HIGHLIGHTS: The Power of Prosecutors in the Decarceration Movement

SSA Associate Professor Matt Epperson, Emily Bazelon, and Khalil Cumberbatch in conversation about the role of prosecutors in ending mass incarceration

On September 25, 2019, the Smart Decarceration Project, with support from The Allen Burns Memorial Fund at the University of Chicago School of Social Service Administration, hosted an event on the role prosecutors can play in advancing decarceration efforts. The featured event speakers were Emily Bazelon, New York Times writer and author of the book Charged: The New Movement to Transform American Prosecution and End Mass Incarceration, Khalil Cumberbatch, Chief Strategist at New Yorkers United for Justice and Matt Epperson, Associate Professor at the University of Chicago School of Social Service Administration, where he also serves as Director of the Smart Decarceration Project.

Until recently, and despite their critically important role in the criminal justice system, prosecutors have not been the focus of criminal justice reform efforts. The panel conversation, like Bazelon’s latest book, examined how the current shift toward progressive prosecution could be leveraged to reduce the use of mass incarceration. The speakers corrected the common misperception that judges are the sole arbiters and decision-makers within criminal cases. Bazelon explained that although judges make bail determinations, research suggests that a prosecutor’s demand is the truly determinative factor in the decision-making process. Cumberbatch illustrated the power of prosecutors by sharing that in New York, “depending on not only the prosecutor in the county, but depending on which county, you could have the same charge with varying differences in terms of outcomes.”

The panelists also discussed the prosecutorial tactic of pursuing the harshest possible charges to pressure defendants into entering guilty pleas. Bazelon described
guilty pleas as “the grease that keeps the wheels turning” as they are responsible for over 95 percent of criminal convictions in the United States. Innocent defendants are often incentivized to plead guilty. The panelists cited some possible incentives as the fear of being convicted by a jury or the desire to get out of the criminal justice system as quickly as possible and return home.

When asked what she viewed as the most promising trend within the progressive prosecution movement, Bazeloon identified bipartisan coalition building. She explained that when groups from diverse political backgrounds unite to leverage their civic power and “rise up and take back (the District Attorney’s) office for themselves,” they are creating a direct path to change. Bazeloon continued by saying, “I also see in cities that are trying this path, a kind of chance to become models that might make it easier and safer for [other] state legislators and the Capitol to take a risk on reform.”

The panel also highlighted work that needs to be done for decarceration efforts to progress. First, our societal narratives about incarceration and currently and formerly incarcerated individuals must be critically examined. Second, people with lived experience of the criminal justice system involvement must be in significant leadership positions to achieve reform. As Cumberbatch explained, “There is no way that you can talk about dramatically changing the system without empowering, and to some extent centering, the voices of those same people (who have been impacted).” Finally, traditional ideas about public safety must be re-examined. Epperson stated, “We’ve studied norms and values that underlie some of this movement away from punitive approaches, but we still find that the holy grail of public safety is an ever present concern.” Progressive prosecution, and decarceration more broadly, must be reframed so they are viewed as aligned with the central values of public safety and justice for victims of crimes, instead of in conflict with them.

Read more about how the Smart Decarceration Project is measuring the power of prosecutors.

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About the Speakers
Emily Bazelon is a staff writer at The New York Times Magazine, the Truman Capote Fellow for Creative Writing and Law, and a lecturer at Yale Law School. Her latest book is Charged: The New Movement to Transform American Prosecution and End Mass Incarceration and her previous book is the national bestseller, Sticks and Stones: Defeating the Culture of Bullying and Rediscovering the Power of Character and Empathy. She’s also a co-host of the Slate Political Gabfest, a popular weekly podcast. Before joining the Times Magazine, Bazelon was a writer and editor at Slate, where she co-founded the women’s section “DoubleX.”

Khalil Cumberbatch currently serves as Chief Strategist at New Yorkers United for Justice, a coalition of diverse organizations whose goal is to pass criminal justice reform legislation in New York State. He previously served as Associate Vice President of Policy at the Fortune Society, a reentry organization whose goal is to build people and not prisons. He is also a lecturer at Columbia University School of Social Work.

Matthew Epperson is an Associate Professor at the University of Chicago School of Social Service Administration, where he also serves as Director of the Smart Decarceration Project. His research centers on developing, implementing, and evaluating interventions to reduce disparities in the criminal justice system. Professor Epperson’s scholarship and teaching aim to build the capacity of the social work profession to address these challenges and opportunities for criminal justice transformation. He is Co-Leader of the Promote Smart Decarceration network, through the Grand Challenges for Social Work Initiative.

The Smart Decarceration Project
The Smart Decarceration Project (SDP) at the University of Chicago School of Social Service Administration is bridging research and practice to reduce the overreliance on incarceration while also working to reverse existing racial and behavioral health disparities in the criminal justice system. With funding from the Joyce Foundation, SDP researchers are currently studying the development and effectiveness of Prosecutor-led Diversion programming in three large Midwestern jurisdictions to inform the expansion and future use of prosecutorial diversion for greater impact. Specifically, this study examines how prosecutor-led diversion programs can improve outcomes for young adults and also involves an in-depth examination of a newly developed gun diversion program.