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Across America, The Single Most Powerful Person in Local Criminal Justice Systems Operates With Near Impunity



By Taylor Pendergrass, Strategic Advisor, Smart Justice Campaign

AUGUST 2, 2017 | 12:00 PM

TAGS: Smart Justice, Mass Incarceration

For anyone who cares about transforming America's criminal justice system, pivotal elections are fast approaching. It's not the congressional elections we are talking about, though — it's the more than 1,000 local prosecutors that will soon be up for

election in counties across the country in 2018.

Criminal justice policy is shaped mostly at the local and state level, and elected prosecutors have more power than any other single actor to influence the trajectory of these policies. With more than nine out of every 10 cases resolved by a plea bargain where a judge has little or no role, prosecutors unilaterally decide who gets a second chance and who goes to prison and for how long. Mandatory minimum sentencing and other laws allowing extraordinarily harsh sentences have only increased prosecutors' power to extract guilty pleas and prison terms. In addition, their extraordinary influence is wielded every year at the statehouse, where prosecutorial opposition can easily undermine or sink even modest criminal justice reform legislation.

The upcoming elections of local prosecutors come at a unique and potentially fragile moment. After years of steadily building power and momentum, criminal justice reformers are now facing a federal government enthralled with brutal and ineffective '90s-era criminal justice policies. The outcome of these local prosecutor elections may prove to be the most significant in history for the movement to end mass incarceration.



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Research suggests that prosecutors’ “tough on crime” practices have been a major driver of mass incarceration over the last several decades. Yet polls suggest that majority of the American public — across demographics and across the political spectrum — prefer second chances and treatment over long prison sentences and overflowing jails.

If this is true, why do “lock ‘em up” prosecutors keep getting elected?

Although prosecutors are politicians elected to serve their local communities, they rarely have any incentive to act like it. In 2016, more than 70 percent of prosecutors ran unopposed. District attorneys who decide not to run for re-election can maintain control by resigning and picking a successor who then runs as an incumbent.

For the most part, voters say they have little understanding of what a district attorney does or the extraordinary impact a prosecutor’s

decisions have on their local community. Research has also shown that high percentages of voters who cast a ballot for their county supervisor or mayor do not go down the ballot to vote for their district attorney.

In between election years, prosecutors operate with near impunity. State oversight over district attorneys is notoriously ineffective. Prosecutors' budgets are often approved without question by county boards despite the fact that it is the prosecutor's decisions that drive a county's biggest expenses — the county jail. Lawsuits seeking to hold prosecutors accountable in court for unconstitutional policies are rare, in part because prosecutors have broad legal immunity from suit in many cases.

Finally, prosecutors have long shielded their actions from public scrutiny, making basic information about their policies or data on the outcomes of their decision-making unavailable. This lack of transparency prevents the public from holding prosecutors accountable.

But times are changing. In 2016, an ever-increasing awareness of prosecutors' authority swept new prosecutors into office on the promise of reform, from Houston to Chicago to Kansas City to Orlando. The electability of these reformers proved that a growing number of Americans are fed up with criminal justice practices that are shamelessly punitive, tear apart low-income communities, and target people of color.

The outcome of these local prosecutor elections may prove to be the most significant in history for the movement to end mass incarceration.



ADD YOU

This year, the ACLU's Campaign for Smart Justice, dedicated to reducing the number of people in prisons and jails by half while reducing racial disparities, announced a new initiative to transform the incentives that drive prosecutors. This initiative aims to directly tackle the unchecked prosecutorial power that has been such a major contributor to mass incarceration.

Over the next three years, the Campaign for Smart Justice will support state ACLU offices in educating voters about the importance of elected prosecutors and on ways to hold them accountable between elections. The campaign will fight for legislation to require prosecutors to make their policies and data public and for laws that would create or strengthen oversight of these offices. And finally, prosecutors who violate the constitution to get convictions or otherwise flout the law should expect to see the ACLU in court.

ADD A COMMENT (12)

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Anonymous

And in states where they are "appointed" they are even more political and there is little chance to replace them in office.

REPLY | AUGUST 2, 2017 | 1:39 PM

Anonymous

So very right Anonymous ! We are doomed with no chance of changing things ! Even our judges are nominated by our governor in Mn !

REPLY | AUGUST 2, 2017 | 3:02 PM

@TimeToFreeKaren

WOW. This makes total sense. And no one knows anything about this. We blame the "system" or privatized prisons. Who thinks to look at the prosecutor on the ballot. This is really powerful. We are looking in Michigan NOW. Thank you. Please send information our way.

REPLY | AUGUST 5, 2017 | 1:50 AM

Pamela Fitzsimmons

“Why do ‘lock ‘em up’ prosecutors keep getting elected?”

Because many voters don’t like being crime victims. For some strange reason, many people (even criminals) don’t like having their property stolen, their kids sold drugs, their bodies assaulted. When these things happen to them or someone they love, they want something done about it. Offering wraparound services isn’t it.

I live in Portland, Ore., and last year I went to a performance by a local ACLU representative who ranted about how nobody even knows the name of the DA. Well, a surprising number of voters don’t know the names of their state representative or state senator. Even fewer know the names of their state Supreme Court justices – including the Chief Justice.

