

## INTRODUCTION

THE GUN WAS AN OFFERING.

Kevin heard about it around midnight on a May evening. He'd gone to the corner store to buy a single cigarette and was heading back to his high-rise in a housing project in Brownsville, a neighborhood in the middle of Brooklyn. The people he'd grown up with were often out at night, and he saw a knot of them, young men around his age, twenty, hanging out by a pair of green benches in a grassy spot near his building. As they swapped greetings, Kevin's friend Mason flicked his eyes at a plastic shopping bag on the ground, lying there like a piece of trash.

*We got the jawn*, he said.

*Jawn* could stand for a lot of things—a pair of shoes, a person—but Kevin knew exactly what Mason meant: there was a gun in that bag.

*I know things are crazy for y'all here*, Mason said, *so I got this for you*.

The police were a frequent presence around the projects, so no

one picked up the bag or asked to see the gun. Kevin said his good-byes and started walking away in the alert and fluid way he had, shoulders back and arms swinging, tall and lean and young, his hair pulled back in a ponytail and his gray hoodie sweatshirt zipped, always aware of where he was but trying not to look over his shoulder. It was important not to look skittish, not around his friends and not if the police were watching, but Kevin also didn't want to hang around with a weapon lying at his feet. He didn't want the trouble a gun brought.

Kevin's housing project, a cluster of brick buildings, was one of eighteen in Brownsville, making the neighborhood one of the densest concentrations of public housing in the country, with more than sixty thousand people packed into 1.2 square miles. The project could feel like a small town, in an old-fashioned way. It had its own recreation center and known personalities and raffish identity. Kevin got a laugh out of the nicknames for the loudmouths or tough guys: Koolaid and Lil Head and OgLoc. He'd lived there his whole life, with his older sister and her two-year-old daughter, his younger brother, and his mother, who'd raised her kids mostly on her own, working retail jobs and caring for the elderly and disabled. The average rent in the Brownsville projects was \$430 a month. Families tended to stay for years once they got off the waiting list for an apartment. "We stick together," Kevin said. "We went to school together. Your apartment might be on top of mine. Your mom might have babysat me."

On a good day, the project's residents would come outside to play music and catch up. You knew it was spring when older people brought small towels to sit on and raised their faces to the sun. "That kind of day, I'm going to be where everyone is, the girls, the mamas, the babies," Kevin said, thinking on it. "That kind of day, it's perfect."

But Brownsville was also one of New York's most disadvantaged communities, measured by health as well as economic insecurity, and one of its most dangerous. The year Kevin was twelve, more

than a hundred people were shot in and around Brownsville and another thirty were killed, about half the number in all of Manhattan. Guns were a fact of life. “I could find someone with a gun before I could find someone with a diploma,” Kevin told me. Over the years, he’d lost people he knew, including close friends. The beefing wasn’t mainly between the gangs with well-known names, like the Bloods or the Crips. They existed, but their presence in the neighborhood was fading. More trouble came from menacing rivalries that pitted groups in the projects against their peers in other projects. The conflicts and alliances shifted, but there was one other project in particular that was the main foe of Kevin and his friends.

Kevin’s father lived in the rival development. He’d moved back in with Kevin’s grandmother when he and Kevin’s mother split up, back when their children were young. Kevin’s dad paid child support regularly, and they talked once in a while, but Kevin hadn’t gone over to see him in years. One day, standing on the street outside his building, he gestured toward the windows of his grandmother’s apartment, visible a couple of blocks away, above the trees. “I can’t remember what the inside of my nana’s crib looks like,” he said.

The battle lines between the projects were drawn when Kevin’s father was growing up, when established gangs fought over territory so they could sell drugs. Kevin didn’t know why—and it didn’t really matter how the trouble started back in the day. Fresh insults piled on top of old grudges. The reason for a fight or even a shooting could be minor—disrespecting someone on social media, or flirting with his girlfriend. Kevin found it disturbing. Most people he knew did. But that wasn’t the same as knowing how to end it. There was too much bad blood. He’d learned you could defend a place, and your people in it, yet at the same time wish you were anywhere else.

When Kevin was thirteen, he went to the store for his mother and got jumped. All he knew was that the people who beat him up and took his money were from another project, and that now he

and his friends would have a problem with them. Months later, one of his eighth-grade classmates was killed in a shooting. Kevin didn't know why that happened, either.

