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# PROSECUTORS, REENTRY, AND PUBLIC SAFETY

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AND COURTNEY M. OLIVA

A Paper in the Series on:

**Reimagining the Role of the Prosecutor in the Community**

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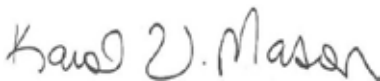
# A Letter from the Co-Chairs of the IIP Advisory Board

The Executive Session on Reimagining the Role of the Prosecutor in the Community (Executive Session), hosted by the Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP), is guiding high-level culture change in the field of prosecution. Through a series of facilitated convenings and conversations spanning three years, the Executive Session brings together the foremost experts in the field of prosecution – elected prosecutors, legal professionals, scholars, policy experts, and individuals directly impacted by the justice system.

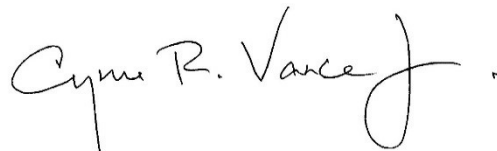
The collaborative research and engagement that informs the Executive Session enables a thorough dive into some of the most complex topics facing prosecutors and their communities: reimagining the role of the prosecutor in a democratic society; producing public safety while reducing harms created by the criminal justice system; and addressing the legacy of racial inequality and structural injustice, to name a few. In order to disseminate these conversations into the field, Executive Session members partner to undertake research and author papers, with an eye towards developing innovative responses. The papers are based on the opinions of the authors, available research, and insight from Executive Session members. While the papers do not represent a consensus of all members, they have been informed by critical engagement and collaborative discussion amongst members. The expertise and diversity of members provide a nuanced lens to some of the most pressing topics in the field of prosecution, and to the criminal justice system overall.

The Executive Session and the papers emerging from it are intended to uplift the evolving role of prosecutors and their power to facilitate the creation of an increasingly equitable and effective American criminal justice system.

For further information about the Executive Session on Prosecution or the IIP, please write to [IIP\\_JohnJay@prosecution.org](mailto:IIP_JohnJay@prosecution.org).



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## **CYRUS R. VANCE JR.** **District Attorney, Manhattan**

Cyrus R. Vance Jr. has been Manhattan District Attorney since 2010. D.A. Vance's achievements include takedowns of major gun traffickers and international cybercrime operations, as well as the first-ever convictions on New York State terror charges. He has reduced unnecessary incarceration and ended the prosecution of thousands of low-level, nonviolent offenses annually, most recently ending the criminal prosecution of marijuana possession and smoking, as well as subway turnstile-jumping.

D.A. Vance established the Criminal Justice Investment Initiative to invest ill-gotten gains seized in prosecutions against major banks in large-scale efforts to strengthen communities, prevent crime and accelerate justice reform. Among other investments, he has allocated millions of dollars to help end the national backlog of untested rape kits; created Youth Opportunity Hubs offering services and safe spaces in underserved Manhattan neighborhoods; reduced the number of individuals with mental and behavioral health issues in the criminal justice system; and enhanced security in New York City public housing developments.

D.A. Vance is the co-founder and co-chair of Prosecutors Against Gun Violence, and co-founder of the Global Cyber Alliance. He is a graduate of Yale University and Georgetown University Law Center.

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## **STANLEY RICHARDS** **Executive Vice President, The Fortune Society**

Stanley Richards is the Executive Vice President of The Fortune Society (Fortune), a 52-year-old service and advocacy non-profit organization based in New York City whose mission is to support successful reentry from prison and promote alternatives to incarceration.

A formerly incarcerated man of color with decades of experience in the criminal justice field, Stanley's professional experience began in 1991 at Fortune, where he initially worked as a Counselor. Between 1997 and 2001, he served as the Deputy Director of Client Intervention at Hunter College Center on AIDS, Drugs and Community Health.

After returning to Fortune and receiving a series of promotions, today, Stanley is the second-highest executive and has responsibilities in the overall management of Fortune and oversight of all direct service programs. He also represents Fortune's fundraising and advocacy work, having taken on a leadership role in its David Rothenberg Center for Public Policy.

In 2014, Stanley was recognized by the Obama administration as a Champion of Change for his commitment to helping individuals impacted by the justice system. He also became the first formerly incarcerated person to be appointed by the City Council Speaker and serves as Vice Chair to the NYC Board of Correction, a regulatory oversight body for setting minimum standards of care, custody and control of people incarcerated in New York City jails. He currently serves on a number of other committees and boards as well.

Other appointments include the Independent Commission on New York City Criminal Justice and Incarceration Reform chaired by former NYS Chief Judge Jonathan Lippman, which created and released a blueprint, "A More Just New York City", for the future of criminal justice in New York City; the Working Group on Design, a subcommittee of the Justice Implementation Task Force, to ensure effective implementation of the "Smaller, Safer, Fairer: A Roadmap to Closing Rikers Island" initiative; the New York City Disconnected Youth Task Force which effort aims to examine the barriers that out-of-school and out-of-work youth face in enrolling in school or being employed; and the New York City Older Adult Reentry Task Force which will issue recommendations to address issues related to the post-incarceration reentry for older adults.



