

“Progressive” Prosecutors Sabotage the Rule of Law, Raise Crime Rates, and Ignore Victims

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KEY TAKEAWAYS

Rogue prosecutors usurp the role of state legislatures, thereby violating the separation of powers between the executive branch and legislative branch.

Rogue prosecutors abuse the role of the district attorney by refusing to prosecute broad categories of crimes, thereby failing to enforce the law faithfully.

Violent crime goes up and victims' rights are ignored in rogue prosecutors' cities.

Introduction

The American prosecutor occupies a unique role among lawyers. The prosecutor has a higher duty than other attorneys. His duty is to seek justice, not simply to obtain convictions. As the American Bar Association notes, “The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.”¹

Prosecutors play a vital and indispensable role in the fair and just administration of criminal law. As members of the executive branch at the local, state, or federal level, they, like all other members of the executive branch, take an oath to support and defend the Constitution and faithfully execute the law as written. They do not make laws. That is the duty of the legislative branch.

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On one level, prosecutors carry out the intent of the people by enforcing the laws their representatives passed and the governor or President signed. On another level, they work with the other two branches of government by sharing their views with legislators about bills up for consideration and with judges about the proper application of those laws in particular cases. In doing so, they occupy a unique, distinct role as key members of the executive branch with immense power and even greater responsibility.

The so-called progressive prosecutor movement—or, as we refer to it, the “rogue prosecutor” movement—upends the traditional and customary role of the prosecutor in American society with short-term and potentially long-term disastrous consequences on a number of levels.

Crime rates are the lowest they have been in decades. Incarceration rates are also the lowest they have been in decades. This did not happen by accident, nor did it happen because of the policies of rogue prosecutors. Instead, it happened because independent progressive and traditional prosecutors, who follow the law and believe in protecting victims’ rights and the right to be safe from crime and violence, created alternatives to incarceration, specialty courts, community outreach programs, and more. The rogue prosecutor movement depends in part on the public’s historical ignorance of those and other facts.

There is nothing progressive about the rogue prosecutor movement. It is dangerous and fundamentally flawed for four reasons:

- It usurps the constitutional role of the legislative branch;
- It abuses and misunderstands the role of the county prosecutor;
- Violent crime increases in cities where rogue prosecutors have been elected; and
- Victims are forgotten and public safety overall suffers.

Prosecution 101. At the federal level, the two parties to a criminal case are the United States and a defendant or defendants. At the state level, the state is represented by a prosecuting attorney who represents the people of the state. Regardless of whether the prosecutor is called the district attorney, the state’s attorney, or the commonwealth’s attorney, criminal cases pit the state against a defendant or defendants.

The criminal justice system in the United States is designed, like those in most common law countries, to be an adversarial system.² Under that

system, the prosecution and defense compete against each other, representing their respective clients. The people are represented by the prosecutor; the defendant is represented by the defense counsel. The judge serves as a referee to ensure that the trial is conducted in a fair and orderly manner and that the rules of evidence and criminal procedure are followed.³ We utilize the adversarial system rather than the inquisitorial system⁴ because we believe that it is the best way to get to the truth of the matter through a competitive, zealous process within the bounds of rules designed to ensure fairness to both sides.

The American prosecutor has unique ethical duties because of the awesome responsibilities that he or she has. A prosecutor must avoid conflicts of interest, one of the most obvious of which is spelled out by the American Bar Association: “The prosecutor should not represent a defendant in criminal proceedings in the prosecutor’s jurisdiction.”⁵ While prosecutors owe a duty of candor to courts and must respect the constitutional and legal rights of everyone, including defendants, it is their job to enforce the law zealously and represent the people, not defendants.

To accomplish their legal, ethical, and moral responsibilities, prosecutors must be and are independent. They work closely with victims of crimes, but they do not form an attorney–client relationship with them. Prosecutors are not the lawyers for victims of rape, child abuse, or robbery in the sense of establishing an attorney–client relationship with them. They represent the people and their interests, and since legislators have passed laws making rape, child abuse, and robbery criminal offenses, prosecutors prosecute on behalf of the people, not any particular person.

Prosecutors are also independent from the police. Police investigate crimes, make arrests, and in some jurisdictions file charges. Prosecutors, who are lawyers subject to state bar ethics rules and other rules, must be able to evaluate the evidence independently and decide on their own whether the evidence was gathered lawfully, whether the witness statements make sense, whether there are credibility problems with the police officers, or whether there are other flaws in a case before deciding whether or not to file charges. Every day, prosecutors reject cases brought to them by police officers because those cases have some sort of problems.

Police officers are not only investigators in cases; they are often witnesses in criminal cases. Prosecutors must be able to evaluate the credibility of all witnesses and are required under the discovery rules to turn over to the defense Brady,⁶ Jencks,⁷ or Giglio⁸ material that may be in the possession of the police. Prosecutors do not represent the police any more than they represent rape, child abuse, or robbery victims. Each is a witness, and

prosecutors are required to maintain professional distance from all witnesses in order to fulfill their professional and ethical responsibilities.

One of the major criticisms of the rogue prosecutor movement is that because they are, in the words of one critic, “heavily dependent on police officers to make out their cases,” prosecutors are “often reluctant to pursue charges against them.”⁹ According to another critic, “traditional prosecutors tend to abandon their zealous investigation and prosecution tendencies when the perpetrator of a crime is a police officer.”¹⁰ Neither author cites empirical data to support this charge, as no reliable data exist to verify their claims. On the other hand, there are scores of articles in which prosecutors have taken police shooting cases to grand juries, and grand juries have decided not to return indictments.

There are over 2,300 separate felony prosecutor offices in the United States. On top of that, there are 94 United States Attorney’s Offices spread across the country. The vast majority of criminal cases, however, are handled at the state and local levels.

As a result, the state prison systems have substantially more prisoners than the federal system, and because most crimes are committed at the state and local levels, more individuals are involved in the criminal justice system of the states than are involved in the federal system. In essence, prosecutors are the gatekeepers to the criminal justice system. Without independent traditional prosecutors, sworn to uphold the law as written, there is no guarantee that the law will be enforced or that charges will be filed in appropriate cases.

Defense Counsel 101. The criminal justice system requires zealous, competent, aggressive criminal defense attorneys. American criminal justice depends on a vibrant, well-funded, and well-resourced criminal defense bar. Defendants are at a distinct disadvantage if they choose to represent themselves in criminal cases or if their defense attorney is mediocre or outright incompetent. Most prosecutors would much rather prosecute a case against a competent, zealous criminal defense attorney than one against a defendant who is appearing pro se, because the system works best when both sides of a case are represented by qualified counsel.

Those who are charged with a crime and cannot afford to hire a criminal defense attorney are entitled to counsel at no cost. In large and medium-size jurisdictions, the public defender fulfills this valuable function, ensuring that those charged with crimes are given a zealous advocate to force the government to prove its case, if it can, beyond a reasonable doubt.

Some larger jurisdictions also have an alternate public defender office or qualified members of the local bar to handle cases where the public

defender's office has a conflict of interest and cannot represent a particular defendant in a case. The attorneys in public defender offices and alternate public defender offices tend to be very experienced, seasoned trial attorneys. They are, like career prosecutors, "true believers" in the sense that they were drawn to that work because of their value systems, experiences, and core beliefs.

In other, mostly smaller jurisdictions where there is no office of the public defender, the local bar usually has arrangements with the judiciary whereby judges appoint local attorneys to represent indigent defendants. Another arrangement is the panel of local attorneys who ask that their names be placed on a court-approved list of attorneys who will take criminal cases for a set hourly fee.

The defense bar plays a vital role in the legislative process as well. They present written and oral testimony to state legislatures on pending legislation, providing policymakers with valuable professional opinions from the perspective of the defense bar. This, combined with input from prosecutors, victims' rights groups, and other stakeholders, helps to inform lawmakers about the merits and demerits of various proposals before a draft bill becomes a law.

Defense attorneys, like prosecutors, often work as adjunct law professors, teaching courses on trial advocacy, evidence, criminal law and procedure, legal research, and writing or working with students in clinics. Their perspective adds to the education and growth of law students, many of whom will go on to practice law, thus enriching the overall competence of the bar as a whole.

Some of the country's best criminal defense attorneys began their careers as prosecutors. Among the dozens who could be cited, Gerry Spence, a renowned trial lawyer and criminal defense counsel, was a prosecutor in Fremont County, Wyoming, for eight years before dedicating his life to "representing the poor, the injured, the forgotten and the damned."¹¹ Similarly, Vincent Bugliosi, who served for several years as a deputy district attorney in the Los Angeles County District Attorney's Office and prosecuted cult leader Charles Manson, later became a highly successful criminal defense attorney and famous author.

In short, the American criminal justice system is by design one that pits educated, zealous, ethical legal combatants against one another. Each player, prosecutor and defense counsel, has a legal duty to represent the interests of his or her client and to do so within the bounds of law and ethics. The system, like all systems designed by humans, has flaws, but it has developed and improved over time.

The rogue prosecutor movement, on the other hand, seeks to dismantle the criminal justice system as we know it by eviscerating the adversarial nature of the prosecutor–defense attorney dynamic and replacing independent progressive and traditional prosecutors with criminal defense attorneys and activists beholden to the movement. The movement, which is well-funded and on the march, has enjoyed some political success, but it also has resulted in more murders, more violent crime, and a blatant and callous disregard for victims and public safety as a whole.

Radical Goals and Tactics of the Rogue Prosecutor Movement

The rogue prosecutor movement has been vocal about its goals. The movement consists of donors, candidates for district attorney, elected rogue prosecutors, and academics¹² and activists.¹³ Those recruited by the movement to run for office tout their “progressive” bona fides and suggest that we need to “reimagine”¹⁴ a better criminal justice system.

It is a serious movement in large part because leftist billionaire George Soros has dumped and continues to dump tens of millions of dollars into specific DA races and into dark-money PACs that identify, recruit, and fund criminal defense attorneys to run against independent law-and-order prosecutors.¹⁵ Academics, mostly in the form of law review articles, support and defend the movement.