At fifteen, he got jumped again and was slashed in the face with a razor blade. Conflict built until trauma begot trauma in Brownsville. In a focus group of young men of color coming home from Rikers Island, nine out of ten said they'd been robbed, jumped, or "seriously hurt in a fight they didn't start," though none of them identified as victims of crime. Writing up the results, the Vera Institute of Justice pointed out that if they don't sufficiently recover, people who are victimized, especially when they're young, are more likely to gravitate toward peers they think can protect them and to commit retaliatory violence themselves. After Kevin was jumped, he couldn't afford to look like an easy target. He and some of his friends found one of the boys who had assaulted him and beat him up.

Kevin got arrested for the first time just after he turned sixteen, when a friend who'd already graduated from his high school came to campus with a car. Kevin asked to drive it. "At the time, I didn't think it was a serious thing to drive without a license. He hands me the keys, and I'm like, 'Lemme put my book bag in your car.' I snuck out at lunch, ran to the car quick, opened the door to the backseat, and put my book bag inside, and as soon as I closed the door, officers are swarming me, guns out." The car was stolen. Kevin didn't tell the police about his friend and he was charged with possession of stolen property. He got five hundred hours of community service, which he worked off by cleaning the piers near the Brooklyn Bridge.

Kevin's father tried to step in after he was arrested. "He tried to come play the father figure. I told him, 'These words don't mean nothing.' I made an example to him like this: 'If something happens to me right now, who you think I'm gonna go get, you or my mans?'" Kevin meant an older friend who had his back in the beefing. "My pops is looking at me with a dumb face. I'm like, 'It's not supposed

to be like that. You supposed to be protecting me.’ We had a fight. He swung at me and I swung at him. ‘Look, all you do is give my mom money. You weren’t here. You don’t know me. My mom takes care of me. She sees me every day. She has the right to put her hands on me but she don’t. You, I speak to you on the phone and you pop up once in a blue.’”

Kevin went to Rikers Island for the first time two years later, spending a couple of nights in the jail after another fight between the projects. He didn’t start it but he didn’t back away, either. He and his friend pummeled two boys, and they ran off, their iPhones falling to the ground in the melee. Kevin picked the phones up. He considered them trophies for a fight that had remained in-bounds, with no one seriously injured.

But the parents of one of the kids he’d fought went to the police, and Kevin and a couple of his friends were charged with robbery. In exchange for pleading guilty, Kevin got a break that benefits a lot of teenagers in the state of New York: he qualified for a one-time get-out-of-jail-free card called youthful offender eligibility. The judge sent him to a year-long program offered by CASES (the Center for Alternative Sentencing and Employment Services), with group sessions and volunteer assignments at his local recreation center. Kevin liked the work, which was a mix of playing with younger kids and cleaning up. He got to go on a trip to Ohio. He met a girl in the program who became his long-term, on-again/off-again girlfriend.

Over the next few years, Kevin lived on the edge of trouble. He had friends at the center: “I sometimes chilled with people who did wild shit,” he said. When they got into fights, he tried to set limits without leaving anyone in the lurch or risking his status. He had a personal code: he fought with his fists, not with weapons. Kevin knew people who were doing twenty-five to life. He wanted no part of that.

Guns were for protection, which wasn’t the same as self-defense, as researchers have explored. In the early 2000s, when he was a twenty-five-year-old graduate student, Victor Rios did fieldwork in

the streets of Oakland, where he'd once been in a gang himself. Shadowing forty teenage boys, Rios regularly came across knives and guns; they sent a signal about how you carried yourself on the street, about how you belonged, precisely because they were dangerous. And yet "although many of the boys had easy access to weapons, they rarely used them," wrote Rios, who became a sociologist at the University of California at Santa Barbara. They didn't want to risk retaliation or prison. They didn't want to take a life.

But sometimes they did. The guns could no more be controlled, in the end, than the damage they did could be contained.

Mason, the friend who'd brought the gun to Kevin's group, didn't live in Brownsville anymore. His family had moved to a safer part of Brooklyn when he was in middle school, and his mother was focused on keeping him out of the projects. But he kept up with Kevin and the rest of their crew, texting and visiting. Through posts on Facebook and homemade videos on YouTube, often narrated by whoever was holding out his phone as a camera, Mason could track the sparring along with the rest of them.