## **COURTNEY M. OLIVA**

### **Executive Director, Center on the Administration of Criminal Law, NYU**

Courtney Oliva is Executive Director of the Center on the Administration of Criminal Law at NYU Law School and an adjunct professor at the Law School. Before joining the Center, Oliva served for several years as an Assistant United States Attorney in the District of New Jersey and as a Special Assistant Attorney General with the New York State Office of the Attorney General. In these capacities, Oliva investigated and prosecuted a variety of federal and state crimes, including violent crime and drug offenses, theft of government funds, endangerment, criminally negligent homicide, and grand larceny schemes designed to defraud the New York State Medicaid program. Prior to becoming a prosecutor, Oliva spent several years in private practice representing individual and corporate clients in government, regulatory, and internal investigations and securities litigation. She received her BA from Brown University and her law degree from the University of Chicago Law School.

# Prosecutors, Reentry, and Public Safety

Cyrus R. Vance Jr., Stanley Richards, and Courtney M. Oliva

## BACKGROUND/INTRODUCTION

As democratically-elected officials who are accountable to their communities, prosecutors must ensure that their charging and sentencing policies promote public safety and just outcomes for everyone, including those communities who disproportionately feel the impact of crime and incarceration. To date, most prosecutors have primarily focused their work at the front-end of the criminal justice system—from the initial investigation and charging of a case through to its disposition, which can include seeking sentences of incarceration.

On some level, this is unsurprising. As one of the most powerful actors in the criminal justice system, prosecutors exercise considerable control over the life cycle of a criminal case. But this discretion operates primarily, if not exclusively, at the front-end of the system. One result of this front-end focus is that prosecutors evaluate themselves and their office based on their case filings and conviction rates. Such a narrow focus on a prosecutor's front-end role overlooks an important reality: prosecutorial discretion exercised during the life cycle of a criminal case can have repercussions that last long after a case is "closed." These repercussions can negatively impact a person's trajectory in the justice system over the long run. A front-end focus on prosecutorial decision-making also disincentives prosecutors to expand their frame to consider what happens to individuals after they are sentenced.

Ignoring barriers to reentry also undermines just outcomes, particularly for low-income

communities and communities of color. Prosecutors' decisions can lead to a criminal record and/or a sentence of incarceration, which can actually undermine public safety and justice over the long haul due to the burdensome consequences. Common sense and equity suggest that these unintended results must be factored into prosecutorial decision-making. But too often, these consequences are either not recognized when a prosecutor makes charging and/or sentencing decisions or they are not incorporated into office policy.

Thus, the crucial challenge for prosecutors is twofold. First, they must recognize that the decision to bring someone into the criminal justice system—regardless of whether they become incarcerated—can lead to long-term negative outcomes that can harm public safety. This potential for harm must be weighed and incorporated into charging and sentencing policies to ensure that decisions are proportionate, equitable, and do less harm than good. Second, they must take ownership of their office's historical practices and recognize that upholding the values of public safety continues outside the courtroom. Caring about public safety means doing work on the back-end to ensure that barriers to reentry are removed so that people do not cycle back into the criminal justice system.

## WHY THIS MATTERS

As a starting point, we must recognize that the value of a broader prosecutorial focus on reentry lies in its potential to impact a large portion of justice-involved individuals. The

vast majority of people incarcerated in state prison- at least 95 percent - will be released back to their communities. Nationwide, roughly 641,000 people were released from state and federal prisons in 2015. Although fewer people are returning to prison,<sup>1</sup> the research still suggests that returning individuals face a host of barriers and challenges to reintegrating and rejoining their communities. These obstacles can create a cycle of criminal justice involvement leading to long-term negative public safety and justice outcomes.

In asking prosecutors to account for reentry and re-envision their role in reducing recidivism, there are a number of challenges that are readily apparent. Some of these challenges, such as bail reform, are well-known, albeit underexplored regarding their effect on reentry. Other challenges are specific to the individual, such as a lack of family support to rely on when returning to the community. Finally, there is a tension between the prosecutor's desire to zealously advocate for holding someone accountable all the way through sentencing proceedings, and to prepare them for reentry while still recognizing and championing the twin aims of public safety and equity. If prosecutors fail to recognize the harms that criminal justice involvement, let alone jail and prison time, can inflict over the long-term, this tension will continue to persist. Instead, offices must meet this tension head-on and recognize that policy shifts are sometimes necessary to remedy the long-term negative consequences of past practices.

### **1. Weigh Reentry Outcomes and Costs at the Inception of a Case**

*“Many people say that reentry begins at arrest or conviction. In theory, that is widely accepted as truth. But the reality of incarceration and doing time demands that the incarcerated person focuses solely on survival. After my last arrest in 1986, I went into survival mode. My mindset shifted and my behavior changed because it had to in order to survive. I had to stop thinking about my release, my freedom, my family, or my community. This is because,*

*after my arrest and arraignment, my bail was set so high that I knew I would not get released. From that point forward, I knew that my life, and my ability to survive incarceration, required me to stop thinking about anything other than what goes on in jail and prison. However, my family still had to figure out how to manage without me. I had two young children – a newborn daughter and five-year-old son, two sisters, one brother and a father, that had to worry about my survival as well as their ability to support me and care for themselves.*

*I hated going to court because I would travel by my community and knew that it was beyond my reach. I knew I would sit for hours in the bullpens, eating cold hard sandwiches, only to stand for three minutes in front of a judge, while my attorney and assistant district attorney checked their calendars for the next available court date. The result—nothing. Another day of getting up extremely early and just hoping to get on the early bus back to Rikers Island, so that I could be back in my housing area before the shift change. That was where my focus was—Rikers, my housing area, and all that it took to survive in that facility. But this mindset and approach to managing my detention was necessary because it allowed me to survive mentally and emotionally.”*

