



70 Million S3 E6 Annotated Transcript: No Longer Waiting for Top-Down Reform

Over the past few years, voters across the U.S. have elected prosecutors who promised to implement much-needed criminal justice reforms, from decriminalizing marijuana to ending cash bail. Journalist Ruxandra Guidi revisits her reporting on the election of a new prosecutor in Houston two years ago, and chronicles how activists, relatives of incarcerated people, and local residents are changing strategies and pushing for reform.

Mitzi Miller: 70 million adults in the United States have a criminal record. In Season Three, we'll explore how our rapidly changing reality is impacting those in custody, and the policies that keep them there. I'm Mitzi Miller.

Four years ago, a Houston lawyer campaigned as a reformer for the office of district attorney — and [won](#).

Ogg (victory speech): Good morning. Until midnight, December 31, 2016, I was Kim Ogg, daughter, mother, lawyer, native Houstonian. At 12:01 on Sunday morning, January 1, 2017, I became Kim Ogg, the District Attorney of Harris County, Texas.

Miller: Kim Ogg was lauded as a progressive prosecutor who was going to stop arresting people for marijuana possession, address racial disparities in prosecutions, limit the death penalty, and fix the broken cash-bail system.

Ruxandra Guidi spoke to her for 70 Million two years ago.

Ogg: My priorities in reforming the criminal justice system were to bring common sense and data into play when it came to forming public policy. And I firmly believe that there can't be any social justice reform without criminal justice reform.

Miller: [Ogg](#) turned that red seat blue for the first time in 36 years. And at first, she had the support of many justice advocates. But some reforms she campaigned on never materialized.

News clip: "There are 8,000 human beings in the Harris County jail tonight, right now, as we talk, today, this afternoon. Many of them are there just because they can't pay monetary bail.

Miller: This year, Ogg is campaigning to keep her job. But she seems to have alienated past supporters enough that two of them ran.... against her.

Carvana Cloud advertisement for D.A. Carvana Cloud: "I'm Carvana Cloud and I'm running for Harris County District Attorney. Houston is home. I was raised in Acres Homes, went to Kincaid on a scholarship, and graduated from South Texas College of Law. I am a wife, a mom...."

Audia Jones for D.A. advertisement. Voter: "Voting for Audia Jones for me means real change for my community, real criminal justice reform and a candidate that truly cares about people."

Miller: Houston is the seat of Harris County. It's the third-most populous county in the country, and one of the most racially and [ethnically diverse](#).

Across the U.S., voters in other large and diverse cities have gone the way of Harris County: they've elected top prosecutors they hope will decriminalize marijuana possession...do away with cash bail...and bring in other reforms that would ultimately mean fewer people end up in jail.

So...how has that worked? And what are the lessons from Harris County?

Journalist Ruxandra Guidi picks up her reporting from season one and updates us from Houston.

Ruxandra Guidi: Audia Jones was a prosecutor back in 2016. In those days, the [Harris County District Attorney's office](#) was known for its [tough-on-crime](#) penalties that sent mostly people with low-level convictions, most of them Black and Latino, to jail.

So when Kim Ogg threw her hat into the ring and decided to run against D.A. Devon Anderson, the Republican incumbent, Audia Jones thought change couldn't come fast enough.

Audia Jones: You know, our current district attorney, I was excited when she made a lot of the promises that she did.

Guidi: That's Jones, who'd started out in Harris County as an Assistant District Attorney.

Jones: I myself voted for her because I was very excited about what she was talking about and literally as soon as she took office, you know, she did a 180 from everything that she said she was going to do.

Audia Jones for D.A. advertisement. Voter: "Today was a wonderful day. Audia Jones filed her paperwork to become Harris County D.A. -- District Attorney."

Guidi: By 2018, many local progressives like advocacy group Texas Organizing Project and people at the DA's office, like Jones, would sour on Ogg, saying she wasn't [a real reformer](#). Jones quit and became Ogg's top challenger in the Democratic primary.

Jones: And so I was like, you know, I know what needs to be fixed. I know how it can be fixed. I know how much authority the district attorney has, which is literally, they're the most powerful actors in our criminal justice system, especially here in Harris County. So that's why I decided to run.

Music

Guidi: [Ogg beat Jones](#) in the primaries on March 3. But then, within days, the [Covid-19 virus hit](#) Houston.