When Mason brought the gun, a silver semiautomatic pistol with scratch marks where the serial number was supposed to be, he didn't say how he'd gotten it and Kevin didn't ask. Bringing it to the group showed Mason stood with them, and it was also a way to seem hard without much likelihood that he'd suffer violence, since he could go back to his safer neighborhood when he wanted. But the next day, the gun showed up in a flashy video that another friend, Chris, posted of himself on Facebook. There was Chris on-screen, the camera jumping around as he showed off the gun to a couple of girls he was with and whoever tuned in to his feed.

The video wasn't online for long, and Kevin missed it. He spent that day inside his family's apartment with his girlfriend, staying off the internet because his phone, which was old, was only half working. It was evening again when he walked her outside to catch the subway to her night job in Manhattan, wearing his gray hoodie and

white sneakers, with a durag in the pocket of his sweatpants. After dropping off his girlfriend, he texted Chris, who lived on another floor of his building. Chris was home with Mason and another guy whom Kevin didn't know well. He told Kevin to come on up. It was a few minutes before 11:00 p.m.

Kevin didn't think about the gun until he saw it sitting on a side table near the door. This time, he didn't walk away. Someone rolled him a blunt. He poured a little liquor into a glass and took a few sips. He was settling in when one of Chris's friends decided to leave. As the one sitting closest to the door, Kevin got up to lock it behind him.

When Chris's friend turned the knob and opened the door to leave, Kevin was standing just behind, ready to close the door after him. Over the friend's shoulder he saw two men standing at the threshold, as if they were about to knock. One was white and one was black. They weren't in uniform, but Kevin recognized them from the neighborhood: they were in plainclothes, but he knew them as police officers. Chris had been arrested for assault and harassment five months earlier, and the police thought he was involved with a gang, so they'd been watching his social media accounts, it turned out. They'd seen the gun in the Facebook video and come looking for him.

Standing there behind Chris's friend, with the cops in the doorway, Kevin felt a jolt of adrenaline. What would the cops do if they saw the gun? Chris, with his record, would definitely go to prison if the police pinned the gun on him, and he was the obvious suspect, since it was his apartment. Or what if Mason got arrested? He'd gotten jumped once and just handed over his phone to the attackers. He wasn't a fighter. Later, describing what was going through his mind in this moment, Kevin brought up the story of Kalief Browder, a touchstone in his world; Jay-Z had called him a prophet and made a documentary about him. Kalief, who was from the Bronx, wasn't a fighter, either. Accused of stealing a backpack, he

spent three years at Rikers Island, enduring solitary confinement and beatings, and afterward, at the age of twenty-two, he killed himself.

Did Kevin remember Kalief in the moment? Probably not. “What were you thinking?” his mother would ask him later. He didn’t have a good answer. In that instant, he had some wild notion of getting rid of the pistol by dashing down the hallway and flushing the gun down the toilet. It was a *crazy* idea, he could see later, full of risk—of leaving the apartment in handcuffs or even getting shot by a nervous cop. But young people do rash and impulsive things, especially when they’re under pressure. They tend to believe nothing truly terrible will ever befall them, and even though Kevin had a rap sheet, he didn’t think of himself as someone who would get into serious trouble with the law. He thought he could draw a line and stay on the safe side of it.

Kevin also wanted to be the kind of person who would come through for his friends, the man in the room who could handle himself. At that moment, those feelings were paramount.

With the police at the door, he picked up the gun.

Seven months later, on a chilly day in December, Kevin sat waiting on a wood bench, in a seat next to the aisle, in an empty courtroom on the nineteenth floor of Brooklyn’s towering courthouse, located downtown at 320 Jay Street. He was jittery, jiggling one leg and moving the zipper up and down on his black sweatshirt. It was his ninth court appearance since his arrest in Chris’s apartment on that May night for gun possession. It had all happened so fast: the officers burst in through the open door, and by that point there was no way to get rid of the gun. The police asked whose it was.

Kevin had a choice in the moment. Though he’d picked up the gun, he could have tried to duck the blame for it. But he felt bound by loyalty and a kind of honor. “A lot of people don’t do what I did,” he said later. “But it’s protocol. ‘You knew what it was when



you signed up for it’—that’s a saying with us. Like if somebody comes up and says, ‘Yo, let’s go smoke weed in the park,’ ” and you’re like ‘All right,’ then you know what you’re getting into if the cops come. You don’t say, ‘Oh, it’s his weed and he told me to come smoke with him.’ No. Same thing with a gun. I had the gun on me, so it was only right to say it was mine.” Maybe the logic wasn’t airtight, but this was his self-justification and his code.

