

Iglesias

So Ed's introduction was correct, I've done a lot of prosecution in my career. Into my bio, I authorized over 11 thousand prosecutions when I was a United States Attorney. Virtually all those people did time, most were immigration offenders, about 60 to 70 percent were. And then about 20% were drug cases. Although in the federal nomenclature, we call that narcotics. I think we're the only people left in America that still use the word narcotic when we really mean drug.

So I also need to tell you that over the course of my service I visited lots of jails and prisons and brigs, not only in the United States but overseas. And I've got a pretty good idea of what they look like, what they smell like, what they feel like. And I'm indebted to Nancy Levine for setting up the trip to the Atlanta Correctional Facility, run by the Federal Bureau of Prison. That was a real eye opener for me.

So let me just open this up by asking a question. This is not a rhetorical question. Can somebody tell me the number of federal criminal statutes that are out there?

Zillions.

The gentleman with the Berkeley sweatshirt said a zillion. That's roughly correct. The honest answer folks is no one really knows. It's at least four-thousand of actual United States code violations, but tens of thousands of federal regulations can be criminalized. So the honest answer is tens of thousands, but no one really knows.

The reason I tell you that is, you have probably, all of us in this room, myself included, at some point in their life have probably violated federal criminal law. The problem is so acute that a Ninth Circuit Court of Appeals Judge named Alex Kazinski wrote a somewhat humorous piece called, You're Probably a Federal Criminal. And he based his title on the fact that there is a vast array of federal laws that can entangle us.

And I also need to tell you something you already know, that prosecutors like to say publicly that they're tough on crime. When I ran for State Attorney General back in the 1990s in my home state of New Mexico, I opened up my TV spot in front of the state penitentiary in Santa Fe. The looming tower in the background was a message to the voter that I would be tough on crime.

I also ran an attack ad against my opponent who let out a heroine dealer and the subtext was that my opponent was soft on crime. So I will show you how that has been incorporated into our political system, into this vast apparatus that we now have, the **Prison Industrial Complex** in the United States.

And as I had mentioned, I was fired from the US Justice Department in 2007 for not finding prosecutable cases. How it's supposed to work is you find a case you can prove beyond a reasonable doubt, you authorize it, and you get a conviction. But in this case my marching order was to find voter fraud cases. If you know anything about the history of voter fraud cases, it's a little bit like searching for the Loch Ness Monster. There are bits and pieces, there are grainy images, there is an occasional sighting, but it is not a systemic problem. I would refer you to the Truman Institute's findings, out of the hundreds of thousands of cases that the Justice Department has filed only a few dozen have been voter fraud cases.

So my unpardonable sin, and for those of us that are Christians my cardinal sin, my unforgivable sin, was not finding a voter fraud case that I could bring and publicize. So I was let go for that. I also need to add that my successors, both Democrats and Republicans, were not able to find any voter fraud cases as well. So I can tell you that I rested well in not authorizing a bogus prosecution.

So I need to tell you that prosecutors are in charge of filing the chargers, whether it's by information, complaint, or indictment. I once had a federal judge tell me, you know David you have more power than I do. Which was astounding to me. I was in my early 40s at the time, I knew my job would just be for a few years, and I knew that he had a lifetime appointment. And I said, well how do you figure that, Judge? He says, because we have to react and hear the cases that you file. We have no input into what you as the Government counsel files. So that left a real impression on me.

I had a US Magistrate judge who had been a United States Attorney tell me, be careful how you wield your power. Just by merely investigating somebody and leaking that, you can ruin people's lives. So he says, use your power like a scalpel, not a sledge hammer. And that left a really impression on me as a rookie United States Attorney.

So Nancy mentioned the sentencing philosophies, there is the term of art, which federal prosecutors use and have used since the Jimmy Carter era. It's called MSRP. And it does not stand for manufacturer's suggested retail price. That's what happens when you buy a car. It stands for most seriously readily provable offense. So the charging philosophy going back to the 1970s is that federal prosecutors will charge the most serious, readily provable. They will not go low, they will always go high.

There was a brief respite during the end of the Obama administration when Attorney General Holder issued a Smart on Crime era, but that has been replaced by the current administration's return back to MSRP. Why is that important? Because in federal court our sentences tend to be harsher than in state court. Unlike state court, there is little to no time off for good behavior. So if you're a federal detainee defendant, if you get a 10 year sentence you're gonna get close to 10 years. If you get sentenced to 10 years in many states you're gonna serve substantially less than 10 years.

Also, if federal judges follow sentencing guidelines, and it looks like a chart where there is a horizontal axis and a vertical axis. They look at your criminal history, they look at the seriousness of the crime, and they literally do this with their fingers. And that's the guideline. That is the sentencing parameters that federal judges have. They depart upwards or downwards at their own risk, because what judges hate is to be reversed on appeal. I had one Federal District Judge mad at me because I got him reversed on appeal on a backpacker case, which I don't have time to go into.

Here's the conundrum, here is the 64 thousand dollar question ladies and gentlemen, brothers and sisters. Is we have a falling crime rate in the United States, and yet the incarceration rate has sky rocketed since the early 1980s. I asked my former office mates a few years after I left, since the number of immigration offenders were dropping significantly on the southwest border, how are our numbers looking? Thinking that there'd be a substantial drop in immigration cases. In fact, the threshold had been change. So they were actually filing more immigration prosecutions with fewer people coming across the border.

