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Don't Reject Federal Prosecutors' Role in Criminal Justice Reform

JOYCE WHITE VANCE*

INTRODUCTION

There are a lot of things that are easy to reject out of hand. Peanut butter and mayonnaise sandwiches are an abomination.¹ Orange juice does not belong in your cereal.² And, as we have recently learned, Tito's Vodka cannot be used to make hand sanitizer.³

All too often, stakeholders in the criminal justice system have had the same reaction to the notion of prosecutors being involved with criminal justice reform. After all, prosecutors are charged with putting people in jail, not advocating for them. How could they possibly play a meaningful role in reform?

Professor Osler argues that criminal justice reform is glacial and offers meaningful suggestions for picking up the pace. In the face of overwhelming evidence of the system's malfunction—from mass incarceration, to bias, to unnecessary and excessive cost that fails to produce a reduction in crime—it impossible to refute the need for reform. And with bipartisan clamor for change, it is difficult to understand why more progress is not being made. Osler suggests structural factors keep federal prosecutors from playing a role⁴ and diagnoses some of the dysfunction that has prevented stakeholders

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¹ See Lyn Mettler, *A Peanut Butter and Mayo Sandwich? This Polarizing Combo Is Shocking the Internet*, TODAY (Sept. 24, 2018, 5:28 PM EDT), <https://perma.cc/52DH-SFK3>.

² Scotty Smalls, *People Who Put Orange Juice in Their Cereal Must Be Stopped*, VICE (Sept. 18, 2015, 11:30 AM), <https://perma.cc/S82D-J5W4>.

³ Bethany Biron, *Tito's Vodka Is Warning Consumers That It Can't Be Used as a Hand-Sanitizer Replacement as the Coronavirus Spreads Across the US*, BUS. INSIDER (Mar. 5, 2020, 1:43 PM), <https://perma.cc/9VRF-URDV>.

⁴ See Mark Osler, *The First Step Act and the Brutal Timidity of Criminal Law Reform*, 54 NEW ENG. L. REV. 161 (2020)

from working together effectively. But despite his excellent analysis, I part company with him on the value federal prosecutors could bring to this work, particularly if their partnership is properly valued, they are mobilized, and they are incentivized to do the work.

Little appeals more to advocates of criminal justice reform than being heretical about common wisdom. They have successfully moved a conversation that was once relegated to the far reaches of the left and reserved for liberals and civil rights lawyers into the bipartisan mainstream. Unusual alliances formed to work on reform, like the partnership between Obama administration officials and Koch Industries executives, suggest the possibilities.⁵ If the ACLU and the Faith and Freedom Coalition can work together, one might hope that even such estranged bedfellows as prosecutors and defense lawyers could form alliances to further justice and fairness.

An emerging generation of elected reformer district attorneys in state systems have begun to change the narrative about prosecutors.⁶ These progressive attorneys have created conviction integrity review units.⁷ In states from Indiana to Virginia to Michigan, they have announced plans to stop charging low-level, non-violent offenses like simple marijuana possession.⁸ Although there has been some criticism of the success of reformer district attorneys, and there have been arguments that structural components of the criminal justice system prevent them from bringing about meaningful change,⁹ in practice, their work has been effective enough to draw criticism from law enforcement, including former-Attorney General William Barr.¹⁰

In this piece, I turn my attention to the role of federal prosecutors. Federal prosecutors differ from their state counterparts in at least one significant way—they are not elected and need not curry favor or temper their prosecutive decisions to suit the perceptions of voters. This frees them

⁵ *Nonpartisan Council on Criminal Justice Launched*, PND (July 24, 2019), <https://perma.cc/V6EM-PGE9>.

⁶ See Justin Miller, *The New Reformer DAs*, AM. PROSPECT (Jan. 2, 2018), <https://perma.cc/5HMH-3DEA>.

⁷ See Richard A. Oppel Jr. & Farah Stockman, *Prosecutors Usually Send People to Prison. These Are Getting Them Out.*, N.Y. TIMES (Nov. 28, 2019), <https://perma.cc/A2Y4-BL28>.

