected by another White, as compared to a non-White, participant (Czopp et al., 2006). This suggests that if judges with prosecutorial backgrounds are willing to discuss or "reject" their own reliance on or bias toward prosecutorial approaches, this could help affect perspectives of other judges with similar professional backgrounds. Indeed, seminars that allow reform-minded judges to speak to their peers and colleagues about common types of, as well as their own personal, pro-prosecution bias could help start these types of conversations in different jurisdictions.

The above suggestions for improvement may be considered minor evolutionary' steps within existing systems, with their ability to make real changes potentially still questionable as more symbolic gestures. Hence, perhaps more 'revolutionary' steps are required, involving changes to the system itself. For example, appointment of judges could be neither by pubic elections nor political appointment, but rather by professional bodies with knowledge on the types of credentials, backgrounds or experiences that may contribute to judges being more well-rounded in their legal approaches. Yet, although revolutionary steps may be more effective in achieving change, they are also less likely to occur.

An evolutionary step that may be most beneficial, however, is to mandate prosecutors and defence lawyers alike, to both have diverse experiences while practicing law in general, and especially before being appointed as judges. Having both backgrounds as a pre-requisite for judicial appointment could go a long way in minimizing sources of biases like those discussed here. Of course it is difficult to separate life experience from one's judicial role. Judges should not be required to deny past experiences that shape their judgements, with their professional backgrounds actually key to their development of expertise into "extraordinary legal thinkers" (Gertner, 2021). Yet, if judges do not have appropriate insight or experience to realize other legal perspectives because they only have appreciation for those garnered from a narrow, one-sided set of experiences, this could very well lead to bias and difficulty in considering other approaches. Therefore, if lawyers are encouraged (if not required) to have more diverse experiences in their careers, this may mitigate the development of one-sided biases associated with either professional background and expand their views on the law, precedent, and legal philosophy.

AUTHOR CONTRIBUTIONS

Colleen M Berryessa: Conceptualization; investigation; writing – original draft; writing – review and editing. **Itiel E. Dror:** Supervision; writing – review and editing. **Bridget McCormack:** Supervision; writing – review and editing.

CONFLICT OF INTEREST

All authors declare no conflict of interest.

DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article as no new data were created or analysed in this study.

ORCID

Colleen M. Berryessa https://orcid.org/0000-0003-1670-7484

REFERENCES

Acquaviva, G. L., & Castiglione, J. D. (2009). Judicial diversity on state supreme courts. *Seton Hall Law Review*, *39*, 1203.

Aharoni, E., Kleider-Offutt, H. M., Brosnan, S. F., & Hoffman, M. B. (2022). Nudges for judges: An experiment on the effect of making sentencing costs explicit. *Frontiers in Psychology*, 13.

Alliance for Justice. (2016). *Broadening the bench: Professional diversity and judicial nominations*. Alliance for Justice.

Anderson, W. L., & Stair, A. G. (2018). Protected lying: How the legal doctrine of "absolute immunity" has created a "lemons problem" in American criminal courts. *The Quarterly Journal of Austrian Economics*, *21*(1), 22–51.

Anthonioz, N. E., Schweizer, M., Vuille, J., & Kuhn, A. (2019). Role-induced bias in criminal prosecutions. *European Journal of Criminology*, *16*(4), 452–465.

Arrington, N. B. (2020). Group selection and opportunities for gender diversity in the judiciary. *Representations*, *56*(2), 149–171.

Banaji, M. R., & Greenwald, A. G. (2016). *Blindspot: Hidden biases of good people*. Bantam.

Baum, L. (2012). *American courts: Process and policy* (7th ed.). Cengage Learning.

Bergman Blix, S., & Wettergren, Å. (2016). A sociological perspective on emotions in the judiciary. *Emotion Review*, *8*(1), 32–37.

Berman, D. A. (2022). Might structural changes be the next step for Federal Sentencing Reform?*Federal Sentencing Reporter*, *34*(4), 213–215.

Booker, B. (2022). *What Justice Ketanji Brown Jackson means for the country*. Politico. https://www.politico.com/news/2022/04/07/ketanji-brown-jacksonsupreme-court-impact-0002396

Brace, P., & Boyea, B. D. (2008). State public opinion, the death penalty, and the practice of electing judges. *American Journal of Political Science*, *52*(2), 360–372.

Brandenburg, B., & Schotland, R. A. (2008). Justice in peril: The endangered balance between impartial courts and judicial election campaigns. *Georgetown Journal of Legal Ethics*, *21*, 1229.

