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## Creating a Better, Fairer Criminal Justice System

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Created and Presented Jointly by Students from State Correctional Institution - Greene, Waynesburg, PA, and University of Pittsburgh School of Law, Chief Editor: David A. Harris

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*Issues in Criminal Justice and the Law: Inside Out Prison Exchange Program*

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**CREATING A BETTER, FAIRER CRIMINAL LEGAL SYSTEM**

*Created and Presented Jointly by Students from*

State Correctional Institution – Greene, Waynesburg, PA

And

University of Pittsburgh School of Law

Fall Semester, 2022

Prof. David Harris, Instructor/Senior Editor

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## **INTRODUCTION**

During the Fall semester of the 2022-2023 academic year, students from the State Correctional Institution (SCI) – Greene, in Waynesburg, Pennsylvania (the Inside students), and the University of Pittsburgh School of Law (the Outside students) gathered weekly at SCI Greene for a two- and one-half-hour class called “Issues in Criminal Justice and Law.” The class was organized, presented, and conducted using the Inside-Out Prison Exchange method, in which Inside and Outside students work together as peers in small and large groups to learn with, and teach, each other. Inside-Out students read materials selected by the Instructor (Professor David Harris of the School of Law), who acted as a facilitator throughout the full semester of the class. Work and learning took place through dialogue and writing on the weekly topics and readings. The work of the semester culminated in a Group Project, for which students selected the main topic and subtopics, and then worked in small groups for extended periods to generate ideas. That work was then pulled together by two Outside students into a report that may assist public policy professionals. This document is that report.

Inside-Out classes have been taught for twenty-five years by universities and prisons working in partnership throughout the United States and overseas. This class is one of only three such courses in which the university unit partnering with a prison is a law school. As such, it presented a unique opportunity to address criminal justice issues in a setting in which half the students had been deeply impacted by that system, and half the students might play important official roles in the system later in their careers.

As a class in Criminal Justice and the Law, students worked through a variety of criminal justice topics: prisons, crime and how to address it, victims and survivors of crime, race and criminal justice, prosecution, public defense, courts, and others. These topics and readings sparked

discussions of real depth and intensity, into which all students brought not just “book learning” but their own experiences, philosophies, and analysis.

Given the overall high level of these discussions, and the intense interest of the students in all the topics of the semester, it was no surprise that the class selected “Creating a Better, Fairer Criminal Justice System” as its topic for this Group Project. Subtopics were selected from an extensive list of possibilities. Those selected include changing policing, changing criminal defense, changing prosecution, changing prisons, rooting out racism, and changing courts and judges.

Over the course of two weeks of classes, small groups of Inside and Outside students worked on each of these six topics. For each, they decided which issues they wished to discuss and debate in the paper, in the pursuit of what changes might produce a better, fairer system. For each issue, they proposed solutions, and then examined what practical problems and obstacles their proposed solutions might encounter. Two of the Outside students, Elise and Jaclyn, then worked as editors pulling together the ideas of each group and turning them into a working draft.<sup>1</sup> The Instructor served as senior editor.

The students in this class believe that, given their work throughout the semester on these issues, and the oral and written debates they had with each other, their ideas would advance the goal of creating a better, fairer system. Throughout their work on this project, all students were aware that any system run by human beings will not attain perfection. Rather, they focused on ways in which the system could be improved in the here and now, as it exists. It is in this spirit

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<sup>1</sup> The use of first names only for both Inside and Outside students during the course and in all course writings, is one of the fundamental working rules for all Inside-Out courses. See Lori Pompa, *One Brick at a Time: The Power and Possibility of Dialogue Across the Prison Wall*, 93 THE PRISON J. 127–247 (2013) (“‘Inside’ and ‘Outside’ students use only first names [and] share no identifying information . . .”).

that the class offers the following proposals on six crucial topics, with pride in our work and with the humility that is appropriate when facing any set of large-scale human challenges.

## CHANGING POLICING

When analyzing modern day police tactics and policies, several themes appeared. The class found that officer training and education, transparency and accountability, and awareness and sensitivity towards the community played significant roles in the shortcomings of modern policing.

### **TRAINING AND EDUCATION**

Several issues were identified as problems that exist within police training and education. The class found that current vetting process for hiring and recruiting officers is not as extensive as it could be, training for officers is military-like, and the duration of training is short. Currently, police education pre-employment is insufficient. Although several police departments, including the Pittsburgh Police Department, require applicants to have some college (30 semester credit hours by the date of the written examination, and 60 semester credit hours by the time the applicant is processed into an academy class), very few departments require applicants to have college degrees.<sup>2</sup> As a result, more often than not, officers do not possess college degrees, even though secondary education could yield better policing.<sup>3</sup> An associate degree requiring police to take certain courses in social work, psychology, racial awareness, and criminal law could provide a better understanding of the populations officers will interact with and the issues they will face day

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<sup>2</sup> *Applying Process*, PITTSBURGH BUREAU OF POLICE, <https://pittsburghpa.gov/joinpghpolice/applying/process.html#:~:text=Completed%20online%20City%20of%20Pittsburgh,remain%20a%20resident%20throughout%20employment;The%20Importance%20of%20a%20College%20Degree%20for%20Police%20Officers,POLICEOFFICER.ORG> (Aug. 19, 2020), <https://policeofficer.org/blog/importance-college-degree-police> (stating that “only 8% of police department[s] in the U.S. require officers to have attended college at all.”).

<sup>3</sup> Diana Bruns, *Reflections from the One-Percent of Local Police Departments with Mandatory Four-Year Degree Requirements for New Hires: Are They Diamonds in the Rough?* 7 SW. J. CRIM. JUST. 87, 91 (2010) (stating that “college educated and trained individuals were considered necessary to handle community and social problems and to devise new and adequate measures of social control.”).

to day. Future officers with a wider range of knowledge and worldview will be better prepared and more able to make informed decisions in the field.<sup>4</sup> That said, access to education is certainly difficult for many, and this barrier of higher education could inhibit the recruiting of a diverse pool of officers. Therefore, we recommend that departments allow for grants and funding to support future officers' education, allow them to complete their education during their training. Departments should not immediately disqualify prospective officers as candidates because they have not obtained or cannot afford higher education. From a policy standpoint, law enforcement agencies ought to pay for the education of promising candidates. This way, a lack of education does not disqualify candidates; instead, it provides an opportunity for growth and promotes a better department.<sup>5</sup>

Additionally, departments should screen applicants extensively. This screening process would include interviewing personal references (both those selected by a candidate and others who know the candidate well but who were not named by the candidate as references), thoroughly reviewing the applicant's full online presence (including all accounts and platforms), and testing for biases. If an applicant passes these screenings, that would make them eligible for police training. This training should include cultural awareness and competency, communication skills, commitment to community, and the history of American policing, in addition to physical ability, clerical tasks, and confrontation. The training should last at least a year, and range in complexity

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<sup>4</sup> Steve Mellon, *Pittsburgh Scrapping College Credit Requirement for Police Recruits*, PITTSBURGH POST-GAZETTE (Oct. 9, 2022), <https://www.post-gazette.com/local/city/2022/10/08/pittsburgh-bureau-police-college-credits-academy-mayor-ed-gainey/stories/202210090071> (describing a Michigan State study in 2015 that found "college-educated officers were less likely to use force than their counterparts without degrees.").

