Finding Humanity

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I. The Beginning: Life as a Line Prosecutor in the Northern District of Iowa

A federal prisoner once told us in the late 1990s that "IOWA stands for 'I Oughta Went Around.'" He was right. And we were proud of our reputation. "We" at that time was the U.S. Attorney's Office for the Northern District of Iowa. Though a small district, we were notorious for being one of the toughest districts in the country. We offered True Bills to the grand jury that contained each statutory mandatory minimum sentence[1] we could prove, even if that proof required considerable effort on our part. It was not unheard of for us to present 100 witnesses or more to the grand jury in complicated cases. We filed every available recidivist enhancement under 21 U.S.C. § 851, exponentially increasing drug defendants' sentences based upon prior felony drug convictions.[2] We delighted in creating new case law that expanded the ever-growing list of "crimes of violence"[3] under the Armed Career Criminal Act[4] and the career offender and armed career criminal sentencing guidelines.[5] Under the Department of Justice administrations at the time, these efforts led to dramatically increased sentences. This was true across the country, but it was overwhelmingly true in our small district.

Even for those defendants who opted to cooperate with us, we offered no sentencing immunity.[6] Indeed, when a defendant opted to cooperate, at the time of sentencing we often moved only under USSG § 5K1.1 (allowing the sentencing judge to reduce the sentencing guidelines only), but not under 18 U.S.C. § 3553(e) (allowing the sentencing judge to reduce the sentence below a statutory mandatory minimum).[7]

Unsurprisingly, we were consistently at war with some of our district and circuit judges who disagreed with the Department of Justice's policies, and particularly disagreed with the results of our district's interpretation of them.[8] Outside the courtroom, we were vilified in the media—at times with exaggerated and untrue facts—for criminal prosecutions such as the 2008 "Postville" immigration raid at the Agriprocessors slaughterhouse and meat packing plant, one of the largest worksite enforcement actions in the history of our country.[9] Protestors targeting our office were not common, but neither were their chants so rare that, when heard, anyone was surprised.

Some of those unpopular decisions were the right ones. We did not shy away from the difficult or the unpopular. There is no question very dangerous people found themselves targeted by the Northern District of Iowa U.S. Attorney's Office: murderers, sexual predators, violent gangs.[10] But most cases fell into a grayer area. Worthy of prosecution? Sure. Worthy of decades in prison, or one of the frequently imposed life sentences? Probably not.

We were occasionally asked by defense attorneys to help explain the dangerous realities of our district to their clients. Defendants accustomed to the state penal system could not wrap their heads around our district's startlingly different practices. We would be called upon by defense counsel to meet with the defendant, in the presence of his or her attorney and our case agent, to give what was known in our district as "the worst case scenario" speech. It went like this: "You face a mandatory minimum sentence. If you choose not to cooperate, and not to plead guilty, you are facing a horrendously long sentence. If you take this case to trial, you are very likely to be convicted. You have until the end of this week to make a decision. Please consider our offer carefully. We do not bluff. We are not kidding." Some defendants listened. Some did not. The conversations I remember most are the ones with small-time drug defendants who had multiple, but minor, prior drug conviction enhancements. Once a guilty verdict was rendered in their case, their life sentences were assured.

I still remember those long ago conversations. Sometimes I work up the courage to track those men and women in the Bureau of Prisons Inmate Locator. In search after search, I find these men and women are older now, often serving time in a medical center, which means they are in particularly poor health, but they are still stamped with the "LIFE" designation in the place of a release date. In those, and hundreds of other moments that wash over me daily as I prepare for sentencing hearings, or read case law arising from my old district, or sit on the bench facing contrite defendants and their anguished families, I wish things could have been different—that I could have been different.

