

Prosecutor Institutions and Incentives

ADAPTED FROM RONALD F. WRIGHT
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I. Overview of Wright's Article

Ronald F. Wright puts the job of a prosecutor into context by describing the challenges prosecutors face due to the lack of available data and due to the overall structure of the job. Historically the job of a prosecutor has solely been to file charges against a defendant and resolve the case by either going to trial or settling on a plea agreement. Today, due to awareness of an alarmingly high incarcerated population, many prosecutors are taking a more active role to keep individuals from entering the criminal justice system. Prosecutors are no longer just processing cases but are instead leaders in balancing public safety with community health needs. Wright goes on to synthesize the various reforms many scholars have suggested and discusses why many of these reforms are not viable. Wright concludes with his own recommendations.

II. The Problems Wright Identifies

Two aspects of the prosecutor's role make achieving the best outcomes for defendants and the community difficult.

1. Flying Blind. Prosecutors make decisions in individual cases with limited data on sentencing and diversion outcomes, broader trends in crime within and across jurisdictions, or community priorities. Without this data, prosecutors must rely on best guesses and intuition to decide on the right choice for a defendant and the community. And without data tracking outcomes of the prosecutor's office, the community must rely on good faith that the office is acting in their best interest.

- Prosecutors choose criminal charges from broad criminal codes that allow different charges to apply to the same factual crimes. **Charge selection** may activate a range of unintended consequences in the defendant's day-to-day life, known as collateral consequences. Data on collateral consequences is hard to keep up to date as they can change with each legislative cycle.
- **Diversion programs** rarely conduct program evaluations, making it difficult to assess their effectiveness.
- **Public safety and community priorities** are localized to each jurisdiction (democrat, republican, rural, and urban). This makes comparing prosecutors' performance in achieving desirable outcomes difficult.
- **District Attorneys** (those who lead the prosecutor's office) are elected officials. Without knowing prosecutor outcomes, citizens are in the dark when it comes to prosecutor elections.

Ronald F. Wright, Prosecutor Institutions and Incentives, in REFORMING CRIMINAL JUSTICE: A REPORT FROM THE ACADEMY FOR JUSTICE, available at https://law.asu.edu/sites/default/files/pdf/academy_for_justice/3_Reforming-Criminal-Justice_Vol_3_Prosecutor-Institutions-and-Incentives.pdf.

2. Flying Solo. Prosecutors have the power to make decisions without input from other criminal justice actors. Prosecutors have unmatched power when it comes to criminal justice decisions. This power, along with increased use of plea bargains, have made prosecutors the ultimate gate keeper of the criminal justice system.

- Some prosecutor offices partner with law enforcement to set priorities that influence arrest trends.
- Judges cannot overturn prosecutors' decisions to file charges and usually endorse plea agreements as is.
- Public Defenders can advise defendants reject the prosecutions plea offer and take the case to trial, but it would be unethical for them to encourage a defendant to reject a 'good' deal.
- Juries are able to find defendants not guilty but is more likely that they will side with the prosecutor.
- Data show that prosecutors are disciplined less often by ethics committees when compared to other attorneys. Although policy is changing, currently ethics committees have little supervision over prosecutors.

The combination of prosecutors flying blind and flying solo has led to a number of unintended effects.

- Unequal treatment of individuals based on their race and gender
- Wrongful convictions of innocent defendants
- Distrust of the criminal justice system, particularly among minorities
- High rates of incarceration within the U.S.

■ III. Wrong Approaches, According to Wright

Proposed reforms can be divided into four categories based on where the source of reform is coming from (inside or outside of the prosecutors' office) and what the reform changes (substance or process).

- Scholars often suggest focusing on substantive legal reforms imposed from outside the prosecutor's office. However, these reforms would take decades to implement.
- Substantive legal reforms that originate from within the prosecutor's office would not be enforceable outside of the organization.

Wright therefore emphasizes process reforms (consult and inform) from both outside and inside the prosecutor's office. He notes that this is a way to achieve broad and enforceable reforms that address the prosecutors' decision-making processes and increase transparency with community stakeholders.

■ IV. Wright's Recommendations

1. Advocate for professional associations to set standards for the training of new prosecutors to orient them to public-safety priorities.
2. Issue reports to prosecutors and the public regarding the use of state correctional resources by local prosecutors.
3. Revise sentencing laws and practices to restore judicial input as a balance for prosecutor control.
4. Implement Legislation and sentencing guidelines that require prosecutors to declare local or statewide standards for the selection of charges.