

## Legal Sidebar

# Criminal Justice Reform: One Judge's View

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Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit recently wrote an article in which he recommended 26 changes in the U.S. criminal justice system, federal and state. 44 Geo. L. J. Ann. Rev. Crim. Proc. iii (2015). The recommendations range from investigations to habeas corpus review. Two veteran Justice Department prosecutors have [objected](#) that Judge Kozinski's recommendations with respect to perceived prosecutorial misconduct are based on isolated, unrepresentative instances, sometimes unfairly presented. Several of the proposals would require, or at least might be accomplished by, an Act of Congress. This is an abbreviated sampling of the recommendations.

“Repeal three felonies a day for three years. . . A big reason prosecutors have so much leverage in plea negotiations is that there are many laws written in vague and sweeping language.”

“Give criminal defendants the choice of a jury or a bench trial. Under [current law](#), either the defendant or the prosecution can insist on trying the case before a jury.”

“Treat prosecutorial misconduct as a civil rights violation. The U.S. Justice Department seems ready enough to pursue charges of civil rights violations in cases where police have engaged in physical violence, but far more reluctant to pursue misbehaving prosecutors.”

“Repeal AEDPA [28 U.S.C.] [§2254\(d\)](#) [which denies state prisoners federal habeas corpus relief unless they can show state courts ignored an already clearly established Supreme Court precedent].”

“Abrogate absolute prosecutorial immunity. In *Imbler v. Pachtman* . . . Justice White would have adopted a more limited immunity rule that would have held prosecutors liable for certain kinds of deliberate misconduct.”

“Video record all suspect interrogations. It appears change is underway. Just last year, the Justice Department reversed its century-old prohibition against recording interrogations and adopted a [policy](#) ‘establishing a presumption that [the Department’s investigating agencies] will electronically record statements made by individuals in their custody.’”

“Adopt rigorous, uniform procedures for certifying expert witnesses and preserving the integrity of the testing process. There is an [effort](#) underway to do this at the federal level.”

“Establish independent prosecutorial integrity units. . . . Prosecutors need to know that someone is watching over their shoulders – someone who doesn’t share their values and eat lunch in the same cafeteria.”

“Require open file discovery. If the prosecution has evidence bearing on the crime with which a defendant is being charged, it must promptly turn it over to the defense.”

“Give jurors a written copy of the jury instructions. Jury instructions are often lengthy and difficult to follow. Jurors are expected to absorb them by listening, which is probably the worst way to learn new and complex subject matter.”

“Give jurors a say in sentencing. Except for capital cases, we have turned our sentencing process over entirely to experts and professionals. . . . This is a system only a lawyer could love.”