Sound of COVID news broadcast in Houston: And we begin with breaking news, the number of Coronavirus cases in the Houston area continues to climb. There are now 12 confirmed cases...

Guidi: One case led to another, and before officials could control its spread, the pandemic had unleashed a public health crisis, and a wave of unemployment in Harris County.

At the District Attorney's office, Ogg drew criticism for [endangering her prosecutors](#) by sending them into court. And at the [Harris County jail](#), around 500 people detained there may have been exposed and were put in quarantine by the end of March.

Then, a police killing of a man a thousand miles away in Minneapolis forced a reckoning.

Sound of Houston reporter Brandon Walker of KPRC TV, at the protest for George Floyd: Yeah we're at La Branch between, uh actually, just go right now, actually you can take a look at what you're seeing here.

Guidi: On May 29, thousands of people [marched](#) in downtown Houston and stood in front of city hall to protest the killing of Houston native George Floyd.

Ambient sound of protest.

Black women and men rode horses with their right fists up in the air and posed for pictures. The mood was sad and yet exhilarating.

Here's local reporter Brandon Walker, of TV station KPRC.

Brandon Walker: People have a lot to say. They're frustrated, not only because of what happened to George Floyd, but what they say are larger systemic problems, including right here in Harris County. We spoke to many of them, here's a look at what they had to say...

No Justice, no peace. No justice, no peace

I can't breathe. I can't breathe.

Kewona Mitchner: We are leaders, we are doctors, we are scientists, we are lawyers, we are the people that are running this nation. And you are treating us as if we are still the slaves that we were way back in 18-19 hundred.

Guidi: Terrance Koontz, or TK, was there at the May protests against the police killing of George Floyd.

Terrance Koontz: This situation just made it very clear, made it very plain, that there were some things going on as far as the criminal justice system... And we have the space and opportunity to do something about it. Primarily, in my opinion, because of Covid-19.

Guidi: TK is a statewide training coordinator with [Texas Organizing Project](#), a social justice organization that had supported Kim Ogg for D.A. over her promise to reduce mass incarceration — [until recently](#).

[Back in 2011, TK](#) was convicted of a felony for evading arrest with a vehicle. He spent a night in jail and ended up with a criminal record — something that turned his life upside down and prompted him to become an activist.

TK doesn't hold Ogg responsible for all the criminal justice reforms he'd like to see in Harris County. But neither does he praise her for doing a good job.

Koontz: I wouldn't say that there's one primary target. And I use target for lack of a better word. I just think that right now we are in the mindset that it's about building power. It's about pulling people in and educating them and informing them.

I have faith in the people. I have faith in the reality that we, as a collective, have the ability to decide who our representatives are in the process that allows us to do that.

Guidi: That's who he trusts. His fellow voters. But when it comes to politicians, he's a little more skeptical.

Koontz: Like Audia Jones, you know, uh, I think she, from what I've seen of her and what I know about, I think that she would have been a breath of fresh air. But at the same time, I would never put all my trust and faith in a politician. And I would never advise anybody to do that. I think that that is one of the reasons why we are in the situation that we're in now, because we have given these individuals so much power that we treat them like Kings and Queens, as opposed to servants, which is what they're supposed to be.

Ambient sound of the family of George Floyd on the news: They have finally gotten things underway, we're a little bit off kilter so to speak..."

Guidi: About a week after attending the May protest, TK stayed home with his family and watched George Floyd's [funeral](#) services on TV. A sea of people could be seen moving towards the Fountain of Praise Church in southwestern Houston.

Koontz: The numbers that I'm seeing right now in the streets give me hope. Like if these people just maintain this energy up into that, that ballot box, and then going past that, I just think this is a different world we're living in. I think something special is happening in our lifetime. I can't put my finger on it. I'm struggling to even use words to describe it, but it's just something that

internally I sense I feel, and I believe, and I'm glad to be alive to be a part of this righteous fight.

Guidi: Meanwhile, as George Floyd was being eulogized in Houston, prosecutors from Ogg's office announced their review of protest-related charges. They'd end up dismissing almost [800](#) civil disobedience cases.

Music

Guidi: Since before Kim Ogg became the DA, Black residents in [Harris County](#) represented 20 percent of the population, but they made up more than half of those [arrested](#) for drug possession.