<sup>5</sup> See Kiley Koscinski, *Gainey Administration to Relax Higher Education Requirement for Pittsburgh Police Recruits*, 90.5 WESA (Oct. 6, 2022), <https://www.wesa.fm/politics-government/2022-10-06/gainey-administration-to-relax-higher-education-requirement-for-pittsburgh-police-recruits>.

and rigor. It should include the assumption that not everyone who enters the program would have the ability to finish.

Within this training, police departments should require training in mental health and crisis intervention, leading to the establishment of a mental health crisis unit.<sup>6</sup> Not all 911 calls or disturbances are best served by armed police officers. Typical law enforcement training has sixty hours of training for learning how to shoot a gun, and only eight hours on mental health intervention.<sup>7</sup> The Mental Health Unit would train and educate officers about how to properly intervene and respond to these calls, without the use of or need for force. This type of unit could substantively change how police interact with those who struggle with mental illness, slowly reducing the stigmatization and criminalization of mental illness. Having trusted members of the community de-escalate situations could greatly reduce police calls and lead to better results. A mental health unit would require more resources and funding, but promoting the safety and wellbeing of our communities outweighs this cost, as demonstrated by other mental health units across the United States.<sup>8</sup>

When hired, officers should have a probationary period lasting one year, during which they work toward active integration into the community they serve. During this probationary period, new officers will be partnered with a veteran member of the police force. The newly hired officer should be restricted to using non-lethal weapons for the first six months. (Note that even non-lethal weapons can injure and incapacitate.<sup>9</sup>) After the probationary year is over, officers would

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<sup>6</sup> See ERNIE & JOE: CRISIS COPS (Jenifer McShane) (about Texas police officers part of the San Antonio Police Department Mental Health Unit who are trying to change the way police respond to mental health calls).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Kirsten Nunez, *Why Rubber Bullets and Bean Bag Bullets Are Dangerous, and What to Do If You've Been Shot with One*, HEALTHLINE (Jun. 11, 2021), <https://www.healthline.com/health/rubber-bullet-wound>.

go through an extensive review by a board of community members and police administration. They will have to defend decisions in front of this board. If found competent, the probation period would end, and the department could hire them full time and equip them with a traditional firearm.

A practical problem for this solution is that some community members and police departments may push back on the use of non-lethal weapons and munitions during the probationary period. For example, while rubber bullets have proven to be less lethal than real bullets, they still can cause serious harm and in some cases death.<sup>10</sup> This may cause community members to push back against the idea of rubber bullets. Data shows that rubber bullets are less likely to kill than real bullets, making them a better option for new officers. Police departments will likely argue that their officers are often shot at or encounter individuals who are armed with regular firearms and munitions. This could place officers with only non-lethal weapons at a disadvantage when encountering a potentially dangerous situation while on duty. However, every officer using rubber bullets will always be paired with a veteran member of the police force who carries a real gun. There may be no way to reconcile these conflicting views, but rubber bullets are the best way to keep officers protected while also reassuring community members that all officers operating a real gun have been thoroughly vetted and tested, leading to more community trust and less fear of police.

## **TRANSPARENCY AND ACCOUNTABILITY**

Currently, most police agencies lack real transparency or accountability. Many police departments hesitate to reprimand their officers and “punishment” varies widely. Mandatory body cams worn by officers are one way to help solve the transparency issue. However, body cams come with privacy considerations not only for the officers wearing them, but also for people being

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<sup>10</sup> *Id.*



filmed. Additionally, officers may push back on the ubiquitous use of body cams, because they might feel as though superiors do not trust them. However, body cams have proven to be helpful in court and can protect officers from false claims as well as protect community members from misconduct.<sup>11</sup>

As a part of police accountability, a board of community members and police administrators can review police decisions and actions, with careful consideration and extensive review being given to decisions involving use of force. Specifically, a board should review every time a gun is drawn or fired, and other serious uses of force as well. This review of police actions will help make sure that competent officers remain on the force and others do not.

Practical problems for these review boards include the money to fund them and the time it takes for them to make their judgments and decisions. Police departments are likely to say the funds are limited and due to so many decisions being reviewed, the board will get overwhelmed with the number of decisions needed causing the decisions to be far removed in time from the actions. Despite these objections, the review board will eventually create a well-vetted group of officers and reduce bad publicity for police departments.

## **AWARENESS OF COMMUNITY AND SENSITIVITY**

Increased racial diversity should be prioritized within police departments. Ensuring that the “police force” for a certain area is made up of members of that area’s community should also be an incentivized priority. This means actively recruiting potential officers from the community they will serve, as well as making informed decisions during the hiring process to create an incoming class of officers with varying knowledge and experiences from different backgrounds.

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<sup>11</sup> See National Institute of Justice, *Research on Body-Worn Cameras and Law Enforcement*, DEPT. OF JUST., OFF. OF JUST. PROGRAMS, <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement>.

This is not to say officers should be assigned *only* to the area they are from, but rather police departments should make a conscious effort to include as many officers coming from that area as needed to keep the community safe and advocated for.

Initially, this task may be difficult. It will be hard to recruit officers specifically from certain areas, and logistically might be hard for police departments to place those officers in their own community. However, if children and members of the community see friends, family, and other people that come from similar backgrounds in these positions, they will be inspired and create aspirations. By creating a tradition of hiring within the community, the police will have more understanding and trust within the communities they serve, likely decreasing violence.

### **CHANGING CRIMINAL DEFENSE**

When analyzing the vast criminal defense system, a lack of money, uniformity, and ethics in the courtroom are the pressing issues.