But in those days as a line prosecutor, I moved past moments of sadness for defendants who found themselves in my crosshairs. My colleagues and I gathered to our chests like Medals of Honor the frustration, hate, bitterness, and anger heaped upon our heads from the defendants, the public, the legal community, and fragments of the judiciary. It only made us bond more closely as an office, sharpen our swords, and march the same path forward over and over from the embattled trenches. Most of us knew nothing different. We were almost entirely lifelong Northern District of Iowa prosecutors who were surrounded by other lifelong Northern District of Iowa

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prosecutors. And, for good or for bad, there was nothing any criminal defendant, attorney, or judge could do about our prosecutorial choices. What we were doing fell squarely within the parameters of the Thornburgh Memo,[11] the Reno Memo,[12] and the Ashcroft Memo[13]—all of which outlined for prosecutors a general duty to charge and to pursue the most serious, readily provable offense in any federal prosecution. What was "readily provable" to the Northern District of Iowa U.S. Attorney's Office was that which could be proved with enough time and effort. Nobody could criticize our work ethic, nor challenge that we could indeed prove what we alleged, be that a crime or a sentencing enhancement of some type. And for our activities that fell outside the confines of the Attorney Generals' memos, we were backed by case law granting us enormous discretion in making these very types of decisions.[14]

II. The Middle: Life as a United States Attorney

In this frayed and inhospitable environment I came of age as an attorney. I joined the office in 1996 as a 23-year-old law clerk. I would leave the office sixteen years later as the departing United States Attorney. My entire career, until I was appointed as a United States District Court Judge in the *Southern* District of Iowa, had been spent in one office.

It was in this office that I would have an opportunity to begin exploring humanity. Over my years as an Assistant U.S. Attorney, my colleagues and I attempted to soften the hardest stances of the office. Individually, and sometimes collectively, we advocated to upper management for particular defendants or against particular policies. We had little success. The policies of the district were too well entrenched, and no Attorney General, no President, ever compelled the district to change. President Barack Obama and Attorney General Eric Holder were different. They would plant a kernel of humanity in each district, and direct each U.S. Attorney to tend what sprung from the soil.

The Northern District of Iowa U.S. Attorney's Office understood with absolute perfection what it *could* do; what it lacked was an understanding of what it *should* do. As one of its long-term attorneys, I was steeped in its dogma and didn't use, what I now call, the "Should Principle." Understanding what you "should" do in any given scenario is much more difficult than the question of what you "could" do. "Could" is black and white. What does the case law say? What do the ethics rules require? What does the Department of Justice direct? Answers are found and memorized. Consistent positions are adopted. "Policy" becomes the excuse to uncomfortable criticisms and distressful fleeting—and not-so-fleeting—moments of doubt. When I became our U.S. Attorney, I was faced squarely with the question of "should." With a blank canvas before me, what "should" our office be doing? It was an overwhelming question for most of us in the district. It required skills that had not been tended or developed—and certainly not encouraged—under prior national administrations.

So there I was. Indoctrinated into the culture of the Northern District of Iowa administrations, but beginning to see the misery that routine incarceration of huge segments of our population wrought not only on the individuals, but also on the community at large. And then, in 2009, I met Attorney General Eric Holder. It was the type of meet-and-greet intended to introduce a general to one of his new troops. "Attorney General Holder, meet Stephanie Rose. She's from Northern Iowa." Simple, really. You smile at one another, exchange nonsensical and generic information, and both people walk away. At least, that's what typically happens. Instead, seeing that I was a career prosecutor, Attorney General Holder asked me for my opinion about an internal drug policy he had recently announced. I am not known for my subtlety, and my candor occasionally lacks diplomacy. I offered my honest opinion—at that time a mix of old dogma and embryonic new humanity. My opinion was not flattering. What I would later learn is that as soon as I left the room, Attorney General Holder turned to his staff and said, "I want her on my Advisory Committee."