This was the first time Kevin’s case was scheduled for a full-blown hearing with testimony rather than a momentary appearance before the judge. He wasn’t sure what to expect. He was thinking about his girlfriend. She’d gotten pregnant over the summer, and at first they both wanted to have the baby. But with the criminal charges dangling over his head, everything felt too uncertain. *We’ve got to better ourselves first*, they decided, and she made an appointment at an abortion clinic in Long Island to end the pregnancy. Kevin went with her. In case he had to go straight from court to jail, he’d worn a pair of old sneakers and sweatpants so he wouldn’t have to hand over a nice set of clothes when he changed into a jumpsuit. He’d put out a call to his friends, asking them to come to court “in case someone needs to hold my stuff.” But while they’d wished him luck, they hadn’t shown up.

Kevin was also worried about a job interview he had at UPS, scheduled for the next day. The company was staffing for the holiday rush, and the position paid better, with more hours, than the part-time work he had cleaning office buildings. But he wasn’t sure he’d make it to the interview or be able to take the job if he got it. “I just want this whole thing to be over so bad,” he said to his lawyer, Debora Silberman of Brooklyn Defender Services, who’d come into the courtroom to find out when the hearing would begin and check on Kevin.

“Hey, nothing is changing today,” Silberman answered, her tone upbeat. “You’re going home. Remember that.”

The door in the back of the courtroom opened, and a woman with long blond hair and a serious expression walked in, wearing a

flowing black pantsuit and ballet flats. Silberman, a thirty-two-year-old who'd grown up in Houston and wore makeup and high heels to court to look formidable, walked over to her. Kevin turned around to watch them talk. He could see their lips moving but he couldn't hear what they were saying. He knew the blond woman was from the Brooklyn district attorney's office. She was the one who would determine the course his case would take—and his life along with it.

Caryn Teitelman became a prosecutor in Brooklyn straight out of law school: two decades later, she still couldn't imagine doing anything else. The daughter of public school teachers, Teitelman grew up on Staten Island, New York City's most conservative borough. Her father spent his thirty-year career at a tough, low-income school in Bushwick, Brooklyn. He often said he stuck it out through the worst years, when crack and violence riddled the neighborhood, because he loved the kids. Teitelman felt that her job, like her father's, was about helping people and making Brooklyn safer. In 2002, she tried a man who forced his way into an apartment by pretending to be delivering flowers. With an accomplice, he bound a seven-year-old girl and her parents with duct tape and robbed the place. Afterward he escaped capture for years before getting caught on another violent felony charge with a victim. Teitelman won a conviction, and the man was sentenced to twenty-three years to life. A result like that felt pure to Teitelman. "A person like that should not be walking around," she said. "He's dangerous. Think about the scars that child will have for the rest of her life."

Teitelman called that robbery her most serious case. She wrestled, though, with cases like Kevin's.

Teitelman's thinking was pivotal because she was now the lead prosecutor in a specialized gun court, established in 2016, and it was her job to decide which charges to pursue. There was no sign at the entrance to the gun court, but on most weekday mornings, it occupied two well-lit rooms with blond wood paneling and "In God We Trust" mounted in large letters above the judge's chair.

Lawyers and social workers toting large manila folders sat on the first row of benches once they knew their cases would be called. Their clients waited in the rows behind them.

The proceedings in the gun court were civil and orderly—and if you knew how to look for it, they offered a display of enormous prosecutorial power. The law that governed here gave the D.A.’s office an array of options, each choice marked in the charging sheet with its own acronym. On the high end, Teitelman could prosecute someone like Kevin, accused of simple possession of an unlicensed loaded gun, with a serious violent felony in New York—without proving he intended to use the weapon, and even if he had no criminal record. This maximum charge was called criminal possession of a weapon in the second degree, or CPW2, and it carried a mandatory minimum sentence of three and a half years in prison with a high of fifteen, plus parole. Alternatively, Teitelman could choose criminal possession of a weapon in the third degree. Some provisions of that count almost always came with a mandatory minimum sentence as well—two years in prison, plus parole—and a maximum of seven years. In other words, if Kevin was found guilty of one of these two felonies, a judge would have to send him to prison, whether or not she thought that was just. But the prosecutor also had the discretion to go down to a misdemeanor charge (criminal possession of a weapon in the fourth degree, or CPW4), with no prison or jail time at all.