The rogue prosecutor movement has a variety of goals, but its principal three aims are to:

- **Replace** independent progressive and traditional prosecutors, who follow the law and believe in protecting victims’ rights and ensuring public safety, with criminal defense attorneys and activists who are beholden to the movement;
- **Usurp** the constitutional role of the legislative branch by refusing to prosecute entire categories of crimes; and
- **End** cash bail for all crimes.

If these goals sound radical, that is because they are. Movement leaders and activists are not shy about their goals and, in fact, have written and spoken about them for some time.¹⁶

According to Merriam-Webster’s dictionary, the word “progressive” means “making use of or interested in new ideas, findings, or opportunities.”¹⁷

There is nothing “progressive” about the rogue prosecutor movement, and the only thing that is “new” about this dangerous movement is its members’ approach, which has caused crime to explode in the cities where rogue prosecutors rein, harming the very people about whom they profess to care the most.¹⁸

The *real* progressives are the independent progressive and traditional prosecutors who have created thousands of new diversionary programs across the country; have started conviction integrity units in their offices; and have created drug courts, domestic violence courts and teen/peer courts,¹⁹ prostitution diversion courts,²⁰ veterans courts, mental health courts,²¹ family justice centers,²² community prosecutors,²³ and more. They started these new initiatives because they are charged with keeping the community safe and are constantly trying new ways to tackle old problems in a better, more cost-effective way within the bounds of the law. Given these welcome developments, it is no surprise that crime rates in their jurisdictions have gone down along with incarceration rates.

Rogue prosecutors, on the other hand, call themselves progressive, but they have not started any new collaborative programs like drug, domestic violence, teen, or prostitution courts. Nor did they invent anything like the conviction integrity units within district attorney offices. The only thing new about the rogue prosecutor movement is the radical idea of replacing independent, true progressive and traditional prosecutors with criminal defense attorneys, or defendant-oriented attorneys, who pretend to be prosecutors but do the bidding of the billionaire class, with George Soros-funded organizations taking point.

Another common trait of the rogue prosecutor movement is the inflammatory claim that the entire criminal justice system is systemically racist. They claim that independent, real progressive and traditional prosecutors are “reluctant to criticize the police,”²⁴ are “unable or unwilling to bring charges or seek convictions against police officers,”²⁵ and are “complicit in officer perjury.”²⁶

A student note in the *Harvard Law Review* opined that the entire criminal legal system “is a racial caste system.”²⁷ The author contends that the criminal justice system is a “fundamentally rotten system” and that “progressive prosecutors seek to rebalance the use of prosecutorial discretion.”²⁸ The system, he writes, “was never intended to keep marginalized people safe.”²⁹ The irony is that marginalized people, especially people of color, suffer the worst in cities that have elected rogue prosecutors.

Another ill-informed law student wrote that “progressive prosecutors do more than simply churn through cases; they also often consider whether

an alternative to incarceration is best for a particular defendant,”³⁰ thereby showing her ignorance with respect to the thousands of diversionary programs across the country that have been around for decades and were begun by independent, real progressive and traditional prosecutors.

Rachel Barkow, a law professor and former member of the U.S. Sentencing Commission, has summed up the goal of the progressive prosecutor movement (which she enthusiastically supports) as follows: “to reverse-engineer and dismantle the criminal justice infrastructure” that currently exists.³¹ That process begins with the elimination of independent progressive and traditional prosecutors who follow the law.

Eliminating Independent Progressive and Traditional Prosecutors. This well-funded³² and organized movement is not about liberal v. conservative, Democrat v. Republican, black v. white, or one law-and-order prosecutor against another. This movement is about power. It is about a handful of billionaires manipulating the criminal justice system with large amounts of cash.

Rather than run anti-law enforcement candidates for sheriff, the Soros-backed movement realized that a quicker way to implement their radical goals is to run well-financed criminal defense attorneys, or defense-oriented attorneys, for district attorney in liberal cities. The movement is keenly aware that prosecutors, not police, have the final say as to whether charges are filed against people who are arrested, and because prosecutors occupy that unique position, by eliminating independent progressive and traditional prosecutors and replacing them with attorneys who are beholden to a movement that sees defendants as victims, you “reverse-engineer” and “dismantle” the criminal justice system as it currently exists.

It is no coincidence that Soros and his various PACs have given huge financial support to rogue candidates in liberal cities, as they have the best chance of being elected by a disinterested electorate.³³ One study recently found that even though there are over 2,300 separate state felony prosecutor’s offices in the country, and even though incumbents win re-election 95 percent of the time,³⁴ “incumbents are unlikely to run in contested elections...and...all prosecutor elections are unlikely to be contested.”³⁵ The same study showed that “the larger the jurisdiction, the more likely the election was contested.”³⁶

Even in district attorney races that are contested, there is usually a relatively small amount of money spent by both sides. Knowing this, the Soros-backed rogue prosecutor movement spends heavily to buy elections, investing vast sums of money to back candidates of their choice, knowing that traditional candidates cannot match the infusion of cash. Ironically,

one of the written goals of Soros's Open Society Foundations is to reduce "the undue influence of money in politics" even as they are buying district attorneys who are beholden to their dismantling of the independent progressive and traditional prosecutorial system.³⁷

For example, when the Philadelphia district attorney's seat became open, seven people ran for office in an open primary. Larry Krasner, a career criminal defense and civil rights attorney who had sued the Philadelphia Police Department dozens of times over the decades, received almost \$1.45 million in campaign spending from George Soros.³⁸

Immediately after he was elected and sworn into office, Krasner fired 31 career prosecutors in the office, many of whom were in the homicide division and highly experienced.³⁹ Because deputy district attorneys in the Philadelphia DA's office serve at will and do not enjoy civil service protection, Krasner's move was legal, but it was still extraordinary. Firing independent progressive and traditional career line prosecutors is a suggestion commonly made by the academy.⁴⁰

Despite the fact that the number of homicides across the country has been going down for decades,⁴¹ the number of homicides and violent crimes in Philadelphia has exploded since Krasner was elected, and the vast majority of the victims are black.⁴² Since his election, Krasner has claimed that he has shifted finite resources to focus on serious crimes, but the murder and violent crime rates in Philadelphia speak for themselves.

Homicides and violent crime rates have also risen significantly in other cities that have elected rogue prosecutors, including Baltimore, Boston, and Chicago, among others. The real goal of these prosecutors is not to help black and brown people, as their radical policies, once inflicted on the districts where they operate, hurt black and brown residents more than they hurt others.

Soros dropped \$1.45 million on the DA race in Philadelphia, but he spent the most money in the last election cycle on the San Diego DA's race, dropping a stunning \$2.2 million into the Safety and Justice PAC to oust the incumbent, appointed DA, Summer Stephan. The PAC did not spend the entire \$2.2 million, but it did spend \$1.8 million on the race, backing a San Diego deputy public defender against Stephan. In the end, Stephan won the race handily, handing the rogue prosecutor movement a rare defeat.

The movement plays hardball, and its adherents play their hand early. According to Stephan's campaign, Soros-backed groups did more than just support her opponent. Having identified San Diego (among other cities) as primary targets of opportunity, someone in the movement, using world wide web domain registries, quietly secured domain names like www.

summerstephanforda.com and numerous other variations of her name before the race. When the Stephan campaign went to secure a domain name for her upcoming race, even before there was a declared opponent, they found that virtually every variation of her name was already taken.

Stephan's campaign labelled her opponent anti-prosecution and anti-victim, which rang true to the voters. After the movement lost that race, in order to create the false impression that they really are pro-victim, members established a San Diego chapter of Crime Survivors for Safety and Justice. In reality, the victims for whom that organization works are not real victims of crime, but rather criminal defendants whom the group believes are "victims" of the government.

The top target for Soros and the rogue prosecutor movement in 2020 is the Los Angeles County District Attorney's Office, the largest DA's office in the country with over 1,000 deputy district attorneys.⁴³ The incumbent district attorney is Jackie Lacey, the first female DA and first African American to head the prestigious office. A career independent progressive prosecutor, Lacey is a liberal and registered Democrat. Under her leadership, the Los Angeles DA's office prosecutes 71,000 serious felonies per year and approximately 112,000 less serious crimes across the county's 88 cities.

The rogue prosecutor movement is backing George Gascon, the former DA of San Francisco, who succeeded Kamala Harris as the city's top prosecutor. When Gascon was San Francisco's DA, crime rates exploded under his rogue approach, and they will most likely do the same in Los Angeles if he beats Lacey in November. Not surprisingly, the mayor of Los Angeles, the governor of California, and others who enthusiastically backed fellow Democrat Lacey for years now support Gascon, no doubt because they do not want to cross the radical left or lose access to the billionaire class, including Soros and his active and well-funded PACs.

Lacey has the support of 24 elected female district attorneys across California. According to Sacramento County DA Anne Marie Schubert:⁴⁴

[W]e are a diverse group spanning the state of California: we are mothers, sisters, partners, wives, members of the LGBTQ community, Republicans, Independents, Democrats; we live in rural areas of our state, metropolitan areas, and everywhere in between, and are united in our pride to support Jackie Lacey in her re-election this November.

Lacey also has the support of virtually every local law enforcement organization and dozens of politicians at the federal and state levels, including former San Francisco Mayor and now-U.S. Senator Dianne Feinstein.⁴⁵

Finally, although big-city district attorneys are the most visible targets for the rogue prosecutor movement, the movement has trained its sights on smaller jurisdictions as well because (1) they account for a large percentage of defendants being sentenced to prison⁴⁶ and (2) the financial investment needed to buy a district attorney seat by backing a rogue candidate is small. “[P]ut simply,” in the words of one law review article, “in order for prosecutor elections to serve as an antidote to mass incarceration, more candidates will have to run in rural districts.”⁴⁷

Usurping the Constitutional Role of State Legislatures. One of the hallmarks of the rogue prosecutor movement has been its blatant usurpation of the constitutional role of state legislatures. Elected rogue prosecutors have refused to prosecute entire categories of crimes that are on the books in their states, claiming that they are empowered to refuse under the fig leaf of “prosecutorial discretion.”