*-Stanley Richards*

Stanley's experience tells us that the front-end of the criminal justice system is not equipped to address or incorporate reentry planning. From cash bail and pretrial detention policies that can lead to coerced pleas, to the data on pretrial detention and increased recidivism rates, we have an acute understanding of how the front-end of the system operates— “the process is the punishment.”<sup>2</sup> When viewed through Stanley's experience and the prism of reentry, it is hard to reconcile the narrative that reentry begins at conviction (or even arrest) with the reality that a person charged with a crime has to narrow their focus to basic survival; thinking about a reentry plan is the furthest thing from their minds.

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<sup>1</sup>Pew Report on Recidivism

<sup>2</sup>Malcolm Feeley.

What this means is that prosecutors must take a more holistic approach to their decision-making. They must be mindful of the toll their charging and bail policies take on people they prosecute and how these policies can operate to undermine someone's reentry prospects. Thus, as prosecutor offices begin to recognize the importance that their discretion plays in ensuring equitable public safety outcomes, they must recognize that the decision of whether to charge is the first point in the system where they can weigh reentry and recidivism risks and keep people from becoming unnecessarily enmeshed in the criminal justice system.

Prosecutors can help mitigate reentry challenges by exercising their discretion to prevent people from entering the criminal justice system in the first instance. Offices should craft responsible charge declination policies that take into account historical inequities regarding the policing of communities of color, such as discrepancies in marijuana arrest rates among blacks and Latinos.<sup>3</sup> Similarly, offices should account for research on cash bail and pretrial detention which shows that cash bail perpetuates a two-tier system of justice that penalizes the poor. Studies show that even when bail is set as low as \$500 or less, nearly 40 percent of people stayed in jail for at least three days.<sup>4</sup> Additionally, research shows that pretrial detention, even for as little as 2 to 3 days, can increase someone's risk to commit new crimes before trial.<sup>5</sup>

Sometimes, these assessments may lead an office to conclude that the cost of a criminal conviction for certain offenses is simply too high, or that the impact of arrest and prosecution falls disproportionately on people of color and should be appropriately curtailed. In other

instances, considering the costs of reentry may include assessing the full array of direct and collateral consequences of a criminal conviction *before* deciding whether to institute criminal charges against someone. In both instances, the prosecutor may decide to fashion a charging and declination policy that categorically declines certain classes of offenses.

In offices across the United States, prosecutors are beginning to engage in this calculus to refine their bail policies. In New York, the Brooklyn District Attorney's Office implemented a new bail policy under which release without bail became the default presumption for most misdemeanors.<sup>6</sup> The Office's misdemeanor jail admissions to Rikers Island declined 43.3 percent on an annual basis, and nearly 58 percent overall since the policy's implementation in April 2017.<sup>7</sup> In Philadelphia, the District Attorney's Office announced a new policy declining to seek cash bail for 25 specific offenses.<sup>8</sup> A study by criminologists from George Mason University and the University of Pennsylvania found that 1,700 fewer defendants were detained pending their first hearing; a 23 percent increase in defendants released on one's own recognizance (ROR), without any monetary bail, or with other supervisory conditions; and no detectable effect on pretrial misconduct.<sup>9</sup>

Offices are also becoming sensitive to the massive costs associated with a criminal conviction and are using their discretion to craft sensible charge declination policies. For instance, the Manhattan District Attorney's Office announced charge declination policies for fare evasion cases.<sup>10</sup> The Manhattan, Brooklyn, and Philadelphia district attorneys' offices have also announced declination policies for

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<sup>3</sup>Drug Policy Alliance Report

<sup>4</sup>Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, Jan. 8, 2017, <https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Stevenson%20Job%20Market%20Paper%20Jan%202016.pdf>.

<sup>5</sup>The Arnold Foundation, *Hidden Costs of Pretrial Detention*.

<sup>6</sup>Twitter Statement, Eric Gonzalez, June 13, 2017.

<sup>7</sup>Press Release, Brooklyn District Attorney's Office, *Brooklyn Records the Lowest Number of Homicides in 2018 as Detentions on Bail and Prosecutions of Drug Offenses Decline Dramatically*, Dec. 27, 2018, <http://brooklynda.org/2018/12/27/brooklyn-records-the-lowest-number-of-homicides-in-2018-as-detentions-on-bail-and-prosecutions-of-drug-offenses-decline-dramatically/>.

<sup>8</sup>Press Release, Philadelphia District Attorney's Office, *Larry Krasner Announces End to Cash Bail in Philadelphia for Low-Level Offenses*, Feb. 21, 2018, <https://medium.com/philadelphia-justice/release-after-one-year-the-reduction-of-cash-bail-in-philadelphia-for-low-level-offenses-found-a-13448516a5bf>.