I received my invitation to represent the Eighth Circuit on the Attorney General Advisory Committee (AGAC) soon thereafter. I cannot begin to describe how it felt to receive that call. To know that this administration did not want platitudes and lock-step agreement, but rather sought true and honest ideas about how to improve the administration of justice on behalf of all citizens of our country was momentous. This was an administration that welcomed feedback from those in the courtroom, from the men and women in blue, and from the communities impacted—both positively and negatively—by the Department of Justice and law enforcement in general. If the AGAC's advice really mattered, and if these leaders were willing to listen, change would necessarily follow. I had a chance to learn about and contribute to a nationwide criminal justice evolution, and I did not intend to waste the opportunity.

I served on the AGAC for my entire three-year United States Attorney career. Attorney General Holder renewed my term each time it was set to expire. In return, I was ever honest in my advice—"knee capping," another United States Attorney lovingly called my advice on one occasion. The AGAC burned bright with talented and dedicated men and women. There were days I felt tremendously unqualified to participate in the group. But my voice was heard, as were the voices of everyone else.

Uniquely, Attorney General Holder's AGAC more closely mirrored society than any group I had ever been fortunate enough to join. There were men and women, a range of ages, and different races, religions, and sexual orientations. There were career Department of Justice attorneys, those who had been in private practice, and those who had served as elected officials before they became U.S. Attorneys. Districts of all sizes and geographies were represented.

Upon this carefully balanced foundation, important questions would be considered. Was our country's

enforcement of laws racially or socioeconomically imbalanced? Was it out-of-step with research and data about recidivism? What could be done to assess and address abusers of law enforcement authority, to find workable solutions to remove those abusers, and to prevent abusers from developing again in the future? It was a group tasked with setting aside preconceived notions of punishment, considering new solutions to incarceration, working toward mending rifts in communities, and embracing change as needed and wise. Those tasks were not viewed lightly, but rather with the reverence the topics deserved.

Of course, the Department of Justice is part of the federal government. Resources would always be tight. Obscure and antiquated regulations would rear their ugly heads now and again. Terrorists, violent cartels, cybercrime, and fraud would absorb enormous time and resources of our nation's prosecutors. And although the AGAC had to tackle these issues periodically, our usual task was less ministerial and more innovator. What could we do with the knowledge gifted to us by our predecessors and with our own life experiences, education, training, and ideas? Our goals were building trust in law enforcement among underserved populations; concentrating penal resources on the truly dangerous, and finding a way to safely and successfully reintegrate non-violent inmates back into society; preventing terrorism by strengthening relationships among agencies and with the public; and fair and non-discriminatory sentencing. To achieve these goals, change was the mandate; "because we've always done it that way" was the hobgoblin of that change.

Attorney General Holder made sweeping changes during his six-year term as Attorney General.[15] The AGAC was often asked to weigh in on those changes. Among the early issues tackled by the Holder administration was the crack cocaine sentencing epidemic. On June 1, 2011, I testified next to Attorney General Holder before the United States Sentencing Commission. Together, we recommended retroactive application of the proposed amendment to the federal sentencing guidelines that would implement the Fair Sentencing Act of 2010.[16] Attorney General Holder would later evolve this guidance into a mandate to the United States Attorneys nationwide to stop charging mandatory minimum sentences and recidivist enhancements in the bulk of all types of drug cases—the Holder Memo.[17]

I was proud to serve under Attorney General Holder, and proud to have been entrusted to serve by President Barack Obama. I found both to be extraordinary leaders because they had the ability to listen, as well as to hear; and to speak, rather than simply to talk.[18] More importantly, they not only accepted critical thinking, they sought it out, utilized it, and made our criminal justice system better for having done so.

I absorbed what I learned in Washington, D.C., not only in the AGAC, but also in the alphabet soup of other committees to which I was appointed or which I chaired. I listened raptly as U.S. Attorneys from other districts spoke about their districts' policies and practices, so different from my own. I carried this accumulated knowledge back to my district, where I used it to rewrite some of the district's more inhumane policies. I extended olive branches to those the district had battled for many years. Some of my changes were popular among the attorneys on staff, such as declining federal referrals in non-violent cases better handled by state courts. Some were less popular with those same attorneys, such as expanded criminal discovery, sentencing immunity, and increased motions to reduce sentences for cooperating defendants. But I was resolute in my decision not to do what was easy, but rather what I thought was right, even when that resulted in hurt feelings among the colleagues I cared for as family. I grew, and I let my district grow, as much as I knew how at that time.