Usurpation of legislative power by refusing to prosecute entire classes of crimes is dangerous. It violates the separation of powers between the executive branch and the legislative branch. In doing so, it distorts the entire legal system by disrupting the equipoise between separate but equal branches of government.

One commentator has called the practice of refusing to prosecute valid laws on the books “taking items off the menu,” as if prosecutors are merely cooks at a restaurant,⁴⁸ but prosecutorial discretion does not give rogue prosecutors (or, for that matter, any traditional independent prosecutor) license to ignore the law and refuse to prosecute entire categories of crimes. Rather, prosecutorial discretion gives prosecutors license to exercise judgment, taking into consideration a variety of factors, in deciding how to proceed in a particular case with a particular defendant and, given his track record, what actions to take under the circumstances.

Prosecutors at the state and federal levels are required to be members of their state’s bar, in compliance with that state’s bar ethics rules, and to follow the written internal guidelines of their office and local court rules. They exercise professional judgment and discretion each day, from misdemeanor cases to the most serious felonies. Valid and proper prosecutorial discretion takes myriad forms: from telling police officers that they do not have probable cause to refusing to file charges in cases where the evidence is weak; telling a victim that the case cannot be proven beyond a reasonable doubt; refusing to file charges where the accused’s Fourth, Fifth, and/or Sixth Amendment rights were violated; dropping prior convictions at sentencing to lower the overall exposure of a convicted criminal; agreeing to a plea to a lesser included offense; deferring on a sentence recommendation;

limiting the number of charges despite the fact that the accused committed other crimes; providing discovery to the defense beyond what is legally required; and more. Independent progressive and traditional prosecutors engage in this type of prosecutorial discretion thousands of times a day.

Misdemeanor prosecutors, given the volume of cases they have, exercise discretion every day by dropping cases, holding them in abeyance, or offering a multitude of diversionary programs to those who are accused of minor crimes. The rogue prosecutor movement, by contrast, ignores the everyday use of proper prosecutorial discretion, painting independent progressive and traditional prosecutors as racists intent on notching convictions on their belt above all else: Justice be damned.

Elected rogue prosecutors assert arrogantly that they, and they alone, know what is best for the districts they represent and that they have the power to ignore the laws passed by the people's representatives in state capitals. Rogue prosecutors have followed through on their campaign promises not to enforce the law, but when they claim that their policies will reduce and have reduced crime rates and help underprivileged communities, the facts demonstrate otherwise. This is a major vulnerability of the rogue prosecutor movement.

A debate among three elected rogue prosecutors and one traditional independent prosecutor earlier this year at Hastings School of Law illustrates the arrogance of some rogue prosecutors. Rachael Rollins, the elected district attorney for Suffolk County (Boston, Massachusetts), told McGregor Scott (who is white), a former elected district attorney for Shasta County, California, and current U.S. Attorney for the Eastern District of California, that "I really don't have much time for more white men telling me what communities of color need. Because they don't know."⁴⁹

Rollins, who is a woman of color, also said that she hired a "woman of color in the first time in the history of the world, I think, running the victim advocate program in my office."⁵⁰ Apparently Rollins was unaware that social workers, including licensed clinical social workers and those who have earned a Masters' of Social Work degree, have been working in DA offices across the country for decades, and many victim and witness programs in DA offices have been run and continue to be run by social workers.

When Scott noted that the murder rate in Baltimore City accelerated after Baltimore City State's Attorney Marilyn Mosby was elected and provided accurate statistics to back up his statement,⁵¹ Mosby snidely retorted, "you're not from Baltimore," and called his murder statistics "rhetoric."⁵²

The author of another law review article applauds the "prosecutorial veto" of rogue prosecutors, writing that there is a "disparity between the

state legislature that passes criminal law and the local community where criminal law is enforced.”⁵³ A “non-prosecution policy” therefore “acts... against the democratic inadequacies of the legislative system.”⁵⁴

The author suggests in a not-so-subtle manner that rural white legislators pass criminal laws that are used against black inner-city defendants, claiming that “rural residents, who are predominately white, carry disproportionately greater representation in the legislature than urban residents” and that “white and rural populations [therefore] have relatively greater influence in the writing of criminal laws than the residents of the areas most affected by crime.”⁵⁵

When looking for an example of a rogue prosecutor who has routinely usurped the role of the legislature, one need look no further than Suffolk County DA Rachael Rollins. When Rollins ran for district attorney in Boston, she hinted that she would refuse to prosecute entire categories of crimes. Once elected, Rollins published “The Rachael Rollins Policy Memo,” which lists 15 crimes “for which the default is to decline prosecuting.”⁵⁶

Despite the fact that those 15 crimes were passed by the state legislature and signed into law by the governor, Rollins knows better and has ordered the prosecutors in her office to drop those charges. According to her policy edict, instead of being prosecuted, those 15 categories of crimes should either be “outright dismissed prior to arraignment” or, “where appropriate,” “diverted and treated as a civil infraction.”⁵⁷ A decision to prosecute someone for committing any of these crimes must be approved by a supervisor.

The “Rollins 15” are:

- Trespassing;
- Shoplifting, including offenses that are essentially shoplifting but charged as larceny;
- Larceny under \$250;
- Disorderly conduct;
- Disturbing the peace;
- Receiving stolen property;
- Minor driving offenses, including operating with a suspended or revoked license;

- Breaking and entering where it is into a vacant property or is for the purpose of sleeping or seeking refuge from the cold and there is no actual damage to property;
- Wanton or malicious destruction of property;
- Threats (excluding domestic violence);
- Minor in possession of alcohol;
- Drug possession;
- Drug possession with intent to distribute;
- Resisting arrest where the only charge is resisting arrest; and
- Resisting arrest if the other charges include only charges that fall under the list of charges for which prosecution is declined.

In other words, in Boston, a violent career felon can break into your home, be in possession of large amounts of cocaine, and resist arrest after the police arrive, and all charges will be “outright dismissed” as long as the reason the thug broke into your house was that he wanted to sleep or was seeking refuge from the cold.

In the introduction to her policy memo, Rollins vowed to craft “new policies that would dramatically change the way we approach criminal prosecution”⁵⁸ and pledged that this new approach would be “data-driven”⁵⁹ and “grounded in science.”⁶⁰ Refusing to follow the law and faithfully execute the law as passed by a state legislature is legislative usurpation, not a “data-driven” approach to fighting crime.

Rollins’s blatant disregard for her duties as a member of the executive branch of government resulted in a rebuke by the Massachusetts Executive Office of Public Safety and Security⁶¹ and the refusal of at least one Boston municipal judge to grant an assistant district attorney’s recommendation for non-prosecution in a disorderly conduct case.⁶² While the judge’s actions raise separation of powers issues and may have been improper, we note it here to illustrate that members of the judiciary are also outraged by some of the policies Rollins has implemented.

One law review article suggests that Rollins is violating the Massachusetts Constitution by violating the separation of powers and the state’s

Victim Bill of Rights⁶³ in refusing to prosecute broad swaths of crimes.⁶⁴ Article XXX of the Massachusetts Constitution states:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.⁶⁵

In addition, although prosecutors under Massachusetts law may decline to prosecute a complaint or indictment on a case-by-case basis, the Massachusetts legislature, either expressly or impliedly, has not delegated authority to elected Massachusetts prosecutors to suspend the execution of entire classes of criminal laws.⁶⁶

As one might expect, Rollins's usurpation of the legislative function has caused a massive rift between the district attorney's office, the Boston Police Department, and law enforcement officials in general. A month after Rollins was elected in 2018, the National Police Association (NPA) filed a formal complaint with the Office of the Bar Counsel in Massachusetts against Rollins, claiming that her "reckless disregard for the laws enacted by the Massachusetts General Assembly mandate[d]" its decision to file such a claim. The NPA asserted that her campaign promises not to prosecute entire classes of crimes, if implemented, would "adversely and will foreseeably impact the safety and well-being of those that she is soon charged to represent." Rollins thumbed her nose at the bar complaint and published her "policy memo" on March 25, 2019.

Larry Krasner, the Philadelphia DA, also issued a non-prosecution policy memo to attorneys in his office soon after he was elected.⁶⁷ Only five pages in length (compared to the 50-plus pages of Rollins's memo), the Krasner memo also usurps the legislative power by ordering assistant district attorneys to decline to charge four categories of crimes; charge lower gradations of crimes (to make sure that no bail is required); divert more cases including drug distribution; make plea offers that are at the bottom of the state's guidelines; inform the judge at sentencing proceedings about the financial cost to the state for each year of incarceration; request shorter probation and parole periods; request no more than six months for a technical parole violation (no matter how much "backup time"⁶⁸ the offender has); request no more than two years for a regular parole violation (regardless of backup time available); and impose no parole violation for a positive marijuana test or if the parolee is caught with marijuana.

Since taking office, Krasner has fired about 10 percent of his staff, ended cash bail for 25 low-level offenses, and refused to charge scores of criminals, including violent offenders. Not surprisingly, the murder and violent crime rates in Philadelphia have skyrocketed. Krasner's rogue policies have deadly consequences and led to the murder of Philadelphia Police Corporal James O'Connor, a 23-year veteran of the Philadelphia Police Department.⁶⁹

Krasner, who is white, is fond of saying that "poverty equals bullets,"⁷⁰ a claim that many, including U.S. Attorney for the Eastern District of Pennsylvania William McSwain, find particularly offensive. McSwain lays the blame for the rise in violent crime on Krasner, lambasting him in the press. McSwain has said that Krasner's "disrespect for law enforcement is endangering the public"⁷¹ and has accused him of "offering sweetheart deals to violent defendants."⁷² He also believes that Krasner's "radical experiment has failed,"⁷³ that you can "draw a straight line from these policies to the carnage on the streets,"⁷⁴ and that Krasner's priorities "always lie with violent offenders, consequences be damned."⁷⁵

Elected rogue prosecutors across the country have similarly refused to prosecute entire classes of crimes, thereby usurping the constitutional role of the legislative branch. Baltimore State's Attorney Marilyn Mosby issued policies to her assistant prosecutors about crimes they are not allowed to pursue.⁷⁶ As happened in Philadelphia, the murder and violent crime rates in Baltimore have skyrocketed under Mosby's experiment.