⁸ Jess Arnold & Nick Boykin, *New Fairfax Co. Prosecutor Will No Longer Pursue Charges for Simple Marijuana Possession*, WUSA9 (Jan. 2, 2020, 4:26 PM EST), <https://perma.cc/C2X5-3TAV>; Trace Christenson, *Prosecutor: Simple Possession of Pot No Longer Prosecuted*, BATTLE CREEK ENQUIRER (Nov. 19, 2018, 4:32 PM ET), <https://perma.cc/UM4W-5QAN>; Katie Cox & Matt McKinney, *Marion County Will No Longer Prosecute Simple Marijuana Possession Cases*, WRTV INDIANAPOLIS (Sept. 30, 2019, 10:39 AM), <https://perma.cc/4LEK-9R3E>.

⁹ See generally Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748 (2018).

¹⁰ Allan Smith, *Progressive DAs Are Shaking Up the Criminal Justice System. Pro-Police Groups Aren’t Happy.*, NBC NEWS (Aug. 19, 2019, 4:47 AM EDT), <https://perma.cc/9WY5-QPDE>.

from concerns that they will be subject to claims of being “soft on crime” that are often lodged against district attorneys when they run for reelection if they have any sort of reformer bent. It permits federal prosecutors to make charging and sentencing decisions based solely on the facts and the law. They need not concern themselves with political repercussions in the next election cycle if they choose, for instance, to send first-time, non-violent drug offenders to rehabilitation programs, deferring prosecution. This freedom gives federal prosecutors a baseline of flexibility to adopt reform measures.

I. Criminal Justice Reform at DOJ During the Obama Administration

In fact, DOJ's leadership did just that during the Obama Administration. In May of 2010, Attorney General Eric Holder issued a memo that directed prosecutors to depart from the long-standing DOJ practice of charging the most serious readily provable crime in every case. He instructed them to make charging decisions:

in the context of “an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purpose of the Federal criminal code, and maximize the impact of Federal resources on crime” [USAM 9-27.300]. In all cases, the charges should fairly represent the defendant's criminal conduct, and due consideration should be given to the defendant's substantial assistance in an investigation or prosecution. As a general matter, the decision whether to seek a statutory sentencing enhancement should be guided by these same principles.¹¹

This guidance was a sea change for federal prosecutors. Holder followed up in 2013 with guidance that directed prosecutors to reserve mandatory minimums and § 851 enhancements for the most serious and dangerous offenses, rather than routinely applying the enhancements whenever possible.¹² Along with other work begun in the federal system during President Obama's tenure—including the Fair Sentencing Act of 2010, the retroactive relief amendments implemented by the U.S. Sentencing Commission,¹³ and the DOJ's Clemency Initiative¹⁴—by 2014, the Bureau of

¹¹ Memorandum from Eric H. Holder, Jr., Attorney Gen., Dep't of Justice, to All Federal Prosecutors, *Department Policy on Charging and Sentencing* (May 19, 2010), <https://perma.cc/ZS72-GVRK>.

¹² Memorandum from Eric H. Holder, Jr., Attorney Gen., Dep't of Justice, to The United States Attorneys and Assistant Attorney General for the Criminal Division, *Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases* (Aug. 12, 2013), <https://perma.cc/2J69-CK4Y>.

¹³ See Mark Osler, *The Problem with the Justice Department*, THE MARSHALL PROJECT (May 30, 2017, 10:00 PM), <https://perma.cc/6DYA-KZ4Y>.

¹⁴ Brandon Sample, *Clemency Project and Clemency Initiative*, CLEMENCY.COM (Dec. 4, 2018), <https://perma.cc/UA4V-DVHQ>.

Prisons was experiencing its first reduction in prison population after almost forty years of steady growth.¹⁵ These policies came to be known as “smart on crime” in contrast to the “tough on crime” policies that had characterized earlier administrations and the War on Drugs.

