

REMARKS

OF

BETH MC GARRY  
OAAG CHIEF OF STAFF AND SENIOR COUNSEL  
OFFICE OF JUSTICE PROGRAMS

AT THE

NATIONAL PROSECUTION SUMMIT:  
INNOVATIVE PROSECUTION AND COMMUNITY SAFETY

ON  
MONDAY, SEPTEMBER 22, 2014  
DALLAS, TX

Thank you, I'm pleased to be here. I want to give a special thank you to the Association of Prosecuting Attorneys Chairman and Milwaukee DA John Chisholm; APA Vice Chair and Fulton County (Atlanta) DA Paul Howard; Dallas DA Craig Watkins and Dallas City Attorney Warren Ernst for hosting us in Dallas.

Thanks also to the partners who put this summit together, Steve Jansen and Dave LaBahn from APA, Julius Lang from the Center for Court Innovation and our own Kim Ball from BJA.

As a former Assistant US Attorney in the Northern District of California, I'm always grateful for the chance to have a discussion with the men and women who work every day to improve public safety in their communities.

It is a pleasure to see so many jurisdictions represented here. Not only do we have a diverse representation from across our nation, but it is also heartening to see so many different countries present -- about 10 in all -- eager to learn about the innovative prosecution strategies you employ to improve our criminal justice system.

At the **Office of Justice Programs**, we are organized to address all aspects of the criminal justice system.

- The **Office for Victims of Crime**, for example, enhances the nation's capacity to assist crime victims and provides leadership to change attitudes, policies, and practices to promote justice and healing for all crime victims
- The **Bureau of Justice Statistics** collects, analyzes, publishes, and disseminates information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government
- The **National Institute of Justice's** mission is to generate scientifically rigorous knowledge through research and to disseminate that knowledge in ways that are useful to policymakers and practitioners.
- The **Office of Juvenile Justice and Delinquency Prevention** develops priorities, sets policies on federal juvenile justice issues and provides funding to public and private entities to prevent and respond to juvenile delinquency and child victimization.
- The **Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)** manages a comprehensive sex offender registration and notification system.

And the **Bureau of Justice Assistance** is most directly involved with the issues we are discussing today. BJA's mission is to provide leadership and services in grant administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. BJA supports programs and initiatives in the areas of law enforcement, justice information sharing, countering terrorism, managing offenders, combating drug crime and abuse, adjudication, advancing tribal justice, crime prevention, protecting vulnerable populations, and capacity building. A key element driving BJA's work is encouraging innovation with an emphasis on local control.

As one of the federal leaders promoting public safety, OJP attempts to be responsive to issues in facing our nation.

DOJ has been examining the problems of bias, race and policing, and procedural justice for several years.

Even before the events in Ferguson, Missouri unfolded, OJP put together a coalition of DOJ components to undertake a comprehensive, coordinated, and multi-faceted approach to enhance community trust and improve public safety.

We published a solicitation in April and the Attorney General announced the award recipients on Thursday. We will work closely with a renowned group of criminal justice experts from the John Jay College of Criminal Justice – along with Yale University, the Center for Policing Equity at UCLA, and the Urban Institute – to enhance procedural justice, reduce implicit bias, and support racial reconciliation in communities across the country.

We focused on these three key areas: procedural justice, implicit bias, and racial reconciliation.

## **What is Procedural Justice?**

Procedural justice is a social psychological term used to describe the process by which members of the public make judgments regarding fairness.

Research has demonstrated that procedural justice has a few dimensions.

First, participation is an important element. People report higher levels of satisfaction in encounters with authorities when they have an opportunity to explain their situation and their perspective on it—i.e., to tell their story.

For example, a police officer stops you on the street and tells you that he stopped you because you were jaywalking. You explain that you were in a hurry to make a meeting with the Mayor. The officer nods but tells you that the intersection is very dangerous and there have been several jaywalkers injured. You won't like getting the ticket, but you are satisfied that you told your story and the officer heard you.

Second, people care a great deal about the fairness of decision-making by legal authorities such as police officers, prosecutors and judges. That is, people look to indicia of neutrality, objectivity and consistency of decision-making, and transparency.

So in the same scenario, if you watch the street from your meeting and see the officer give tickets to other jaywalkers of every race and gender, you still don't like getting a ticket, but you believe that the officer treated you fairly – just like every other jaywalker.

Third, people care about how legal authorities treat them. Specifically, people desire to be treated with dignity, with respect for their rights, and with politeness.

In their interactions with police and prosecutors, people want to believe that authorities are acting out of a sense of benevolence toward them. They want to believe that the motivations of the authorities are sincere, well-intentioned, and that they are trying to be responsive to people's concerns.

### **What is Implicit Bias?**

Implicit bias stems from the automatic association between two concepts. Just as the words “doctor” and “surgery” likely bring to mind the word “hospital,” other words and concepts are often stored in the mind together.