Imagine, for example, a different rogue prosecutor movement called the XYZ movement whose goal was to elect prosecutors who would refuse to enforce laws they found distasteful or racist or discriminatory. The XYZ movement might refuse to prosecute all federal or state environmental laws, all insider trading laws or all white-collar crimes, and child sex crimes; refuse to add hate crimes enhancements to charges no matter the circumstances; or refuse to prosecute every criminal violation of fish and wildlife statutes.

From the standpoint of legislative usurpation, there is no difference between the current rogue prosecutor movement and this hypothetical XYZ movement. Both movements are lawless and rogue, trample on the separation of powers, and lead to disastrous consequences. But the rogue prosecutor movement is real, and the XYZ movement is not.

Eliminating Cash Bail for All Crimes. The rogue prosecutor movement cannot claim credit for starting the movement to end cash bail,⁷⁷ but ending cash bail is one of the movement's central goals.

Cash bail is a guarantee by a defendant, or a person acting on behalf of a defendant, that the defendant will show up for trial or hearings. The amount

of cash money required to “post bail” varies by jurisdiction and by crime, and judges usually have the authority to waive cash bail. Those who cannot afford to post bail remain in custody pending trial. Those who post bail and fail to show up for hearings or trial forfeit the cash.

One of the main objections to cash bail is that many people, especially people of color, cannot afford cash bail, and the requirement therefore has a disproportionate effect on minorities.⁷⁸ The American Civil Liberties Union (ACLU) claims that cash does not work because the inability of a person to leave jail pending trial hinders his ability to fight the charges.⁷⁹

The National Association of Criminal Defense Attorneys (NACDL), the nation’s premier organization of criminal defense attorneys dedicated to “identifying and reforming flaws and inequities in the criminal justice system,” opposes pretrial detention in most cases and notes that “over 75% of those detained in local jails have not been convicted of a crime.”⁸⁰

Rogue prosecutors, once elected, have a major say in whether to ask for cash bail, depending on the state and its law. The major proponent of eliminating cash bail is Chesa Boudin, the newly elected district attorney in San Francisco. He ran on the promise that he would end all cash bail, and once elected, he did just that.⁸¹

Boudin “believes that no one should be in jail simply because they are too poor to post bail to get out.”⁸² Under his new policy, “if someone poses a serious public safety risk, the District Attorney’s office will ask that the person remain in jail while waiting for the case to resolve or go to trial.”⁸³ Boudin touts his no-cash-bail policy as the most progressive in the country and an “important step towards ending the criminalization of poverty and stopping mass incarceration.”⁸⁴

Of course, it is not easy to identify everyone who poses a “serious public safety risk,” and opinions naturally will vary as to which particular defendant poses or does not pose such a risk. Rogue prosecutors tend to side with defendants, whom they view as victims of a structurally racist criminal justice system and racist police departments. As a result, they are eager not to request cash bail.

Rachael Rollins established a new policy on cash bail and pretrial release in her policy memo: “presumptive recommendation of release on personal recognizance without conditions. This presumption will only be rebutted if there is clear evidence of a flight risk.”⁸⁵ Not to be outdone by other progressive prosecutors, Rollins ordered that her office apply her cash bail and pretrial release policy retroactively to anyone held on “an amount of cash bail \$25,000 or less and re-assess bail through this release presumption framework.”⁸⁶

Many police organizations, traditional independent law-and-order prosecutors, and legislators think cash bail is appropriate for select defendants and oppose the wholesale abolition of cash bail as a pretrial precautionary device.⁸⁷ In response to Rollins's bail policy, a commission in Massachusetts charged with looking at the issue of cash bail recommended keeping cash bail because it "continues to play an important role."⁸⁸

The Money and Individuals Behind the Plot

While it is important to understand the goals of the rogue prosecutor movement, it is also important to understand who is funding the movement, the goals of these funders, who some of the recipients of these funds are, and the consequences for the unfortunate citizens who have to endure these rogue prosecutors' lawless decisions to abdicate their duties.

George Soros. The most frequently mentioned source of funding for those who are promoting the fundamental transformation of our criminal justice system and election of rogue prosecutors is liberal billionaire George Soros. *The Wall Street Journal* has reported that four years ago in the 2016 election cycle, Soros "contributed at least \$3.8 million to political-action committees supporting candidates for district attorney in Arizona, Colorado, Florida, Georgia, Illinois, Missouri, New Mexico, Texas, and Wisconsin...."⁸⁹

And that was just a fraction of the money he poured into county prosecutor races. Between 2014 and May 2018, Soros "spent more than \$16 million in 17 county races in [states other than California]. His favored candidates won in 13."⁹⁰ During that same time period, he spent more than \$2.7 million in California alone. Of that, more than \$1.5 million went to a political action committee promoting his preferred candidate, who was challenging the sitting San Diego County District Attorney.⁹¹

Since that time his contributions have continued. Unfortunately, the money can be difficult to trace because it is often funneled through a variety of entities. Local prosecutor races have seen an influx of money delivered through state-level super PACs and national "527" groups, which carry no caps on expenditures, as well as money funneled through local PACs and allied organizations.

Soros has funneled many of his contributions to support rogue DAs through the Justice & Public Safety PAC as well as related state-level Justice & Public Safety PACs.⁹² For instance, the Soros-funded Philadelphia Justice & Public Safety PAC spent almost \$1.7 million in 2017 to help elect Larry Krasner.⁹³ More recently, in November 2019, Soros funneled \$1 million to the Pennsylvania Justice & Public Safety PAC, which helped Jack

Stollstemer win election as the Delaware County District Attorney in a Philadelphia suburb.⁹⁴

In 2019, Soros also spent nearly \$1 million to help his preferred candidates win their primaries in the Washington, D.C., suburbs of Arlington and Fairfax counties in Virginia.⁹⁵ A week before their primary elections, *The Washington Post* reported that “[t]he Justice and Public Safety PAC has donated about \$583,000 to Parisa Dehghani-Tafti, a candidate for Arlington County commonwealth’s attorney, and \$392,000 to Fairfax County commonwealth’s attorney candidate, Steve T. Descano.”⁹⁶ The article went on to say that the “donations represent the lion’s share of the roughly \$744,000 and \$546,000 the candidates, respectively, have raised to date.”⁹⁷

To put that in perspective, Soros’s donations accounted for approximately 78 percent of Dehghani-Tafti’s war chest and 72 percent of Descano’s. For even more perspective, by that same point, Dehghani-Tafti’s opponent, the incumbent Arlington County commonwealth attorney, had raised only \$191,000, and Descano’s opponent, the incumbent Fairfax County commonwealth attorney, had raised only \$251,000. Both Dehghani-Tafti and Descano won their races and are currently implementing their rogue policies.⁹⁸

For the 2020 election cycle, Soros has already pumped \$2 million into the Illinois Justice & Public Safety PAC to help Cook County State’s Attorney Kim Foxx win her bid for re-election.⁹⁹ He also recently donated \$1.5 million to the California Justice & Public Safety PAC, which is supporting former San Francisco DA George Gascon in his bid to become the top prosecutor in Los Angeles County.¹⁰⁰ So far, the PAC has spent roughly \$930,000 on television and digital ads to support Gascon. This is in addition to the \$1 million contribution the PAC received from the independent expenditure group Run, George, Run: George Gascon for LA DA 2020,¹⁰¹ which is notable since the wife of Netflix’s CEO had previously made a \$1 million donation to that organization.¹⁰²

In Florida, Soros supported Joe Kimok in his bid to become the state attorney overseeing Broward County. Although Kimok lost the primary, among all of the Democratic candidates, he was the “biggest beneficiary of PAC money, by far...”¹⁰³ In three weeks, “the Florida Justice & Public Safety PAC...raised more than \$750,000 for his effort.”¹⁰⁴

Similarly, Soros-linked groups helped push Monique Worrell to victory in the Democratic primary to become the state attorney responsible for prosecuting crimes in and around Orlando, Florida. According to the *Orlando Sentinel*, “Records show that a new political committee raised more than \$2.2 million and spent more than \$1.5 million” in just two weeks in support of Worrell.¹⁰⁵ At least “\$1 million [came] from Democracy PAC, a

political committee set up by Soros” after “Soros [had] spent more than \$1.3 million in the closing weeks for the 2016 campaign to elect the current state attorney, Aramis Ayala, who is not running for re-election.”¹⁰⁶ Ayala infamously has refused to seek the death penalty in cases that her office prosecutes, and this has led two Florida governors to take the drastic step of reassigning capital cases to a different state attorney’s office.¹⁰⁷

Soros also donated \$116,000 to the Missouri Justice & Public Safety PAC in support of St. Louis prosecutor Kim Gardner, discussed below.¹⁰⁸

Soros has also relied on organizations like the Tides Foundation, “a San Francisco-based group that acts almost like a clearing house for other donors, directing their contributions to liberal non-profit groups.”¹⁰⁹ In 2018, for example, Tides “hosted campaign donors for Soros and the ACLU and racial-justice activists from Color of Change to talk about steering non-profit money toward the cause.”¹¹⁰

Soros had previously coordinated closely with the ACLU, including making a \$50 million donation “to mount an eight-year political campaign across the country to make change of criminal justice policies a key issue in local, state and national elections.”¹¹¹ This was after “a panel on prosecutor races [in fall 2017] at the closed-door retreat of Democracy Alliance, a coalition of groups and leaders who pool their resources behind liberal causes.”¹¹² Moreover, earlier this year, the Black Lives Matter Global Network (BLM) gave notice that it intended “to transfer the fiscal sponsorship of BLM and the funds and associated assets it has held for the BLM Project to The Tides Center, a leading provider of nonprofit fiscal sponsorship services.”¹¹³

Tech Titans. While George Soros might be the most well-known liberal backer of rogue DAs, Facebook cofounder Dustin Muskovitz and his wife, Cari Tuna, have provided significant funding as well, most notably through their Open Philanthropy Project, which in turn has provided significant funding for organizations like the Accountable Justice Action Fund, Fair and Just Prosecutions, and the Real Justice PAC, all of which directly or indirectly support rogue prosecutors and candidates. The Open Philanthropy Project says on its website that:

We have funded a lot of work in the prosecutor space. An example of a specialty organization for prosecutors is Fair and Just Prosecution. We tend to think that funding work for particular policy reforms...may have limitations...when system actors are able to quickly adapt and push different policies that may have the same effect, and [this approach avoids] the danger of signaling too clearly to anti-change forces what the intended target is.¹¹⁴

Who are these groups, and how much money have they received? Fair and Just Prosecution says they are establishing a network of prosecutors committed to building a better criminal justice system.¹¹⁵ In doing so, they highlight “inspiring new leaders redefining prosecution in the 21st Century” such as Larry Krasner and Marilyn Mosby, among others.¹¹⁶ In addition to receiving money from the Open Philanthropy Project, Fair and Just Prosecution receives funding from the Tides Center, which, again, is supported by George Soros and other wealthy individuals.¹¹⁷

The Real Justice PAC states that it wants to utilize tactics “pioneered” by the Bernie Sanders Campaign to “[e]lect prosecutors who will fix our broken criminal justice system.”¹¹⁸ Their endorsements read like a who’s who of rogue prosecutors and rogue-prosecutor wannabes.¹¹⁹ Moreover, the organization was cofounded by Shaun King, an activist with a history of making false accusations and threatening statements against police officers.¹²⁰

The Accountable Justice Action Fund “supports criminal justice reform, with a focus on reforming prosecution and equipping local and national groups to increase accountability in prosecutorial elections,” with an eye to ending mass incarceration.¹²¹ Its treasurer is the head of criminal justice reform for the Open Philanthropy Project.

The reach of Moskowitz and Tuna’s Open Philanthropy Project is vast—and may even rival Soros’s influence. For instance, a May 2018 *Los Angeles Times* article noted that the Open Philanthropy Project “directed \$6.6 million toward ‘prosecutorial reform’ or similar terms” from 2014 to 2017.¹²² A review of the Project’s Grants Database shows that for 2019 through October 15, 2020, it has recommended making criminal justice–related grants totaling \$60,796,100, with approximately \$21,987,300 of this amount related to prosecutorial “reform” efforts.¹²³

Consequences of Rogue Prosecutors’ Policies

We do not have to look far to see the consequences and the havoc that these rogue prosecutors wreak on their communities. One article’s headline puts the point bluntly: “Crime Spikes as Soros-Funded DAs Take Charge.”¹²⁴ This is hardly surprising, given their refusals to enforce broad swaths of criminal law.¹²⁵

Crime Soars in Philadelphia on Krasner’s Watch. A recent study of crime rates and trends in Philadelphia is illuminating. “[S]ince [Larry] Krasner took office in 2018,” it reports, “homicides are up 49 percent and shootings have climbed 59 percent.”¹²⁶ One analyst has said that if “the trend

holds, Philadelphia will tally more than 450 homicides in 2020—the highest count in nearly 30 years.”¹²⁷ The same analyst put it succinctly:

Compared with his predecessor’s average conviction rates, Krasner either dropped or lost 26 percent more of all felony cases. More robbery cases (up 14 percent) and auto theft cases (up 37 percent) were dropped or lost. In drug sales (not possession) cases, Krasner dismisses or loses 55 percent of cases, compared with the 34 percent rate of his predecessor.

In his first two years in office, Krasner dropped or lost 47 percent of all illegal firearms cases—a 42 percent higher rate than the last district attorney, Seth Williams. Krasner won convictions in 21 percent fewer cases.¹²⁸

U.S. Attorney William McSwain aptly summed it up in a November 2019 speech entitled “Enough of This Nonsense: Restoring Respect for the Rule of Law with Prosecution that Serves Law-Abiding Citizens and Victims, Not Criminals.” In addition to highlighting statistics showing Krasner’s woeful underenforcement of criminal laws, McSwain provided real-life examples and delineated the consequences of the dangerous antics of “Uncle Larry, which is the nickname that the City’s violent criminals have affectionately bestowed on him.”¹²⁹

McSwain highlighted the case of Jouvan Patterson, who shot a Cambodian immigrant shopowner during a May 2018 attempted robbery, an act that left the shopowner confined to a wheelchair. Krasner’s office began by charging Patterson with attempted murder and aggravated assault but “then quietly dropped the attempted murder charges and agreed to a ridiculously lenient plea deal of 3 1/2 to 10 years imprisonment.” McSwain’s office stepped in and sought federal charges to correct this injustice. McSwain said that his office “will be acting like a prosecutor and not a public defender.... There is no ‘Uncle Bill’ waiting for Mr. Patterson in federal court.”¹³⁰

Or consider the role Krasner’s policies played in the murder of Philadelphia police corporal James O’Connor:

Hassan Elliot—who was caught in 2017 possessing a firearm illegally—was released almost immediately for time served when Krasner took office in January 2018 (Elliot had been detained by Krasner’s predecessor). The following year, Elliot was apprehended for possession [of] large quantities of cocaine for distribution. Elliot had violated his supervision requirements and was eligible for detention. Instead, Krasner released Elliot, scheduling his trial. That same day (March 1, 2019) Elliot killed someone. Krasner filed a murder warrant.

Unbelievably, the day after Elliot failed to appear for his cocaine case trial which allowed for Elliot to be detained on the parole violation alone, Krasner instead dropped that charge altogether. Elliot remained a fugitive until he murdered O'Connor.¹³¹

We could go on, but it is clear that Larry Krasner's view of himself as the city's "public defender with power" is not serving his constituents well, is thwarting justice, and in the process is making Philadelphia and its citizens less safe.

Crime Soars in San Francisco on Chesa Boudin's Watch. The same story is playing out in San Francisco where District Attorney Chesa Boudin touts on his website that "[f]or too long, prosecutors nationwide have promoted mass incarceration and relied on policies that hurt the poor and people of color disproportionately.... DA Chesa Boudin rejects those models and instead leads the San Francisco District Attorney's Office on a progressive path forward toward seeking true justice...."¹³²

What does that "true justice" look like? According to one California newspaper:

Boudin's lack of prosecutions is fueling a burglary epidemic. Boudin's term started with a 23% leap in robberies and upticks in burglaries and car break-ins. After the March 16th Covid-19 shutdown, with retail stores closing and tourists and rental cars disappearing, criminals transitioned to stealing cars, starting fires, and committing burglaries. Through the shutdown, as of September 1st, burglaries exploded up 57.6% over the same period last year. (Year-to-date homicides are up 33% under Boudin.)¹³³

The result: Residents are "voicing concerns for their safety and expressing frustration over suspects not being prosecuted."¹³⁴

And who can blame them? "In San Francisco," according to the *San Francisco Chronicle*, "smash-and-grab automobile break-ins have been at epidemic levels in recent times."¹³⁵ Although car break-ins are declining, in September 2020, "904 vehicle break-ins were reported, or roughly 30 per day." Moreover, "given Boudin's invitation—he won't be prosecuting quality-of-life crimes nor will he require defendants to post cash bail unless they are judged to be a public safety or flight risk—it's safe to say that even more ambitious bandits in nearby communities" will flock to San Francisco.¹³⁶

Crime Soars in Boston on Rachael Rollins's Watch. Rachael Rollins in Boston is another so-called reform-minded prosecutor. What are the results of her vow to craft "new policies that would dramatically change

the way we approach criminal prosecution,”¹³⁷ a new approach that would be “data-driven”¹³⁸ and “grounded in science”?¹³⁹ They are not good. As of August 2020, the number of shootings in Boston was up 29 percent compared to the same time last year.¹⁴⁰ More tragically, “Deadly shootings [were] up 34%, jumping from 23 victims in 2019 to 31 victims in 2020.”¹⁴¹

Boston Police Commissioner William Gross blamed the recent increase in crime on the early release of prisoners due to the COVID-19 pandemic. “Regarding the early releases and repeat offenders, Commissioner Gross pointed the finger squarely at controversial DA Rachael Rollins,” who allowed some dangerous felons to be released early from jail because of the COVID-19 pandemic. In response to one recent shooting, Gross said that “[w]hen you release and keep releasing dangerous persons to the neighborhood...it just bolsters the confidence of repeat violent offenders.”¹⁴²

In response to another incident, Gross said that “[j]ust last week, a known gang member, carrying a firearm, firing a firearm, home invasion—released. When you do things like that, it sets a mentality on these streets that people can do what they want.” He went on to say that “[t]his is unacceptable. People who have been locked up for violent offenses and carrying a firearm should not be released on personals....”¹⁴³ But release on personal recognizance is the default position that Rollins has instructed her office to take.¹⁴⁴

Crime Soars in Chicago on Kim Foxx’s Watch. Finally, there is Chicago. In August of this year, the *Chicago Tribune* conducted an analysis showing that “Cook County State’s Attorney Kim Foxx is dropping felony cases involving charges of murder and other serious offenses at a higher rate than her predecessor....”¹⁴⁵ For all felony defendants, she dropped charges 29.9 percent of the time compared to only 19.4 percent for her predecessor’s last three years in office. In response, Foxx said that “her office has dismissed cases against low-level, non-violent offenders so prosecutors can concentrate on crimes of violence.”

Really? Is that true? The *Tribune* story continued:

However, the Tribune found that Foxx’s higher rates of dropped cases included people accused of murder, shooting another person, sex crimes, and attacks on police officers—as well as serious drug offenses that for decades have driven much of Chicago’s street violence.

For the three-year period analyzed, Foxx’s office dropped 8.1% of homicide cases, compared with 5.3% under [Anita] Alvarez, the Tribune found. Under Foxx, the office dropped 9.5% of felony sex crime cases; the rate was 6.5% for Alvarez.

Foxx's office also increased the rate of dropped cases for aggravated battery and for aggravated battery with a firearm. And under Foxx, the percentage of cases dropped for defendants accused of aggravated battery of a police officer more than doubled, from 3.9% to 8.1%.