II. The Fate of Criminal Justice Reform When Administrations Change

Eight years was not enough to eradicate the mass incarceration that resulted from decades of sustained growth in federal prison populations due to tough on crime charging and sentencing requirements for Department of Justice prosecutors.¹⁶ The lack of permanence to Obama-era changes became readily apparent when President Trump’s first Attorney General, former-Southern District of Alabama U.S. Attorney Jeff Sessions, promptly rescinded Holder’s charging guidance and returned to the traditional tough on crime approach.¹⁷

In contrast to his predecessors in the Obama Administration, Sessions arrived at DOJ having played a major role in defeating a bill that would have reduced prison sentences for low level drug offenders, roundly criticized policing reforms implemented by the Obama Administration during a Senate hearing called “The War on Police”, and opined that “good people don’t smoke marijuana.”¹⁸ He reinstated the requirement that prosecutors charge the most serious, readily provable offenses and propose sentences based on those charges that include stacking mandatory minimums and filing § 851 enhancements, which result in lengthy sentences.¹⁹ That policy directive remained in place under Attorney General Barr, who made no secret of his distaste for reformer district attorneys.²⁰ The number of cases federal prosecutors brought ticked upwards as a result of this guidance, fueled by low-level immigration and firearm cases.²¹

Although some aspects of criminal justice reform remained in vogue after President Trump took office, with the President advocating for passage

¹⁵ Philip Bump, *The Federal Prison Population Dropped for the First Time in 30 Years. It May Have Been Inevitable.*, WASH. POST (Sept. 23, 2014), <https://perma.cc/S9H2-MFB2>; see NATIONAL RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES* 33 (2014).

¹⁶ See Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, SENT’G PROJECT (Nov. 5, 2018), <https://perma.cc/L574-RB52>.

¹⁷ German Lopez, *The Trump Administration Just Took Its First Big Step to Escalate the War on Drugs*, VOX, <https://perma.cc/L36K-URNU> (last updated May 12, 2017, 9:41 AM EDT).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Michael Brice-Saddler, *41 Prosecutors Blast Attorney General Barr for ‘Dangerous and Failed’ Approach to Criminal Justice*, WASH. POST (Feb. 13, 2020), <https://perma.cc/5G5Z-2PHE>.

²¹ See *Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019*, U.S. DEP’T OF JUST. (Oct. 17, 2019), <https://perma.cc/3BBT-PDE4>; *Federal Gun Prosecutions Up 23 Percent After Sessions Memo*, U.S. DEP’T OF JUST. (July 28, 2017), <https://perma.cc/767Q-88YJ>.

of the First Step Act²² and promoting the use of pardons and commutations,²³ the commitment of leadership to a full range of reforms designed to impact meaningful change in the system—at a minimum, crime prevention, charging reform, sentencing reform, prison reform and reentry work—dissipated. Prison reform, though much vaunted, was not fully funded in President Trump's proposed 2020 budget.²⁴ The commitment to reform did not manifest as advertised.²⁵

On balance, DOJ's ability to alter its approach to criminal justice reform in response to the views of a new president or attorney general is undoubtedly disconcerting for would-be partners. Stability and reliability are necessary in any relationship, and even criminal justice stakeholders who fully expect and prepare for change at DOJ as administrations put their own imprimatur on policy must find an abrupt about-face raises questions about whether DOJ can be counted on as a long-term partner in progress. So, why, in the face of this institutional uncertainty, should prosecutors still be considered good partners?

In the next two sections, I attempt to answer those questions, discussing why federal prosecutors are key partners if reform goals are to be achieved and what could be done to create a more sustained commitment to the bipartisan goal of criminal justice reform.

III. Prosecutors Are Essential Partners in Criminal Justice Reform as the System Is Currently Configured Because They Are the Gatekeepers for Many Key Decisions

Should prosecutors be involved in reform? It is a truism that in any effort to reform policy, you can go fast alone or far together. Prosecutors are an essential stakeholder in the criminal justice system, along with judges, defense lawyers, probation officers, prison officials, victims, defendants' families, communities, and others. Prosecutors exercise broad and unique discretion to make decisions regarding who gets investigated, what for, who gets charged, what plea deals are offered, what sentence is recommended, and even what sorts of pretrial diversion and reentry programs exist and who gets to participate in them.

Absent an overhaul of the criminal justice system that statutorily

²² Justin George, *First Step Act Comes Up Short in Trump's 2020 Budget*, THE MARSHALL PROJECT (Mar. 12, 2019, 6:00 AM), <https://perma.cc/2KHL-YKBA> (explaining that despite passage, the First Step Act was not close to fully funded in the 2020 budget).

²³ See John Kruzel, *Trump Flexes Pardon Power with High-Profile Clemencies*, THE HILL (Feb. 18, 2020, 6:40 PM EST), <https://perma.cc/V9VH-NRQF>.

