

Prosecutors and Pleas

Prosecutors—known on the county level as District Attorneys or State’s Attorneys—have been called the “gatekeepers of America’s criminal justice system”²¹⁹ and “arguably the most powerful officials in the US criminal justice system and the least understood and least transparent”²²⁰. The discretion they exercise on whether to charge an arrested person with a crime has a huge effect on the resolution of the case. In fact, according to one study, the strongest driver of incarceration since 1994 has been prosecutors filing more charges.²²¹ This

may have been an unintended consequence of mandatory minimums; with judges’ discretion limited, the prosecutors’ discretion became more important.²²²

The power of the prosecutor is compounded by the fact that 98% of criminal cases are settled in a plea deal, before the case reaches a trial.²²³ Prosecutors can use the threat of heavy sanctions, as well as the economic hardship of being

held in jail, to scare people into accepting these deals. People accepting pleas may avoid time in prison, but they still end up with a felony record, which carries with it all of the barriers discussed on p. 82.

As elected officials, prosecutors must keep an eye on reelection, and campaign rhetoric tends to focus on being tough on crime.²²⁴

The Responsibility of the Court

In a court of three [the lowest level of Jewish court]...each of the judges should have these seven characteristics: wisdom, humility, fear of God, distaste for wealth, love of truth, respect from the people, and good character. (Maimonides Hilchot Sanhedrin 2:7)

In any properly-constituted Jewish court, the Shechinah [God’s Presence] is present. Therefore, the judges must sit in fear and reverence, with modest dress and appropriate seriousness. They may not speak lightly or idly, or jest in the court; they must speak only words of Torah and wisdom. (Maimonides Hilchot Sanhedrin 3:7)

Many advocates have called for violence by police to be prosecuted by special prosecutors who are not part of the ordinary criminal justice system (see, for instance, this editorial by the *Washington Post*²²⁵). Advocates have also called for the hiring of more black attorneys in prosecutors’ offices.



219 <https://www.themarshallproject.org/2015/03/16/the-gatekeepers>

220 Gottschalk, p. 266

221 <http://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2700&context=gsulr> see Figure 7B, p. 14.

222 <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>

223 <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf> table 21

224 <https://www.themarshallproject.org/2015/03/16/the-gatekeepers>

225 http://www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fc57e28-7cd6-11e4-b821-503cc7efed9e_story.html

You Shall Not Judge Unfairly

You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly; you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. (Deuteronomy 16:18-19)

The Role of Witnesses

It is a positive commandment to examine the witnesses in depth, to ask many questions and be very specific, to help them from one topic to the next in the course of questioning so that they will fall silent or recant if their testimony has any falsehood in it...for such examination is the essence of the testimony and the grounds for conviction or acquittal...We even examine the witnesses at length about matters which are not at the core of the testimony and on which the case does not rely...and the more one dwells on these matters, the more praiseworthy. (Maimonides Hilchot Edut, 1:4-6)

What's Working: "Conviction Integrity Units"

Fifteen prosecutors' offices across the country have opened "conviction integrity units" charged with reviewing prosecutions and convictions after the fact and correcting mistakes.²²⁶ Ideally, our criminal justice system would root out mistakes before putting people in prison. In the meantime, a built-in independent investigator serves as a first step.²²⁷



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²²⁶ <http://www.politico.com/magazine/story/2015/03/good-prosecutors-116362.html>

²²⁷ <http://www.thecrimereport.org/news/inside-criminal-justice/2014-03-wrongful-convictions-can-prosecutors-reform-themselv>