The picture did not get any rosier looking solely at conviction rates—rebutting Foxx's claim that “she is more selective about prosecuting the strongest, winnable cases.” Alvarez won convictions in 75 percent of the felony cases her office tried during her last three years in office; Foxx's office has won only 66 percent.¹⁴⁶

In the wake of Foxx's efforts to pursue bail reform policies, more individuals have been placed on electronic home monitoring. As the *Tribune* explained:

Defendants who destroy the ankle bracelet or simply take off can be charged with felony escape. It's a charge where the difference between Foxx's office and Alvarez's is particularly stark. About 400 people are charged every year with felony escape. During Alvarez's last three years in office, she dropped a total of 55 such cases, compared with 420 for Foxx.

Chicago's increased suffering from violent crime shows the results of Foxx's policies. “You go from 9,600 people in our county jail in 2016 to 4,600 in 2020,” according to Chicago Police Superintendent David Brown. “That is not sustainable. Many of these people came right back to the very communities where they committed their crimes to commit more crimes.”¹⁴⁷ Chicago police have pointed to the “skyrocketing use of electronic monitoring as a key factor in the city's shocking 50% rise in killings this year.”¹⁴⁸

Chicago's gun violence is also on the rise. In one weekend in September, 45 people were shot, 10 of them fatally.¹⁴⁹ The next weekend, 50 people were shot, nine of them fatally.¹⁵⁰ To be clear, through Sunday, October 11, 2020, 3,304 people had been shot in Chicago, which is 1,120—or approximately 34 percent—more than in 2019.¹⁵¹

In a recent interview, Kim Foxx said, “We're in really, really uncharted territory” in terms of gun violence.¹⁵² On that at least, we can agree, especially with a prosecutor who appears to be either incompetent or unwilling to do her job.

Crime Soars on Other Rogue Prosecutors' Watches. As should be clear, the problems associated with rogue prosecutors are not isolated phenomena. Suffice it to say that many of the problems—high crime, reduced prosecutions, reduced charges, and more—that have plagued the rogue

prosecutors discussed above have plagued rogue prosecutors elsewhere as well: for example, Kim Gardner in St. Louis¹⁵³ and Marilyn Mosby in Baltimore.¹⁵⁴

Gun violence also is surging in New York City, especially in Brooklyn where rogue prosecutor Eric Gonzalez is responsible for enforcing the law.¹⁵⁵ Gonzalez “has argued that public safety is better served by putting fewer people in jails, including young gun offenders.”¹⁵⁶ This has led federal authorities—especially the U.S. Attorney’s Office in Brooklyn—to charge many more gun crimes federally than before as they attempt to stem the tide of violence.¹⁵⁷

Surely, one of the main things that could be done to stem this tide, again, is to elect prosecutors willing and able to do the job of enforcing the law and protecting their communities.

The Real Progressives: Independent Traditional Prosecutors

Independent traditional prosecutors who believe in protecting victims’ rights and the right to be safe from crime and violence and who exercise proper discretion are the real progressive prosecutors. They have been at the forefront in keeping communities safe. Crime rates and incarceration rates have fallen dramatically on their watch.

They have worked hard with the bench and bar to create alternatives to incarceration and have been the primary drivers behind specialty courts. Those courts, started decades ago, combined with thousands of alternatives to incarceration and diversionary programs, work to benefit those accused of crime, those addicted to drugs, and others, and this in turn benefits society.

The following specialty courts, many of which have been in existence for decades, were started under traditional independent prosecutors.

Domestic Violence Courts. Until domestic violence courts were created decades ago, assault cases involving intimate partners were often difficult, if not impossible, to prosecute. Back then, a typical domestic violence case would involve a man assaulting a woman. The woman would call 911, the police would arrive on the scene, she would give the police a statement, and charges would be filed. By the time the case came up for trial, however, the woman would refuse to testify, and the prosecutor would have no choice but to dismiss the case. In many cases, the same defendant would later do the same thing to the same or a different woman—and with the same results.

Independent progressive and traditional prosecutors, working with social workers, judges, academics, and the defense bar, realized that there

had to be a better way to break the cycle of violence and get those who were inclined to abuse their intimate partners the help they need while at the same time holding them accountable and providing a safe place for the victims of these crimes.

Domestic violence courts were the result of this new “progressive” thinking. Traditional prosecutors worked with police to gather evidence and contemporaneous statements from victims of domestic violence at or near the time of the assaults. Charges were funneled to domestic violence courts where trained judges, learned in the cycle of violence, presided over cases. Victim services, including temporary housing, shelter, financial support, and emotional or psychological support, were made available to victims immediately so that they had the option of not going back to their abusers. Waiting times for trials were shortened, lessening the chance that the victim would recant her statement that she was beaten.

Prosecutors listen to and work with defense attorneys to find out about the defendant and his issues. In most cases where the charges are misdemeanors, the defendant is offered a pretrial diversion program, which usually consists of going to therapy and domestic violence counseling. Successful completion of the program results in dismissal of the charges.

In cases where the accused chooses to go to trial and the victim refuses to testify, the prosecutor can still proceed utilizing a recording of the victim’s 911 call, photos, the victim’s excited utterance to the police officer, and other evidence. If the accused is found guilty, he is usually given some jail time, which is suspended as long as he completes the domestic violence recovery programs described in the preceding paragraph.

These courts, which have existed for decades and are in operation in many jurisdictions around the country, were created by independent progressive and traditional prosecutors. These courts work not only for the victims, but also for the defendants if they take advantage of the recovery programs that are offered.

Drug Courts. Until drug courts were created decades ago, minor drug crimes, like simple possession or use, were processed in regular misdemeanor courts. Offenders, many of whom were young and in need of treatment, were not offered the services they needed, and many continued to use drugs and build up criminal records. It was a vicious cycle.

Drug courts were created by independent progressive and traditional prosecutors with input from defense attorneys, judges, health care professionals, and others to give those who are addicted to marijuana and other illegal drugs the substance abuse help they needed. They are like no other specialty courts in the country.

When a person is caught using or possessing illegal drugs like cocaine, heroin, methamphetamines, LSD, marijuana, or other illicit substances, and when a drug court exists and that individual otherwise qualifies, that person's case is diverted to drug court. In drug court, the defense attorney, prosecutor, judge, and drug court specialist work together.

As a predicate, the defendant must agree to plead guilty and be willing to enter drug treatment. The judge imposes a jail sentence on the accused and then suspends the sentence pending successful completion of a set number of weeks (usually one year) of drug treatment sessions. Most drug courts require defendants to look for a job, prove it, and be subjected to random urinalysis tests.

It is common for defendants, especially early into treatment, to test positive. When that happens, they are brought back into court, and the lawyers work with the defendant to find out why he or she relapsed. In some cases, the judge imposes a few nights of jail; in others, the judge simply resets the clock to zero, requiring the accused to begin treatment again. The goal, as with all diversionary courts, is to help the offender succeed in addressing the underlying issue (be it substance abuse, a mental health issue, an anger management issue, or the like), not to hope that the offender fails and ends up in prison.

When a defendant successfully completes drug treatment, many drug courts hold a graduation for the defendant. Studies have shown that those who complete long-term drug treatment programs through drug courts have a much higher chance of not relapsing than do those who did not undergo drug treatment.

Drug courts have been a smashing success. There are not enough of them, and more need to be created and funded. But where they exist, they are a benefit to everyone, and the rogue prosecutor movement had nothing to do with their creation.

Other Courts and Programs. Other specialty courts and programs are flourishing across the country. In teen and peer courts, for example, prosecutors and defense attorneys bring high school students to a courthouse, teach them over a day how to present a case, and then allow the students themselves to play the part of the judge, jury, prosecutor, and defense counsel in a hypothetical case. Traditional prosecutors helped to create teen and peer courts years ago as a way to educate high school students about the criminal justice system and the rule of law.

Traditional prosecutors also created the community prosecutor movement decades ago. Community prosecutors work with members of the community, attend community meetings, go to town halls, attend events,

and go to schools, churches, mosques, and other houses of worship to listen and explain the criminal justice system. They act as ambassadors from the district attorney's office to the community, providing a valuable information loop from the office to the community and from the community to the leadership of the office.

Traditional prosecutors engage with thousands of other professionals across a broad spectrum of diversion and treatment programs. Some of those programs support victims, and others support defendants. Independent progressive prosecutors have also created better choice courts, mental health courts, elder abuse units, and other specialty units in their offices.

Conclusion

There is nothing progressive about the rogue prosecutor movement. Elected rogue district attorneys have not worked within the law to enhance public safety, protect victims' rights, lower crime, and serve their communities. They brazenly usurp the constitutional role of the legislative branch by refusing to prosecute entire categories of crime, abuse the role of the county prosecutor, fail to protect victims of crime, and ignore the rising crime rates that flow from their radical policies.

This movement exists because George Soros and a handful of billionaires have invested heavily in the election of district attorneys who are working to reverse-engineer and dismantle the criminal justice system as we know it—a system that, while not perfect, has resulted in the lowest crime and incarceration rates in decades.