How dangerous was Kevin? What punishment did he deserve, and what consequence for him would serve the community’s interests? Teitelman knew the police found it frustrating to catch someone with a gun and then see him returned to the neighborhood, but she felt that the gun court “shouldn’t be a one-way ticket to jail.” Her job was to “get it right” by looking at each case individually. Most of the gun-court defendants who went to prison would come back to Brooklyn, and she knew that incarceration often had the opposite effect of what she intended. It might well increase the chance that they’d commit more crimes on release.

In the moments before Kevin's hearing, Silberman tried to nudge Teitelman and her assistants toward mercy by giving them a fresh copy of a report about him and his future. Written by the social worker at Brooklyn Defender Services who was working with Kevin, the report described him as standing at his own fork in the road. "We foresee two distinct paths," the social worker wrote. One led to prison and the loss of his public housing upon release. ("How will he get a job with a conviction?" asked the report. "Where will he live?") The other began with diversion—a program that would offer Kevin services instead of prison. If Kevin could get in, his lawyer and social worker imagined an alternative path for him: a job, the chance to save some money, enrollment in community college, an apartment with his girlfriend.

The diversion program was run by the D.A.'s office, so the decision about whom to admit lay in the prosecutors' hands. As Teitelman weighed it, the choice between prison and freedom was hers to make. She hated to think about her job like that, but it was the reality of the gun court. Another reality: in about nine of ten cases, prosecutors gave themselves maximum leverage at the outset by charging CPW2. When Kevin was arrested, he was actually charged with the lesser felony of CPW3 and the misdemeanor CPW4. But a few weeks later, when his case was transferred to the gun court, the D.A.'s office loaded on CPW2, the most serious possible charge.

As a result, Kevin was facing a mandatory sentence of at least three and a half years. All, as he saw it, for picking up a pistol that wasn't his in a friend's apartment. He felt like he was in a slow-motion tailspin, with the years, his plans, and his life as he'd known it whirling away from him.

Caught up in the process of the gun court, Kevin felt subject to whims and judgment calls and unwritten rules. It seemed like anything could happen and he would never really know why. As he sensed, what happened next wasn't really up to the judge or what anyone said in open court. His fate lay in the behind-the-scenes

decisions of Teitelman and the Brooklyn D.A.'s office. The prosecutors held power in the Brooklyn gun court, and Kevin had entered the system at a moment in which that was more true, in courts across the country, than ever before.

This book will show that American prosecutors have breathtaking power, leading to disastrous results for millions of people churning through the criminal justice system. Over the last forty years, prosecutors have amassed more power than our system was designed for. And they have mostly used it to put more people in prison, contributing to the scourge of mass incarceration, which continues to rip apart poor communities, especially if they are mostly black or brown, and long ago passed the level required for public safety.

The unfettered power of prosecutors is the missing piece for explaining how the number of people incarcerated in the United States has *quintupled* since the 1980s, to a total of almost 2.2 million. Our level of imprisonment is five to ten times higher than that of other liberal democracies—nine times Germany's and seven times France's. There's more: when the system misfires in the worst way possible, by convicting an innocent person, a prosecutor's errors (or, less frequently, willful misconduct) often account for the breakdown, at least in part. And when black defendants are punished more severely than white defendants for similar crimes, the choices of prosecutors are largely to blame. Though they're not the only ones at fault, their decisions are the ones that matter most of all.

Jail and prison have a role to play in our society. Some people commit truly serious crimes—not that many, relatively speaking, but some—and a subset cause unconscionable harm. In the United States, however, the criminal justice net has expanded to envelope immense numbers of people who don't fit into those categories. The overuse of incarceration isn't necessary, or even a sound strategy, for keeping the public safe. The crime rate has dropped in parts

of the United States where incarceration is also falling and also in countries where imprisonment has remained low. The American focus on prison also drains resources from other means of preventing crime that can strengthen communities and improve people's lives. There's nothing pragmatic about the status quo. Lifetime consequences, government overreach, racial disparity—these are sources of suffering and also American disasters, adding up to one of the most pressing problems of our time. They have not been fixed, not by any means. In many places in the country, they haven't even been addressed. Our justice system regularly operates as a system of *injustice*, grinding out unwarranted and counterproductive levels of punishment. This is, in large part, because of the outsize role prosecutors now play. "The power imbalance blew my mind, frankly: I couldn't figure out for the life of me how prosecutors had so much power with so little accountability," says Angela J. Davis, a law professor who was formerly the director of the Public Defender Service in Washington, D.C., and the author of a 2007 book about prosecutors. "They were allowed to do things, some unconstitutional, some perfectly legal but with horrific results that most human beings would think were unfair. I thought, how can this be?"

