

Criminal Justice Reform in America: Rethinking the Role of the Prosecutor

Proskauer For Good Blog on **October 31, 2019**

Until recently, conventional wisdom among prosecutors dictated that long prison terms were vital to public safety. They took seriously the direction [“to charge and pursue the most serious, readily provable offenses,”](#) and measured success in terms of trial wins and convictions. Conventional wisdom, however, is changing from this purely punitive model as prosecutors are now beginning to recognize the great price we pay — both the [dollar](#) and [human](#) cost — for mass incarceration in America.

At a panel discussion earlier this week, “Prosecutors and the Criminal Justice Reform Movement,” Lucy Lang, Executive Director of the [Institute for Innovation in Prosecution \(“IIP”\)](#) at John Jay College, and Sam Rivera, Associate Vice President of Housing at [The Fortune Society](#), discussed the role of the prosecutor in bringing about systemic change.

Lang, a former Assistant District Attorney in Manhattan, emphasized the need for prosecutors to recognize the long history of racial inequality in our justice system, and to play a leadership role in overcoming it. Following the end of the Civil War, for example, the prison population swelled as [freed slaves were prosecuted under vagrancy laws](#) for, in effect, being poor and unemployed. The use of prison labor (a practice that continues today) thus created a new form of slavery and perpetuated racial injustice, as did Jim Crow laws, which enforced racial segregation. In short, understanding the past informs the challenges we face today: African Americans are incarcerated at more than [five times](#) the rate of whites.

A guiding principle for Lang is [the American Bar Association standard](#) that “[t]he primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict.” Thus, she advocated for a public health model of prosecution, focusing on the underlying causes of crime, as opposed solely on punishment. An example of such a model can be found in [Seattle](#), which placed juvenile justice under the purview of the public health department. As Mayor Tim Burgess noted in announcing the policy: “It is misguided and counterproductive to respond to juvenile crimes solely with punitive incarceration.”

Lang suggested a number of specific actions that reform-minded prosecutors can take:

- Developing community outreach programs and strategies;
- Studying internal disparities in: case acceptance, dismissals, pretrial detention, plea bargaining, sentencing recommendations, and creating tailored policy interventions;
- Opting not to prosecute whole categories of conduct;
- Diverting low level, non-violent cases out of the system;
- Looking to public health models to create new responses to drug crimes;
- Developing protocols for evidence-based alternatives to incarceration;
- Exploring opportunities for restorative justice;
- Employing procedurally just and trauma-informed best practices in communicating with victims, witnesses, and people charged;
- Implementing interventions to guard against implicit bias.

Lang also discussed important statutory reform recently enacted in New York State such as bail reform, favorable changes to criminal discovery and speedy trial rules, and increased use of desk appearance tickets (as opposed to arrest). These and other measures not only will improve the system but will also help restore the public’s faith in the criminal justice system which is critically important.

Rivera discussed the challenges he faced when released from prison, and the essential role that the Fortune Society played in his successful transition, including his subsequent employment by the organization where he now holds a leadership position. There is currently a great need among recently incarcerated individuals for education, employment and housing opportunities, as well as mental health services and help overcoming addiction. With respect to prosecutors, the panelists had specific recommendations for appropriate action post-conviction:

- Considering successful re-entry from prison as a priority;
- Developing Conviction Review Units;
- Developing Conviction Integrity Units;
- Sealing or expunging old cases;
- Advocating for clemency or sentence reductions;
- Undertaking sentinel event reviews to improve the criminal justice system.

Individuals attempting to reenter society following prison often face legal challenges separate from their criminal cases that create additional barriers to their successful rehabilitation. As part of Proskauer's pro bono program, we are seeking to address these hurdles by providing representation on a wide range of civil collateral issues, including housing, public assistance benefits, immigration, professional licensing, and family law.

[View Original](#)

[Related Professionals](#)

- **William C. Silverman**
Pro Bono Partner