

**The
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**Plea Bargains in the Criminal Justice System
Color of Law**

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BlackCommentator.com Editorial Board

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In Philadelphia, it is time for a new district attorney. The current D.A. Lynne Abraham is retiring, and none too soon - after 18 years in the position, she has been called ["America's deadliest D.A."](#) for her exceptionally voracious appetite in seeking the death penalty. Without question, most of the people sentenced to death were African American.

A report by the Death Penalty Information Center noted that Amnesty International characterized Pennsylvania's death penalty as one the most racist in America. Philadelphia, with 14% of Pennsylvania's population, has accounted for more than half of the state's death sentences. Further, [Blacks in Philadelphia were far more likely to get the death penalty](#) than similarly situated defendants - 3.9 times to be exact. The report also said the overwhelming majority of Pennsylvania's death row prisoners are Black, and 84% of death row inmates from Philadelphia are Black.

Yet, despite the complaints about Abraham over the years, someone voted her back into office, election after election, didn't they?

Seth Williams recently won the Democratic primary for the D.A.'s race, which means he stands a better than good chance of becoming Philadelphia's next prosecutor in this heavily Democratic city. If he wins, he will have lots of power. But will he use those powers for good? His platform looks promising, including dealing with violent rather than nonviolent crime, employing preventive measures, and most of all, reducing the number of plea bargains.

A plea bargain is an agreement in a criminal case where the defendant pleads guilty to a crime - usually to a lesser crime than the original charge - and waives his or her right to a jury trial, and the right against self-incrimination. At its worst, I view plea bargaining as a shortcut to justice, sometimes an injustice in and of itself. A plea bargain is to justice what fast food is to gourmet cooking. Quicker doesn't necessarily mean better, and 90% of criminal cases end up in plea bargains. It gives the impression that justice is a deal that can be bartered. Perhaps these plea bargains are the grease that helps to lubricate an often frustratingly slow and overburdened justice system. Or perhaps they are the grease that clogs up the arteries of the justice system, and makes that system hardened, calcified, inelastic and diseased - unable to allow justice to flow.

Perhaps some plea agreements serve a legitimate purpose. But what happens when the defendant didn't commit a crime at all, and is pressured into taking the deal by his or her defense lawyer or coerced by the D.A.? What if the crime should not have been prosecuted at all, such as the case of marijuana possession, or a good kid with no prior offenses? A criminal record - in most cases secured as a result of a plea bargain, whether or not the defendant actually did the crime - can mean prison time, social stigma, and a bar to many educational and employment opportunities. Prosecutors have a lot of power, and they have a lot of discretion in deciding who gets prosecuted and for what offenses. They may choose not to prosecute a nonviolent, victimless crime, or choose not to seek punishment that serves no legitimate social purpose. And as they say, you can indict a ham sandwich.

The fact of the matter is that many prosecutors build their careers on the backs of the prosecuted. The number of convictions one racks up become notches in the belt of one's political career, rungs in the ladder of success. And whether those people actually committed crimes is secondary in importance, if important at all.

The American Bar Association (ABA) [Rules of Professional Conduct](#), as well as the Pennsylvania rules, say the following about the role of a prosecutor:

Rule 3.8 Special Responsibilities Of A Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

The realities of how some prosecutors behave fly in the face of these sensible rules - rules which assume that the ultimate goal is getting to the truth, rather than the personal aggrandizement of the lawyers and others who oversee the criminal justice system.

Consider the town of Tenaha, Texas, where the D.A. and the police are being sued for, literally, [highway robbery](#): A federal class-action lawsuit alleges that cops have been illegally stopping hundreds of mostly out-of-town, Black and Latino motorists, and giving them the choice of taking a felony charge, or handing over their money and valuables. A black grandmother from Akron, Ohio was forced to give up \$4,000 after Tenaha police pulled her over. Meanwhile, an interracial couple from Houston surrendered over \$6,000 to police, who had threatened to take their children and [place them in foster care](#). Between 2006 and 2008, the town has seized around \$3 million under this perverse use of Texas' forfeiture law, which requires such seized money to be used for law enforcement purposes. But in Tenaha, proceeds from these illegal seizures went to a church and a little league baseball team, and one officer received a \$10,000 check. "We try to enforce the law here," [George Bowers](#), the town's mayor said. "We're not doing this to raise money."

And consider the town of Tulia, Texas (there seems to be a pattern with these Texas towns), where a racially-motivated drug sting led to the arrest of 46 people, nearly all African American, on bogus drug charges. No drugs, money or weapons were seized because no crimes had been committed. Yet, some of these people were sentenced to very hard time, 99 years in one case. Fourteen of the defendants took pleas and were sent to prison. Prosecutors relied on the testimony of a sketchy undercover narcotics agent with a checkered past. The regional, 26-county drug task force that masterminded the sting was allowed to play by its own rules. They received federal money, and were funded based on the number of arrests and convictions they helped win. Such disasters cannot occur without the participation of sheriff's departments, disreputable police officers and unscrupulous district attorney's offices that are looking to make that big score.

And society participates in the madness by putting profit into imprisonment, and by endorsing public officials who thrive on a "tough on crime", "lock 'em up and throw away the key" stance.

[Two judges in Luzerne County, PA](#) were looking for that big score when they collected \$2.6 million in kickbacks from private juvenile detention centers. In return, the judges helped the centers secure their contracts, and filled the centers with [over 5,000 children](#), many first-time offenders who committed minor offenses. The judges denied many of these juveniles [access to an attorney](#). Like the law enforcement agent or the prosecutor who racks up arrests or convictions for personal advancement, it is amazing what happens when dollars are at stake.

When justice is reduced to a hustle or a deal - not unlike the economic system that the justice system has undergirded for so long - we all become cheapened in the process. And all you have left is a fast food justice system, a McJustice system.

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