<sup>9</sup>Press Release, Philadelphia District Attorney's Office, *After One Year, the Reduction of Cash Bail in Philadelphia for Low-Level Offenses Found a Success*, Feb. 19, 2019, <https://medium.com/philadelphia-justice/release-after-one-year-the-reduction-of-cash-bail-in-philadelphia-for-low-level-offenses-found-a-13448516a5bf>.



marijuana possession cases.<sup>11</sup> These policies acknowledge that the costs associated with conviction outweigh the societal or public safety benefits, and they account for the historical racial imbalances found in prosecutions for marijuana possession. Likewise, in Cook County, Illinois, State’s Attorney Kim Foxx announced that her office would raise the bar for felony retail theft charges from \$300 to \$1,000.<sup>12</sup> Thanks in part to this policy change, incarceration rates for Foxx’s office declined 19 percent from 2017 to 2018, with no corresponding increase in crime rates over that same period.<sup>13</sup> The decisions by these offices to decline charging and implement bail policy restraint reflect a decision to value reentry, by not imposing the costs associated with it on people in the first place.

## 2. Reimagine sentencing and expand the notion of who counts as a victim

*“At the end of my nearly two years of going back and forth to court, my case was adjudicated and I was sentenced to NY State prison. My sentence and this entire process never felt like it was about accountability or the victim. Every court date and appearance felt like it was about the prosecuting attorney’s pursuit of punishment. It never felt like my crime and sentence was connected to the broader safety of my community or my accountability for the harm I caused in my community. This sentence and every day in jail and prison was in the pursuit of furthering the punishment by truly connecting all of the stakeholders in this process. So I lived in jail and prison in survival mode never thinking about the harm I had done or the harm I caused my family to experience. The process felt like and was experienced as a set of interconnected people, yet we were all disconnected – the victim, myself, my family, my community, and the prosecutor. When we all see each other as*

*connected in cause and effect, we can begin to align our procedures to account for not only the immediate but the short and long term impact of our behavior and decisions.*

*When I began to let my guard down and to see the connection between my behavior, viewpoint, and potential opportunities to my community and society at large, it allowed me to shift my approach from the survival of incarceration and doing my time to my transition and post-release. I started thinking about what I would do if I got released on my first parole board. Where would I live? How would I get a job? These questions generated urgency in me, because I had nowhere to go. I also needed to repair my relationship with my children. My sister was caring for my son, and the agreement with ACS barred me from living with her. I had a daughter whom I had not seen in four-and-a-half years. They were carrying the weight of my convictions, and I needed to figure out how to get a job and provide for them, and for my wife and her young child.”*

The sentencing process is a missed opportunity to begin the reentry process for incarcerated people and their families. Too often, prosecutors approach sentencing as a chance to “hammer” a defendant with a long sentence. This is not surprising given that sentencing is the final phase in the criminal process, where heightened adversarial instincts can lead to a desire to argue for a lengthy period of incarceration. But what if sentencing and holding someone accountable was not synonymous with unmitigated severity? What would a sentencing process look like if it asked prosecutors and judges to account for a person’s individual risk factors and designed a reentry plan to be implemented in prison, which would help mitigate these

<sup>10</sup>Press Release, Manhattan District Attorney’s Office, District Attorney Vance to End Criminal Prosecution of Approximately 20,000 Low-Level, Non-Violent Misdemeanors Per Year, June 30, 2017, <https://www.manhattanda.org/district-attorney-vance-end-criminal-prosecution-approximately-20000-low-level-non-vio/>.

<sup>11</sup>Press Release, Manhattan District Attorney’s Office, Tomorrow: D.A. Vance Ends Prosecution of Marijuana Possession and Smoking Cases, July 31, 2018, <https://www.manhattanda.org/tomorrow-d-a-vance-ends-prosecution-of-marijuana-possession-and-smoking-cases/>; Press Release, Brooklyn District Attorney’s Office, Low-Level Prosecutions in Brooklyn Plunge by over 91% This Year as District Attorney’s Office Expanded Declination Policy, July 27, 2018, <http://www.brooklynda.org/2018/07/27/low-level-marijuana-prosecutions-in-brooklyn-plunged-by-over-91-this-year-as-district-attorneys-office-expanded-declination-policy/>; Philadelphia District Attorney’s Office, New Policies Announced February 15, 2018, <https://www.documentcloud.org/documents/4415817-Philadelphia-DA-Larry-Krasner-s-Revolutionary-Memo.html>.

<sup>12</sup>

<sup>13</sup>Community Partners, Sentences of Incarceration Decline Sharply, Public Safety Improves During Kim Foxx’s Second Year in Office, July 2019, <https://www.thepeopleslobbyusa.org/wp-content/uploads/2019/07/2019-07-Final-Report-Kim-Foxx-ForPrint.pdf>.

risks? What would a sentencing process look like if it acknowledged that 95 percent of people return to their communities, where they need treatment, employment and educational training to be successful?

A reimagined sentencing process has the potential to shift reentry planning to the fore and acknowledge that the individual being incarcerated is a person with needs that must be addressed. It also forces a shift in mindset: instead of punitive excess being the end goal, a sentencing process that considers reentry planning recognizes the humanity of the person being incarcerated and what they need for successful reintegration in the future. While this might sound radical, the reality is that much of the information we need for reentry planning is already being collected throughout the life cycle of a criminal case. For instance, in some jurisdictions, people are interviewed and given risk assessment tools upon arrest. In most jurisdictions, probation or community corrections agencies create reports about the person being sentenced that are shared with the court, the prosecutor, and defense counsel.