Breger, M. L. (2018). Making the invisible visible: Exploring implicit bias, judicial diversity, and the bench trial. *University of Richmond Law Review*, *53*, 1039.

Bright, S. B., & Keenan, P. J. (1995). Judges and the politics of death: Deciding between the bill of rights and the next election in capital cases. *Boston University Law Review*, *75*, 759-836.

Buchanan, M. J. (2020, August 13). *Pipelines to power: Encouraging professional diversity on the Federal Appellate Bench*. American Progress. https://www.americanprogress.org/issues/courts/reports/2020/08/13/489312/pipelinespower-encouraging-professional-diversity-federal-appellate-bench/

Carp, R., & Wheeler, R. (1972). Sink or swim: The socialization of a federal district judge. *Journal of Public Law*, *21*, 359.

Champagne, A. (2001). Television ads in judicial campaigns. *Indian Law Review*, *35*, 669.

Cineas, F. (2022). *Why Ketanji Brown Jackson's time as a public defender matters*. Vox. https://www.vox.com/22979925/ketanji-brown-jackson-public-defender

Cohen, M. A. (1991). Explaining judicial behavior or What's" unconstitutional" about the sentencing commission?*Journal of Law, Economics, and Organization*, *7*(1), 183–199.

Craig, S. G., Ho, Y. C., & Satterlee, A. J. (2008). The demand for judicial sanctions: Voter information and the election of judges. *Economics of Governance*, *9*(3), 265–285.

Crespo, A. M. (2015). Regaining perspective: Constitutional criminal adjudication in the US supreme court. *Minnesota Law Review*, *100*, 1985.

Czopp, A. M., Monteith, M. J., & Mark, A. Y. (2006). Standing up for a change: Reducing bias through interpersonal confrontation. *Journal of Personality and Social Psychology*, *90*(5), 784–803.

Davies, M. F. (1997). Belief persistence after evidential discrediting: The impact of generated versus provided explanations on the likelihood of discredited outcomes. *Journal of Experimental Social Psychology*, *33*(6), 561–578.

Davis, A. J. (2007). *Arbitrary justice: The power of the American prosecutor*. Oxford University Press.

Devine, P. G., Forscher, P. S., Austin, A. J., & Cox, W. T. (2012). Long-term reduction in implicit race bias: A prejudice habit-breaking intervention. *Journal of Experimental Social Psychology*, *48*(6), 1267–1278.

Dharmapala, D., Garoupa, N., & McAdams, R. H. (2016). Punitive police? Agency costs, law enforcement, and criminal procedure. *The Journal of Legal Studies*, *45*(1), 105–141.

Di Federico, G. (2005). *Recruitment, professional evaluation and career of judges and prosecutors in Europe*. Istituto di ricerca sui sistemi giudiziari.

Dror, I. E. (2018). Biases in forensic experts. *Science*, *360*(6386), 243.

Dror, I. E. (2020). Cognitive and human factors in expert decision making: Six fallacies and the eight sources of bias. *Analytical Chemistry*, *92*(12), 7998–8004.

Dror, I. E., Melinek, J., Arden, J. L., Kukucka, J., Hawkins, S., Carter, J., & Atherton, D. S. (2021). Cognitive bias in forensic pathology decisions. *Journal of Forensic Sciences*, *66*(5), 1751–1757.

Dror, L. (2022). Is there an epistemic advantage to being oppressed?. *Noûs*, 1–23. https://doi.org/10.1111/nous.12424