An estimated seventy percent of people held in county jails are [awaiting trial](#) and haven't yet been convicted of a crime. In 2016, the year Ogg was elected, the county's conviction integrity unit exonerated 48 [wrongful convictions](#) — one of the highest rates anywhere in the country, a [trend](#) that started before Ogg became D.A. But most of what the unit did was change the [status](#) of cases as their post-conviction drug tests came in. Since she came to Harris County, Ogg's office has steadily continued to [reverse](#) drug convictions.

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Neither the George Floyd protests nor the pandemic lockdown have kept activists from organizing around urgent criminal justice reforms in Houston.

Activist speaking on a police accountability phone call: “There has been a lot of information that has been issued out from several of the council members...”

Guidi: Every Friday this spring, family members of incarcerated people, activists and other concerned local residents have been joining a [strategy call](#) to find ways to put pressure on city councilmembers, Houston's mayor, the police chief and the DA.

Activist speaking on a police accountability phone call: “When it comes to policy and law, there's always ...”

[They're asking](#) for three things: a uniform body camera policy, the transparent tracking of public complaints about police, and a citizens' review board with subpoena power.

On the day after George Floyd's funeral in Houston drew six thousand people to the streets, Harris County Commissioners Court passed a package of 11 [criminal justice reform](#) measures: the cornerstone measure is a study to

evaluate the creation of a civilian oversight board that would review the use of force by police.

Ogg was absent from these reforms. She didn't openly support them, but neither did she object to them.

Last year, the Harris County Commissioners Court rejected her [request](#) for a 31 percent budget increase that would have funded an additional 102 prosecutors.

Elsewhere around the country, from Suffolk County, Massachusetts to Cook County, Illinois, D.A.s like Ogg have also proven to be not as progressive as activists would like them to be...That's the case with D.A. Larry Krasner, in Philadelphia.

Candice McKinley: One of his major promises was that he was going to end the use of cash bail in Philadelphia, and basically bring about a major overhaul of the way the office of the DA works.

Guidi: That's Candace McKinley, an activist with [Philadelphia Community Bail Fund](#), a [grassroots group](#) that wants to end cash bail in that city. She's critical of Krasner, one of the first district attorneys to run — and win — over promises of reform.

McKinley: And so in Philadelphia, we also have this history of corrupt district attorneys, people who are really harsh drivers of mass incarceration and the carceral state... Who were really pushing for the death penalty... So we were expecting him to be fundamentally different.

Guidi: But McKinley says Krasner has perpetuated a system that keeps Philadelphia jails — like Houston jails — with too many people who have yet to face trial.

So McKinley and other Philly activists have raised money and bailed out almost 500 people out since May 2017. Their movement, she says, is now experiencing a real momentum by engaging the people who've been most directly impacted by mass incarceration.

McKinley: We're not being dismissed just as like, pie in the sky progressives. I think a lot more people are being like, 'compromise hasn't gotten us anywhere.'

Guidi: Many of these activists like McKinley, particularly those who've been mobilized over their frustration with the slow pace of reforms, are finding a new way forward: by starting their own non-profits.

Savannah Eldridge is among those demanding that criminal reforms happen at a much faster rate.

Savannah Eldridge: I just tried to put myself in spaces where I could learn what other people were doing so I could figure out what I could do.

Guidi: Eldridge is a traveling nurse by day and a self-taught criminal justice activist by night. Her two brothers and step-son are incarcerated. Her brother, Frank, has a life sentence for aggravated assault with a deadly weapon. He's at the James V. Allred Unit, an almost six-hour drive from her home in Houston.

Eldridge: *...now there's this big push for folks who are formerly incarcerated to have a space to talk about their experience and use that experience to pass policies and laws, and also directly impacted individuals. But you know, families' experience is different than somebody who's been incarcerated. So I really think, you know, it's a different experience, but we still need to have a seat at the table. Cause I mean, it's, it is a lot.*

Guidi: Eldridge's experience has centered on trying to navigate the prison system in both small and big ways: she's worked to make sure Frank's jail cell has air conditioning in the summers, and has also fought to make sure incarcerated people in Texas who menstruate have access to sanitary pads.

She's done much of this activism through groups like Texas Organizing Project, alongside TK. But now Eldridge is trying to figure out how to start her own criminal justice reform nonprofit. She's calling it "Be Frank 4 Justice."