Because when it comes right down to it folks, if you prosecute fewer cases you lose budget from the US Justice Department. It's a numbers game, it's a money game. And if you don't show progress as defined

as more people sent, more people convicted, you will lose budget from the Justice Department in Washington D.C.

So the crime rate, I'll show you a whole bunch of charts, I'm a big believer in demonstrative evidence. Those of you that have tried cases know that a good chart, a good photo, is worth 1000 words. So we'll go over some charts, but I will say that the modern era, in terms of mass incarceration, and the political nexus, started about 1980. Let's see what the official ... these are not statistics that I've taken from Joe Schmuckatelli's blog. These are US Justice Department figures. So how do-

All right, I got it. So here's what's going on, and here's what has gone. During the H.W. Bush era we had the notorious Willie Horton matter in which a convicted murderer was released on a furlough. He ends up raping a woman and severely injuring her boyfriend. Then, presidential candidate Dukakis was attacked by H.W. Bush for being soft on crime. And some of you probably remember this Willie Horton ad.

No more recently, just last year, last couple years, we have a Mexican national named Francisco Sanchez. He's been deported five times. He was in San Francisco, he allegedly picked up a firearm that was stolen from a Federal Agent. The firearm goes off, killing a woman. His stated position is that there was an accidental discharge, so there was no intent on his part. This shooting occurred in the summer of 2015, it went to trial on Monday of this week. And so what then candidate Trump level charges that the city of San Francisco is soft on crime because it was a sanctuary city. That had they been tough on crime, that this woman would not have been shot. So crime was used in the 80s, and used more recently.

And here is an actual campaign flier, the Soft on Crime Caucus. Which does not exist. And you can see for yourself, it says soft on crime democrats support criminals' right to buy guns, no questions asked. So this has been part of our political landscape. And during the Bill Clinton era, during the 1990s, even Time Magazine apparently showed that there is significant support for mass incarceration. Lock them up and throw away the key.

Now here's where it starts getting really interesting from my perspective. Here's a crime rate going back almost 50 years, actually 50 plus years. From 1960 to 2012, look at where the crime rate is.

Look where it was in about 2011. If you draw a straight line across, you go back to the early 1970s. So our rate of crime is about what it was in the early 70s.

How about violent crime? You see a spike in about 1992. If you draw a line, again in 2014 which was the most current FBI information I could find, draw a line across, it looks like about 1970 as well. What about more recently? You see a more recent drop. 1990 to 2015 it's gone down.

What about rates of incarceration? Nancy has covered some of this, but here's my takeaway. Despite the fact that crime is falling, both violent crime and property crime, the rates of incarceration have sky rocketed.

Let's go back to 1925. I doubt anybody here remembers 1925. And if you did, please do not volunteer that. But look at it, the crime rate is relatively flat until around 1980. Here's a really interesting takeaway, what does the public think? And this is a Gallop Poll folks, so again this is not the

Schmuckatelli Poll. This is a well-respected poll showing that the public thinks that we have a crime problem. Even though the crime rate is going down, the perception is that we have a problem still.

And I think I blame that in part with our 24/7 news cycle. Anytime somebody is kidnapped or murdered, whether it's in Pocatello, Idaho or Key West, Florida, it's news here in Chicagoland and wherever else you live. There is no longer a concept of local news. Our entire country is treated as local news.

And here's a telling incarceration chart. Again, a picture's worth 1000 words. By race and ethnicity, Latino and Black rates of incarceration, significantly higher. And again, this is the US Justice Department Bureau of Statistics.

Here's another great way of looking at it. This breaks it down by gender. All men, about one in nine likelihood of imprisonment, including all races. White men about 1 in 17, Black men about 1 in 3, Latino men it's about 1 in 6. Women fair better, 1 in 56 overall. White women, 1 in 111, Black women 1 in 18, Latinas about 1 in 45. So significant discrepancies in who gets charged and prosecuted, convicted, and serves time in this country.

So what about the bread and butter of the US Justice Department, our immigration cases and drug cases? The apprehensions on the southwest border, you'd think based on what you read we're being overwhelmed, they're storming the ramparts. When in fact, the numbers of illegal immigrants have dropped precipitously. This chart shows you that we're down to Nixon era levels of illegal immigration numbers. And this is not a Justice Department slide, this is a Homeland Security slide.

We don't have time for questions, but I wanted to show you this picture because this was my last press conference. I was trying to explain why I'd been fired. And look what I'm using, I'm using statistics. Some prosecutors lose a forest for the trees, others lose the trees for the forest. I tried not to do either. But I do look forward to the time that we can ask questions.

I will say, having been a former political candidate, crime sells when a candidate campaigns. And I think it's one of the unholy trinity for political campaigns. It's jobs, it's education, and it's crime, those are the three. I had a governor from my home state, his Chief of Staff told me that years ago when I told him I was interested in running for office. He says, you gotta work on one of those three, and you gotta hammer it in. That was in the 90s. It was true then, it's still true.

So how do we disassociate politics from rates of incarceration? Let's be honest here folks, would the average voter vote for somebody who says, I want to be modest on crime? I want to be reasonable on crime? I want to be soft on crime? Probably the rank and file voter would not. Especially the soft on crime. But the reasonable on crime, maybe. Because as the slides and Nancy shows, are we really the land of the free when we have higher rates of incarceration than North Korea, Russia, China? Countries that have systemic human rights abuses.

Are we really the land of the free? Do we really need two million people behind bars? Do we really need to keep the private prison businesses in business? Is this a core governmental function that we should not have delegated out to people that are there to seek a profit? I think that these are questions that are all up for grabs. And I thank you for your time.