Engel, C., & Glöckner, A. (2013). Role-induced bias in court: An experimental analysis. *Journal of Behavioral Decision Making*, *26*(3), 272–284.
Engel, C., & Zhurakhovska, L. (2017). You are in charge: Experimentally testing the motivating power of holding a judicial office. *The Journal of Legal Studies*, *46*(1), 1–50.
Epps, D. & Ortman, W. (2020, March 16). *One change that could make American criminal justice fairer*. The Atlantic. https://www.theatlantic.com/ideas/archive/2020/03/america-needs-defendergeneral/
Feld, B. C. (2003). The politics of race and juvenile justice: The "due process revolution" and the conservative reaction. *Justice Quarterly*, *20*(4), 765–800.
Findley, K. A. (2011). Adversarial inquisitions: Rethinking the search for the truth. *The New York Law School Law Review*, *56*, 911–941.
Fix, R. L. (2020). Justice is not blind: A preliminary evaluation of an implicit bias training for justice professionals. *Race and Social Problems*, *12*(4), 362–374.
Fox, R., & Van Sickel, R. (2000). Gender dynamics and judicial behavior in criminal trial courts: An exploratory study. *Justice System Journal*, *21*(3), 261–280.
Gertner, N. (2021). *Reimagining Judging*. The Square One Project.
Geyh, C. G., Alfini, J. J., & Sample, J. (2021). *Judicial conduct and ethics* (6th ed.). LexisNexis.
Goldberg, D., Sample, J., & Pozen, D. E. (2006). The best defense: Why elected courts should Lead recusal reform. *Washburn Law Journal*, *46*, 503-534.
Goldberg, J. H., Lerner, J. S., & Tetlock, P. E. (1999). Rage and reason: The psychology of the intuitive prosecutor. *European Journal of Social Psychology*, *29*(5–6), 781–795.
Goldberg, S. L. (1984). Judicial socialization: An empirical study. *Journal of Contemporary Law*, *11*, 423.
Goodpaster, G. (1987). On the theory of American adversary criminal trial. *The Journal of Criminal Law and Criminology*, *78*(1), 118–154.
Gordon, S. C., & Huber, G. (2007). The effect of electoral competitiveness on incumbent behavior. *Quarterly Journal of Political Science*, *2*(2), 107–138.
Graham, B. L. (2004). Toward an understanding of judicial diversity in American courts. *Michigan Journal of Race and Law*, *10*, 153.
Gray, C. (2016). So You're going to be a judge: Ethical issues for new judges. *Court Review*, *52*, 80.
Harris, A. P., & Sen, M. (2019). Bias and judging. *Annual Review of Political Science*, *22*, 241–259.
Harris, A. P., & Sen, M. (2022). *How Judges' professional experience impacts case outcomes: An examination of public defenders and criminal sentencing*. https://scholar.harvard.edu/files/msen/files/harris-sen-public-defenders.pdf
Heise, M. (2002). *The past, present, and future of empirical legal scholarship: Judicial decision making and the new empiricism*. U. Ill. L. Rev. (p. 819). Cornell Law Faculty Publications.
Hernandez, S. L., & Navarro, S. A. (Eds.). (2018). *Race, gender, sexuality, and the politics of the American judiciary*. Cambridge University Press.
Huber, G. A., & Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office?*American Journal of Political Science*, *48*(2), 247–263.
In re McMillan, 797 So. 2d 560 (Fla. 2001).
Iuliano, J., & Stewart, A. (2016). The new diversity crisis in the Federal Judiciary. *Tennessee Law Review*, *84*, 247.
Johnson, K. R. (2017). How political ideology undermines racial and gender diversity in Federal Judicial Selection: The Prospects for Judicial Diversity in the Trump Years. *Wisconsin Law Review*, 345.
Kahneman, D., Sibony, O., & Sunstein, C. R. (2021). *Noise: A flaw in human judgment*. Little Brown, Spark.
Kessler, D. K. (2009). The more you know: How 360-decree feedback could help Federal District Judges. *Rutgers Law Review*, *62*, 687.
King, E., & Gilrane, V. (2015). *Social science strategies for managing diversity: Industrial and organizational opportunities to enhance inclusion. SHRM-SIOP science of HR white paper series*. Society for Human Resource Management and Society for Industrial and Organizational Psychology.
Kronick, K. (2020). Forensic science and the judicial conformity problem. *Seton Hall Law Review*, *51*, 589.
Lidén, M., Gräns, M., & Juslin, P. (2019). From devil's advocate to crime fighter: Confirmation bias and debiasing techniques in prosecutorial decision-making. *Psychology Crime and Law*, *25*(5), 494–526.
Lindquist, S. A., Martinek, W. L., & Hettinger, V. A. (2007). Splitting the difference: Modeling appellate court decisions with mixed outcomes. *Law and Society Review*, *41*(2), 429–456.
Lyon, S., & Sossin, L. (2014). Data and diversity in the Canadian justice community. *Journal of Law and Equality*, *11*, 85.
Maltzman, F., Spriggs, J. F., & Wahlbeck, P. J. (2000). *Crafting law on the supreme court: The collegial game*. Cambridge University Press.
Marder, I. D., & Pina-Sánchez, J. (2020). Nudge the judge? Theorizing the interaction between heuristics, sentencing guidelines and sentence clustering. *Criminology and Criminal Justice*, *20*(4), 399–415.
Mayeux, S. (2022). *And a public defender for all*. Inquest. https://inquest.org/and-a-public-defender-for-all/
McMillion, B. J. (2014). *US circuit and district court judges: Profile of select characteristics*. Congressional Research Service.
Melnikoff, D. E., & Strohminger, N. (2020). The automatic influence of advocacy on lawyers and novices. *Nature Human Behaviour*, *4*(12), 1258–1264.