### **INCREASED FUNDING**

Most, if not all, of the problems in the criminal defense system could be solved with more money. Increased funding can lead to an equitable distribution of money (e.g., salaries and benefits for attorneys) and resources (e.g., personnel and technology for cases) which can lead to an equitable distribution of representation. Still, the issue of money can be broken down into two categories: (1) a lack of funding for public defenders' offices and (2) overpriced private defense. A lack of funding at public defenders' offices usually means that public defenders are paid a low salary, are overloaded and overworked with huge caseloads, and cannot access resources such as technology, social workers, and investigators as easily as their prosecutorial counterparts.<sup>12</sup> This

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<sup>12</sup> See YALE KAMISAR ET AL., BASIC CRIMINAL PROCEDURE: CASES, COMMENTS, AND QUESTIONS, 73 (West Academic Publishing, 15<sup>th</sup> ed. 2019).

can lead to burnout among public defenders. All of this may lead attorneys passionate about defense work away from pursuing a career in public defense and opting for more lucrative careers.

The solution is simple – fund public defenders’ offices. However, the means are not as simple. Funding for public defenders’ offices comes from city governments and larger legislative bodies.<sup>13</sup> This requires us to lobby legislators and constituents to teach them about the importance of public defense. Further, Pennsylvania presents its own unique challenges. Indigent defense is funded by each individual county in the Commonwealth.<sup>14</sup> Therefore, it may be difficult to create change in smaller, rural counties. A more uniform system of funding – i.e., statewide rather than county-by-county – could have better results.

Of course, there are practical difficulties that accompany increased funding. First, where will the money come from (e.g., tax revenue, state grants, etc.)? Second, how do lobbyists get legislators and constituents to prioritize indigent defense and empathize with those in the criminal legal system?

For clients that either do not qualify for a public defender or prefer to seek counsel elsewhere, the cost of private defense can be a strenuous financial burden. In addition, it can be difficult to determine if private defense attorneys have a passion for criminal defense when their judgment may be clouded by a large paycheck. This is not to say that all private defense attorneys are “bad,” but the current system leaves room for exploitation of clients. For example, a wealthy defense attorney may be able to afford billboards and advertisements all over the city, allowing themselves to thrive on name recognition. Many clients can be fooled by this if they are not familiar

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<sup>13</sup> See Robert L. Spangenberg & Marea L. Breeman, *Indigent Defense Systems in the United States*, 58 L. & CONTEMPORARY PROBLEMS 31 (1995).

<sup>14</sup> See Katie Meyer, *Despite Outlier Status, Pa. Lawmakers Don’t Make Public Defense a Priority*, WHYY, (Oct. 2, 2018), <https://whyy.org/articles/despite-outlier-status-pa-lawmakers-dont-make-public-defense-a-priority/>.

with the criminal system. Instead of choosing a public defender or doing research on private defense in the area, clients may choose to hire the lawyer with the most name recognition.

One possible solution is to limit the amount of money that private defense attorneys can charge and spend. State bar associations could install and enforce price caps on the amount of money that a private defense attorney may charge – both generally and at each stage of representation. For example, the price cap for a preliminary hearing would be lower than the price cap for trial. This way, the client does not spend all their money at the beginning stages of the legal process without any real outcome. To ensure fairness, the price caps could be based on a percentage of the client's income rather than a flat fee or an hourly rate.

The practical difficulty here is that many private defense attorneys go into private defense for the purpose of enjoying a lucrative career. A mandate on lower fees could diminish the private defense sector significantly because attorneys will look for more money elsewhere. Also, the fee cap based on income could disincentivize attorneys to take cases from poorer clients. Further, antitrust laws, which prohibit price fixing, would likely make this proposition difficult. However, a system where defense attorneys' prices do not differ so heavily is needed.

### **STATEWIDE DEFENSE SYSTEM**

The second issue involves a lack of uniformity in the criminal defense system. In other words, the existence of public defenders, legal aid networks, nonprofits, and private defense – all of which operate differently, county-by-county – creates a public defense system that lacks uniformity.<sup>15</sup> This can lead to a lack of awareness among clients and the general public. For instance, clients may not be aware of how to obtain a public defender or private counsel. Clients

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<sup>15</sup> See Robert L. Spangenberg & Marea L. Breeman, *Indigent Defense Systems in the United States*, 58 L. & CONTEMPORARY PROBLEMS 31 (1995).

may also view the confusing system as illegitimate, causing them to have skewed perceptions of defense attorneys. For example, public defenders are often thought of as “fake lawyers” who are lazy and always willing to take a plea deal. On the other hand, private attorneys can be tagged as slimy and immoral.

Ideally, criminal defense exists on a statewide, socialized basis. Instead of having multiple public defenders’ offices across the state and multiple sectors of defense (public, private, nonprofit, etc.), there should be a statewide agency that works for criminal defendants – the Pennsylvania Criminal Defenders, for example. One single office with field offices in each county could lead to more uniformity in the following ways: identical policies and practices across the state, clients treated with the same standard of care, and equitable distribution of resources and personnel. A unified system may provide a sense of legitimacy to criminal defense. Some states already use a statewide public defender system, providing representation in every country in the state.<sup>16</sup> However, this system will be very difficult for Pennsylvania to achieve since it works on a county-by-county basis, and consolidation would take an extreme amount of time, money and effort.<sup>17</sup> Additionally, The Bronx Defenders, a “holistic” defender’s office where clients are “furnished with a team of criminal, civil and family attorneys, social workers and non-lawyer specialists who help with their housing issues, food stamps and other public benefits” are another great example of a better defense system.<sup>18</sup> Here, this team of advocates helps to humanize their clients to judges in an effort to allow judges to make more precise decisions about whom to divert from jail.<sup>19</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> See Katie Meyer, *Despite Outlier Status, Pa. Lawmakers Don’t Make Public Defense a Priority*, WHY?, (Oct. 2, 2018), <https://why.org/articles/despite-outlier-status-pa-lawmakers-dont-make-public-defense-a-priority/>.

<sup>18</sup> Eli Hager, *The Courts See a Crime. These Lawyers See a Whole Life. Pairing Old-School Defense with Attention to Real-Life Problems Gets People Out of Jail*, THE MARSHALL PROJECT (Nov. 12, 2018), <https://www.themarshallproject.org/2018/11/12/the-courts-see-a-crime-these-lawyers-see-a-whole-life>.

<sup>19</sup> *Id.*

Given that the statewide defense system may be more idealistic, there are other solutions to unify the criminal defense system. One solution is to put public defenders' offices and private defense attorneys on a level playing field. To help with lack of awareness, public defenders' offices must be given a face. Often, public defenders' offices are seen only as an arm of local government. In fact, many clients are unaware of where the physical office is located and have no idea who the Chief Public Defender is. Advertisements around the city with faces and names could humanize the office and give the public defender the same name recognition that many private attorneys enjoy. A practical obstacle for this solution is that like many issues in the criminal defense system, a public awareness campaign will require funding.