Some form of this exists in Oregon, which revisited its approach to sentencing proceedings after participating in the national Justice Reinvestment movement to reduce reliance on prison and to reinvest those cost savings back into local communities.<sup>14</sup> In 2014, county officials enacted the Multnomah County Justice Reinvestment Program (MCJRP), which resulted in (i) case management and treatment planning beginning immediately after someone is arrested, and (ii) people facing presumptive prison sentences being offered intensive supervision instead.

The hallmark of Multnomah County's new model is "informed sentencing,"<sup>15</sup> a program that utilizes transition planning and Case

Management and Treatment Planning. Upon arrest, people charged with felonies carrying presumptive prison sentences are screened by the district attorney's office for eligibility. If eligible, a probation officer assesses their recidivism risk, and this information is shared with the court, the prosecutor, and defense counsel. Additionally, a probation officer will customize a detailed supervision and treatment plan based on the assessment, which can include additional services proven to reduce recidivism.<sup>16</sup> This case plan is created before sentencing and discussed at a judicial settlement conference, where it can be further altered to a person's risks and needs.<sup>17</sup> Individual plans can include housing, alcohol and drug treatment, mental health services, mentoring, and employment or education services.<sup>18</sup> Consistent with best practices, these individual supervision plans are the result of a collaboration between probation officers, the courts, prosecutors, and defense counsel, resulting in supervision conditions that are tailored to a person's criminogenic risks and needs.<sup>19</sup>

A preliminary evaluation of the MCJRP shows promising results. The initial rate of prison sentences for MCJRP participants dropped 49 percent compared to a pre-MCJRP control group, and only 33 percent of MCJRP participants were imprisoned in the year after sentencing compared to 58 percent of the control group. All told, this is a 42 percent reduction in the rate of imprisonment. The same study also found that MCJRP participants were being safely supervised in the community, and concluded that they posed no greater risk to public safety than people sentenced to community supervision prior to MCJRP implementation. Further, there was no significant difference in their 12-month re-arrest rates or the average number of arrest incidents. In fact, MCJRP participants had the same or better recidivism rates when compared to the control group who

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<sup>14</sup>Justice Reinvestment refers to data-driven approach to improving public safety, which generally reallocates monies spent on corrections and uses it to fund community programs that will end the cycle of recidivism. See, e.g., Department of Justice Bureau of Justice Assistance, Justice Reinvestment Initiative, [https://www.bja.gov/Programs/jri\\_background.html](https://www.bja.gov/Programs/jri_background.html).

<sup>15</sup>District Attorney of New York Press Release, et al., Subway Fare Evasion Prosecutions Down 96% in First Year of New Policy, Feb. 1, 2019, <https://www.manhattanda.org/subway-fare-evasion-prosecutions-down-96-in-first-year-of-new-policy/>.

<sup>16</sup>Id.

<sup>17</sup>Id.

<sup>18</sup>Id.

<sup>19</sup>Id.

was supervised on traditional probation or post-prison release supervision.<sup>20</sup>

Finally, what would sentencing look like if prosecutors recognized the harm that incarceration can impose on the family of the defendant? Prosecutors must not lose sight of the fact that their decision to seek incarceration has lasting effects that can be detrimental to public safety. As the United States has embraced mass incarceration, families have been hurt: statistics suggest that 1.7 to 2.7 million children have experienced parental incarceration at least once in their lifetime.<sup>21</sup> Family members of the incarcerated are often “hidden victims,” as the harmful effects of incarceration are not always immediately felt. Although this is difficult to accurately study, we know that children of incarcerated parents are exposed to a range of risk factors,<sup>22</sup> including material hardship and family instability.<sup>23</sup> The defendant may need to be held accountable, but what of his or her family? They are community members to whom the prosecutor is also accountable, and who are in a sense, victims of the process.

This is yet another opportunity for prosecutors to reframe the purpose of sentencing. Rather than approaching it as the culmination of punitive excess, prosecutors can expand the notion of who counts as a “victim” and connect the children and families of the incarcerated to services they may need. In many cases, the information the family needs may be readily available through victim services agencies. In other instances, the prosecutor’s office may need to partner with community reentry organizations. Regardless, these services should be seen as investments in the support structures that people—like Stanley—will eventually rely upon. They should be viewed as long-term investments that will reduce the likelihood of recidivism. Lastly, the acknowledgment that incarceration can harm families is more than just smart public policy—it is a humane response to the decision to incarcerate.

### 3. Support Prison Education Initiatives

*“My reentry journey didn’t really begin until the DOCCS program committee helped me figure out what I would do for a job and activities while I was locked up. I was encouraged to go to school and seek my GED. I accepted that recommendation and started on my journey to obtain my GED. I studied hard and really enjoyed learning and exploring the world and new things I had not been previously exposed to, or chose to think about. But even then, I refused to think about release. I had it set in my mind for nine years, so I wasn’t even going to look at a calendar. Time in terms of days, weeks and months did not exist in my mind. My mental survival still depended on my ability to block out everything about the external world. I would look and read about what was going on in the external world, but it was only to peek into that world and see how things are going. It was not to think about how I would reconnect with that world and live in that space.*

*But even while I kept my head down, I never quit on my education. I eventually got my GED and was encouraged to attend college. At this point in my life, I found that I liked and enjoyed learning, exploring, and engaging intellectually. I signed up for college and was accepted. Shortly after starting college, I was assigned to work in the Pre-Release Center (now called Reentry Centers). We helped people prepare for Parole Board hearing by teaching them how to present at the board; what paperwork they should have available to show what they have done while incarcerated. We also helped them identify resources they would need in the community after release. We explored the various service providers who work with formerly incarcerated people and help them find employment, housing, drug treatment, etc. It was at this point in my incarceration that I started to shift my thinking about reentry and ask the question - what will I do when I get released?”*

At the back-end, prosecutors must do more to track the trajectory of people they sentence. Prosecutors should elevate their ability to

<sup>20</sup>Id.

