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# To Stop Bad Prosecutors, Call the Feds

By THE EDITORIAL BOARD JUNE 6, 2016

Prosecutors are the most powerful players in the American criminal justice system. Their decisions — like whom to charge with a crime, and what sentence to seek — have profound consequences.

So why is it so hard to keep them from breaking the law or violating the Constitution?

The short answer is that they are almost never held accountable for misconduct, even when it results in wrongful convictions. It is time for a new approach to ending this behavior: federal oversight of prosecutors' offices that repeatedly ignore defendants' legal and constitutional rights. There is a successful model for this in the Justice Department's monitoring of police departments with histories of misconduct.

Among the most serious prosecutorial violations is the withholding of evidence that could help a defendant prove his or her innocence or get a reduced sentence — a practice so widespread that one federal judge called it an “epidemic.” Under the 1963 landmark Supreme Court case *Brady v. Maryland*, prosecutors are required to turn over any exculpatory evidence to a defendant that could materially affect a verdict or sentence. Yet in many district attorneys' offices, the *Brady* rule is considered nothing more than a suggestion, with prosecutors routinely holding back such evidence to win their cases.

Nowhere is this situation worse than in Louisiana, where prosecutors seem to believe they are unconstrained by the Constitution.

This month, the Supreme Court will consider the latest challenge to prosecutorial misconduct in Louisiana in the case of David Brown, who was one of five men charged in the 1999 murder of a prison guard. Mr. Brown said he did not commit the murder, but he was convicted and sentenced to death anyway. Only later did his lawyers discover that prosecutors had withheld the transcript of an interview with another prisoner directly implicating two other men — and only those men — in the murder.

This is about as blatant a Brady violation as can be found, and the judge who presided over Mr. Brown's trial agreed, throwing out his death penalty and ordering a new sentencing. But the Louisiana Supreme Court reversed that decision, ruling that the new evidence would not have made a difference in the jury's sentence.

David Brown's case is a good example of how every part of the justice system bears some responsibility for not fighting prosecutorial misconduct. State courts often fail to hold prosecutors accountable, even when their wrongdoing is clear. Professional ethics boards rarely discipline them. And individual prosecutors are protected from civil lawsuits, while criminal punishment is virtually unheard of. Money damages levied against a prosecutor's office could deter some misconduct, but the Supreme Court has made it extremely difficult for wrongfully convicted citizens to win such claims.

This maddening situation has long resisted a solution. What would make good sense is to have the federal government step in to monitor some of the worst actors, increasing the chance of catching misconduct before it ruins peoples' lives. The Justice Department is already authorized to do this by a 1994 federal law prohibiting any "pattern or practice of conduct by law enforcement officers" that deprives a person of legal or constitutional rights.

The department has used this power to monitor police departments in Los Angeles, New Orleans, Detroit and Seattle, among other municipalities with a history of brutality, wrongful arrests, shootings of unarmed civilians and other illegal or unconstitutional practices. For the most part, the results have been positive. Since prosecutors are also "law enforcement officers," there is no reason they and their offices should be immune from federal oversight.

Of course, many district attorneys' offices will balk at being put under a federal microscope. But nothing else has worked to prevent misconduct by prosecutors, and the Justice Department is uniquely equipped to ferret out the worst actors and expose their repeated disregard for the law and the Constitution.

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