The ACLU is coattailing on outrage over Trump’s election. That’s fine. But it’s not going to change human nature: People don’t want to be victims of criminals, and they don’t want criminals to be rewarded. They want prosecutors to prosecute.

REPLY | AUGUST 5, 2017 | 8:20 PM

Anonymous

Exactly what percentage of crimes committed are those that

you refer to? Because from what I've seen, cops and prosecutors can be just as guilty of these, and other far more egregious crimes than the often innocent people they mercilessly and relentlessly pursue. And moreover, they will allow and promote the destruction of entire families in order to keep just one snitch producing. This does not even touch on the piracy on I-95 over asset forfeiture.

AUGUST 6, 2017 | 2:13 PM

Anonymous

You mean the most powerful person in local criminal justice is NOT our Constitutional Sheriff??? Oh, my!! He won't like hearing that!

REPLY | AUGUST 6, 2017 | 11:44 AM

Joshua Marquis

I'm not anonymous

I'm the elected DA in Astoria, Oregon, by almost any measure one of the most progressive communities in a progressive state.

95% of prosecutors in America are elected something that happens in no other country in the world .

I grew up admiring the ACLU for defending the right of people to exercise the first amendmen, but now you seem to have been co-opted and brag about the prosecutors elected by billionaires like George Soros.

When the ACLU came to my town a couple months ago the ACLU representative had to admit that the vast majority of people there, who elected me for over 20 years, knew exactly who their DA was I'm sure I'm not as isolated as you claim.

REPLY | AUGUST 6, 2017 | 2:58 PM

Nancy Carre'

When folks think "tough on crime" they check off the box for the DA without much consideration of that person's actual process or qualifications. I know of one prosecutor here in Colorado who has rubber stamped his assistant's idiotic half-assed recommendations for plea bargains where she has pretty much admitted she hadn't even read the motions for the defense, only the police reports, and those cursorily. In a hurry, don't much care, people suffer, so what. It's despicable and criminal malfeasance, but they can continue behaving that way with impunity because nobody will challenge them and the judges don't care.

REPLY | AUGUST 6, 2017 | 4:57 PM

Concerned

Doesn't everyone charged have a right to trial? Then they can have 6-12 of their peers decide if the prosecutor is off-base. How is it the prosecutor's fault that such a high percentage of criminals choose to plead guilty? To me, that means they are ok with the outcome because they see a serious risk of being convicted if they go to trial...in my experience, the system works well when people understand their rights.

REPLY | AUGUST 7, 2017 | 11:48 AM

Jessica Crawford

To answer this, the prosecutor and DA often pressure and bully people, including innocent people to plea guilty. Currently here in the US, we have a serious problem with wrongful convictions due to cases without DNA evidence. These types of cases, are the problem with pleading guilty.

Especially if the person is poor and unable to afford

lawyers(public defenders don't always do a good job especially if the case is serious, most public defenders are overwhelmed with work), uneducated and unaware of their rights.

So when the prosecution and DA pressure people to take plea deals this causes wrongful convictions.

Also, in lots of states, like New York for example. The justice system is so full that it can take 3 - 6 years to get to trial and if the person is poor and can't afford bail, then this can make innocent people take plea deals, (especially if they have special circumstances like children, job, sick parents ect)

So the person would rather plea guilty and get time served or a lesser sentence than sit in jail for 3-6 years waiting for trail..

Because of the serious overcrowding in our jails, prisons, and justice system. public defenders are overwhelmed, there are states right now in big trouble because their public defenders have so many cases that they are deemed unconstitutional because they can't give people a fair defense because they simply don't have the time to dedicate to the cases that they should, but because of lack of Federal funding for public defenders the states are left to foot the bill if they hire anymore public defenders.... Which is another reason why people chose to plea instead of going to trail.

All of these reasons are Heartbreaking and the state of our justice system is horrible. No one should feel like they have to take a plea deal because of the circumference but.. they do.

So people feel forced to plea because::

- It can take YEARS to get to trail and they don't have money for bail.
- The expensive cost for attorneys and public defenders not being able to give good defense.

-The evidence is lacking and the odds are stacked against them and they can't afford a good attorney to prove their Innocence.

-The are being pressured by the DA and Prosecutor and they have little faith that they can be properly represented.

And of course the most common and this goes along with all the other reasons...

-their lawyer is a public defender, and is not doing a good Job.
(And they can't afford another)

So, when you say that our system works if people know their rights... That's not true.

Our system is currently under a lot of stress. Over 54% of all arrests are Non-violent drug charges.. and we are currently in a crisis with the opiate epidemic. So we have jails, prisons and court rooms overflowing with people who have drug problems and mental health issues that really need to be in a rehabilitation facility or psychiatric facility but instead they end up in our criminal justice system... Our system would work much better if the nonviolent offenders weren't overflowing our system. . And the system would work better if lawyers and bail weren't so expensive and if people could get to trail in decent amount of time...

Anyway I hope this helps you understand why plea deals and Prosecutors pressuring people to plea can be a problem...

People should have a fair trial. Instead, innocent people are being Intimated and pressured into pleading guilty because of conditions and intimation

AUGUST 7, 2017 | 7:40 PM



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