

Book Review

Emily Bazelon, *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*, New York, N.Y., Random House, 2019, pp. 448, \$18 (paper)

Reviewed by Justin Murray

Introduction

The role of the prosecutor is currently undergoing a major shift in a steadily increasing number of counties across the United States. Until the past five years or so, prosecutors were generally expected to go after those who commit crime with relentless zeal, sparing little concern for the scale and harshness of our carceral system. But this has recently begun to change. Several dozen district attorneys (“DAs”) who plausibly describe themselves as reformers or, in many instances, as “progressive prosecutors” have now won elections by promising to shrink the vast footprint of America’s criminal justice system. That figure by itself might fail to impress considering that there are over 2300 elected DAs in the United States.¹ The new crop of reform-oriented prosecutors punch above their weight, however, since many of them hold power in high-density urban centers like Brooklyn, Chicago, Philadelphia, and Boston. All told, “about 40 million Americans, more than 12 percent of the population, live[s] in a city or county with a D.A. who . . . could be considered a reformer” (290).

What should we make of these reformist prosecutors, and how do they fit within the larger movement to transform American criminal justice? Emily Bazelon wrestles with these questions in her new book, *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*. Bazelon has reported on prosecutors and other criminal justice topics for years at The New York Times Magazine and, previously, Slate; she is also a lecturer in law and the Truman Capote Fellow at Yale Law School. Through an engaging mix of investigative journalism centered on two specific prosecutions and incisive analysis of broader national trends, Bazelon makes the case that American prosecutors have misused their immense power to punish far too many people much too harshly and, further, that prosecutors must now exercise that same power differently to help reverse mass incarceration. Even more ambitiously, Bazelon

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1. CARISSA B. HESSICK, PROSECUTORS AND POLITICS PROJECT, NATIONAL STUDY OF PROSECUTOR ELECTIONS 5 (2020), <https://law.unc.edu/wp-content/uploads/2020/01/National-Study-Prosecutor-Elections-2020.pdf>.

argues that electing prosecutors who are serious about decarceration represents “the most promising means of reform . . . on the political landscape” (296).

Charged is an important, insightful book. To be clear, I am not entirely convinced by the strongest version of Bazelon’s thesis: namely, that prosecutorial power is the main culprit behind mass incarceration as well as our best hope for escaping from it. It seems to me that other stakeholders besides prosecutors—legislatures, courts, police, defendants and their lawyers, community leaders, and more—also have key roles to play, both as a general matter and in the two prosecutions that Bazelon puts under the microscope. But the abundant discretionary power wielded by prosecutors unquestionably matters a great deal. *Charged* invites much-needed reflection on how prosecutors should exercise that power through its trenchant critique of conventional prosecutors and its rich exploration of their reformist brethren.

Conventional Prosecutors, Mass Criminalization, and the Case Against Noura Jackson

It is not hard to see why Bazelon is alarmed at the scale and harshness of the American criminal justice system. Although the U.S. incarceration rate was comparable to that of most European countries a half-century ago, the United States is now “home to 5 percent of the world’s population but 25 percent of its prisoners.”² The United States incarcerates nearly 2.3 million people on any given day, with approximately 11 million new admissions to jail or prison every year,³ disrupting—oftentimes, totally derailing—a vast number of lives. Another 4.5 million or so adults are subject to community supervision, mainly probation or parole, which means there are around 6.7 million adults, or one out of thirty-seven, who are currently under some type of correctional control.⁴ Even this startling figure is utterly dwarfed by the number of people in the United States who have been arrested or convicted at some point in their lives. People of color are especially at risk: Black adults are incarcerated at nearly 5.9 times the rate of white adults,⁵ and approximately one out of three black men (or nearly 1 in 4 black adults overall) bears the stigma of a felony criminal record.⁶

How did the American criminal justice system become so enormous and punitive? Many different factors contributed, and there remains a great deal

2. JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION—AND HOW TO ACHIEVE REAL REFORM I* (2017).
3. WENDY SAWYER & PETER WAGNER, PRISON POLICY INITIATIVE, *MASS INCARCERATION: THE WHOLE PIE 2019* (2019), <https://www.prisonpolicy.org/reports>.
4. ALEXI JONES, PRISON POLICY INITIATIVE, *CORRECTIONAL CONTROL 2018: INCARCERATION AND SUPERVISION BY STATE* (2018), <https://www.prisonpolicy.org/reports>.
5. E. ANN CARSON, U.S. BUREAU OF JUSTICE STATISTICS, *PRISONERS IN 2016*, at 8 (2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf>. Hispanic adults are incarcerated at a rate around 3.1 times that of white adults—a somewhat lower yet still quite dramatic disparity. *Id.*
6. Sarah K. S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010*, 54 *DEMOGRAPHY* 1795, 1807 (2017).

of disagreement over which of them carries the most explanatory weight. One of Bazelon's central claims in *Charged* is that the "breathhtaking power" of prosecutors is the "missing piece" that helps explain not only the rise of mass incarceration, but also the related problems of wrongful convictions and racially disparate enforcement outcomes (xxv). Bazelon endeavors to support this claim in part by documenting the troubled history of a murder prosecution against a young woman named Noura Jackson, and by identifying generalizable lessons from Noura's tale along the way.⁷

Noura was eighteen years old and had recently lost her father when her mother, Jennifer Jackson, was brutally murdered. Noura and Jennifer were living together at the time, and it was Noura who first discovered Jennifer's body and called 911. Although Noura told the police that she had been out all night partying before the murder, Amy Weirich, the Shelby County prosecutor assigned to the case, suspected Noura had killed Jennifer for money and to liberate herself from her mother's rules.

No physical evidence tied Noura to the crime, but several strands of circumstantial evidence initially lent at least a modicum of plausibility to Weirich's theory. Noura and Jennifer had quarreled intensely over money, drug use, and schoolwork during the days leading up to Jennifer's killing. Noura's alibi was not airtight, and her story shifted somewhat over time.⁸ Also, a friend of Noura's named Andrew Hammack claimed that Noura had contacted him multiple times on the morning Jennifer was killed asking him to meet at her house—an unusual request for Noura to make, and one that placed Noura at home around the time when the murder occurred. (More about Hammack in a moment.) Weirich charged Noura with first-degree murder and sought a life sentence.

Despite all this, however, there were profound reasons to doubt that Weirich had charged the right person from the very beginning.⁹ And the case against Noura grew weaker still when DNA testing conducted by the Tennessee crime

7. I will follow Bazelon's convention of referring to Noura and Kevin—the defendant in Bazelon's other main case study—by their first names. Bazelon refers to Kevin solely by his pseudonymous first name, and using Noura's first name makes it easier to distinguish between her and her mother, who shares her last name.
8. No one doubted that Noura told the truth about the first part of the evening: Noura's friends confirmed that she had been out partying with them. And phone records established that Noura had spoken with Jennifer at 12:20 a.m., placing the time of the murder between 12:20 and Noura's 5 a.m. call to 911. Regarding that stretch of time, Noura told police that she had visited "a friend's house, a gas station, and Taco Bell," leaving out the fact that she had also gone to Walgreens around 4 a.m. to buy bandages for a small cut on one of her hands (14-15). By contrast, when Noura's aunt Cindy asked where she had been that night, Noura simply replied, "I don't know"—an answer that Cindy, Weirich, and others considered incriminating (15, 113).
9. There was no known history of violence between Noura and Jennifer, and the pristine condition of Noura's manicure when she spoke with the police shortly after Jennifer's death made it unlikely that she was the person who had physically struggled with Jennifer and stabbed her fifty times.

lab revealed that at least two unknown individuals—but not Noura—had left behind DNA mixed with Jennifer’s blood inside the room where the murder took place.¹⁰ Yet this did not deter Weirich. She extended a plea offer under which Noura would spend twenty-five years in prison. Noura turned down the offer, went to trial, was convicted by a jury of second-degree murder, and was sentenced to prison for nearly twenty-one years.¹¹

Weirich and her junior colleague, Stephen Jones, committed serious misconduct in at least two ways during Noura’s trial. First, Weirich illegally drew the jury’s attention to Noura’s decision not to testify by shouting—right at the start of her rebuttal argument—“[j]ust tell us where you were!,” then adding, “That’s all we’re asking, Noura!” (118).¹² Second, the prosecutors failed to disclose, until five days *after* trial, a handwritten note that key government witness Hammack had given the police indicating, among other things, that he’d been “rolling on XTC” (referring to Ecstasy, a hallucinogenic drug) on the morning of the incident (120). The Tennessee Supreme Court concluded that these errors deprived Noura of a fair trial, warranting reversal of her conviction.

No one has ever held Weirich and Jones meaningfully accountable for their misdeeds. In fact, during the years that followed Noura’s trial, Weirich leveraged her “reputation for being ‘tough as nails’” to win election as the top prosecutor of Shelby County (181). For his part, Jones went on to become Weirich’s legal adviser and training director. The Tennessee bar disciplinary authorities did file ethics charges against Weirich and Jones based on their mishandling of Noura’s trial. But Jones was found not guilty by a three-member panel of fellow lawyers from the local bar—a panel that included a former Shelby County prosecutor—and bar counsel subsequently let Weirich walk away with no consequences to speak of beyond a private reprimand.

As for Noura, a special prosecutor took over her case after Weirich voluntarily recused herself from further involvement. The special prosecutor offered Noura an *Alford* plea¹³—set to expire after one day—to voluntary manslaughter with a sentence of fifteen years in prison and with parole eligibility after Noura served sixty percent of the sentence. Because Noura had

10. Although long blond hairs were found in Jennifer’s hand, the government inexplicably did not test those hairs for DNA. Nor did the government test a condom wrapper found on the floor of Jennifer’s bedroom, apparently because the investigators decided to fingerprint the wrapper, and “the process used to lift the fingerprint made a DNA test impossible.” *State v. Jackson*, 444 S.W.3d 554, 575 (Tenn. 2014).

11. The jury acquitted Noura, however, of the top charge: first-degree premeditated murder (583).

12. Simply reciting Weirich’s words understates the gravity of her misconduct. Around the time she demanded that Noura tell the courtroom where she had been, Weirich was “striding across the courtroom to where Noura was sitting, bending her knees to look her in the eye, and throwing up her hands in a gesture of impatience” (118).

13. An *Alford* plea allows a defendant to maintain his or her innocence while formally assenting to an agreed-upon conviction and sentence for tactical reasons. The U.S. Supreme Court approved this kind of plea in *North Carolina v. Alford*, 400 U.S. 25 (1970).

already been imprisoned for around nine years by this time, the agreement meant she would likely be released in the not-so-distant future. Recognizing that she might get convicted again and receive a sentence harsher than fifteen years if she gambled on a second trial, Noura took the deal. Noura has now completed her sentence and is hard at work trying to get her life back on track outside the prison walls.

Bazon sees Noura's prosecution as a microcosm of broader systemic pathologies—and for good reason. She analyzes Weirich's fateful decision to indict Noura without a solid evidentiary foundation not only as a lapse of personal judgment but as the product of an institutional culture that "prizes aggression and trial victories" over "[c]aution" and "balance" (19). She explains that the suppression of exculpatory evidence at Noura's trial is likely symptomatic of a widespread problem in jurisdictions that have not yet moved toward open-file discovery and, instead, rely on prosecutors to decide for themselves what evidence is sufficiently important to share with the defense. And she criticizes prosecutors who use their vast discretion over charging and plea bargaining to coerce defendants into pleading guilty, citing the intense pressure Noura's prosecutors applied as an instance of this pervasive practice.

That said, Noura's case, like any complex story, has some idiosyncratic features that limit the range of lessons we might draw from it. Noura was able to pay for effective legal representation, take her case to trial (the first time around, anyway), and obtain reversal of her conviction on appeal. Countless other defendants, by contrast, receive tokenistic representation from overworked, underpaid attorneys and get pushed into unfavorable plea agreements before anyone—defense counsel, prosecutor, judge, or jury—meaningfully scrutinizes the allegations. Noura is middle-class and white,¹⁴ whereas the criminal justice system far more commonly targets poor people and people of color. And although Noura probably did not do what prosecutors alleged she had done, the same cannot be said of most criminal defendants. Reversing mass criminalization will require not just avoiding wrongful convictions in the narrow sense of convicting the wrong person, but drastically reducing our reliance on carceral responses and excessive punishment for people who *did* engage in prohibited conduct.

Reformist Prosecutors, Diversion, and the Noncriminal Disposition of Gun Charges against "Kevin"

Although *Charged* comes down hard on prosecutors like Amy Weirich who misuse their discretion to put too many people behind bars for too long, Bazon does not condemn prosecutorial power as such. Her thesis, rather, is that prosecutors can and must use the levers they control in a fresh new way, aiming to downsize America's swollen prisons, jails, and other carceral

14. It is worth mentioning, though, that Noura "had her [Lebanese] father's dark hair and eyes and an olive complexion," and she felt as though her aunts—including Cindy, who was one of the prosecution's key witnesses at Noura's trial—"wanted nothing to do with [her father] or the daughter who looked like him" (9).

institutions while also promoting public safety. She contends that electing reform-oriented prosecutors offers the best hope, at least in the short term, for reversing mass incarceration and transforming how Americans think about criminal punishment and security.

To build this pillar of her argument, Bazelon traces the arc of a gun prosecution brought by the Brooklyn District Attorney's Office, under the leadership of a self-described progressive prosecutor named Eric Gonzalez, against a young man referred to by the pseudonym "Kevin." Bazelon applauds Gonzalez for supporting an unusually adventurous diversion program—one designed for (some) felony gun possession offenses, not just low-level misdemeanor offenses—and celebrates that Kevin was able to avoid prison time by participating in the program. But as Bazelon acknowledges, even in Brooklyn, with a prosecutor interested in reform at the helm, the story could easily have ended differently—indeed, it very nearly *did* end differently—with Kevin getting torn from his community to serve several years in an upstate prison. Kevin's eventual success, viewed in tandem with the multitude of barriers and near-failures he encountered along the way, highlight the promise and value of prosecution-driven criminal justice reform as well as its limits.

Kevin's story is set in Brownsville, "one of New York's most disadvantaged communities . . . and one of its most dangerous" (xiv). As a black boy growing up there, Kevin could not escape the violence that was endemic in his community: At the age of thirteen he was beaten and robbed by residents of a rival public housing project, and when he was fifteen someone cut his face with a razor blade. These experiences taught Kevin that "he couldn't afford to look like an easy target," so he and his friends beat up one of the boys who had attacked him (xvi). Over the next few years, Kevin struggled in school, eventually dropping out entirely, and he began to accumulate a record of juvenile offenses.¹⁵

One evening, Kevin, then twenty years old, was hanging out in his friend Chris's home when police officers arrived, searching for a gun with which Chris had posed in a video posted on social media.¹⁶ In a bid to protect Chris and other friends who were there, Kevin picked up the gun and tried to conceal it from the police. But his plan failed: The police spotted him with the gun. Feeling "bound by loyalty and a kind of honor," Kevin claimed the gun belonged to him (xx).

Kevin's arrest thrust him into the thicket of New York City's fraught politics around gun possession. Brooklyn had two longstanding diversion programs

15. Kevin was first arrested when he was sixteen. A friend of Kevin's lent him a car, but as luck would have it, the car had been stolen. He was charged with possession of stolen property and was ordered to perform 500 hours of community service. Two years later, Kevin and his friends got into another fight with boys from a different project, and after the other boys dropped their phones while fleeing, Kevin kept the phones. He pleaded guilty to robbery and took advantage of a year-long diversion program for youthful offenders (xvi-xvii).

16. The police suspected that Chris was tied to a gang, so they were monitoring his social media activity and took notice when he uploaded the video (xix).

for gun offenders—Youth and Congregations in Partnership, or YCP, and Project Redirect—and there was a chance Kevin might be a suitable candidate for at least YCP.¹⁷ Ken Thompson, who preceded Gonzalez as Brooklyn's DA, had argued that diverting certain gun cases "is in the best interest of public safety in the long run," explaining, "if we don't, they're going to go to prison for a few years at a young age, and they're going to come out and pose more of a problem for us in the community" (55-6). Gonzalez also backed the programs, and he took steps to expand them after taking over as head of the office. But the police had been trying to shutter YCP and Project Redirect for years, capitalizing on negative publicity from the rare cases in which a defendant who benefited from diversion went on to commit a serious new offense. For Gonzalez as well as the line prosecutors who handled day-to-day business in Brooklyn's gun court, "every YCP participant represented a risk," and so the office screened and accepted just a small subset of the defendants who wound up in gun court (31).

The prosecutors responsible for Kevin's case initially adopted an aggressive stance, angling to maximize their leverage in plea negotiations. They charged Kevin with the highest possible offense—a felony carrying a mandatory minimum penalty of three and a half years in prison plus parole—instead of a lesser felony option requiring at least two years in prison plus parole or a misdemeanor with no mandatory minimum. They asked for bail to be set at \$20,000; the judge acquiesced.¹⁸ And they offered Kevin a tough, albeit routine, plea: two years in prison followed by parole.

Kevin's court-appointed lawyer from the Brooklyn Defender Services, Debora Silberman, lobbied the prosecutors to let Kevin participate in YCP. At first, her efforts to divert Kevin from the criminal justice track led nowhere. But Silberman continued to press the issue, while simultaneously litigating a motion to suppress Kevin's incriminating statements to the police¹⁹ and connecting Kevin with a social worker who was also employed by Brooklyn Defenders. The judge granted Silberman's suppression motion, modestly weakening the prosecution's case against Kevin. For his part, Kevin attended GED classes and stayed out of trouble. After about a year, the prosecutors relented, agreeing to at least refer Kevin to YCP for screening.

YCP is a strict program, operated directly by the DA's office,²⁰ that imposes a number of conditions and burdens on its clients. Clients must call in for a

17. Bazelon does not discuss whether Kevin pursued or may have been eligible for Project Redirect.

18. As a result, Kevin's impoverished mother had to pay a nonrefundable \$2000 deposit plus fees to a for-profit bail agent to keep Kevin out of the notoriously violent Rikers Island jail while his case was pending.

19. In the motion, Silberman claimed that the police violated the Constitution by asking Kevin and his friends, "Whose gun is this?," after arresting them but before administering *Miranda* warnings (25).

20. Most diversion programs, by contrast, are run by outside partners rather than the DA's office itself, making it easier for support staff to build trust with clients.

nightly curfew and “submit to random drug testing, do community service, check in with a YCP social worker in person every week, and work or go to school” (123). The social workers ask participants questions about “their neighborhoods and networks,” and while their answers are supposedly kept confidential, many clients “suspected they were being pumped for information that could be fed to the police or the D.A.’s office,” placing them at risk of being labeled a snitch in their communities (124-5). A new arrest can get someone kicked out of the program. Clients who clear the screening phase are required to plead guilty if they wish to move forward. Their convictions eventually get dismissed and sealed if they successfully complete YCP’s year-long program, but those who fail go to prison in accordance with the terms of their plea.

Kevin struggled with many of YCP’s requirements. From the very beginning, he refused to tell his social worker about his friends or about people in the community who had guns, since he “had little trust that a program run by the D.A.’s office would keep his secrets” (125). One of his many court dates coincided with a sentencing hearing for a man who came from a rival housing project; Kevin skipped court, explaining to his social worker that the man’s supporters would be there, potentially jeopardizing his safety.²¹ Just a few weeks after Kevin passed screening, gained entry into YCP, and pleaded guilty, the police arrested him on a flimsy loitering charge, causing him to violate the terms of his plea agreement.²² He also took a drug test that falsely tested positive for marijuana—an error Kevin’s social worker was able to straighten out by redoing the test himself. And Kevin waited until the eleventh hour to complete eighty hours of community service, fulfilling his last YCP obligation.

In the end, Kevin successfully completed YCP, earning the dismissal of his conviction.²³ To that extent, at least, Bazelon is on solid ground when she lifts up Kevin’s experience to “illustrate . . . the precious second chances [prosecutors] can extend that allow people to make things right in their own lives” (xxix). She is also undoubtedly right that Brooklyn’s gun court “offered a display of enormous prosecutorial power” insofar as prosecutors there have broad discretion to pursue a serious felony charge, a lesser misdemeanor charge, diversion, or dismissal (xxiii).

21. Another court date was set for the same day Kevin was supposed to take his GED test, which could not be rescheduled. Instead of missing court again, he quit school.
22. Kevin was outside one night before his curfew, smoking a cigarette while watching people play dice, when a police car quickly pulled up. Those who were playing dice, some of whom had been smoking marijuana, fled, but Kevin stayed put and was arrested. Luckily for Kevin, a glitch prevented the prosecutors from learning immediately about the new arrest, and his YCP social worker later framed the incident in a manner that helped calm the prosecutors’ nerves.
23. This is not to say Kevin had completely put the case behind him. A few months after Kevin graduated from YCP, the police came to the home he shared with his mother, sister, and niece, broke down the front door, handcuffed him, and tore apart every room in the apartment, searching for guns that an informant had accused Kevin of keeping there. The police mentioned Kevin’s gun charge, even though his case had supposedly been sealed, and his inclusion on a list of high-priority targets maintained by the police department.

To my mind, though, the way Kevin's case was handled by Brooklyn's prosecutors raises troubling questions regarding the limits of prosecution-driven criminal justice reform. For starters, why was Kevin's conduct criminalized and prosecuted at all? Perhaps prosecutors claiming the mantle of reform should stop pushing gun possession defendants into programs like YCP that severely restrict their liberty and set some of them up to fail, and should instead go several steps further, dismissing cases outright and leaning on the legislature to decriminalize or decrease the mandatory penalties for unlawful gun possession. Also, why are prosecutors who work for a progressive like Gonzalez using harsh felony charges as bargaining chips to extract cheap guilty pleas and demanding \$20,000 bail—or *any* bail—from a young man living in poverty? Shouldn't Gonzalez and his staff instead rely on their sense of justice, not a desire for leverage, when making charging decisions, and strive to reduce or even eliminate New York's wealth-based pretrial detention scheme?²⁴ Finally, what should we make of the fact that Gonzalez's prosecutors initially opposed diversion for Kevin and changed their tune only after a skillful defense lawyer—aided by a social worker and, of course, Kevin's own efforts—pressed the issue for months and a judge handed them a major defeat on a pretrial motion? It seems that prosecutorial discretion, though undoubtedly expansive, is not impervious to pressure from outside forces and that even prosecutors led by a reformer need such pressure to stay on track.

Principles and Best Practices for Reform-Minded Prosecutors

Electing reform-minded prosecutors as a means of drastically downsizing the carceral state is a fairly novel concept, and no one can truly know at this early stage how the experiment will turn out. District attorneys who campaigned on a promise of far-reaching reform are now test-running a wide range of decarceral strategies, learning through trial and error which ones most effectively drive down incarceration without causing crime spikes or needless backlash. In this rapidly evolving political environment, there is a pressing need for reflective work aimed at identifying principles and best practices to guide reformist prosecutors and the community stakeholders who hold them accountable.

On this score, *Charged* does not disappoint. Bazelon periodically zooms out from narrating the particulars of Noura's and Kevin's criminal cases to provide a broader examination of the nascent movement to elect prosecutors who demonstrate a commitment to deep reform. She describes the movement's brief yet fascinating history, identifies its common goals as well as its salient internal variations, and explores the challenges it has encountered so far. And the book ends with a remarkable appendix titled *Twenty-One Principles for Twenty-First-Century Prosecutors*: a manifesto that Bazelon coauthored with other leaders in the field.

24. Soon after coming to power in Brooklyn, Gonzalez instructed prosecutors not to seek bail "in most misdemeanor cases" (92). But the policy did not cover felony gun charges such as the top charge Kevin was facing.

Bazon traces the origins of the movement for prosecution-driven criminal justice reform to 2015.²⁵ That year, billionaire philanthropist George Soros partnered with death penalty abolitionists to launch three campaigns, two in Mississippi and one in Louisiana, to unseat district attorneys who frequently sought death sentences. Once those campaigns succeeded, emboldened reform leaders carefully selected another set of targets, chief among them Anita Alvarez, the top prosecutor in Cook County (which covers Chicago). Former prosecutor Kim Foxx defeated Alvarez by a landslide in the Democratic primary, all but ensuring victory in the general election, by tapping into the community's outrage over the notorious police shooting of Laquan McDonald, which Alvarez woefully mishandled. Foxx's win in Chicago inspired dozens of other insurgent candidacies across the country. Not all of them prevailed. But many did: Bazon estimates that "about 40 million Americans, more than 12 percent of the population, live[s] in a city or county with a D.A. who . . . could be considered a reformer" (290).

These newly elected prosecutors are bound together by a few core commitments. Their overarching goals, to borrow from Gonzalez, are to "protect public safety" while simultaneously being "far less punitive" (272). They believe mass incarceration has not only decimated poor communities and communities of color, but has also fueled serious crime by diminishing trust in (and cooperation with) the police and by subjecting vast numbers of people to inhumane, anti-rehabilitative punishments. They are not, of course, abolitionists—after all, reformist prosecutors are still prosecutors. But they hope to see a major reduction in prosecutions and criminal penalties for low-level criminal offenses, a redirection of scarce enforcement resources toward solving violent crimes, and fairer procedures used to pursue cases that remain on the prosecution track.

Prosecutors seeking to implement bold reform initiatives frequently run into fierce resistance. The most intense pushback often comes from the local police, who are accustomed to working hand in glove with their prosecutorial partners and tend to feel betrayed when prosecutors align themselves with criminal justice reformers instead of (or in addition to) their law enforcement brethren.²⁶ Some reformist prosecutors have faced crippling blowback not just from the police, but from governors, legislatures, judges, and other officials

25. Bazon says that before 2015 there were a few "partial exceptions to harsh law-and-order prosecution," citing as examples the "long-serving D.A.s" in Seattle and Milwaukee, as well as Kamala Harris in San Francisco (80). Perhaps a sign of how quickly national norms regarding prosecution have shifted over the past few years, Harris's record as a prosecutor, which had been a major asset in her previous campaigns for higher office, suddenly turned into a liability during her failed 2020 presidential bid. See Peter Beinart, *Progressives Have Short Memories*, THE ATLANTIC, Dec. 4, 2019.

26. When former public defender and civil rights lawyer Larry Krasner won Philadelphia's prosecutor race, for instance, city officers widely disseminated the hashtag #notmyDA, and the leader of the police union condemned one of Krasner's first speeches as "dangerous and despicable" (161).

too.²⁷ And the new wave of prosecutors must also grapple with the quiet yet insidious risk of opposition from within: the risk, in other words, that line prosecutors or supervising prosecutors will ignore reformist aspirations and carry on with business as usual when making high-stakes, low-visibility decisions about charging, bail, plea offers, sentencing, and more.

Should district attorneys who are interested in reform fight fire with fire? Or should they compromise and seek buy-in from stakeholders who may have more conventional, punitive instincts about the function of law enforcement?