After three years, in 2012, I was asked to serve as a United States District Court Judge in the Southern District of Iowa. I packed my belongings and took my knowledge with me to the bench, leaving behind a district that was still a fragile sapling struggling to grow in the winds of change.

III. The Present: Five Years on the Bench

I was fortunate to find myself a new judge in a district the Federal Judicial Center had selected as one of five sites in the country for a post-conviction reentry court study.[19] I was doubly fortunate to immediately inherit the project as the district's newest judge. This was fine with me: my background made me uniquely interested in and suited to what some would term "social work." I spent the next several years meeting some of the most "high risk" men and women in our district after they were released from prison. I watched them struggle and fight for sobriety, acceptance, and a fresh start. Most of them failed. They died of a drug overdose, were charged in state court for home invasion robbery or attempted murder, or in federal court with drug trafficking crimes. But each defendant taught me something. And based upon what our team of probation officers, defense attorneys, prosecutors, and treatment providers learned during the experimental reentry court years, we began working to develop a better program. This brought us the impressive skills of Dr. Matthew DeLisi.

Dr. DeLisi, a professor at Iowa State University, is one of the most prolific and highly cited criminologists in the world, with most of his work focused on pathological criminality, psychopathy, self-control, offender/inmate behavior, and the genetics of antisocial behavior. Dr. DeLisi partnered with my new district's Probation Office to conduct comprehensive research using years of the district's accumulated data. He sifted through this data looking for key traits of the most violent and least violent offenders. His results were fascinating, and generally echoed the instincts I had developed over my time as a prosecutor, U.S. Attorney, and judge: having more arrests was bad, and arrests that started at a young age were worse. The type of crimes mattered: a bank robber or felon in possession of a firearm was a much more dangerous offender than a generic recidivist drug offender. Mental health struggles mattered.

Substance abuse mattered. An ability to finish school and hold down a job mattered. Long-term, stable, and healthy relationships mattered.[20]

Of course, none of that was particularly surprising—but the clinical evidence that supported my gut instinct gave me the courage to depart and vary downward in sentencing more frequently and to greater and greater degrees. President Obama's and Attorney General Holder's evolving policies that prevented prosecutors from pursuing mandatory minimum sentences in most cases ensured those departures and variances were possible. So I began to spend more time listening to defendants and considering their childhoods and juvenile indiscretions. Now, I look at how old they were upon their first arrest and how old they were when they first began drinking alcohol or using drugs. I look at their psychological profiles. I look at their school and job records. I look carefully at their criminal history and what it shows or doesn't show. And then I decide under 18 U.S.C. § 3553(a) on a sentence I believe is "sufficient, but not greater than necessary."[21]

Today, I worry that the current and future administrations will erode the policies carefully developed under President Obama and Attorney General Holder. If those policies continue to crumble,[22] much of what I and others like me have learned, will become moot. Humanity will be lost. It is that fear that keeps me up at night, far more than any fear of the men and women who stand before me each day. Most of those men and women are not dangerous. Locking away immense segments of our population unnecessarily is.

IV. A Plea for a Humane Future

I carry in my head a list of prison sentences I wish I had the power to commute. Some I imposed during my early months on the bench. Some were imposed at my request when I stood before another United States District Court Judge as a prosecutor or U.S. Attorney. The men and women on that list would probably be surprised to find themselves there. They do not know that through a more humane lens, I see better the loss to society their twenty-, thirty-, and forty-year or life terms of imprisonment bring. Even today, I'm not sure I always get it right. But now, I have Dr. DeLisi's research to supplement my gut instincts, my growing experience, and my evolving humanity. Having found that path, I intend to continue walking it with whatever resources I have, and whatever options are available to me.