We often think of prosecutors and defense lawyers as points of a triangle on the same plane, with the judge poised above them: equal contest, level playing field, neutral arbiter, et cetera. That image is entirely out of date. It's not how the system works anymore. Much of the time, prosecutors, more than judges, control the outcome. They answer to no one else and make most of the key decisions in a case, from choosing the charge to making the bail demand to determining the plea bargain. The officer in uniform and the judge in robes are our indelible images of criminal justice. No one needs to explain the power they wield. Yet it is Caryn Teitelman, in her pantsuit and ballet flats, who today embodies the might and majesty of the state. "It's all about discretion," says Eric Gonzalez, the district attorney of Brooklyn and Teitelman's boss. "Do you authorize the arrest, request bail, argue to keep them in

jail or let them out, go all out on the charges or take a plea bargain? Prosecutors decide, especially, who gets a second chance.”

Here’s the thing: prosecutors also hold the key to change. They can protect against convicting the innocent. They can guard against racial bias. They can curtail mass incarceration.

Change who occupies the prosecutor’s office, and you can make the system begin to operate differently. The power of the D.A.\* makes him or her the actor—the only actor—who can start to fix what’s broken without changing a single law.

A movement of organizers and activists and local leaders and defense lawyers and professors and students and donors is fighting for that change. This movement is working to elect a new type of D.A. in city after city and county after county. The movement is a groundswell. It’s growing. And it’s causing the first major shift in the politics and incentives of American prosecution in decades.

The candidates for D.A. the movement embraces see ensuring fairness as integral to public safety. They know that people who have faith in the criminal justice system are more likely to help the police solve crimes and to testify as witnesses in court. In a democracy, people tend to uphold the law when they believe it is fair. It’s an understanding that’s fundamental to the legitimacy of state power.

The movement to transform American prosecution is bipartisan. It has roots in civil rights history, the Black Lives Matter campaign against violence and racism, libertarian skepticism of government overreach, and conservative concerns about waste and spending. So far, the newly elected D.A.s represent a small fraction of the more than twenty-four hundred prosecutors who hold elected office nationwide. But they include Democrats and Republicans, in

\* District attorneys, also called state or county attorneys, are the chief prosecutors in the state court system and are elected in almost every state. The lawyers who work for them are called assistant district attorneys or line prosecutors. U.S. attorneys, the chief prosecutors in ninety-three federal offices around the country under the umbrella of the Justice Department, are appointed by the president and confirmed by the Senate. The lawyers who work for them are called assistant U.S. attorneys.

red states as well as purple and blue ones, and they hold the reins of law enforcement in an increasing number of major cities as well as scattered rural areas.

Because campaigns to reform D.A.'s offices are local, they show how urban strongholds can control their destinies without waiting for state legislatures to get on board. And as the movement spreads, it's beyond the control of Washington and the Trump administration to stop. Local prosecutors handle more than 95 percent of the nation's criminal docket, and by reinventing how they do their jobs, they can stand up to Trump, on issues surrounding punishment but also on immigration, drug policy, and civil rights.

We, the people, elect state prosecutors, and that means their power is our power. At this moment in twenty-first-century America, we have an opportunity. Most of us are safer from crime than we have been for generations. The murder rate remains close to a fifty-year low. State legislatures are rethinking the wisdom of spending more than \$43 billion a year on prisons and jails, at a cost of \$15,000 to \$70,000 annually per prisoner. Falling crime and mounting costs are opening a window for deep reform.