Another way to help restore the perception of public defenders is to allow clients to interview multiple attorneys at the office and choose whomever they build the best relationship with. This will show clients that public defenders are not lazy and uneducated. Rather, they are passionate about their careers and want to achieve the best outcomes for their clients. However, this process may not be practical because it would take a great deal of time for both clients and attorneys. One county in Texas permits defendants in need of counsel to choose their own attorney from a list of qualified attorneys.<sup>20</sup> A study conducted about this program suggested that defendants plead guilty to lesser charges or proceeded to trial more often than those who were not a part of this program.<sup>21</sup>

## **ETHICAL BOUNDARIES**

The third issue centers around politics in the courtroom. This refers to the relationship between defense attorneys and judges. Unfortunately, the relationship between a defense attorney

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<sup>20</sup> YALE KAMISAR ET AL., *BASIC CRIMINAL PROCEDURE: CASES, COMMENTS, AND QUESTIONS*, 72 (West Academic Publishing, 15<sup>th</sup> ed. 2019).

<sup>21</sup> *Id.*

and a judge could possibly influence the outcomes of cases. For example, if the defense attorney has created a good relationship with the judge, their clients may serve shorter sentences. On the other hand, if the defense attorney has no interest in creating a relationship with the judge, their clients may face a “trial penalty” or serve longer sentences. The effect of relationships between defense attorneys and judges can be observed in the court appointment system. Perhaps a new defense attorney does a favor for a judge (i.e., he clears the judge’s docket by getting a client to accept a plea rather than going to trial). The next time there is a court appointment up for grabs, the judge may choose that same defense attorney in hopes that the attorney persuades their next client to take a deal.<sup>22</sup>

It is absolutely necessary to create ethical boundaries between counsel and judges. While this kind of boundary is already the rule in most, if not all, jurisdictions, enforcement must improve. For example, in the case of court appointments, an agency tasked with enforcing the professional relationship between defense attorneys and judges should keep track of how often the attorney takes a plea deal instead of going to trial. While entering a plea sometimes represents the best outcome for the client, tracking pleas could still help determine whether the attorney is an outlier, pleading out more appointed cases than other attorneys do, and therefore perhaps failing to serve as the strong advocate the accused client deserves.

For defense attorneys, having a strong relationship with a judge is a double-edged sword. This is where the practical difficulty of limiting that relationship lies. While it may be beneficial to clients for their defense attorney to have a good relationship with the judge, it could also give the impression that their defense attorney is not on their side. Rather, the defense attorney could

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<sup>22</sup> See Robert L. Spangenberg & Marea L. Breeman, *Indigent Defense Systems in the United States*, 58 L. & CONTEMPORARY PROBLEMS 31 (1995).

be seen as part of a larger, oppressive system that is the criminal legal system. At the very least, defense attorneys should ease their client's mind by keeping them up to date and explaining decisions and interactions, allowing the client to understand that they are being fiercely advocated for.

### **CHANGING PROSECUTION**

The current prosecutorial system possesses a lack of cultural competency, a lack of accountability, and too much discretion and power.

### **LACK OF CULTURAL SENSITIVITY AND UNDERSTANDING**

Prosecutors tend to lack of cultural awareness, resulting in biases concerning both the victims of crime and those who have committed crime. These potential economic and social biases on behalf of prosecutors may lead to overreliance on cash bail, a lack of diversion opportunities, and seeing minorities and those battling drug addiction and mental illness.<sup>23</sup> This blinkered and biased point of view could be countered by requiring cultural immersion of prosecutors, educating them on things such as cultural norms and differences, languages, and anti-racism. It is essential to a fair criminal legal system that prosecutors learn how different groups are impacted by the system, and how to effectively communicate with and understand different communities. Prosecutors should have the necessary education and training to enable them to understand the historical and sociological roots of criminal behavior. That understanding will orient them, to some degree, toward efforts to prevent crime, rather than simply responding to crime with the blunt instrument of punishment. Inside-Out Prison Exchange Programs are a great way to stimulate this education and should be easily accessible and even required for prosecutors to complete before

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<sup>23</sup> See Emily Bazelon, *21 Principles for the 21<sup>st</sup> Century Prosecutor*, BRENNAN CTR. FOR JUST. (Dec. 3, 2018), <https://www.brennancenter.org/our-work/policy-solutions/21-principles-21st-century-prosecutor>.



they are assigned cases. The material for “Inside-Out: prosecutors edition” could focus on legal sociology and criminology. This could help create better relationships between incarcerated persons and prosecutors and foster an environment where each group can better understand each other. Additionally, many prosecutorial offices already have sensitivity and bias training, which should continue to be developed as the social and cultural world evolves.

However, a practical problem with these trainings and courses is that there is no way to force people to take them seriously, and there is also no tangible way to track its success. One way to make sure the courses are taken seriously is to develop a curriculum that could be implemented quarterly every year. This way, the material is constantly being refreshed and built upon, which could increase the likelihood that the information is retained. Although there is no way to track success, or if people are using these courses in their life and work, it is another qualification that could weed out biased prosecutors.

### **LACK OF ACCOUNTABILITY**

Since prosecutors are not required to justify their decisions to anyone besides their immediate supervisors, there is no real system of accountability ensuring important decisions, such as charging and plea-bargaining, are made without bias.<sup>24</sup> Further, these decisions are often made in the privacy of prosecutors’ offices, making it more difficult to discover arbitrary or racially biased decisions.<sup>25</sup> Moreover, even when misconduct is uncovered, a legal remedy is difficult to achieve. For instance, federal civil rights claims and constitutional claims of selective prosecution have a high burden of proof due to standing requirements and the need to show intentional

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<sup>24</sup> Angela J. Davis, *The Power and Discretion of the American Prosecutor*, 49 OPEN EDITION J. 55, 61 (2005).

<sup>25</sup> *Id.*

discrimination.<sup>26</sup> Additionally, some courts may even find that the misconduct itself is harmless and dismiss the claim.