President Barack Obama and Attorney General Holder gave me and other United States Attorneys and federal judges a rare chance to explore what does not appear in the indictment itself—the freedom to consider that a defendant may be suffering from a profound mental illness or is terribly low-functioning intellectually. It allowed those in the system to look behind the indictment to see if the defendant was so youthful that his or her brain had not developed, or so elderly that he or she was of little danger to anyone but self. They granted each of us freedom to consider whether the crime of conviction was an aberration, or an act of common practice and habit. They gave prosecutors and judges the ability to ask these critical questions and to shape sentences appropriately without mandatory minimums that eliminated too many humane options. Through his administration, President Obama gave us hope, and freed us to consider more than what the police reports showed.

Of course, this "evolved" approach is not without risks. Judges and prosecutors may get it wrong and may release dangerous offenders earlier than they would otherwise have done under prior sentencing systems. There may be inconsistent outcomes from judge to judge. There is the "whiplash" effect for current prisoners as laws and policies change rapidly with seemingly little explanation. There could be a loss of confidence in the penal system in general—though that confidence is quite dented at the present in any event. Law enforcement agents who investigate cases, and for whom lengthy sentences are too often a measure of their perceived effort and effectiveness, may feel betrayed and pressured under a milder system. Still, in my view, none of those risks outweighs the benefit of humanity in sentencing.

This new system also forces judges, many of whom are already critically overwhelmed and under staffed, to work harder. Of that there is no doubt. It is far easier to accept the recommendation of the United States Sentencing Guidelines and impose a safe-from-appeal sentence within that range. And it is easier still to impose a statutorily mandated sentence that requires virtually no analysis beyond a brief consultation of the indictment and plea agreement. Under a more humane, evolved sentencing system, judges must work harder to gather and consider a breadth of data about an offender. They must look beyond the chains and fluorescent orange jumpsuits. They must see the specter of the child the offender once was, and the elder that offender might become. They must look appellate reversal in the eye. There is no Magic 8-Ball that can do that job.

It goes without saying that when the system does not work, the headlines write themselves. Nor does it need to be said that the reverse is not true. In our sound-bite generation, it is not easy to reduce nuanced, considered, thoughtful analysis about why an offender deserves mercy into a tweet. "Two-time drug offender gets life" is a much easier announcement to make.

But fear of "bad publicity" or of change itself should not be used to rationalize a return to old ways. The cost on the souls of every person in a prison cell, and on those who put them there, is heavy. The hunt for humanity must continue. As the great English legal philosopher Jeremy Bentham wrote some 200 years ago: "Every particle of real punishment that is produced, more than what is necessary, is just so much misery run to waste."[23]

For those of us who have seen humanity's light, we fear little more than a return to the dark.

Notes

* To the men and women who served in the United States Attorney's Office for the Northern District of Iowa from 1996

to 2012, you have my unparalleled appreciation and affection. I would not change the path that introduced me to each of you, and allowed me to be your colleague; my failings, and my path, are my own.

[1] *See, e.g.*, 21 U.S.C. § 841, *et seq*. (prohibiting violations of the Controlled Substances Act), 18 U.S.C. § 924(c) (prohibiting use/possession of firearms in connection with other crimes), 18 U.S.C. § 2251 (prohibiting sexual exploitation of children), or 18 U.S.C. § 1028A (prohibiting aggravated identity theft).

[2] United States v. Young, 960 F. Supp. 2d 881, 882 (N.D. Iowa 2013) ("Recent statistics obtained from the U.S. Sentencing Commission (Commission)—the only known data that exists on the eligibility and applications of the DOJ's § 851 decision making—reveal jaw-dropping, shocking disparity. For example, a defendant in the Northern District of Iowa (N.D. of Iowa) who is eligible for a § 851 enhancement is 2,532% more likely to receive it than a similarly eligible defendant in the bordering District of Nebraska.").