Guidi: *Given the conversations that we finally seem to be having over the last few years about everything that's systemically wrong with the criminal justice system and the ways that basically Black and Brown people are set up for, for failure... When you look back on all this stuff, like, what is the feeling? Is it like, I should have known, I wish I had known. Is it anger?*

Eldridge: *For me as a Black woman, right? And as a mother of a Black son, um, I'm angry. Um, because I've been, I mean, I've been in situations where people say, you know, oh, you're playing the race card. You know, I'm angry because up until what seems like two months ago, people didn't understand that these injustices were happening. It was like, I feel like they felt like people of color*

were crying wolves in a way because they didn't understand. It took to see somebody on video being killed by the police for them to then believe that, oh, maybe this has been happening. Maybe what they were saying really is true. Like as a mother of an African American son, like, it scares me, you know, that, you know, he's gonna be looked at as a predator.

Guidi: Eldridge's son is 15 years old, and she's raising him as a single mom. Just a few years ago, she says, she had no idea what the District Attorney did or that this elected office held so much power. After finding out, Eldridge supported Audia Jones' platform.

And Jones wishes she were running, too. She's now back to private practice as a personal injury and employment lawyer. She says the recent push for more police reform, coupled with the George Floyd protests in Houston and nationwide, signal to her that Harris County voters may now be ready for a more progressive candidate for DA, like her.

Jones: *We have people that are voicing their concerns and marching that are holding protests and voter registration events. So that's what really gives me hope. And then, I'm still fighting the good fight from my position. Um, and, and, and that brings me joy to say, 'Hey, things may really change, finally.'*

Guidi: *Would you consider running again for office?*

Audia: *It's a possibility it's definitely a possibility, you know, I mean, we, it's just such, it's such an important role... Um, so yeah, I think for sure, I would definitely consider running again.*

Ambient sound of lobby.

Guidi: Two years ago, I stood at the entrance of an old art deco office building in downtown Houston, waiting to meet Harris County District Attorney Kim Ogg.

Lawyers came and went through the lobby, pulling their briefcases on wheels; police officers in uniform gathered in a corner.

Ambient sound of conversation in Ogg's office.

Guidi: After a few minutes, I was taken to meet Ogg. Dressed in a navy blue power suit, she welcomed me into her office and sat behind her dark mahogany desk.

Just a year and a half before, she had ridden to victory as a criminal justice reformer, becoming the first Democratic District Attorney in Harris County in almost four decades.

Ogg: My priorities in reforming the criminal justice system were to bring common sense and data into play when it came to forming public policy. And I firmly believe that there can't be any social justice reform without criminal justice reform.

Guidi: This time, Ogg did not sit down for an interview. Her office spokesperson declined without offering a reason.

Ogg's [diversion programs](#) have received the most praise from the Harris County Sheriff's Office: a mental health diversion program AND a marijuana diversion initiative.

Over the last two years, more than 35 million Harris County tax dollars have been [redirected](#) from the arrest and prosecution of misdemeanor marijuana offenses, according to the Harris County DA's office.

This time around, she's campaigning on this success in ads like [this one](#).

Ogg: *And after instituting Texas' most progressive marijuana diversion policy, tens of thousands of misdemeanor marijuana offenders have avoided jail and stayed in the workforce...*

Guidi: Actually, in March her office said just more than 9,000 people had avoided jail.

The program lets someone caught with less than four ounces of marijuana avoid a criminal charge if they pay \$150 to take a four-hour cognitive decision-making class. But here's the catch: people weren't finishing the class, and they blamed its \$150 price tag. As of early 2019, around half of participants failed to complete the program and had warrants issued for their [arrest](#).

Jones and [Carvana Cloud](#), both of whom ran against Ogg as Democrats in the primaries, say that rather than expand the program, marijuana in Texas needs to be decriminalized.

Ogg has also promised to keep [death penalty](#) cases to a minimum. In an interview with a local paper, she said, quote, “People’s attitudes have changed, prosecuting attorneys’ attitudes have changed, and mine have changed.” End quote.

Ogg’s first full year in office, 2017, was the first time in more than three decades no one from Harris County was executed. The following year, she recommended to the county court that four men be removed from [death row](#).

But then in 2019, her office pursued the death penalty in [eight cases](#).

Sound of the courtroom as the judge reads the death sentence to Dexter Johnson:

In accordance with the laws of the state of Texas, this court hereby sets as your punishment death. It is therefore the order of this court that you Dexter Darnell Johnson...