Murphy, S. (2020, January 29). *White men still dominate judiciary, says justice report*. The Guardian. https://www.theguardian.com/law/2020/jan/29/white-men-still-dominate-judiciary-says-justice-report
Murrie, D. C., Boccaccini, M. T., Guarnera, L. A., & Rufino, K. A. (2013). Are forensic experts biased by the side that retained them?*Psychological Science*, *24*, 1889–1897.
Nagel, S. S. (1962). Judicial backgrounds and criminal cases. *The Journal of Criminal Law, Criminology, and Police Science*, *53*(3), 333–339.
Neily, C. (2019). *Are a disproportionate number of Federal Judges Former Government Advocates?*Cato Institute.
Nichols, B. (1994, October 9). *Allegations stir up appeals court races*. Dallas Morning News.
Nickerson, R. S. (1998). Confirmation bias: A ubiquitous phenomenon in many guises. *Review of General Psychology*, *2*(2), 175–220.
O'Brien, B. (2009). A recipe for bias: An empirical look at the interplay between institutional incentives and bounded rationality in prosecutorial decision making. *Missouri Law Review*, *74*, 999.
Oliva, J. D., & Beety, V. E. (2017). Discovering forensic fraud. *Northwestern University Law Review*, *112*, 121.
Opeskin, B. (2020). Dismantling the diversity deficit: Towards a more inclusive Australian judiciary. In G.Appleby & A.Lynch (Eds.), *The judge, the judiciary and the court: Individual, collegial and institutional judicial dynamics in Australia*. Cambridge University Press.
Ostrom, B. J., Ostrom, C. W., Hanson, R. A., & Kleiman, M. (2007). *Trial courts as organizations*. Temple University Press.
Pinello, D. (1995). *The impact of judicial-selection method on state-supreme-court policy: Innovation, reaction, and atrophy*. Greenwood.
Ponzetto, G. A., & Fernandez, P. A. (2008). Case law versus statute law: An evolutionary comparison. *The Journal of Legal Studies*, *37*(2), 379–430.
Pronin, E., Lin, D. Y., & Ross, L. (2002). The bias blind spot: Perceptions of bias in self versus others. *Personality and Social Psychology Bulletin*, *28*(3), 369–381.
Rachlinski, J. J., & Wistrich, A. J. (2017). Judging the judiciary by the numbers: Empirical research on judges. *Annual Review of Law and Social Science*, *13*, 203–229.
Ramseyer, J. M., & Rasmusen, E. B. (2007). Political uncertainty's effect on judicial recruitment and retention: Japan in the 1990s. *Journal of Comparative Economics*, *35*(2), 329–345.
Roberts, J. V., Sanchez, J., & Marder, I. (2018). Individualisation at sentencing: The effects of guidelines and 'preferred'numbers. *Criminal Law Review*, *2*, 123–136.
Robinson, R. (2011). Does prosecutorial experience "balance out" a Judge's Liberal tendencies?*Justice System Journal*, *32*(2), 143–168.
Root, D., Faleschini, J., & Oyenubi, G. (2019). *Building a more inclusive Federal Judiciary*. Center for American Progress.
Ross, L., & Anderson, C. (1982). Shortcomings in the attribution process: On the origins and maintenance of erroneous social assessments. In A.Tversky, D.Kahneman, & P.Slovic (Eds.), *Judgement under uncertainty: Heursitics and biases*. Cambridge University Press.
Sample, J. J., Hall, C., & Casey, L. (2010). The new politics of judicial elections. *Judicature*, *94*, 50.
Schmid, J., & Fiedler, K. (1998). The backbone of closing speeches: The impact of prosecution versus defense language on judicial attributions 1. *Journal of Applied Social Psychology*, *28*(13), 1140–1172.
Segal, J. A., & Spaeth, H. J. (2002). *The supreme court and the attitudinal model revisited*. Cambridge University Press.
Sen, M. (2017). Diversity, qualifications, and ideology: How female and minority judges have changed, or not changed, over time. *Wisconsin Law Review*, *6*, 367–399.
Shepherd, J. M. (2009). The influence of retention politics on judges' voting. *The Journal of Legal Studies*, *38*(1), 169–206.
Shepherd, J. M. (2021). *Jobs, judges, and justice: The relationship between professional diversity and judicial decisions*. Demand Justice.
Simon, D., Ahn, M., Stenstrom, D. M., & Read, S. J. (2020). The adversarial mindset. *Psychology, Public Policy, and Law*, *26*(3), 353–377.
Simon, D., Snow, S. D., & Read, C. J. (2004). The redux of cognitive consistency theories: Evidence judgments by constraint satisfaction. *Journal of Personality and Social Psychology*, *86*, 814–837.
Singh, R., & Rai, H. (2021). Desiring to punish leaders: A new test of the model of people as intuitive prosecutors. *Journal of Theoretical Social Psychology*, *5*(4), 377–390.
Slotnick, E., Schiavoni, S., & Goldman, S. (2017). Obama's judicial legacy: The final chapter. *Journal of Law and Courts*, *5*(2), 363–422.
Smith, A. (2003). Defense-oriented judges. *Hofstra Law Review*, *32*, 1483.
Smith, A. (2017). Judges as bullies. *Hofstra Law Review*, *46*, 253.
Spohn, C. (1990). The sentencing decisions of black and white judges: Expected and unexpected similarities. *Law and Society Review*, *24*, 1197–1216.
Steffensmeier, D., & Hebert, C. (1999). Women and men policymakers: Does the judge's gender affect the sentencing of criminal defendants?*Social Forces*, *77*(3), 1163–1196.
Sunstein, C. R. (2015). Nudges do not undermine human agency. *Journal of Consumer Policy*, *38*(3), 207–210.
Swisher, K. (2010). Pro-prosecution judges: Tough on crime, soft on strategy, ripe for disqualification. *Arizona Law Review*, *52*, 317.
Tate, C. N. (1981). Personal attribute models of the voting behavior of US supreme court justices: Liberalism in civil liberties and economics decisions, 1946-1978. *The American Political Science Review*, *75*, 355–367.
Tate, C. N., & Handberg, R. (1991). Time binding and theory building in personal attribute models of supreme court voting behavior, 1916-88. *American Journal of Political Science*, *35*, 460–480.
Tetlock, P. E., Visser, P. S., Singh, R., Polifroni, M., Scott, A., Elson, S. B., Mazzocco, P., & Rescober, P. (2007). People as intuitive prosecutors: The impact of social-control goals on attributions of responsibility. *Journal of Experimental Social Psychology*, *43*(2), 195–209.
Thurston, J. L. (2019). Black robes, white judges: The lack of diversity on the magistrate judge bench. *Law and Contemporary Problems*, *82*, 63.