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Endnotes

1. See Criminal Justice Standards for the Prosecution Function, Part I, Standard 3-1.2(b) (AM. BAR ASS'N 4TH ED. 2017), available at https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.
2. See Adversarial Versus Inquisitorial System, The Doha Declaration, United Nations Congress on Crime Prevention and Criminal Justice, <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html#:~:text=The%20inquisitorial%20system%20is%20associated,has%20existed%20for%20many%20centuries.&text=The%20inquisitorial%20process%20can%20be,defence%20to%20determine%20the%20facts> (last visited Oct. 19, 2020).
3. *Id.*
4. *Id.* The inquisitorial system is associated with civil law legal systems and has existed for many centuries. It is characterized by extensive pretrial investigation and interrogations with the objective of avoiding bringing an innocent person to trial. The inquisitorial process can be described as an official inquiry to ascertain the truth, whereas the adversarial system uses a competitive process between prosecution and defense to determine the facts. The inquisitorial process grants more power to the judge who oversees the process, whereas the judge in the adversarial system serves more as an arbiter between claims of the prosecution and defense.
5. See Conflicts of Interest, Criminal Justice Standards for the Prosecution Function, Part I, Standard 3-1.7(b) (AM. BAR ASS'N 4TH ED. 2017), available at https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.
6. *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that criminal defendants have a constitutional right for prosecutors not to suppress evidence favorable to them where the evidence is material to either their guilt or their punishment—essentially, potentially exculpatory or mitigating evidence).
7. Jencks Act, 18 U.S.C. §3500 (providing that after a government witness testifies at trial, the defense may request and receive any prior “statement” of that witness in the possession of the United States “which relates to the subject matter” of the testimony).
8. *Giglio v. United States*, 405 U.S. 150, 154 (1972) (holding that evidence affecting a witness’s credibility falls within the Brady Rule—essentially impeachment information).
9. See Olwyn Conway, *How Can I Reconcile with You When Your Foot Is on My Neck? The Role of Justice in the Pursuit of Truth and Reconciliation*, 2018 MICH. ST. L. REV. 1349, 1369 (2018).
10. See Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 754 (2018).
11. See GERRY SPENCE, <https://gerryspence.com/> (last visited Oct. 19, 2020). Spence claims never to have lost a criminal case in his life as a prosecutor or defense attorney. He has tried and won many nationally known cases, including the Karen Silkwood case (a movie about the case was made with Meryl Streep and Cher); the defense of Randy Weaver at Ruby Ridge; the defense of Imelda Marcos; the case against *Penthouse* magazine for Miss Wyoming; and the murder defenses of Ed Cantrell and Sandy Jones. In 2008, in a politically charged case brought by the Justice Department in Michigan against attorney Geoffrey Fieger, Spence won complete acquittals for his client on a 10-count indictment alleging federal campaign contribution violations, conspiracy, and obstruction of justice. Spence represented Brandon Mayfield, an Oregon attorney, in a case against the United States in which Spence was instrumental in persuading a federal judge to rule that the Patriot Act was unconstitutional.
12. See David Alan Sklansky, *The Progressive Prosecutor’s Handbook*, 50 U.C. DAVIS L. REV. ONLINE 25 (2017); see also David Alan Sklansky, Commentary, *The Changing Political Landscape for Elected Prosecutors*, 14 OHIO ST. J. CRIM. L. 647 (2017).
13. See generally James Forman Jr., *Locking Up Our Own, Crime and Punishment in Black America* (2017); see also Rachel Elise Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (2019); Paul Butler, *Chokehold: Policing Black Men* (2017); Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 FORDHAM L. REV. 1 (2018).
14. See George Gascon, *Transformative Justice: Prosecution Strategies to Reform the Justice System and Enhance Community Safety*, available at https://www.georgegascon.org/wp-content/uploads/2020/09/SFDA_Transformative-Justice_George-Gascon_2019.pdf (last visited Oct. 19, 2020).
15. See, e.g., Scott Bland, *George Soros’ Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016, 5:25 AM), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519>; see also Paige St. John and Abbie Vansickle, *Here’s Why George Soros, Liberal Groups Are Spending Big to Help Decide Who’s Your Next D.A.*, L.A. TIMES (May 23, 2018, 7:00 AM), <https://www.latimes.com/local/california/la-me-prosecutor-campaign-20180523-story.html> (detailing the tens of millions of dollars Soros and other like-minded individuals have poured into various DA races and PACs in order to back rogue prosecutor candidates).
16. See David Weigel, *Down the Ballot, Liberal Reformers Take over the Criminal Justice System*, WASH. POST (Sept. 5, 2018), <https://www.washingtonpost.com/politics/2018/09/05/down-ballot-liberal-reformers-take-over-criminal-justice-system/> (noting that the first victory in the campaign to transform the criminal justice system via rogue prosecutors came in early 2016, when George Soros plunked down \$300,000 into a PAC created to elect Kim Foxx as the state’s attorney of Cook County, Ill.).
17. See PROGRESSIVE, MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/progressive> (last visited Oct. 19, 2020).

18. See LAW ENFORCEMENT LEGAL DEFENSE FUND, PROSECUTORIAL MALPRACTICE: PROGRESSIVE PROSECUTORS, PUBLIC SAFETY, AND FELONY OUTCOMES (2020), <http://www.policedefense.org/wp-content/uploads/2020/06/Prosecutorial-Malpractice.pdf> (showing that in six cities where rogue prosecutors were elected, guilty verdicts decreased substantially, and those same offices dropped or lost cases by substantial percentages compared to when the offices were headed by independent, traditional law-and-order prosecutors); see also Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The “Minneapolis Effect” and the Decline in Proactive Policing*, FEDERAL SENTENCING REPORTER (forthcoming 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3690473.
19. See Teen Courts: A Focus on Research, Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice (Oct. 2000) (describing teen courts “as a voluntary alternative in lieu of more formal handling by the traditional juvenile justice system” where other “young people rather than adults determine the disposition, given a broad array of sentencing options”), available at <https://www.ncjrs.gov/pdffiles1/ojdp/183472.pdf>; see also TEEN COURT, MONTGOMERY CNTY., MD STATE’S ATTORNEY’S OFFICE, <https://www.montgomerycountymd.gov/SAO/other/teencourt.html> (last visited Oct. 23, 2020).
20. See Sarah Schweig, Danielle Malangone, and Miriam Goodman, *Prostitution Diversion Programs*, Center for Court Innovation (2012) (stating that “People arrested for prostitution tend to cycle through the justice system again and again. Recognizing this, some justice practitioners are trying new approaches—rather than fines and jail time—to address the problems, such as trauma, abuse, and drug addiction, that keep many women and girls in ‘the life’ of prostitution”), available at https://www.courtinnovation.org/sites/default/files/documents/CI_Prostitution%207.5.12%20PDF.pdf; see also Ana Ley, *The Impact of Specialty Courts: I’ve Seen Girls Go from Prostitution to College*, L.V. SUN (June 8, 2014) (describing Nevada’s specialty courts), <https://lasvegassun.com/news/2014/jun/08/impact-specialty-courts-ive-seen-girls-go-prostitu/>.
21. Mental Health Courts Program, Bureau of Justice Assistance, U.S. Dep’t of Justice, <https://bja.ojp.gov/program/mental-health-courts-program/overview> (stating that the “Mental Health Courts Program funds projects that seek to mobilize communities to implement innovative, collaborative efforts that bring systemwide improvements to the way the needs of adult offenders with mental disabilities or illnesses are addressed”) (last visited Oct. 23, 2020); see also Treatment Court Locators, Substance Abuse and Mental Health Services Administration, U.S. Dep’t of Health & Human Services, <https://www.samhsa.gov/gains-center/treatment-court-locators> (stating that “Mental health courts for adults and juveniles work with people with mental illnesses who are involved in the justice system. These courts connect people to effective treatment and support after they undergo screening and assessments”) (last visited Oct. 23, 2020).
22. FAMILY JUSTICE CENTER ALLIANCE, <https://www.familyjusticecenter.org/> (last visited Oct. 23, 2020) (stating that they “develop and support Family Justice Centers that help survivors and their children find the services they need in ONE place”); see also SAN DIEGO FAMILY JUSTICE CENTER, <https://www.sandiego.gov/sandiegofamilyjusticecenter/fjcinfo/> (last visited Oct. 23, 2020) (stating that it is “dedicated to transitioning victims of domestic violence, sexual assault, and sex trafficking into survivors” and that it “is a team of professionals including therapists, nurses, attorneys, prosecutors, advocates, immigration attorneys, police, and other social service providers”).
23. John S. Goldkamp, Cheryl Irons-Guynn, and Doris Weiland, *Community Prosecution Strategies: Measuring Impact*, Bureau of Justice Assistance, U.S. Dep’t of Justice (Nov. 2002) (stating that “community prosecution initiatives deploy prosecutors or, in some jurisdictions, nonlegal staff in the community to identify the public safety concerns of residents and to seek their participation in developing and implementing strategies to address the problems that are the community’s highest priorities”), available at <https://www.ncjrs.gov/pdffiles1/bja/192826.pdf>.
24. 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, I-49-50 (2020), available at <https://lawdigitalcommons.bc.edu/bclr/vol61/iss9/4/>.
25. See Olwyn Conway, *How Can I Reconcile with You When Your Foot Is on My Neck? The Role of Justice in the Pursuit of Truth and Reconciliation*, 2018 MICH. ST. L. REV. 1349, 1353 (2018).
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28. Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 750 (2018).
29. *Id.* at 758.
30. McWithey, *supra* note 24.
31. See Rachel E. Barkow, *Three Lessons for Criminal Law Reformers from Locking up Our Own*, 107 CALIF. L. REV. 1967, 1968 (2019).
32. See St. John and Vansickle, *supra* note 15.
33. *Id.*; see also OPEN SOCIETY—U.S., <https://www.opensocietyfoundations.org/who-we-are/programs/open-society-us> (last visited Oct. 19, 2020) (listing goals such as ending “mass incarceration,” holding police departments accountable, decriminalizing drugs, ending the death penalty, and more).
34. See Carissa Byrne Hessick and Michael Morse, *Picking Prosecutors*, 105 IOWA L. REV. 1537, 1544 (2020).
35. *Id.*
36. *Id.*
37. See *supra* note 12.