To create accountability for District Attorneys and those who work for them, there must be more communication between the prosecution and defense, in order to improve transparency. Regular and systemic review of prosecutor decision must become standard. Currently, the primary check against prosecutorial misconduct is voting the President out of office for appointing disappointing federal prosecutors, or voting to oust state-level District Attorneys when they run for re-election.<sup>27</sup> This is easier to do on the state level, because even if voters took special interest in particular federal prosecutors, they would remain uninformed regarding those prosecutors' day-to-day practices and policies.<sup>28</sup> Also, it is unlikely the electorate would vote out a President solely based on its disappointment with federal prosecutors.<sup>29</sup> A prosecutorial review board, similar to the one in the "Changing Policing" section, could be a step in the right direction. The board's membership could consist of a combination of citizens, attorneys, and judges. A "District Attorney (DA) Citizens Review Board" could create punishments such as suspension or demotion for those who do not act ethically and appropriately. For a first infraction, the offender could pay fines and be assigned a certain amount of time in the clerical unit. For a second infraction, an increased fine would be imposed, the offender would be placed under supervision, and they would now be sent to the review board. Following the third strike, the offender should be sent to an attorney ethics board for determination of future employment and licensure.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

However, an obstacle to this solution is how violations would be determined and documented. Further, it would be hard to establish, standardize, and gain enforcement power for these review boards in every prosecutorial office. This would create a need to establish a system of rules and violations. Also, expecting prosecutors to police and report on each other seems just as unlikely as what we currently see with police. Despite these difficulties, a prosecutorial review board could nevertheless help to instill a culture of accountability of prosecutors to their community.

### **CHARGING DISCRETION**

Prosecutors have immense discretion when making charging decisions. They are the ones who decide what to charge a defendant with, or whether to charge them at all.<sup>30</sup> This makes prosecutors extremely powerful in the criminal legal system. For instance, if an individual is arrested for possessing more than a personal-use quantity of drugs, a prosecutor can decide to charge or dismiss. If the prosecutor decides to charge the individual, the charges could range from simple possession, to possession with intent to distribute, or even drug distribution.<sup>31</sup> Since charging is directly related to sentencing, the charging decision always plays a substantial role in any sentence.<sup>32</sup> Additionally, the ability and power of prosecutors to “stack” charges as described above (i.e., charging someone with possession, intent to distribute, and distribution) often leads to unfavorable or coercive plea deals.<sup>33</sup> Ninety-five percent of all defendants go through the plea-bargaining process.<sup>34</sup> Many defendants take a plea deal because trial has become too risky with

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<sup>30</sup> *Id.*

<sup>31</sup> Example adapted from *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

the increase in mandatory minimums and longer prison terms.<sup>35</sup> Some prosecutors abuse their charging discretion by “overcharging” the defendant – charging him with the offense that carries the greatest penalty, even if the prosecutor might not be able to prove that offense at trial – so that the defendant will plead guilty to a lesser offense.<sup>36</sup>

In fixing the charging power and plea-deal issues, there must be no retaliation for rejecting a plea deal, such as asking for the maximum penalty for the charge at trial, or asking for a jail sentence when probation would be an appropriate remedy. Regarding to charging power, courts should require that some evidence of *all* elements of a charge be present prior to the charge being added. This would help ensure that a defendant is being properly and not arbitrarily or unfairly charged. Additionally, this would allow attorneys to focus on negotiating a proper sentence for the defendant during plea bargaining, rather than negotiating about which charges might be dropped. If there is a belief a charge is erroneous or that a prosecutor is abusing their authority, the defense attorney should have the authority to submit a motion asking the court for an evidentiary hearing to determine if there was any abuse present. If abuse is found, the prosecutor should be held accountable.

This solution might be hard to achieve and not accepted in practice because of the nature of investigations and the way evidence is collected for a trial. Legislation would need to be enacted to change charging in some scenarios. Additionally, sentencing guidelines would need to be altered. Further, the courts must establish a standard and an acceptable burden of proof for these for evidentiary hearings concerning prosecutorial abuse. Despite this obstacle in implementation,

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

it is still a good idea to enforce these prosecutorial restrictions. Prosecutors have immense power, and that makes it essential to assure that that power is not abused.

### **CHANGING PRISONS**

Great change is needed to address the current state of American prisons. The class focused on the negative and debilitating living conditions of prisons, the physical distance of prisons from society and “home,” lack of educational programming, and prisons serving as an opportunity for financial exploitation as issues in need of attention.

### **CORRECTIONAL OFFICERS, LIVING CONDITIONS, AND THE PHYSICAL DISTANCE BETWEEN PRISONS AND THE HOMES OF THE INCARCERATED**

There is a clear issue with the current conditions of prisons, which are dehumanizing and punishment-focused, rather than rehabilitation-focused. This is evident in the lack of holistic training for correctional officers. In most of the United States, correctional officers undergo training modeled after that received by law enforcement, giving officers “practical skills related to defensive tactics, subduing violent inmates, and riot control.”<sup>37</sup> Requirements for hiring a correctional officer at federal correctional institution are more stringent than at most state institutions; federal correctional institutions require applicants to have a four-year college/bachelor’s degree, whereas most state correctional institutions only require applicants to hold a high school diploma or GED.<sup>38</sup> All correctional officers, state and federal, must undergo written and physical exams, and are usually subject to background checks, medical evaluations, drug screenings, and a psychological evaluation before employment is offered.<sup>39</sup> However, none

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<sup>37</sup> *Job Requirements for State and Federal Correctional Officers*, CORRECTIONALOFFICEREDU.ORG, <https://www.correctionalofficeredu.org/correctional-officer-requirements/>.

<sup>38</sup> Although, some state correctional institutions require candidates to complete college courses in the behavioral or social sciences. *Id.*

<sup>39</sup> *Id.*

of their training teaches successful rehabilitation tactics when interacting with incarcerated persons. If American prisons want incarcerated people to rejoin society upon release, those who interact with incarcerated individuals every day -- correctional officers -- must be trained to understand and use rehabilitative approaches.

Additionally, the distance of the prisons from the homes of those within them incapacitates and dehumanizes incarcerated individuals by making family ties and relationships of all kinds much more difficult to maintain. Moving incarcerated persons great distances from their support systems and families decreases motivation and can increase the probability of hopelessness, mental illness, and recalcitrant behavior.<sup>40</sup> One way to address this issue is to encourage courts to sentence individuals to prisons close to their home and family. This will provide support to those incarcerated and make reentry into society easier after release. A study in Iowa found that one additional visit in jail per month reduced misconduct in prison by 14 percent and time served by 11 percent.<sup>41</sup> When prisoners receive visitors, they are 15 percent less likely to re-offend.<sup>42</sup> Being in prison is already an isolating experience; it need not be exacerbated.

