



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

March 5, 2021

We Need Justice, Not Politics

Editor's Note: The following is submitted by the Chief State's Attorney and the 13 State's Attorneys of Connecticut.

The administration of justice should not be political. Prosecutors must be guided by the evidence in a case and the applicable law, not by partisan, political considerations. Political pressure should never sway a prosecutor's decision-making.

Political independence of the United States Department of Justice took center stage at last month's confirmation hearing for Merrick Garland, President Joseph Biden's nominee for attorney general, who was pressed by legislators about what is supposed to be a fundamental norm. Garland insisted that he would oppose any attempt by the White House to politicize the Justice Department, telling the Senate Judiciary Committee: "I am not the president's lawyer; I am the United States' lawyer."

The line of questioning stemmed from criticism about the Justice Department being called upon publicly by the former administration to open criminal investigations into its political opponents while undermining federal criminal prosecutions of its allies. This overt political interference in federal prosecutions is unprecedented in our lifetimes. Not only have these actions eroded public confidence in the federal criminal justice system, but also they have underscored the importance of a little understood concept -- prosecutorial independence.

Historically, both Republican and Democratic administrations have used federal law enforcement as a blunt instrument of power for their own political interests. It was only in the mid-1970s when federal law enforcement abuses were brought to light during the post-Watergate reckoning that today's norm of political noninterference in federal law enforcement was established.

In recent years, we have seen the increasing politicization of the federal prosecutorial function. Unlike their state counterparts, the Attorney General and individual U.S. Attorneys are subject to a political appointment process. Further, once appointed, they serve at the pleasure of the President. This complete lack of tenure makes them uniquely vulnerable to political

interference in their duties. On Friday, John Durham, the U.S. Attorney for the District of Connecticut, resigned after the Department of Justice asked U.S. Attorneys appointed under President Donald Trump to resign so the Biden administration could present its own nominations to those posts.

Fortunately, Connecticut had the wisdom to provide prosecutors with the independence they need to do their jobs. All Connecticut prosecutors are not subject to the political appointment process. The state constitution vests the prosecutorial function in an independent agency -- the Division of Criminal Justice. Prosecutors in Connecticut are appointed through a merit selection process by a seven member panel -- the Criminal Justice Commission -- consisting of two judges, the Chief State's Attorney and four members of the community.

Prosecutors perform an important role in our criminal justice system. That role is to seek justice. In their pursuit of justice, prosecutors have wide latitude and broad discretion in determining when, who, why and whether to prosecute for violations of the criminal law. Most of Connecticut's prosecutors serve as career employees. This enables them to gain experience and knowledge in the special legal areas in which prosecutors are expected to have expertise. The thirteen State's Attorneys who serve as each judicial district's chief law enforcement officer are each appointed to eight-year terms. This is the same length of term to which our judges are appointed in recognition of the fact that both make difficult, often controversial decisions and should be free to make them based solely on the evidence before them and the law.

Prosecutors need time to deal with cases. Eight-year terms for prosecutors give them that time. Indeed, as community prosecutors, State's Attorneys need the stability and time to build relationships with their communities and the various agencies they work with to resolve cases. Frequent rotation would be bad for morale in the office and community, and hinder the ability of State's Attorneys to implement real change and progress in their districts.

Connecticut has struck a balance between independence and accountability by ensuring that prosecutors are the most heavily regulated attorneys practicing in the state. Already, there are multiple levels of oversight and accountability. As members of the bar, State's Attorneys in Connecticut are subject to the same disciplinary processes to which every lawyer is subject to with the Statewide Grievance Committee. In addition to this, the Criminal Justice Commission has broad statutory disciplinary authority over them. This includes the ability to remove them at any time during their term for misconduct, incompetence or material neglect of their duties.

Actions on the federal level in recent years have shown how important prosecutorial independence is to ensuring public confidence in our criminal justice system. Modern democratic norms demand a criminal justice system administered on the basis of a professional evaluation of the evidence and the applicable law, not partisanship and politics. Connecticut should be proud of its current system that appoints attorneys on the basis of merit and provides them with the independence they need to do their jobs.

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