38. See Chris Brennan, *\$1.45 Billion Soros Investment in Philly DA's Race Draws Heat for Krasner*, PHIL. INQ. (May 5, 2017), <https://www.inquirer.com/philly/news/politics/Soros-145-million-investment-in-DAs-race-draws-heat-for-Krasner.html>.
39. See Chris Palmer, Julie Shaw, and Mensah M. Dean, *Krasner Dismisses 31 from Philly DA's Office in Dramatic First-Week Shakeup*, PHIL. INQ. (Jan. 5, 2018), <https://www.inquirer.com/philly/news/crime/larry-krasner-philly-da-firing-prosecutors-20180105.html-2>.
40. See *supra* note 10 at 760–63, where the author suggests that there is “significant potential for noncompliance from those on the lower rungs of the hierarchy due to a lack of buy-in to the goals of the head prosecutor.” He suggests that this defiance exists across a spectrum and can be subtle, but that such defiance “can undermine a chief prosecutor’s progressive agenda.” He suggests that the most “brazenly defiant” will be fired. See also generally Paul Butler, *LET’S GET FREE HELP: A HIP-HOP THEORY OF JUSTICE* (2009).
41. FBI UCR, *Crime in the U.S.*, <https://ucr.fbi.gov/crime-in-the-u.s> (last visited Oct. 19, 2020).
42. See “Usurping the Constitutional Role of State Legislatures,” *infra*.
43. See *Office Overview*, LOS ANGELES COUNTY DISTRICT ATTORNEY’S OFFICE, <https://da.lacounty.gov/about/office-overview> (last visited Oct. 13, 2020).
44. See Anne Marie Schubert, *Twenty-Four Female Elected DAs Extol Support for Los Angeles DA Jackie Lacey*, CALIFORNIA GLOBE (Oct. 14, 2020), <https://californiaglobe.com/section-2/twenty-four-female-elected-das-extol-support-for-los-angeles-da-jackie-lacey/>.
45. See *Endorsements*, JACKIE LACEY FOR DA, <https://www.jackielacey.com/endorsements> (last visited Oct. 19, 2020).
46. See Hessick and Morse, *supra* note 34 at 1546.
47. *Id.*
48. See Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 752 (2018).
49. See UC Hastings College of Law, Hastings Journal of Crime and Punishment and Hastings Race and Poverty Law Journal Event, *Progressive Prosecution and the Carceral State*, UC HASTING PANOPTO (Feb 7, 2020, at 2:21:29), <https://uchastings.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=917ae0be-b80f-4084-aa10-ab58000cba7f&fbclid=IwAR1DpRUDFe4lx%20Hz5tOxiFHeV3LNA2Fc00baylYo92VYUISN2Zebg6BexPA>. During this debate, Mosby said that a progressive prosecutor is “a person advocating for social reform not new liberal ideas; moving away from the tough on crime approach, the war on drugs, stop and frisk, zero tolerance and winning at all costs, which has led to mass incarceration and overcriminalization of black and brown people.”
50. *Id.*
51. See note 49, *infra*.
52. *Id.*
53. See John E. Foster, *Charges to Be Declined: Legal Challenges and Policy Debates Surrounding Non-Prosecution Initiatives in Massachusetts*, 60 B.C. L. REV. 2511, 2534 (2019).
54. *Id.* at 2534–35.
55. *Id.*
56. See “The Rachael Rollins Policy Memo,” Appendix D (D-1), <http://files.suffolkdistrictattorney.com/The-Rachael-Rollins-Policy-Memo.pdf> (last visited Oct. 13, 2020).
57. *Id.*
58. *Id.* at 2.
59. *Id.*
60. *Id.* at 9.
61. See Joe Dwinell, *Charlie Baker’s Team Slams Rachael Rollins’ No-Prosecute List*, BOSTON HERALD (Apr. 5, 2019), <https://www.bostonherald.com/2019/04/04/baker-team-slams-da-rachael-rollins-no-prosecute-list-new-memo/>.
62. See Alyssa Vaughn, *Massachusetts Supreme Court Rules in Rachael Rollins’ Favor in Straight Pride Protest Dispute*, BOSTON MAGAZINE (Sept. 9, 2019), <https://www.bostonmagazine.com/news/2019/09/09/rollins-straight-pride-supreme-court-ruling/>.
63. See Mass. Gen. Laws ch. 258B, Section 3, available at <https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIV/Chapter258B/Section3>.
64. See John E. Foster, *Charges to Be Declined: Legal Challenges and Policy Debates Surrounding Non-Prosecution Initiatives in Massachusetts*, 60 B.C. L. REV. 2511, 2522 (2019). Foster writes that “the Massachusetts SJC continues to recognize the core principle of Article XXX; that no branch of government may interfere with the power of the other branches.”
65. See Article XXX, Massachusetts Constitution, available at <https://malegislature.gov/laws/constitution#preamble>.
66. See “Usurping the Constitutional Role of State Legislatures,” *infra*.
67. See Larry Krasner, *New Policies Announced February 15, 2018*, available at https://cdn.muckrock.com/outbound_composer_attachments/Lucasgs/62919/Philadelphia-DA-Larry-Krasner-s-Memo.pdf.

68. “Backup time” is a term of art used in the criminal justice system. It refers to the amount of prison time a judge suspends in a particular case instead allowing the defendant the privilege of parole, whether that parole is supervised or unsupervised. For example, a judge sentences a defendant to three years in state prison but suspends two years of the sentence and places the defendant on two years of supervised release. Under that sentencing scheme, the defendant serves one year (usually much less) in prison and is then released and goes into two years of supervised parole. If the defendant violates the terms of his parole (for example, by committing another crime) and is caught, the prosecutor has the discretion to ask the court to revoke his parole and sentence him to his “backup time” (i.e., the two years).
69. See Hon. William McSwain, United States Attorney for the Eastern District of Pennsylvania, *Statement of U.S. Attorney William M. McSwain Regarding the Murder of Philadelphia Police Corporal James O’Connor* (March 16, 2020), available at <https://www.justice.gov/usao-edpa/pr/statement-us-attorney-william-m-mcswain-regarding-murder-philadelphia-police-corporal>.
70. See Jack Tomczuk, *What Is Behind Philadelphia’s Growing Murder Rate?*, METRO (Aug 11, 2020), <https://philly.metro.us/what-is-behind-philadelphias-growing-homicide-count/#:~:text=%E2%80%9CThere%20is%20no%20question%20that,put%2C%20poverty%20equals%20bullets.%E2%80%9D>.
71. See Caitlin Oprysko, “I Am Fed up with It”: Philadelphia U.S. Attorney Torches Local D.A. After Police Standoff, POLITICO (Aug 15, 2019), available at <https://www.politico.com/story/2019/08/15/philadelphia-attorney-larry-krasner-police-standoff-1465394>.
72. See Julie Shaw, *After Sweetheart Deal from Philly DA, Gunman Gets 14 Years in Federal Prison for Shooting a Store Owner with an AK-47*, PHIL. INQ. (Aug 13, 2020), <https://www.inquirer.com/news/jovaun-patterson-ak-47-shooting-sentencing-william-mcswain-larry-krasner-20200813.html>.
73. See Michael Tanenbaum, *U.S. Attorney McSwain Blames Philly D.A. Krasner for City’s “Culture of Lawlessness,”* THE PHILLY VOICE (Sept. 14, 2020), <https://www.phillyvoice.com/philly-violence-larry-krasner-bill-mcswain-federal-charges-guns-shootings/>.
74. *Id.*
75. See McSwain, *supra* note 69.
76. See Marilyn Mosby, *Press Statement, Baltimore State’s Attorney Marilyn Mosby to Stop Prosecuting Marijuana Cases, Says Prosecutions Provide No Public Safety Value and Undermine Public Trust in Law Enforcement*, (undated), <https://www.stattorney.org/media-center/press-releases/1597-baltimore-state-s-attorney-marilyn-mosby-to-stop-prosecuting-marijuana-cases-says-prosecutions-provide-no-public-safety-value-and-undermine-public-trust-in-law-enforcement> (last visited Oct. 19, 2020); see also Marilyn Mosby, *Reforming a Broken System: Rethinking the Role of Marijuana Prosecutions in Baltimore City* (Jan. 2019), available at https://www.stattorney.org/images/MARIJUANA_WHITE_PAPER_FINAL.pdf.
77. See Lea Hunter, *What You Need to Know About Ending Cash Bail*, CENTER FOR AMERICAN PROGRESS (Mar 16, 2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/03/16/481543/ending-cash-bail/>; see also Tana Ganeva, *The Fight to End Cash Bail*, STANFORD SOCIAL INNOVATION REVIEW (Spring 2019), https://ssir.org/articles/entry/the_fight_to_end_cash_bail.
78. See Adureh Onyekwere, *How Cash Bail Works*, THE BRENNAN CENTER (Jun. 2, 2020), <https://www.brennancenter.org/our-work/research-reports/how-cash-bail-works>.
79. See *The Truth About Bail: It Doesn’t Work*, ACLU, <https://www.aclu.org/video/truth-about-bail-it-doesnt-work> (last visited Oct. 19, 2020).
80. See *Pretrial Release Advocacy*, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE ATTORNEYS, <https://www.nacdl.org/Landing/PretrialReleaseAdvocacy> (last visited Oct. 19, 2020).
81. See *No Cash Bail*, SAN FRANCISCO DISTRICT ATTORNEY, <https://www.sfdistrictattorney.org/policy/no-cash-bail/> (last visited Oct. 19, 2020).
82. *Id.*
83. *Id.*
84. *Id.*
85. See “Rachael Rollins Policy Memo,” *supra* note 56 at 15.
86. *Id.*
87. See Jess Kinley, Alan Feuer, and Luis Ferre-Saduri, *Why Abolishing Jail for Some Crimes Has Law Enforcement on Edge*, N.Y. TIMES (Dec. 31, 2019), <https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html>; see also National District Attorney’s Association, *National Prosecution Standards, Third Edition, Part IV, 4-4.2 Bail Amount Request*, <https://ndaa.org/wp-content/uploads/NDAA-NPS-3rd-Ed.-w-Revised-Commentary.pdf> (last visited Oct. 19, 2020).
88. See Christian M. Wade, *State Panel Rejects Dropping Cash Bail*, SALEM NEWS (Jan. 12, 2020), https://www.salemnews.com/news/state_news/state-panel-rejects-dropping-cash-bail/article_90d166a5-e81a-543a-857f-89ca123c601b.html.
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95. Justin Jouvenal and Rachel Weiner, *PAC Funded by George Soros Pumps Nearly \$1 Million into Local Races for Prosecutor*, WASH. POST (June 4, 2019, 8:47 PM), https://www.washingtonpost.com/local/legal-issues/pac-funded-by-george-soros-pumps-nearly-1-million-into-local-races-for-prosecutor/2019/06/04/c2df1b08-86f0-11e9-a491-25df61c78dc4_story.html.
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118. *The Strategy*, REAL JUSTICE PAC, <https://realjusticepac.org/#the-strategy> (last visited Oct. 15, 2020).
119. *Endorsement*, REAL JUSTICE PAC, <https://realjusticepac.org/endorsements/> (last visited Oct. 15, 2020).
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