<sup>21</sup>Eric Martin, Hidden Consequences: The Impact of Incarceration on Dependent Children, National Institute of Justice, May 2017, .

<sup>22</sup>National Conference of State Legislatures, Children of Incarcerated Parents, March 2009.

<sup>23</sup>Id.

### Inside Criminal Justice: A New Model for Educating Prosecutors



Third ICJ graduation at John Jay College of Criminal Justice. March 2019.

Inside Criminal Justice, a joint initiative of The Manhattan D.A. Academy, the Institute for Innovation in Prosecution at John Jay College of Criminal Justice, and the Center for Justice at Columbia University, is a semester-long seminar comprised of individuals incarcerated at Queensboro Correctional Facility and prosecutors from the Manhattan District Attorney's Office.

The course is intended to encourage in-depth and respectful conversation about the criminal justice system, culminating in jointly-authored policy proposals. The objective is to think together about a justice system that emphasizes public safety while supporting healthy development from birth to old age and makes engaged citizenship possible for everyone.

The course reviews and integrates current psychological research on the role of social factors in healthy and unhealthy personal, community and societal outcomes and considers how this knowledge can be translated into action to promote personal and societal health.

foster multi-agency partnerships to tackle reentry barriers prior to and upon reentry. One place to start is by supporting correctional education programs, which are a cost-effective way to reduce recidivism. The data shows that

people who participate in prison education programs are less likely to return to prison and more likely to obtain employment after their release.<sup>24</sup> These education programs also provide additional benefits in the form

<sup>24</sup>RAND Corporation, How Effective is Correctional Education, and Where Do We Go From Here?, 2014, [https://www.rand.org/pubs/research\\_reports/RR564.html](https://www.rand.org/pubs/research_reports/RR564.html).

<sup>25</sup>Kathleen Bender, Center for American Progress, Education Opportunities in Prison Are Key to Reducing Crime, Mar. 2, 2018, <https://www.americanprogress.org/issues/education-k-12/news/2018/03/02/447321/education-opportunities-prison-key-reducing-crime/>.

<sup>26</sup>Vera Institute, Building Effective Partnerships and Programs for High-Quality Postsecondary Education in Correctional Facilities, Dec. 2015, [https://storage.googleapis.com/vera-web-assets/downloads/Publications/making-the-grade-postsecondary-education-programs-in-prison/legacy\\_downloads/EAPSE-Factsheet-v5.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/making-the-grade-postsecondary-education-programs-in-prison/legacy_downloads/EAPSE-Factsheet-v5.pdf).



of reduced violence in prisons, increased personal income, and lower unemployment, all of which impact a person's ability to succeed upon leaving prison.<sup>25</sup> However, of the more than 2.3 million people incarcerated in the United States, a large portion of them lack access to corrections education programming. The Vera Institute reports that as of 2015, only 35 percent of state prisons provide college-level courses, and during the 2009 to 2010 academic year, only six percent of the total state prison population in the United States participated in postsecondary education programs.<sup>26</sup>

This is an arena where prosecutors have traditionally been absent and where there is considerable room for offices to pursue cross-agency partnerships to improve reentry programming. In New York, the Manhattan DA partnered with Governor Andrew Cuomo and the Department of Corrections and Common Services to invest \$7.3 million in educational programming and reentry services in seventeen state prisons over the next five years. People can earn associate degrees, bachelors degrees, or industry-recognized certifications through courses offered by a consortium of colleges, including Bard, Cornell, Medaille, Mercy College, Mohawk Valley Community College, NYU, and SUNY Jefferson. Importantly, there are no restrictions on participation—no type of crime or conviction would exclude someone from participating. The only requirement is that a person has no more than five years remaining on their sentence. That is because the program is tailored by design to cover New Yorkers who are on that reentry journey, and who in just a few years will be expected to compete in the labor market with community members who were not incarcerated.

We recognize that not all offices have the financial resources to fund prison education programming. However, as public officials, prosecutors still have powerful political voices, whether alone or as part of their local district attorneys association. They must use

their voice to educate the public about the effectiveness of prison education programs in promoting public safety and better outcomes for people returning to their communities. This includes using their political platform to lobby lawmakers about the importance of funding these initiatives.

As part of these efforts, prosecutors can urge lawmakers to collect better data on education and other vocational programs by prison location, to better understand which prisons are successful at reducing recidivism. Improved data collection and partnering with corrections agencies is vital, not just to understanding what programs work to reduce recidivism and improve reentry, but to helping prosecutors make sentencing recommendations when they determine a sentence of incarceration is still appropriate. In the long run, this data can be used by prosecutors, probation officers, and judges to determine appropriate prison placement to ensure that people have meaningful reentry programming.