A great example of the goal American prisons should be working towards is Halden Prison in southeastern Norway. It is well-lit, has green spaces, and is organized around the “normalization principle,” which “recognizes the inherent harms of incarceration and

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<sup>40</sup> Tana Golash-Boza, *Prisoners Incarcerated Far Away from Home Are Effectively Denied the Possibility of Seeing Family Members*, THE HILL (May 23, 2020), <https://thehill.com/opinion/criminal-justice/499307-prisoners-sent-far-away-from-home-are-effectively-denied-the/>.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

requires that life in prison approximate the positive aspects of life in the community.”<sup>43</sup>

This way, punishment for incarcerated individuals is limited to the separation from society inherent in the custodial sentence itself. Halden Prison recognizes that conditions of confinement themselves should be “neither punitive nor onerous.”<sup>44</sup> Rather than exacerbating punishment by making prison punitive and harsh, the structure and culture of American prisons must shift toward a focus on the reintegration of people upon release and encouraging individuals to lead a life of social responsibility.

Short of changing the entire structure of prisons, rehabilitation measures can begin with correctional officer training and education. Correctional officers should have a longer training period and undergo sensitivity training, bias training, and at the very least should have coursework completed in psychology, social work, and criminology. In Norway, correctional officers are “directly involved in rehabilitation and planning for the incarcerated person’s reentry into the world outside of the prison.”<sup>45</sup> Additionally, the “us vs them” power dynamic between correctional officers and incarcerated persons needs to stop, for it creates an unhealthy living environment for all incarcerated individuals. The correctional officers are able to go home after a long day and “reset,” but incarcerated persons are constantly subjected to this adversarial relationship, which can take a toll on a person after a while. Training officers and shifting prison culture towards rehabilitation could really improve the punitive and cruel structure of American prisons.

## **EDUCATIONAL AND TRANSFORMATIVE OPPORTUNITIES**

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<sup>43</sup> Ram Subramanian, *How Some European Prisons Are Based on Dignity Instead of Dehumanization*, BRENNAN CTR. FOR JUST. (Nov. 29, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-some-european-prisons-are-based-dignity-instead-dehumanization>.

<sup>44</sup> *Id.*

<sup>45</sup> Jordan Hyatt & Synove Nygaard Andersen, *A Pa. Prison Got a Scandinavian-Style Makeover. Here’s What Happened Next*, PA. CAPITAL-STAR (Oct. 8, 2022), <https://www.penncapital-star.com/commentary/a-pa-prison-got-a-scandinavian-style-makeover-heres-what-happened-next-analysis/>.

Another issue with the current conditions of prisons is the lack of educational services and transformative opportunities. Again, the structure of American prisons is punitive, rather than rehabilitative, with little or no preparation of individuals for life after release. Although prison education programs have proven to decrease recidivism rates, and violence within facilities, many of these programs were largely dismantled during the “tough on crime” era in the 1990s.<sup>46</sup> Other than preparing individuals for life beyond prison, educational programs can increase one’s self-worth, as well as ignite and guide one’s purpose in life. In sum, these kinds of programs are advantageous no matter what sentence someone received.

Updated and modernized programs could be offered that apply to incarcerated individual’s current skills and interests. These programs must include up to date curriculums, vocational and trade programs, and college degree programs. Further, these programs need to be widely available to all inmates. Many experience long waits to be enrolled. Lifers (incarcerated persons serving life sentences) may lose educational opportunities to those who will be released, resulting in inequitable access to education. Additionally, expanding transformative services to include topics that appeal to a wider array of the prison population, such as reentry programs taught by qualified mentors with relevant experience, would encourage more participation and completion of courses. Increased therapeutic and mental health services should be offered and made easily accessible to all incarcerated populations.

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<sup>46</sup> See The Editorial Board, *Let Prisoners Learn While They Serve*, THE N.Y. TIMES (Aug. 16, 2017), <https://www.nytimes.com/2017/08/16/opinion/prison-education-programs-.html>.



Increasing the availability and quality of prison education programs would require more funding, which can be difficult to obtain. When he served as Manhattan’s district attorney, Cyrus Vance Jr. took a step in the right direction when he agreed to pay for Governor Cuomo’s prison education plan that aimed to expand the number of prisoners taking college courses from 1,000 to 3,500, through utilizing criminal forfeiture money secured from banks.<sup>47</sup> Even though obtaining funding will prove challenging, educational programs will not only improve life after release but will provide purpose and value to one while they serve time.

### **PRISONS FOR FINANCIAL GAIN**

The current prison system is a money-making machine based on financial exploitation.<sup>48</sup> This is evident through private prisons, private contracts with commissaries, and the minimal payment for prison labor.<sup>49</sup> Incarcerated individuals should be paid a living wage for the services that they provide. The current range of 19 cents to 51 cents is grossly inadequate to set up any individual for success. Increasing wages would improve overall morale, encourage support of the family unit, and ultimately mitigate recidivism by creating professional development and having the resources to start life upon release.

A practical obstacle for this solution is convincing those in charge of budgeting to prioritize providing incarcerated individuals with a living wage over other potential needs for the prison. Many prisons argue that they are already underfunded so adequate pay for incarcerated individuals is the last thing they can prioritize. However, if incarcerated

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<sup>47</sup> *Id.*

<sup>48</sup> See *Captive Labor: Exploitation of Incarcerated Workers*, AM. CIV. LIBERTIES UNION, (Jun. 15, 2022), <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers>.

<sup>49</sup> *Id.*

individuals were able to leave prison with money for the services they provided, re-offending numbers would likely fall. Rejoining society with some money would provide a better chance for success.

### **ROOTING OUT RACISM**

The conversation around rooting out racism is difficult and will not result in change overnight. This section aims to continue the conversation regarding rooting out racism in the criminal legal system, and discusses changes needing to take place on societal, structural, and individual levels.

#### **SOCIETY**

Societal racism refers to the theory of formalizing a collection of institutional, historical, cultural, and interpersonal behaviors within a society that favors some social or ethnic groups and disadvantages others over time, resulting in disparities between the groups. To root out racism within the criminal legal system, a measure similar to Germany's Holocaust denial laws could be implemented. The first fundamental step toward addressing racism is to require that Americans recognize the reality of slavery, and that Black Americans were promised reparations that the government never paid. These laws would prohibit people from publicly denying America's history of racism. While this measure would not solve all the problems within the system, it is the first necessary step to take in order to make real progress. It is impossible to take any step forward without recognizing the foundation our country was built upon.

