

CONSERVATIVE SCOTUS AND PROGRESSIVE DAs

by

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How can we be safe from crime? There are two camps vigorously competing for your buy-in. Conservatives want to stay the course with the tired and failed rhetoric of "law and order." Progressives want to implement new strategies; strategies that get to the root of crime and are evidenced based.

Let's face it, the problem with law and order rhetoric is that it is just that -- rhetoric. California has one of the largest prison systems in the nation. Do you feel safer? According to the rhetoric, arresting our way out of the crime problem should make us the safest state in the union.

The problem is that too many of the draconian laws that emerged from the tough-on-crime era stem from mere caprice, with no studies to predict effectiveness: life without the possibility of parole, Three-Strikes laws, and the spectrum of sentencing enhancements that add additional time to a sentence. There was nothing what-so-ever to validate their effectiveness. As it turned out, they were costly failures that only caused more harm -- and most importantly -- never got to the root of the problem.

Progressive former San Francisco District Attorney Chesa Boudin went beyond

the rhetoric, to the root of the problem. The problem is not so much the "bad guys" running rampant, terrorizing the neighbors as the over simplistic Conservative narrative goes, but bad policies that create so-called bad guys.

The great Rev. Martin Luther King, Jr. noted over fifty years ago, that inequality causes poverty; poverty causes desperation, and desperation is the root of crime.

It doesn't take academia to tell us that, yet they do, and have for decades. Those facts ignored, Boudin became the face of the frustration people felt as a result of wide-spread post-Covid crime reporting. In all actuality, it is much too early to assess whether progressive prosecutorial policies can be attributed to the aberrant behavior of many citizens following the traumatic Covid lockdowns.

In fact, it is too early for researchers to even determine with all certainty what negative effects the Covid lockdowns had on any of us. However, preliminary studies indicate that the Covid lockdowns may have played a role in the spike in aberrant behavior by Americans all over the United States, even in the skies as we collectively witnessed hard working flight attendants being abused and mistreated in mid-flight. Incidents that went far beyond the borders of Northern California.

The truth is, Boudin policies were in lock-step with everyone willing to admit that the tough-on-crime era policies were a resounding debacle. A turning point was in order.

In what may be a surprise to many, that turning point didn't come from progressive district attorneys. One of the most pronounced turn-arounds came directly out of the Right-leaning U.S. Supreme Court -- just 9 months before Boudin was blamed by a fraction of the San Francisco voters who originally voted him in during the general election. Such is the problem with California

Recall procedures. Yet the High Court was paving a new course.

In June 2022, the U.S. Supreme Court ruled that trial court judges are permitted to weigh a panoply of factors when considering resentencing options to correct past wrongs.

In its 5-4 decision, the wrongs the Supreme Court were rectifying were the notorious racial disparities encrusted into the crack cocaine vs. power cocaine injustices of the tough-on-crime era. To be specific, the U.S. Congress enacted legislation imposing much harsher sanctions on crack cocaine offenses than powder cocaine offenses.

For instance, possessing just 5 grams of crack cocaine, which was typically associated with Black people, carried the same penalty as a whopping 500 grams of power cocaine, typically possessed by white people.

To correct this particular gross disparity, Congress passed the Fair Sentencing Act of 2010. It was a reckoning of a past injustice codified into law.

Meanwhile, in January of 2022, California passed AB 1540, Ensuring Due Process and Equity in California Resentencing Laws, which expands opportunities for resentencing and incentivizes self-development, positive programming in state prisons.

In 2021, months prior to the expansion of resentencing opportunities in California -- which are a great tool for correcting past injustices - the California Legislature declared, in pertinent part: Since the mid-1970s rates of incarceration rose dramatically, and have increased since [though in general, crime stabilized or decreased].

Today the California Department of Corrections and Rehabilitation houses 35,000 people serving life sentences, representing 38 percent of the prison

population. Many have been incarcerated decades. Moreover, according to CDCR, as of June 2019, approximately 24 percent of the prison population was over 50 years of age.

Yet researchers have determined that there is scant evidence that long sentences deter criminal behavior. Furthermore, research shows that criminal inclinations diminish dramatically by age 40, and even more after age 50. Progressive DA's get this, Conservatives ignore it.

Moreover, research has found that prisons are crimenogenic. One of the many ways that overuse of prisons hurt communities is that incarceration robs children of their parents. The result of this is that children with incarcerated parents tend to fall into the grasps of the court apparatus themselves, making imprisonment predictably generational. In this case, we are creating a symptom from the cure.

One of the most pervasive causes of criminal behavior is trauma. Poverty is traumatic; witnessing a care giver abuse drugs as a coping mechanism to poverty is traumatic, and being over policed, harassed by police, or being physically or sexually abused are all traumatic events.

The disproportionality of these experiences bare themselves out in the numbers. While studies have repeatedly concluded that crimes are committed evenly across racial lines, people of color are more likely to end up in prison, and for longer periods of time. The crack vs. power cocaine issue was just one of thousands of codified inequalities.

These are the symptoms Boudin and other progressives around the country are trying to rectify. Progressive district attorneys were not the first to attempt to make this turn around, but they are the most political because they are the face of the change.

Sources:

Bessel Van Der Kolk, "The Body that Keeps the Score (Penguin Books), 2014, p.183

Center for Disease Control, "97% of Incarcerated People Have Had at Least One Traumatic Childhood Experience," as cited by Steve Brooks, San Quentin News, January 2022, p. 1,4

Craig Haney, Reforming Punishment: "Psychological Limits to the Pains of Imprisonment" (American Psychological Association, Wash., DC). 2014

Deering's California Code Annotated, Penal Code Section, 1170, Determinate Sentencing; Sentence Recall; Medical Release, Stats. 2021, Ch. 719, section 1

Deering's California Code Annotated, Penal Code Section, 1170, Determinate Sentencing; Sentence Recall; Medical Release, Stats. 2021, Ch. 719, section 1, AB 1540, effective January 1, 2022

Karl Rove, George Soros' Conservative Renaissance," Wall Street Journal, July 21, 2022, A15

Penal Code Revision Committee, 2021 Annual Report

Prosecutor's Alliance California, "Survivor Voices," 2019, www.prosecutorsalliance.org

The Sentencing Project, www.sentencingproject.org/WD-content/uploads/2021/02/No-End-in-Sight-Americas-Enduring-Reliance-on-Life-Imprisonment.pdf (Blacks and Browns Disproportionately Incarcerated)

George Soros, "Why I Support Reform Prosecutors," Wall Street Journal, August 1, 2022, p. A15

Jan Wolfe, "Court Clarifies Resentencing Rules," Wall Street Journal, June 28, 2022, p. A4