Unfortunately, that happens with both good associations (e.g., “birthday” and “happy”) and bad ones (e.g., “Black” and “crime”). These automatic associations do not require that one hold prejudiced beliefs. However, they can influence behavior, leading individuals and groups to respond in stereotype-consistent ways.

Put another way: implicit bias is the tendency to associate a group with its stereotypes—even when we do not believe the stereotype. For that reason, it is particularly difficult to identify and remedy.

### **What is Racial Reconciliation?**

Over American history, many racial and ethnic groups have been treated badly under American law through law enforcement practice. The history of African-Americans under slavery, reconstruction, and “separate but equal,” has been particularly serious.

Reconciliation requires police and other agents of the law to face that history squarely, further addressing what are often damaging narratives on both sides (for example, police beliefs that troubled communities approve of violence, or neighborhood beliefs that the police are complicit in the drug trade), and finding common ground on which to proceed on key community safety concerns.

So, you may ask – Why focus on these three areas?

These three areas of research and action represent at once exciting innovations in evidence-based approaches to improving the criminal justice system, and an established base for that evidence. However, the research has not been disseminated broadly through the criminal justice system and across the nation.

The National Initiative to Build Community Trust and Justice will undertake five major activities.

1. Test strategies of procedural justice, implicit bias, and racial reconciliation in pilot sites that will be selected over the next six months;
2. Create a web-based central information clearinghouse to provide information and technical assistance to the field;
3. Expand knowledge through new research;
4. Develop materials to help carry that research into practice; and
5. Promote public discussion of issues around race and policing.

This effort will design strategies aimed specifically at addressing the sometimes stressed relationships between law enforcement agencies and minority youth. It will focus on improving the experiences of sexual assault and domestic violence victims as they interact with police and prosecutors so that they will be more willing to seek help when they need it.

And it will respond to concerns of the LGBTQ community about its experiences with police and prosecutors by making all citizens feel respected as individuals in encounters with the justice system.

Through this National Initiative for Building Community Trust and Justice, we will advance the pioneering work many of you have already done in some of the nation’s most challenged areas – work that has proved to be successful – and we will open doors to cooperation and trust that will lead to safer neighborhoods and a justice system that inspires the confidence of those it serves.

For example, this year, the Vera Institute of Justice, with funding from the National Institute of Justice, partnered with the New York County District Attorney’s office and published *Prosecution and Racial Justice in New York County*.

Prior research had not adequately examined the extent to which prosecutors’ discretion to file charges, change or reduce charges, plea bargain, and make sentencing recommendations might contribute to racial and ethnic disparities in the system.

Using data from the New York County District Attorney's Office, this study assessed racial and ethnic disparity at multiple discretionary points of prosecution and sentencing.

The study found that the District Attorney's office accepts for prosecution nearly all cases brought by the police with no marked racial or ethnic differences at case screening, but showed disparities for subsequent decisions by discretionary point and offense category.

For all offenses combined, Black and Latino defendants were more likely to be detained, to receive a custodial plea offer, and to be incarcerated than similarly-situated White defendants. But Black and Latino defendants were also more likely to benefit from case dismissals.

In terms of offense categories, Blacks and Latinos were particularly likely to be held in pretrial detention for misdemeanor *person* offenses, followed by misdemeanor *drug* offenses. Blacks and Latinos were also most likely to have their cases dismissed for misdemeanor *drug* offenses.

The study found that disparities in custodial sentence offers, as part of the plea bargaining process, and the sentences ultimately imposed were most pronounced for *drug* offenses, where blacks and Latinos received especially punitive outcomes.

Asian defendants appeared to have the most favorable outcomes across all discretionary points, as they were less likely to be detained, to receive custodial offers, and to be incarcerated relative to White defendants. Asian defendants received particularly favorable outcomes for misdemeanor *property* offenses.

Because these findings represent actual case processing decisions, they not only contribute to the body of research and our understanding of the phenomenon, they also are helpful in thinking about how to improve existing prosecutorial policies and practices.

As we all reframe our roles in enhancing the legitimacy in the criminal justice system, many successful prosecution offices have defined their goals on achieving safety rather than winning cases.

A prosecution office that embraces community prosecution and uses its resources to prevent crime while reducing incarceration, promote successful reentry, and engages in restorative justice, successfully addresses crime in a community.

At OJP we are using our grant funds to incentivize evidence-based approaches, so that we can help turn the page on America's over-reliance on imprisonment. We are investing in programs that we know can curb violence and prevent formerly incarcerated individuals from coming back into the system.

As an example, we can look to the research and evaluation coming out of the Cook County State's Attorney's Office in Chicago. There, University of Chicago researcher Tom Miles concluded that areas that use community prosecution experience about a 10 percent reduction in crime compared to other parts of the city.

The study was the first empirical investigation of whether the community prosecutions strategy improves on public safety, and the first evidence that community prosecution can produce cost-justified reductions in crime.