Guidi: Her office has also been criticized for repeatedly seeking execution dates for Dexter Johnson who was convicted of a double murder in 2007 when he was 18 years old. Johnson has shown evidence of [intellectual disability](#) and has been diagnosed with schizophrenia.

Sound of the courtroom as the judge reads the death sentence to Dexter Johnson:

...of this court. You are remanded to the custody of the sheriff until they can obey and carry out this...

Guidi: But Ogg has gotten the most heat from [groups like](#) the Texas Organizing Project from her position on a key criminal justice reform that’s seen as a first big step towards ending mass incarceration: [bail](#).

Ogg first campaigned in 2016 on the need for comprehensive bail reform. [Here she is](#) in 2018, speaking to the Bayou Blue Democrats, a club within the Harris County Democratic Party.

Ogg: Bail reform is not complete. The county continues to spend at district commissioners’ court, millions of dollars defending a bail system that a local judge in our federal judiciary has found unconstitutional. And I can tell you, after many years of practice was unconstitutional. And was a real burden on the poor, it did not keep you safer. Anybody with money could still get out.”

Guidi: Yet after two years in office, [Ogg filed an objection](#) to a legal settlement that would get rid of cash bail for most low-level offenses.

She supported getting rid of bail for low-level, non-violence misdemeanors... But, she warned, if there was no bail for these people, they could get out of jail and commit additional crimes.

Ogg explained her decision to Houston Public Media last September. She said she was seeing pimps, stalkers, abusers and drunk drivers get bonded out and re-offend.

Ogg: This endangers the public. So as the chief prosecutor in Harris County, I think it's incumbent on me to make sure that any proposed settlement, especially one that's going to be enforceable for seven years, include provisions that protect the public.

Guidi: That settlement means that an estimated [85 percent](#) of people with misdemeanor charges in Harris County will be released without having to pay a bond.

Guidi: As the election nears, Ogg is expected to beat Mary Nan Huffman. Her opponent is a traditional conservative prosecutor, someone who's running on tough-on-crime policies and against bail reform.

But this time around, Ogg will no longer have the endorsement of many of Houston's progressive grassroots groups. Candace McKinley, of the Philadelphia Community Bail Fund, has witnessed a similar situation in her home city -- where D.A. Larry Krasner is set to run for reelection next year.

McKinley: I think when Krasner won, he beat out the party establishment. And it was like a fight. And it was because a lot of people were mobilized to go knock on doors and get different unions on board. So there was a lot of groundwork. I do think like some of those people who were responsible for putting a lot of boots on the ground are disenchanted because, you know, he hasn't followed through on a lot of his promises. But then a lot of people who also would put out boots on the ground for him, he has responded to some of their issues. Like when it comes to getting people's wrongful convictions overturned, police accountability, so it's like, it's been I think a mixed bag. So I don't think you'll have the same amount of overwhelming support.

Guidi: This November's election will be a real test for Ogg in Houston -- and it will help define, around the country, what it really means to be a progressive D.A. Or how useful that label is to people who want reform.

McKinley: Would it be better if we didn't have, like, a progressive prosecutor? If we had a pure, opponent per se, where people could easily understand... See the actual, see and understand the policies that are being implemented and not be sort of swayed by this label of progressive, that sort of muddies the waters and confuses people.

Guidi: McKinley will be keeping an eye to next year, when Philly's DA, Krasner, will seek reelection.

For her, TK, Savannah Eldridge and others, change in the DA's office won't check everything off their list. So they're also focused on the long game—defunding the police, and educating their neighbors about the power the DA's office has in their lives.

Miller: Our story was reported by Ruxandra Guidi.

Special thanks to Emma Forbes for production assistance on this episode.

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70 Million is made possible by a grant from the [Safety and Justice Challenge at the MacArthur Foundation](#).

70 Million is a production of [Lantigua Williams & Co](#). Season 3 was edited by Phyllis Fletcher and Laura Flynn, Cedric Wilson is our lead producer and sound designer. Virginia Lora is our managing producer. Leslie Datsis is our marketing lead. Laura Tillman is our staff writer, and Michelle Baker is our photo editor. Sarah McClure is our lead fact-checker. Ryan Katz also

contributed fact checking. Juleyka Lantigua-Williams is the creator and executive producer. I'm Mitzi Miller.

Citation:

Guidi, Ruxandra. "No Longer Waiting for Top-Down Reform" *70 Million Podcast*, Lantigua Williams & Co., October 19, 2020. 70millionpod.com

Produced by:

