

Behind the curtain

As Multnomah County grapples with widespread inequities in its criminal justice system, heads turn toward the most powerful man in the room

BY EMILY GREEN
STAFF WRITER

Prosecutors wield a tremendous amount of power in the courtroom, and in an effort to keep it that way, they systematically block attempts to make meaningful reforms to the criminal justice system, states an American Civil Liberties Union of Oregon report released Wednesday.

Their commitment to the status quo contradicts widespread consensus across party lines that mass incarceration is unsustainable and the drug war has failed, argues the report.

In each of Oregon's 36 counties, an elected district attorney oversees a team of lawyers who decide whether and how to prosecute alleged criminal offenders on behalf of the state.

Together in Salem, they form the Oregon District Attorneys Association, a highly influential lobbying group that effectively promotes legislation to increase its members' power and blocks legislation that seeks to limit it, proponents of reformative legislation say.

Despite their role in shaping the law and their ability to use a profound level of prosecutorial discretion when enforcing it, district attorneys are rarely challenged when running for re-election, and they largely avoid the public scrutiny that befalls most other elected leaders.

ACLU of Oregon director David Rogers is joining Bobbin Singh, director at Oregon Justice Resource Center, in an effort to educate the public about who district attorneys are and the role they play in Oregon's criminal justice system and political sphere.

They will lead a panel discussion about these dynamics at 6:30 p.m. April 26 at the First Unitarian Church in downtown Portland. The event is free and open to the public.

The ACLU of Oregon's report, "Roadblocks to Reform," found that between 2004 and 2014, 78 percent of district attorney races in Oregon were uncontested, and of Oregon's current district attorneys, nearly half weren't elected to their current positions initially.

Instead, they were appointed by the governor and then kept their positions by sailing through elections unopposed.

The report indicates the high rate of gubernatorial appointments is the result of district attorneys' common strategy of retiring before their term is up. By leaving their position early, it enables them to hand pick their successors, giving them the advantage as running as an incumbent at election.

In Multnomah County, former District Attorney Mike Schruck faced a challenger for his seat only once during his 32 years as top prosecutor.

Now his successor, Rod Underhill, is up

for his first re-election this November, and he too, is running unopposed.

One question Singh said he plans to raise during the panel discussion this Tuesday is whether Multnomah County's district attorney has policies and practices that are consistent with his constituency.

"We are one of the bluest jurisdictions in the country," Singh said. "To not have one of the most progressive district attorneys in the country pushing for real and meaningful criminal justice reform, to me, is peculiar."

Underhill defended his approach to justice reform by noting he played a "significant leadership role" in the creation of justice reinvestment legislation, House Bill 3194, which funds programs aimed at reducing recidivism and prison populations.

"When Rod Underhill says he played a 'significant leadership role' in House Bill 3194," said Rogers, "does he mean a leadership role in watering it down?"

The ACLU of Oregon's report indicated Underhill initially opposed House Bill 3194, and co-authored an opinion piece with Schruck for *The Oregonian* entitled "Public safety and sentencing reform: Why overhaul a justice system that is working?"

"The District Attorneys Association worked hard to strip House Bill 3194 of any changes to Measure 11 (mandatory minimum sentences), including modest changes that would mitigate the way youth are treated as adults within the criminal justice system. This was one of the great disappointments of House Bill 3194," Rogers said.

Underhill said he's also a primary partner in the Multnomah County Justice Reinvestment Program, created under House Bill 3194, which diverts prison-bound offenders who qualify into an intensive probation with the accompaniment of housing and treatment resources.

"Yes, the modest policy changes that did pass have slowed Oregon's prison growth," said Rogers. "But after two decades where we have seen our prison population double and our prison budget quadruple, that is not good enough."

In an email response to the ACLU of Oregon report, Oregon District Attorneys Association spokesperson Kevin Neely wrote, "The ACLU and Mr. Rogers fail to acknowledge that today Oregon citizens are less likely to be the victims of violent crime than at any time in Oregon's history."

"We believe the reason district attorneys are so frequently re-elected and so often unopposed is that Oregon's voters resoundingly support their tireless efforts."

Rogers found that during the previous six election cycles in Multnomah County, 46 percent of people who voted skipped over the district attorney's name on the ballot without marking a selection.

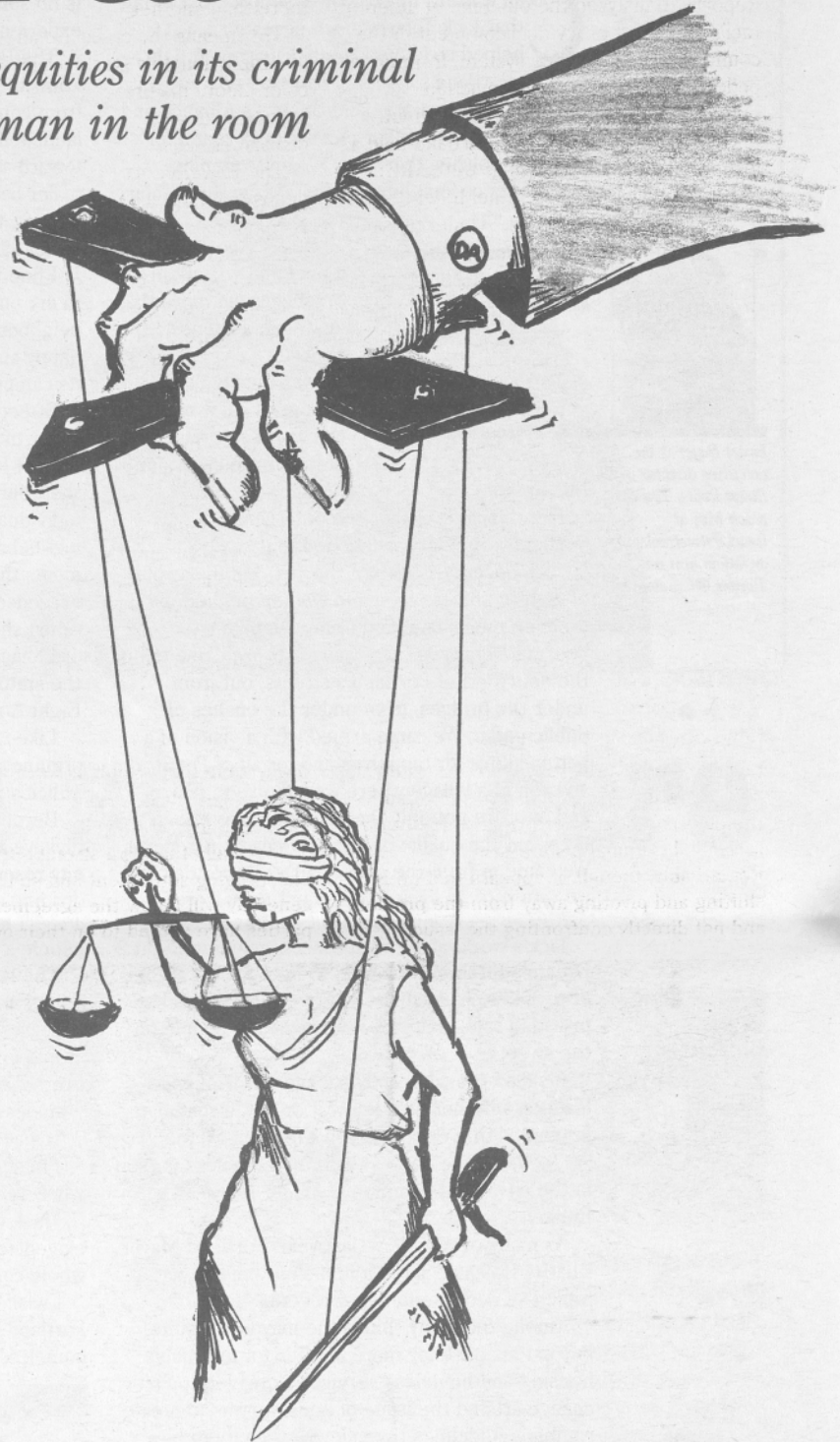
"We're a week away from receiving ballots in the mail, and I can already tell you there's one very important elected position most

voters will unlikely be able to influence, and that is the district attorney race," Rogers said. "Because nearly eight out of 10 district attorney elections are over before they begin."

The report also states that in comparison to other elected lawmakers, district attorneys remain largely unavailable.

"Every one of Oregon's 36 district attorneys actively engages with their community," Neely said in response. "Often this outreach is done on weekends and evenings, as every DA must see to the day-to-day operation of their office. Oregon's District Attorneys are not politicians. They are professional prosecutors who are deeply invested in ensuring the safety of the citizens they represent."

When district attorneys keep their seats



CARTOON BY APALA BARCLAY

without any challenger, it robs the public of robust debate about the state of the local criminal justice system, the report argues.

"Elections elevate public conversations around important issues," said Rogers, noting current conversations taking place in Portland's mayoral debates around housing, homelessness and the economy.

"The dynamics around district attorney elections and appointments mean that voters don't get to influence critical policy concerns about the direction of the criminal justice system," he said, "and I think that's a problem."

In Multnomah County, a debate about the direction of the criminal justice system might help solve the dilemmas it's currently facing.

A MacArthur Foundation analysis of Multnomah County's justice system found