At OJP's National Institute of Justice we are focusing on the latest advancements in science and technology and partnering with prosecutors' offices.

For example, with a grant from the National Institute of Justice Detroit, Wayne County Prosecutor Kym Worthy convened a multi-disciplinary group of stakeholders, along with sexual assault researchers from Michigan State University, to determine how thousands of sexual assault kits came to be warehoused, how to move forward and how to ensure that the problem does not happen again.

Ms. Worthy's office is dedicated to ensuring every one of the more than 8500 untested kits is tested and every case is investigated. Under the NIJ grant, the Wayne County Prosecutors Office is developing protocols to assist other offices which might experience such rape kit testing backlogs.

Many of you know that our funding at OJP revolves around two basic philosophies: evidence-based programming and comprehensive approaches to problem-solving.

Our goal is to bring to the table all the stakeholders and to promote strategies that rely on sound science and effective practices.

By using your stature as community leaders to set priorities and convene discussions, you, our nation's prosecutors, play a vital role in this work.

You are central to ensuring a sound, effective, and fair system of justice. Your embrace of community prosecution and your vested interest in evidence-based solutions are central to confronting – and conquering -- the public safety challenges we face today.

In keeping with the theme of this conference, "Innovative Prosecution and Community Safety," OJP, through its Bureau of Justice Assistance, has partnered with the American Prosecutors Association and the Center for Court Innovation to not only identify innovative criminal justice programs but to provide training and technical assistance, so we can educate jurisdictions about Community Prosecution and the High Performing Prosecutorial.

As you know, BJA has invested millions of dollars in grant funds each year in a "Smart Suite" of programs, which includes the Smart Policing, Smart Supervision and the new Smart Prosecution Initiative.

These initiatives are designed to bring together practitioners and researchers to develop data-driven solutions aimed at reducing crime, improving community safety, lowering recidivism, and preventing unnecessary confinement.

These programs have three common design features:

- They are data-driven.
- They use evidenced-based or promising strategies; and
- They incorporate a research practitioner partnership to analyze data and measure results.

The Smart Suite represents a strategic approach that brings more science into criminal justice operations by leveraging innovative applications of analysis, technology, and evidence-based practices with the goal of improving performance and effectiveness while containing costs.

Today, I am happy to announce the four winners of our inaugural Smart Prosecution grant program and the selection of one national training and technical assistance provider to support and build capacity among those jurisdictions selected to be the Smart Prosecution sites.

BJA released the Smart Prosecution site-based solicitation on March 24. The solicitation sought applications from state, local, or tribal prosecutorial agencies interested in testing data-driven approaches that address one or more prosecutor goals:

- promoting fair, impartial, and expeditious pursuit of justice;
- ensuring safer communities; and
- promoting integrity in the prosecution profession and effective coordination in the criminal justice system.

BJA received 24 applications, and invited 17 applicants to submit full proposals by June 6. These are the four awardees:

**Cook County IL State's Attorney Office.** This awardee will develop, implement, and evaluate the Misdemeanor Deferred Prosecution Enhancement Program, which seeks to reduce subsequent criminal behavior, reduce costs to the system, minimize the collateral consequences resulting from low-level non-violent convictions, and share findings with the larger community.

**Harris County, TX.** This awardee will work with the Harris County District Attorney's Office to establish a Misdemeanor Prostitution Court, a structured and targeted intervention program that identifies and treats the needs of prostituted young adults, ages 17-25, who are at an increased risk of further sexual exploitation.

**Office of the Los Angeles City Attorney.** This awardee will introduce INTERCEPT (Introducing New Tools based on Evidence and Risk-assessments to Confirm Eligibility for Prosecution Treatment) a new system advancement that will use evidence-based risk assessment to evaluate prosecutorial diversion approaches for misdemeanor offenders and implement restorative justice strategies in the form of Community Justice Panels.

**San Francisco District Attorney's Office.** This awardee will establish a Crime Strategies and Intelligence Unit to gather appropriate and valid data, using statistical tools to identify chronic locations and chronic offenders in San Francisco and work closely with Neighborhood Prosecutors to identify suitable individuals and cases for Neighborhood Courts.

Finally, the Smart Prosecution training and technical assistance solicitation, also released on March 24, requested applications from for-profit organizations, nonprofit organizations, faith-based and community organizations, institutions of higher education, and consortiums with demonstrated experience providing national and local-level training and technical assistance.

The peer reviewers gave careful consideration to the applicants' knowledge of the role of research and crime analysis for today's prosecutor, and the applicants' analytic capacity to assist Smart Prosecution sites implement their projects.

I am happy to announce that the award of \$450,000 goes to the Association of Prosecuting Attorneys.

I bring congratulations to all the awardees from Attorney General Eric Holder and Assistant Attorney General Karol Mason, who are very much with us in spirit today.

Thank you for all you do to keep America's communities safe.