[3] *See, e.g.*, United States v. Malloy, 614 F.3d 852, 859, 866 (8th Cir. 2010) (interference with official acts causing bodily injury and eluding); United States v. Smith, 422 F.3d 715, 723 (8th Cir. 2005) (reckless use of a firearm); United States v. Campbell, 410 F.3d 456, 467 (8th Cir. 2005) (burglary of an occupied vehicle); United States v. Griffith, 301 F.3d 880, 885 (8th Cir. 2002) (theft from a person); United States v. Allegree, 175 F.3d 648, 651 (8th Cir. 1999) (possession of a sawed-off shotgun); United States v. Hendrickson, 940 F.2d 320, 324 (8th Cir. 1991) (breaking and entering).

[4] 18 U.S.C. § 924(e).

[5] *See* USSG §§ 4B1.1, 4B1.4.

[6] United States v. Buckendahl, 251 F.3d 753, 765 (8th Cir. 2001) (Heaney, J., dissenting) ("The Northern District of Iowa has a blanket policy of refusing to grant eligible defendants § 1B1.8 protection, while its sister district to the south routinely provides such protection, as do the majority of the ninety-four federal districts in the nation.").

[7] *See, e.g.*, United States v. Saenz, 429 F. Supp. 2d 1081, 1089–90 (N.D. Iowa 2006) (collecting cases and referring to "the routine practice by the United States Attorney's Office in this District of making ridiculously stingy recommendations concerning the extent to which the court should depart downward for a defendant's substantial assistance, with no explication of the basis for such recommendations, accompanied by unfounded assertions that the court must then give such recommendations substantial deference"); United States v. Moeller, 383 F.3d 710 (8th Cir. 2004) (discussing Northern District of Iowa two-part substantial assistance process).

[8] *See, e.g.*, United States v. Brewer, 624 F.3d 900, 910–14 (8th Cir. 2010) (Bright, J., concurring in part and dissenting in part and describing sentencing practices in the Northern District of Iowa) ("Who could have guessed that President Eisenhower's decision nearly sixty years ago to create a national system of interstate highways would have an effect on sentencing in Iowa today? Well, it has.").

[9] *See, e.g.*, Abused: The Postville Raid (Luis Argueta 2011).

[10] *See, e.g.*, Dustin Honken (drug dealer convicted of killing five people—including two children—to protect his methamphetamine operation); Casey Frederiksen (prosecuted on child pornography charges to help state investigators establish Frederiksen's murder of a 5-year-old girl, Evelyn Miller); James Bently (prosecuted on child pornography charges to assist state investigators establish that Bentley's brother, Roger Bentley, had kidnapped, raped, and murdered a 10-year-old girl, Jetseta Marrie Gage, who was the subject of the child pornography images); Jeffrey Gruber (national vice-president of the Sons of Silence outlaw motorcycle gang, prosecuted under the Racketeer Influenced and Corrupt Organizations Act).

[11] *See* Memorandum from Dick Thornburgh, U.S. Attorney General, to Federal Prosecutors: Plea Bargaining Under the Sentencing Reform Act (Mar. 13, 1989) [herein, Thornburgh Memo].

[12] *See* Memorandum from Janet Reno, U.S. Attorney General, to Holders of U.S. Attorneys' Manual: Title 9, Principles of Federal Prosecution (Oct. 12, 1993) [herein, Reno Memo].

[13] *See* Memorandum from John Ashcroft, U.S. Attorney General, to All Federal Prosecutors: Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing (Sept. 22, 2003) [herein, Ashcroft Memo].

[14]
> In our criminal justice system, the Government retains "broad discretion" as to whom to prosecute. "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion." This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. Judicial supervision in this area, moreover, entails systemic costs of particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decisionmaking to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy. All these are substantial concerns that make the courts properly hesitant to examine the decision whether to prosecute.