²⁴ See Scott Shackford, *Trump's Budget Shortchanges the Prison Reform Bill He Signed*, REASON (Mar. 12, 2019, 12:30 PM), <https://perma.cc/47MR-8JPB>.

²⁵ See Samantha Michaels, *Trump Just Bragged About Criminal Justice Reform. Look Closer at How His Administration Is Undoing It.*, MOTHER JONES (Feb. 4, 2020), <https://perma.cc/JN83-4E7J>.

transforms decision-making authority, prosecutors uniquely control many of the stages in investigations and prosecutions that most impact outcomes for individuals and the system itself. Other than at sentencing where judges (although they may be constrained by the charges brought) have the ultimate say, prosecutors exercise near-exclusive control, and their decisions can only be upended in rare, exceptional cases.²⁶

Some scholars have argued federal prosecutors have too much power.²⁷ They argue that the system should be overhauled rather than tweaked.²⁸ Be that as it may, because federal prosecutors, now and for the foreseeable future with Congress in gridlock, have the ability to make decisions that determine who gets charged and what type of sentences they are eligible for, prosecutors' engagement in reform is highly desirable. In fact, it is essential precisely because of the decisions they are entrusted with. Criminal justice policy is at its best when it is made on the basis of data, not ideology. It would be transformative if prosecution guidelines were updated to reflect what decades of data tells us about the criminal justice system. We can have safer communities and less crime, while spending fewer taxpayer dollars on prison systems, if prosecutors focus on prosecuting the most serious crimes and seeking shorter sentences. Prosecutors who understand that the transfer of resources from prisons to communities, with an emphasis on prevention and support for people reentering their communities after serving sentences in prison, could play an essential role in making our communities safer and achieving reform.²⁹

Although Osler believes prosecutors are unlikely to be a force for change, or at least suggests there are serious systemic impediments to their participation, their engaged participation could move the work forward dramatically, as it began to do during the Obama Administration.³⁰ That is not to say it would generate the complete transformation of the system that many see as the goal, but, because of the decisions prosecutors control, their involvement has the potential to be more transformative than any changes, absent statutory ones, can be.

Policy updates on the federal level that enable prosecutors to take on the role of criminal justice reformers would have nationwide impact. Of course,

²⁶ See, e.g., *United States v. Ammidown*, 497 F.2d 615, 635 (D.C. Cir. 1973).

²⁷ Angela J. Davis, *Federal Prosecutors Have Way Too Much Power*, N.Y. TIMES (Jan. 14, 2015, 11:57 AM), <https://perma.cc/M5G6-C8H7>.

²⁸ *The Paradox of "Progressive Prosecution," supra note 9, at 758–60.*

²⁹ See, e.g., Sheridan Watson, *Pennsylvania Sees Steady Decline in Crime Rate over Last 20 Years*, CSG JUST. CENTER (Dec. 18, 2019), <https://perma.cc/7TBD-YSUA>.

³⁰ See *Department of Justice to Launch Inaugural National Reentry Week*, U.S. DEP'T OF JUST. (Apr. 22, 2016), <https://perma.cc/PRP3-MY88> (describing how prosecutors in virtually all of the 94 federal districts sponsored events during "reentry week" to focus attention on and educate communities about the work they were doing to help people who were reentering communities after serving prison sentences).

a new direction can only succeed if it is built on a solid foundation of buy-in from DOJ prosecutors across the country. Exposure to data that confirms the benefits of reform is essential. Prosecutors must be educated about the merit of the smart on crime approach, as contrasted to the failures and waste of tough on crime strategies, if they are to become committed to exercising prosecutorial discretion in a fashion that achieves the goals of reform. Simply put, once in progress and accepted by prosecutors, a generational culture change would have long-lasting effects.