#### 4. Forge community partnerships

*“After I got out of prison, my now wife Tara and I faced real challenges. We struggled to find work and consistently put food on the table or pay our light bills. The only thing I knew was the streets, but I knew that if I went to the streets, I would end up back in prison, hurt and disappoint Tara and lose my children, my sisters and brother, and father again. At one point in my journey, Tara and I were down to our last one hundred dollars, and our light and gas bill was overdue, we needed food and the lights were eventually cut off. Tara’s mom came to visit and noticed the lights were out. She knew that we didn’t have electricity or gas and took our daughter until we could figure our situation out. She also offered to help us pay the bill and repay her when we get on our feet. It was at this lowest point that Tara’s mom’s phone rang. It was The Fortune Society, calling me to interview for a counselor position there. I went to the interview some time ago, and it went really well. Three*

<sup>27</sup>Ingrid A. Binswanger, et al., “Release from Prison—A High Risk of Death for Former Inmates,” *New England Journal of Medicine*, Jan 2007, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2836121/>.

<sup>28</sup>Anne Milgram, et al. Kennedy School paper.

<sup>29</sup>Urban Institute, Investing Justice Resources to Address Community Needs, Feb. 2018, [https://www.urban.org/sites/default/files/publication/96341/investing\\_justice\\_resources\\_to\\_address\\_community\\_needs.pdf](https://www.urban.org/sites/default/files/publication/96341/investing_justice_resources_to_address_community_needs.pdf).

*days later, I received another call asking me if I was interested in working at Fortune Society. I put my hand over the phone and let out a deep scream of excitement. I then calmly returned to the phone and said 'yes,' without asking about money or anything else. The caller then asked if I want to know the salary. I said yes, and she said \$21,000. I had never thought that I would make \$21,000, let alone work counseling others, since so many other New York based non-profits working with criminal justice people turned me down because I didn't have the professional work experience. I had always thought that nobody would give a guy without a work history an opportunity to give back and make a career. But I was wrong."*

Stanley's reentry journey was a success in part because of The Fortune Society and the opportunity it afforded him to use his unique experience to counsel others. One important lesson to draw from his experience is that supporting community organizations and forging community-based partnerships can help formerly incarcerated people overcome challenges as they transition from jails and prisons. At the back end, criminal justice actors need to create conditions that foster the growth of community-based responses to reentry.

Thus, prosecutors should strive to bring different actors together to highlight the need for diverse community partnerships that can begin to address the multi-faceted challenges people face when they leave jails and prisons. Reentry is a period when returning people are most vulnerable: studies show a high risk of death, as well as emergency room usage, in the weeks immediately following release.<sup>27</sup> We are also beginning to recognize that improving public safety cannot be solved in a vacuum, because people who become justice-involved are often battling a multitude of socioeconomic factors that increase the risk of involvement in the justice system.<sup>28</sup> These factors often exist outside the purview of the criminal justice system, so prosecutors must think broadly about community partnerships when addressing reentry barriers at the back end.

The good news is that we also have a growing understanding of what works. Research on successful community programs shows the importance of (i) partnering with

organizations that are truly integrated into the neighborhoods they serve; (ii) building support for these programs through various strategies, including site visits and relationship building; (iii) collaborating with corrections agencies to obtain buy-in and support for reentry programming; and (iv) breaking down silos to connect community partners and their work.<sup>29</sup>

We also have examples of cross-system partnerships that have the potential to break down reentry barriers and reduce the likelihood of someone cycling back into the criminal justice system after release. The Manhattan DA Health Initiative is a pilot partnership with the New York City Department of Health and Mental Hygiene. The Manhattan DAO has invested \$3 million in DOH's Health Justice Network, which exists exclusively to connect formerly incarcerated individuals with proper and stable medical care. This is the largest single investment in primary care for reentering individuals that has ever been made. Under this pilot program, three clinics in underserved neighborhoods were selected to receive specialized DOH training to improve the provision of services to reentering individuals. Consistent with the research showing that formerly incarcerated people bring value to community partnerships, the Manhattan DAO and DOH have hired peer navigators, who are formerly incarcerated themselves, to work out of these clinics and help newly reentering New Yorkers access primary care and navigate what can be an incredibly complicated system – even for those without a criminal record.

On the housing front, the New York City Housing Authority, New York Department of Corrections, and a host of service providers including Fortune Society, have partnered to create the Family Reunification Project (FRP). It allows people with certain categories of criminal convictions to engage in individualized treatment plans in exchange for the opportunity to be added back to their family's NYCHA lease. The FRP's goal is to provide the formerly incarcerated and their families with stable housing environments, which can lower the likelihood of a person returning to the criminal justice system. According to a Vera Institute study of the FRP during its pilot phase, some participants reported that the FRP helped counteract the overwhelming and often

frustrating feelings they had as they navigated the reentry process, while other participants expressed relief and happiness at having the opportunity to live with their family without worry or fear. Notably, all participants expressed the importance of having safe and stable housing and the opportunity to reunite with their family, who served as a means of support for them.