Under the 14<sup>th</sup> amendment, race policies whether state or federal can only be enacted if it were to pass strict scrutiny. Strict scrutiny means that it must be narrowly tailored to meet a

compelling government interest through the least restrictive means possible.<sup>50</sup> There have been many ideas on how to get reparations to pass strict scrutiny. Although potentially difficult to pass through the Supreme Court, reparations are essential to progress and addressing the past.

## **STRUCTURES**

Deeply ingrained and persistent social practices that give preference to one group over another based-on factors like skin color creates structural racism. To root out racism on a structural level, changes need to occur through the education system and with voting rights. The federal government should prioritize, emphasize, and mandate an educational curriculum highlighting minority writers and stories in English and History classes. This would broaden the voices and perspectives students learn about and from, encouraging a wider (and more accurate) range of knowledge. Also, this could give minority students historical figures and prominent writers to admire. Additionally, the education system should also integrate curricula regarding impulse control and effective dialogues. Although this second measure does not directly address the subject of racism, it could help individuals identify their biases and learn how to communicate effectively in difficult situations.

The biggest practical obstacle is that education is regulated state-by-state. It would be extremely hard to develop a uniform curriculum on the federal level. If states slowly started prioritizing this crucial education hopefully more would follow suit. In developing this curriculum, the states should call upon resources such as mental health providers, psychologists, and teachers.

Secondly, the right to vote should be restored to incarcerated persons. The continued mass incarceration of Black Americans suppresses their voice when it comes to voting. By restoring the

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<sup>50</sup> Charles Lane, *Would Reparations for Slavery be Constitutional?*, WASH. POST (Aug. 12, 2019), [https://www.washingtonpost.com/opinions/would-reparations-for-slavery-be-constitutional/2019/08/12/76677182-ba10-11e9-b3b4-2bb69e8c4e39\\_story.html](https://www.washingtonpost.com/opinions/would-reparations-for-slavery-be-constitutional/2019/08/12/76677182-ba10-11e9-b3b4-2bb69e8c4e39_story.html).

right to vote, incarcerated Americans would no longer be left out of society, and politicians can no longer run on being “tough on crime.” As touched on before, many people are relocated in prison far away from their families and where they live. The Census counts incarcerated people in the district they are incarcerated at during Census collection, rather than where they call home.<sup>51</sup> This means in 2020, roughly 1.4 million incarcerated people were counted this way.<sup>52</sup> If incarcerated residents of Philadelphia were counted where they resided and not where they were incarcerated, areas with high populations of people of color could gain as many as two additional seats in the House of Representatives to have their voices represented.<sup>53</sup>

## **INDIVIDUAL ACTORS**

When striving to root out racism in the criminal legal system through individual actors, jurors come to mind. Jurors come into the courtroom with their own set of biases, perspectives, backgrounds, and experiences.<sup>54</sup> Because of this, it is important for all those involved in the criminal justice process to be aware of this fact and do their best to combat it. Specifically, during the potential juror orientation, jurors should have to take the “Implicit Association Test” (IAT) in an effort to make jurors consciously aware of their own individual implicit biases. Juror orientation is universal and a crucial period for the forming of first impressions.<sup>55</sup> Making this test apart of juror orientation will give the jurors something tangible to think about when the judge instructs the jurors about leaving their preconceived notions out of the courtroom and only focusing on the facts of the case. Additionally, physically taking the test itself would be more effective than simply

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<sup>51</sup> Nicholas Turner & Sam McCann, *How Mass Incarceration Shapes Our Elections*, VERA INST. OF JUST. (Oct. 26, 2022), <https://www.vera.org/news/how-mass-incarceration-shapes-our-elections>

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Anna Roberts, *Re(forming) the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 CONN. L. REV. 827 (2012).

<sup>55</sup> *Id.*

being told about implicit biases.<sup>56</sup> It should also be encouraged for defense attorneys, so that they consider how race may play a role in their client's case and can make conscious decisions about how to handle and address this at trial. For instance, if a defense attorney believes their client's race is a crucial factor that the jury must consider, they can present that to the jury at trial.

### **CHANGING COURTS AND JUDGES**

When analyzing the nature of courts and judges, we must consider the close connection between prosecutors and judges, inherent biases in judges, and how judges are selected in order to create a better, fairer criminal legal system.

### **CONNECTION BETWEEN PROSECUTION AND JUDGES, AND THE RESULTING BIAS**

Currently, there is a pipeline from prosecution to judgeship. The Cato Institute found that the odds of having a judge whose previous career experience included acting on behalf of the government was fifty percent in civil rights or criminal cases.<sup>57</sup> The study also found that four times as many former prosecutors were serving as federal judges as were former criminal defense lawyers.<sup>58</sup> The Cato Institute study noted how President Obama at least made some effort to appoint more criminal defense attorneys to the bench. This contrasted with the Trump Administration, which appointed over twelve times more judges who had worked as government advocates or prosecutors than judges with backgrounds in criminal defense or plaintiff-side civil rights litigation.<sup>59</sup> Because the federal judiciary is tilted in favor of former prosecutors over formal

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<sup>56</sup> *Id.*

<sup>57</sup> Jayson Hawkins, *Prosecutors Overrepresented Among Federal Judges*, CRIM. LEGAL NEWS (Apr. 15, 2020), <https://www.criminallegalnews.org/news/2020/apr/15/prosecutors-overrepresented-among-federal-judges/>.

<sup>58</sup> *Id.* (including that when civil cases were added in on both sides, the ratio was seven to one).

<sup>59</sup> Clark Neily, *Are a Disproportionate Number of Federal Judges Former Government Advocates?* CATO INST. (May 27, 2021), <https://www.cato.org/study/are-disproportionate-number-federal-judges-former-government-advocates#introduction-summary-findings>.

criminal defense attorneys, there creates a potential impact on rulings due to unconscious biases seeping through judges' impartiality.<sup>60</sup> This is especially true for Black individuals.<sup>61</sup> As the Cato Institute concluded, “[n]o prosecutor would relish the prospect of trying a case before a jury half filled with former criminal defense attorneys—just as no criminal defendant relishes the idea of going before a judiciary half filled with former government advocates.”<sup>62</sup>

Everyone possesses their own set of biases, typically coming from one's own background and experiences. In his article “Prosecutors Overrepresented Among Federal Judges,” Jayson Hawkins gives this example: “Imagine you're a former criminal defense attorney who gets called for jury duty in a drug-dealing prosecution. Your chances of being seated on that jury are slim to none. Why? Because the prosecutor will... [want] to keep you off the jury on the entirely reasonable assumption that, in light of your professional background, you are likely to have certain biases and predispositions that will tend to color both your perception and your assessment of the prosecution's case.”<sup>63</sup> The federal docket is largely criminal or habeas corpus related, where judges have to make life-altering decisions, so it is incredibly important to ensure to the highest extent possible that inherent biases are controlled. This means electing and appointing more criminal defense attorneys and government opponents to the bench. A study conducted by Allison P. Harris and Maya Sen investigating thousands of federal sentences from 2010 to 2019, found that

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<sup>60</sup>Jayson Hawkins, *Prosecutors Overrepresented Among Federal Judges*, CRIM. LEGAL NEWS (Apr. 15, 2020), <https://www.criminallegalnews.org/news/2020/apr/15/prosecutors-overrepresented-among-federal-judges/>.