Tolan, C. (2018, July 09). *Why public defenders are less likely to become judges-and why that matters*. Splinter News. https://splinternews.com/why-public-defenders-are-less-likely-to-become-judges-a-1793855687

Torres-Spelliscy, C., Chase, M., & Greenman, E. (2008). *Improving judicial diversity*. The Brennan Center.

Truesdale, M. (2016). Pro-prosecution doctrinal drift in criminal sentencing. *Northwestern University Law Review*, *111*, 1131.

Tulsky, F. (2007, January 31). *How judges favor the prosecution*. Mercury News. https://www.mercurynews.com/2007/01/31/part-four-how-judges-favor-the-prosecution/.

Ulmer, J. T., & Johnson, B. D. (2017). Organizational conformity and punishment. *The Journal of Criminal Law and Criminology (1973-)*, *107*(2), 253–292.

Uphoff, R. J. (2006). On misjudging and its implications for criminal defendants, their lawyers and the criminal justice system. *Nevada Law Journal*, *7*, 521-547.

Vidmar, N. (2005). Expert evidence, the adversary system, and the jury. *American Journal of Public Health*, *95*(S1), S137–S143.

Weiss, J. C. (2006). Tough on crime: How campaigns for state judiciary violate criminal defendants' due process rights. *NYUL Review*, *81*, 1101.

Williams, K. (2004). Brennan Center for Justice Symposium Introduction: Diversity, impartiality, and representation on the bench. *Michigan Journal of Race and Law*, *10*, 1.

Wistrich, A. J., & Rachlinski, J. J. (2017). Implicit bias in judicial decision making how it affects judgment and what judges can do about it. In S.Redfield (Ed.), *Enhancing justice: Reducing bias* (pp. 87–130). ABA Book Publishing.

How to cite this article: Berryessa, C. M., Dror, I. E., & McCormack, C. J. B. (2023). Prosecuting from the bench? Examining sources of pro-prosecution bias in judges. *Legal and Criminological Psychology*, *28*, 1–14. https://doi.org/10.1111/lcrp.12226