### 5. Listen and learn as a means to culture change

*“My reentry success was a result of the education foundation I obtained while incarcerated, family and loved ones. I found myself in a housing crisis as soon as I was released. I felt like I might fail my post-release test and end up back on the streets. I did not want this to happen, because I knew I would go back to prison. My housing plan to live with my aunt fell through when she became ill and required a live-in home health aide. I ended up meeting my wife (Tara) and she offered to allow me to move in with her. Luckily for me, I was fortunate to have that relationship turn into 28 years of marriage.*

*Tara is my emotional rock and foundation. She, her family and Fortune never once judged me on the crime I committed or the life I lived on the street. They flat out saw me for who I could be and helped me—helped us—as I navigated reentry. There were still many challenges: I had to rebuild relationships with my children, who I had not seen in some time. My brother and sister were cycling through jails and the streets, where they used drugs, and my father was an alcoholic. But it was due to Tara and her support that I pulled through. Her family supported us financially and emotionally during hard times. My success is due to her unconditional, patient love and support. These challenges were never discussed with my parole officer. I survived and thrived because of her—because of us.”*

Stanley’s successful reentry was not the product of any service linkages or assistance received from his parole officer. Rather, he struggled on his own to rebuild his support network, and he relied on his family to break down the reentry

barriers and emotional challenges he faced. Although Stanley’s story is unique, there is a common strand of truth here: we need to listen to and learn from people who are incarcerated and formerly incarcerated to better understand the challenges they face as they reenter society. Listening and learning from incarcerated and formerly incarcerated people is a valuable way for offices to understand the real challenges that people face as they prepare to return to their communities.

One example of a program that unites prosecutors and incarcerated people is Inside San Quentin, a forum that brings together prosecutors from the San Francisco District Attorney’s (SFDAO) Office and people incarcerated at San Quentin. The forum allows prosecutors from the SFDAO to regularly travel to San Quentin and meet with the incarcerated to discuss incarceration, rehabilitation, and reentry. The genesis of the forum started when a prosecutor from the SFDAO attended a general newspaper meeting at San Quentin and heard people discuss their personal insights about the role incarceration played in their lives and their plans to impact change outside of prison.<sup>30</sup> The forum was so successful that the SFDAO created the Formerly Incarcerated Advisory Board, which includes SFDAO prosecutors and formerly incarcerated men and women, many of whom were sentenced to life in prison before being granted parole.<sup>31</sup> The Board meets regularly to discuss the challenges that reentering people face and how to meet their needs to promote successful reintegration.

Attempts to listen and learn from incarcerated and formerly incarcerated people must be viewed through the lens of culture change. By bringing together these formerly adversarial groups to have a conversation about what happens *after* a conviction and a sentence of incarceration, prosecutors can nudge their offices toward a paradigm shift, where their staff consider reentry barriers at all crucial aspects of the life cycle of a criminal case. Culture change vis a vis reentry may seem amorphous and difficult to quantify or measure but it is important: without office

<sup>30</sup>San Francisco District Attorney’s Office, Partnering With San Quentin: The SFDA/San Quentin News Forum, <https://sfdistrictattorney.org/partnering-san-quentin-sfdasan-quentin-news-forum>.

<sup>31</sup>San Francisco District Attorney’s Office, Report on the Formerly Incarcerated Advisory (FIA) Board: The Inspiration, Inception, and Impact, [https://sfdistrictattorney.org/sites/default/files/Formerly%20Incarcerated%20Advisory%20Board%20Report\\_1.pdf](https://sfdistrictattorney.org/sites/default/files/Formerly%20Incarcerated%20Advisory%20Board%20Report_1.pdf).

buy-in, any attempt to implement reentry policy reforms will likely fail. While a full evaluation of implementation strategies designed to change prosecutorial culture is beyond the scope of this paper, it bears noting that prosecutors must set the tone at the top and demonstrate their commitment to emphasizing the importance of reentry success and anti-recidivism initiatives. This can be done through forums like the one implemented by the SFDA, which can be used to educate prosecutors (and even other policymakers) about the complex processes and barriers that people must navigate after leaving prison, as well how prosecutorial discretion can cause people to encounter many of these processes and barriers.

## CONCLUSION

There is a growing recognition of the power of the prosecutor's ability to reform the criminal justice system. Prosecutors have always cared about public safety, but they have traditionally seen their role as concluding when a sentence is handed out and a case is closed. But the time has come for prosecutors to expand the notion of what their jobs entail. When people whom the prosecutor has convicted—and sometimes has sent to prison—are unable to find success in their communities, thereby increasing the likelihood that they will cycle back to jail or prison, no one is made any safer. Public safety and community betterment are not served by ignoring what happens to people after a prosecutor obtains a sentence. If part of a prosecutor's job is to improve public safety, they should necessarily care about reentry and reducing recidivism in all phases of the criminal justice system.

Thus, as part of this movement, prosecutors must ensure that their reform work spans the entire spectrum of the system. Prosecutorial power and discretion can shrink the front door, through the declination of cases and the creation of off-ramps to divert people who do not belong in the system. Even if the office determines that criminal charges are appropriate, this power—to critically assess whether someone is truly an appropriate candidate for criminal justice sanctions—must not be abandoned in favor of punitive excess. Prosecutors must not lose sight of the long-term negative effects that criminal justice involvement imposes on people and communities.

At the back-end, prosecutors should take care not to confuse accountability with severity when they are seeking to resolve a given case. In practice, this means that offices must ensure that their office policies incorporate reentry and anti-recidivism concerns into the sentencing phase of their cases, so that people are better prepared to confront the challenges they will face as they reenter society. This also means widening the scope of their lens to account for the collateral damage that a conviction and incarceration has on a defendant's family members. Finally, offices must accept responsibility for the long-term negative effects of a decision to incarcerate, both by supporting the expansion of prison education and job training programs and by partnering with community organizations who can provide reentry support services to people leaving jails and prisons.







# MEMBERS OF THE EXECUTIVE SESSION

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