Osler sees “[t]he consistent and powerful influence of prosecutors in developing policy”³¹ as part of the problem. Imagine if that “consistent and powerful influence” could be used to effect change. Prosecutors can have a profound impact if their north star is keeping their communities safe and enhancing justice, guided by data about where the criminal justice system has succeeded and where it has failed. Their day-to-day decisions have an enormous impact and can transform the system.³²

IV. What Are the Conditions That Make It Possible for Prosecutors to Be Good Partners?

DOJ’s leadership sets criminal justice policy. But it is implemented by line prosecutors and supervisors across the country as they investigate, charge, and prosecute criminal matters. Their exercise of prosecutorial discretion is informed by the guidance set forth in the Principles of Federal Prosecution.³³

So implementing criminal justice reform in the federal system at charging, plea, and sentencing should be as easy as rewriting those policies and principles, right? Of course, we know it is not that easy. DOJ, like any other institution, can be as agile as a battleship when it comes to changing direction. But, with the right conditions and incentives, progress is possible. Given all of the gatekeeping prosecutors do for key decisions in the system, the question that we should be asking is, what changes and conditions need to be made to make it possible for prosecutors to be full partners in criminal justice reform?

I would argue three key conditions need to be met for prosecutors to be successful criminal-justice reformers:

There must be a commitment to criminal justice reform from leadership.

There must be education for prosecutors that focuses on data supporting the shift from a tough on crime approach to a smart on crime one, demonstrating that it makes communities safer while reducing costs in the

³¹ Osler, *supra* note 4, at 162.

³² See Lucy Lang, *Prosecutors Need to Take the Lead in Reforming Prisons*, THE ATLANTIC (Aug. 27, 2019), <https://perma.cc/M5D9-TNB6>.

³³ 9-27.000 - *Principles of Federal Prosecution*, U.S. DEP’T OF JUST., <https://perma.cc/X8Y4-EJ7G> (last updated Feb. 2018).

system and restoring people to their lives and families.

There must be a change in the metrics DOJ and communities use to evaluate prosecutors' "success" that supports criminal justice reform goals.

It is not possible to turn a battleship unless the captain is fully committed to the maneuver. An essential element for success is a top down commitment to reform. But what does reform mean? It should be comprehensive and include planning for different stages in the criminal justice life cycle. During the Obama administration, some of my U.S. Attorney colleagues and I argued that prosecutors had to do more than just change how they prosecuted their cases—they had to be committed to prevention and reentry work as well as to traditional prosecutions. We believed that these three aspects of the criminal justice system had to come together to form a three-legged stool and that if these priorities were pursued in a balanced fashion, prosecutors could help to transform the system.

Traditionally, prosecutors' primary role has been limited to prosecuting cases. They have not been involved in other aspects of the criminal justice system. But federal prosecutors are deeply committed to public safety and to justice and fairness. It is what attracts most of them to the work in the first place. When they are engaged in their work prosecuting cases, they are involved in making their communities safer. They exercise their discretion in a way they have been trained to believe will make their communities safer. If their leadership helps redefine their role into an expanded one that involves more than prosecuting cases, most of them will approach the work with enthusiasm. For instance, during the Obama administration, prosecutors embraced the mandate to implement reform-minded programs and strategies.³⁴

The question is not just how to create new policy directives. For long-term success, the need for criminal justice reform must be widely accepted by prosecutors. They must be convinced, which can only happen if data that supports the view that criminal justice reform policies offer the best results for the communities that they serve is socialized across the Department. It will require a significant commitment of time and resources to educate prosecutors. But culture change across an organization whose leadership has more often focused on the rhetoric of tough on crime than on the data-driven rationale for smart on crime approaches is essential for permanence. Experience has shown that when a change in policy is explained by underlying data that supports its objectives, education achieves results. In 2016, Deputy Attorney General Sally Yates discussed the impact of the

³⁴ See generally NYU Center on the Administration of Criminal Law, *Disrupting the Cycle: Reimagining the Prosecutor's Role in Reentry*, NYU LAW (2017), <https://perma.cc/T2KU-3UDE> (discussing how, under the Obama Administration's Smart on Crime initiative, several U.S. Attorneys' Offices assisted those reentering society with securing employment and educated employers about hiring the formerly incarcerated).

changes Attorney General Holder implemented:

I'm not going to tell you that every single prosecutor out there would have written the Smart on Crime policy him or herself, but what I can tell you is we know they're doing it. The stats show that . . . particularly for prosecutors who've been doing this for a long time, we've seen that mandatory minimums done the old way cast too broad a net because they focus just on one feature—drug quantity—and doing so doesn't distinguish between the drug kingpin and the courier. Prosecutors who have been doing this for a long time have recognized that.³⁵

Education works. Osler uses the example of disparate sentencing for crack and powder cocaine and points out that greater fairness for crack sentencing only happened when there was data available that “exploded the myth of racial neutrality,” showing that Blacks and Hispanics were prosecuted at disparate rates.³⁶ All too often, as with the initial sentencing regime that treated crack and cocaine cases differently, criminal justice policy is made on the basis of ideology, not data. Introducing data and educating prosecutors about policies that have failed and beliefs that are outmoded is the path forward.