Bazon probes these questions by comparing Gonzalez's leadership style in Brooklyn with that of Larry Krasner in Philadelphia. Gonzalez is a career prosecutor who prefers working collaboratively with the police as well as other state and city officials to build a shared vision of criminal justice. While running for office on a moderately reformist agenda, he cultivated relationships with the police and other establishment figures, securing endorsements from the police union, Brooklyn's congressional delegation, and more. Since winning election, Gonzalez has continued to work in coordination with his staff and other law enforcement officials to pursue reform in a gradual manner. Krasner, on the other hand, is a former public defender and civil rights lawyer who had sued the city police department seventy-five times before seeking office. He saw the city's criminal justice system as racist and profoundly destructive, and he didn't hesitate to say so. Soon after gaining power, Krasner fired thirty-one prosecutors,²⁸ put in new leadership, and issued a memo instructing his attorneys to dismiss, divert, or recommend lenient sentences in many cases involving nonviolent offenses. Bazon does not tell us whose approach to leadership and collaboration she favors, but she seems to suggest that the answer may vary depending on the prosecutor's local political environment and the scale of the reforms that are needed in his or her jurisdiction.

Bazon shows her cards more readily when discussing the substance of the reform agenda rather than the leadership strategies used to effectuate it. An appendix to the book reprints a report Bazon had previously coauthored with Miriam Krinsky (Fair and Just Prosecution), L.B. Eisen (Brennan Center for Justice), and Jake Sussman (the Justice Collaborative), laying out twenty-one principles to guide prosecutorial reform and fleshing out each principle with concrete policy recommendations and model initiatives drawn from jurisdictions all across the country. The document covers a lot of important ground, urging expanded use of diversion, fairer charging and sentencing,

27. As an example, Florida Governor Rick Scott stripped control of murder prosecutions away from Orlando DA Aramis Ayala after she announced that she would not seek the death penalty under any circumstances. Florida's Supreme Court upheld the governor's action, and the state legislature slashed Ayala's budget to reflect her reduced caseload. Because of this exceedingly unusual intrusion on her jurisdiction, Ayala is not pursuing reelection in 2020. See Monivette Cordeiro & Jeff Weiner, *Aramis Ayala Won't Seek Re-election as Orange-Osceola State Attorney; Belvin Perry May Enter Race*, ORLANDO SENTINEL, May 28, 2019.

28. Krasner infamously explained the firings this way: "When the pirates take over the ship, some of the crew is going over the side" (161).

abolition of cash bail, efforts to reduce racial disparity, enhanced police accountability for excessive force incidents, and much more.

Many of the ideas Bazelon and her coauthors champion could be implemented unilaterally by prosecutors, given the immense discretionary power they hold over so many of the criminal justice system's key levers.²⁹ This tantalizing possibility, perhaps more than anything else, helps explain why Bazelon is so enthusiastic about prosecutor-driven reform. "While it would be nice if lawmakers and the courts threw themselves into fixing the criminal justice system, in the meantime, elections for prosecutors represent a shortcut to addressing a lot of dysfunction," she writes (272).

I am broadly sympathetic to Bazelon's project.³⁰ At the same time, I worry that reform efforts that place prosecutors at the center are, and likely will remain, insufficiently bold and imaginative to dig us out of the deep hole we currently find ourselves in. Prosecutors depend for their success on close working relationships with the police and other fixtures of the carceral state, and they can push the system only so far without straining those relationships. Many of the deeper layers of reform we need to pursue—such as decriminalizing (not just diverting) most low-level offenses and rethinking the severity of our carceral responses even for serious or violent offenses—call for leadership from outside the system. Bazelon is absolutely right that we need better prosecutors. But we must also be wary of overinvesting in prosecutor-driven reform at the expense of legislative and community-based sources of power and vision.

29. This assumes, of course, that the elected district attorney and his or her line prosecutors are on more or less the same page. As noted earlier, that assumption does not always hold.

30. See Justin Murray, *Reimagining Criminal Prosecution: Toward a Color-Conscious Professional Ethic for Prosecutors*, 49 AM. CRIM. L. REV. 1541 (2012) (arguing that line prosecutors and prosecutors' offices can contribute to racial justice by altering how they exercise discretion).