At the same time, the shape of mass incarceration has begun to shift since the scarring war on drugs of the 1990s. In New York and some other states, sentences for drug offenses have already plummeted, and more than half of state prisoners nationwide are now behind bars for crimes that are designated as violent. Nationally, cutting the prison population by 50 percent or more requires going much further than leniency for people who are low-level or first-time defendants. Ending mass incarceration means narrowing the current conception of who counts as a violent felon and doing far more to ensure that the jailhouse gate isn't a revolving door. It means dismantling the barriers that regularly freeze people out of housing and employment after they're released. It means giving former felons the vote. It means treating them not like ex-cons, forever trailed by the worst thing they did, but as returning citizens, defined



by who they may become. It means betting, far more often, on the future of people like Kevin.

It's not clear yet whether the movement to transform American prosecution will be equal to the challenge—whether it will spread beyond a few dozen D.A.'s offices, and thus impact incarceration on a national scale. In much of the country, prosecutors still lean hard toward punitive outcomes and toward retribution. Reform-minded prosecutors venture down a new path, while their old-school counterparts stick with the practices of the last forty years. This book uses a wide lens to explore the history of the American way of prosecution and the macro forces that could reshape it. To tell the full story, I focus on two very different elected D.A.s, Eric Gonzalez in Brooklyn and Amy Weirich in Memphis, and two young people caught up in the system: Kevin, who picked up his friend's gun as the cops burst in, and Noura Jackson, a teenage girl whom Weirich charged with murder.

Kevin's case is about the ordinary and perfectly legal exercise of a prosecutor's power, beginning with the decision about how to charge a crime. Noura's case is different: it shades into the abuse of power, showing just how much can go wrong when a prosecutor breaks the legal and ethical rules that are supposed to protect all of us from being squeezed in the state's vise. I'll follow each case through the criminal process, from arrest and charging to bail, plea bargaining or trial, and sentencing. These two stories illustrate the damage prosecutors can do and also the precious second chances they can extend that allow people to make things right in their own lives. You'll see how criminal prosecutions can go wrong *and why they don't have to*. I'll also explore how new D.A.s elected in cities around the country, including Philadelphia, Chicago, Jacksonville, St. Louis, Denver, and Houston, are coming together to lobby nationally for more rational and merciful law enforcement. At the end of the book, I'll share a blueprint for twenty-first-century prosecution.

On TV serials and in the press, prosecutors tend to be portrayed

as calculating politicians, white-hat heroes, or rote functionaries. These are not fair or full portraits. Prosecutors have always been obligated to pursue a dual mission: seek convictions and act as ministers of justice. The roles are “obviously unharmonious,” Supreme Court Justice Thurgood Marshall once wrote, a phrase that captures the difficulty inherent in playing both at once. But mastering that duality is fundamental to a prosecutor’s professional and ethical calling. Good prosecutors know it and live it and teach it. The prosecutor “is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer,” Supreme Court Justice George Sutherland wrote in 1935. “The citizen’s safety lies in the prosecutor who tempers zeal with human kindness,” Justice Robert Jackson added five years later. In other words, the prosecutor’s job is *not* to exact the greatest possible punishment. It is not to win at all costs. It’s to offer mercy in equal measure to justice.

Prosecutors are not solely responsible for the state of the criminal justice system, of course. They respond to the cues of judges, to legislators and other elected officials, and to the priorities of the police, who are their closest partners. The quality of defense lawyers, especially those who represent the poor, matters a great deal for the quality of justice, and adequate funding for public defenders is an absolute necessity. When prosecutors make decisions about which defendants to charge to the max and which to spare, those charged with crimes need good defense attorneys with the time, resources, and heart to tell the stories of their clients and make the case for mercy. Judges still have some ability to keep prosecutors within certain bounds. The Supreme Court matters, too, perhaps most of all for what it hasn’t done. The Court has not reined in the power of prosecutors at plea bargaining or enforced any limits of proportionality on punishment. Perhaps most damagingly of all, the justices have bestowed upon prosecutors absolute immunity from lawsuits, making them even harder to sue than the police.

It’s still important to persuade legislators to change the laws,

elevate judges who care about fairness, and create the conditions for first-rate defense work. But we can stop caging people needlessly *right now* if we choose prosecutors who will open the locks. While it would be nice if lawmakers and the courts threw themselves into fixing the criminal justice system, in the meantime, elections for prosecutors represent a shortcut to addressing a lot of dysfunction. Cities and counties can model change that can spread statewide and nationally. This movement deserves your attention. There's good reason to think the United States could safely reduce the number of people in prison and jail by half or even more. In time, the country's embrace of mass incarceration, in its vast cruelty, may come to seem nearly as shameful as slavery does now.