But setting priorities and educating prosecutors alone will not be sufficient. The metrics that are used to define federal prosecutors' success at their jobs must change. Both internally and externally, prosecutors are evaluated based on the numbers: number of cases indicted and tried, number of defendants prosecuted, and so forth. These metrics incentivize prosecutors to work on the cases that are the easiest and the quickest to move forward. Not only are these numerical metrics used internally at DOJ to measure the work of both individual prosecutors and the overall success of U.S. Attorneys' offices, but the public and the press evaluate prosecutors based on them too.

It is simple to understand the impact: if prosecutors are criticized for prosecuting fewer cases, if they lose resources because of it, they will tend to pursue the kinds of cases that result in greater numbers of prosecutions. We see that now with the dramatic increase in numbers of low-level immigration and gun possession prosecutions referred to in Part II. It is more difficult and far more time consuming to investigate and prosecute a long-term public corruption case or a civil rights matter than it is to prosecute a person for being a felon in possession of a firearm. If our goal is to make our communities safer, we should encourage prosecutors to prosecute fewer—but more serious—crimes and reward them when they do. We need new and better metrics to do that.

Prosecutors ultimately put themselves out of business if they are

³⁵ Juleyka Lantigua-Williams, *Are Prosecutors the Key to Justice Reform?*, THE ATLANTIC (May 18, 2016), <https://perma.cc/TZG8-6ZP2>.

³⁶ Osler, *supra* note 4, at 166.

successful—less crime, fewer cases. But if the metric for success is how many cases an office prosecutes, then success means failure. We need metrics that evaluate whether prosecutors are creating better community outcomes and that incentivize prosecutors to do what they would prefer to do absent the tyranny of raw statistical evaluation: prosecute the most serious, significant cases, even if they take more time and have less certain outcomes.

Metrics that consider community engagement and safety promote the ability of prosecutors to engage in programs that focus on criminal justice reform: for instance, Birmingham, Alabama's Reconciliation and Listening Sessions as part of the National Initiative for Building Community Trust—which sought to improve community-police relations by focusing on procedural justice, implicit bias, and restorative justice³⁷—or High Point, North Carolina's domestic violence initiative.³⁸ Freed of the gravitational pull of numbers of cases as the only metric for success, prosecutors could play an important role in reform, both in their prosecution practices and, more generally, as they expand their notion of their responsibilities to include prevention, reentry, and other work in the community.³⁹

CONCLUSION

Prosecutors should be, the linchpin in successful criminal justice reform because of their unique decision-making responsibilities and their ability to reinvent their role to better serve their communities. Given an administration with leadership that is committed to a full scope of reform, education and updated metrics for evaluating prosecutors could be used to create a culture change that would make prosecutors true partners and leaders in reforming the criminal justice system.

Osler suggests we “must be bold in what we ask for”⁴⁰ when it comes to criminal justice reform, and this is true. What could be bolder than to ask that prosecutors, those the system charges with prosecuting people accused of crimes, also become advocates for them?

³⁷ National Initiative for Building Community Trust & Justice, *Case Study: Integrating Community Members into Reconciliation Listening Sessions in Birmingham*, NAT'L NETWORK FOR SAFE COMMUNITIES 1 (Mar. 2019), <https://perma.cc/2NVJ-AWNX>.

³⁸ See *Domestic Violence Initiative*, CITY OF HIGH POINT POLICE DEP'T., <https://perma.cc/8LDX-LSTR> (last visited July 16, 2021).

³⁹ See, e.g., Angela J. Davis, *Meet the Criminal Justice System's Most Powerful Actors*, THE APPEAL (May 29, 2018), <https://perma.cc/Q75C-TY TZ>.

⁴⁰ Osler, *supra* note 4, at 197.