<sup>61</sup> See Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 WASH. UNIV. L. REV. 1, (2009).

<sup>62</sup> *Id.*

<sup>63</sup> Clark Neily, *Are a Disproportionate Number of Federal Judges Former Government Advocates?* CATO INST. (May 27, 2021), <https://www.cato.org/study/are-disproportionate-number-federal-judges-former-government-advocates#introduction-summary-findings>.

defendants whose cases were assigned to a judge who was a former public defender are, on average, less likely to be incarcerated, and in some cases are sentenced to shorter terms.<sup>64</sup>

Encouraging public defenders to run for judge at the state level should be incentivized, and Presidents should make appointing federal judges who were formally government opponents a priority. Prosecutors know that a potential “next step” for them is judgeship; this should be no less true for public defenders and all other defense attorneys. To go even further, the government could enforce a temporary stay in nominating former prosecutors to the bench while promoting lawyers with experience representing individuals against the government to help even out the playing field.

Additionally, to help decrease bias from emerging in judges, video recordings of court proceedings that could be subject to review could encourage judges to make a conscious effort to combat biases in the courtroom. Moreover, a review board for judges could be created, where every three years, a random pool of cases from a judge’s history would be selected and screened for discrepancies, especially in cases with similar facts. If a case is flagged during the screening process, a judge should have to defend the legal decisions they made to the review board. Cases should be screened through the sentencing process as well. The review board could be made up of four criminal defense attorneys or government opponents, four prosecutors or government advocates, and one academic who acts as the mediator and tiebreaker. Furthermore, offering and encouraging bias and cultural trainings, Inside-Out Prison Exchange Programs, and “cross-trainings/forums,” where judges who were former government advocates learn from former government opponents and vice versa could be beneficial to thwarting bias in the courtroom.

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<sup>64</sup> Allison P. Harris & Maya Sen, *How Judges’ Professional Experience Impacts Case Outcomes: An Examination of Public Defenders and Criminal Sentencing*, HARV. UNIV., <https://scholar.harvard.edu/files/msen/files/harris-sen-public-defenders.pdf>.

The practical obstacles to these solutions are the resources it would take to record every court proceeding would be immense. This would be expensive and might also carry some privacy concerns. Even with these concerns, this suggestion is a way to allow judges to be reviewed and held accountable.

## **JUDICIAL SELECTION**

Judicial selection refers to the process used to select judges for the court. The ways that judges are chosen and selected invites political biases, with no checks for unfavorable judges. In Pennsylvania, state judges are primarily elected through partisan elections and serve for ten years except in magisterial districts.<sup>65</sup> Partisan elections allow politics into the process, contradicting the judge's oath to act impartially. Further, some areas have retention elections, where a judge is unopposed and voters decide whether to "retain" a judge to office, determined by a super majority. Because of the way retention elections are run, most judges stay on the bench for long periods of time.<sup>66</sup> Ideally, retention elections should cease to exist because they would make it easier to elect judges who are more favorable to the public's needs and easier to cast out judges who are acting unfavorably. Instead of a retention election after a certain number of years in office, the judge would have to run for office again with opponents. One of the only ways to address this issue would be to completely change the way judicial elections work. Some states already have a non-partisan election model that would be preferable to the partisan model. However, an alternative suggestion for state judicial elections would be to have nameless candidates on the ballot, and instead of a party, the candidates' records and decision-making statistics would be available for

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<sup>65</sup> *Judicial Selection in Pennsylvania*, BALLOTPEDIA, [https://ballotpedia.org/Judicial\\_selection\\_in\\_Pennsylvania](https://ballotpedia.org/Judicial_selection_in_Pennsylvania).

<sup>66</sup> *Retention Election*, BALLOTPEDIA, [https://ballotpedia.org/Retention\\_election](https://ballotpedia.org/Retention_election).



voters to consider. This new model aims to get rid of political biases and polarization, as well as uninformed voting.

An obvious practical obstacle is that changing how elections work would be extremely difficult. This would require likely years of law writing and passing. Additionally, a nameless ballot would interfere with the common practice of campaigning in American elections.

In the federal realm, judges are appointed by the President for life. This makes the selection process in federal courts implicitly political, since each President is a part of a certain political party pushing a certain agenda. Again, the President should be strongly encouraged to appoint federal judges with diverse professional and personal backgrounds. Also, consideration should be given to eliminating life terms, especially for the Supreme Court; of course, this would require a constitutional amendment. Chief Justice John Roberts stated that “setting a term of, say, fifteen years would ensure that federal judges would not lose all touch with reality through decades of ivory tower existence. It would also provide a more regular and greater degree of turnover among the judges.”<sup>67</sup> The rules governing federal courts should be updated to reflect the reality of life in modern America.

The obvious practical difficulty of this is the enormous difficulty of amending the Constitution. However, the hope is that enough law makers will realize that the confirmation process of Supreme Court justices has become too politically polarized for the good of the country, and that limiting terms for justices and judges could help fix this. Alternatively, if the Constitution cannot be amended, federal judges could be encouraged as part of the confirmation process to pledge to step down after a defined term of years.

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<sup>67</sup> Maggie Jo Buchanan, *The Need for Supreme Court Term Limits*, CTR. FOR AMERICAN PROGRESS (Aug. 3, 2020), <https://www.americanprogress.org/article/need-supreme-court-term-limits/>.

## **CONCLUSION**

Overall, there is no shortage of issues in the criminal legal system. The Inside students of SCI-Green and the Outside students of Pitt Law—one group deeply impacted by the system and another group hoping to play a significant role in the system—together offer these solutions to contribute to the conversation on changing the criminal legal system. Our aim is for policy makers, advocates, and those inspired to change the criminal legal system to listen to the voices of those on the inside, and to strive to do something to change the oppressive, punitive system we call the “justice process” into a better, fairer criminal legal system.