Wayte v. United States, 470 U.S. 598, 607–08 (1985) (alteration in original) (citations omitted).

[15]
> The President's pledge for a new beginning between the United States and the Muslim community takes root here in the Justice Department where we are committed to using criminal and civil rights laws to protect Muslim Americans. A top priority of this Justice Department is a return to robust civil rights enforcement and outreach in defending religious freedoms and other fundamental rights of all of our fellow citizens in the workplace, in the housing market, in our schools and in the voting booth.

Statement from Eric Holder, U.S. Attorney General: Department of Justice's Oureach and Enforcement Efforts to Protect Amerian Muslims (June 4, 2009) (Attorney General Holder announcing 2009 outreach policy regarding Muslim communities), https://www.justice.gov/opa/speech/attorney-general-eric-holder-department-justice-s-outreach-and-enforcement-efforts.

"Creating an electronic record will ensure that we have an objective account of key investigations and interactions with people who are held in federal custody. . . . It will allow us to document that detained individuals are afforded their constitutionally-protected rights." Press Release, Department of Justice, Office of Public Affairs, *Attorney General Holder Announces Significant Policy Shift Concerning Electronic Recording of Statements* (May 22, 2014) (Attorney General Holder announcing 2014 policy that required federal agents to record certain interviews with arrested suspects), at https://www.justice.gov/opa/pr/attorney-general-holder-announces-significant-policy-shift-concerning-electronic-recording.

> Three years ago, as attorney general, I established the Smart on Crime initiative to reduce draconian mandatory minimum sentencing for low-level drug offenses and encourage more

> investment in rehabilitation programs to tackle recidivism. The preliminary results are very encouraging. . . . Mandatory minimum sentences should be eliminated for many offenses, and where they are still applied, their length should be reduced. . . . The judiciary needs greater discretion in imposing mandatory minimums, as do our prosecutors seeking them."

Eric H. Holder, Opinion, *Eric Holder: We Can Have Shorter Sentences and Less Crime*, N.Y. Times, Aug. 11, 2016.

16 Statement of Stephanie M. Rose, U.S. Attorney, Northern District of Iowa, before the U.S. Sentencing Commission, *Hearing on Retroactive Application of the Proposed Amendment to the Federal Sentencing Guidelines Implementing the Fair Sentencing Act of 2010* (June 1, 2011), https://www.ussc.gov/policymaking/meetings-hearings/june-1-2011.

17 *See* Memorandum from Eric Holder, U.S. Attorney General, to United States Attorneys and Assistant Attorney General for the Criminal Division (August 12, 2013) [herein, Holder Memo].

18 *See* Paul Simon, *The Sound of Silence* (Columbia Studios 1964).

19 The study was conducted at the request of the Committee on Criminal Law for the Judicial Conference of the United States. *Cited in* Barbara S. Meierhoefer & Patricia D. Breen, *Progress-Descriptive Study of Judge-Involved Supervision Programs in the Federal System*, Federal Judicial Center, at n.1 (Feb. 2013), https://www.fjc.gov/sites/default/files/2014/JUDGE-INVOLVED-SUPERVISION-FJC-2013.pdf.

20 *See* Matthew DeLisi et al., *The Criminology of Homicidal Ideation: Associations with Criminal Careers and Psychopathology among Federal Correctional Clients*, 42(3) Am. J. Crim. Just. 554–73 (2017); Matthew DeLisi et al., *Criminally Explosive: Intermittent Explosive Disorder, Criminal Careers, and Psychopathology among Federal Correctional Clients*, 16(4) Int'l J. Forensic Mental Health 293–303 (2017); Matthew DeLisi et al., *Sexual Sadism and Criminal Versatility: Does Sexual Sadism Spillover into Nonsexual Crimes?*, 9(1) J. Aggression, Conflict & Peace 2–12 (2017); Alan Drury et al., *Adverse Childhood Experiences, Paraphilias, and Serious Criminal Violence Among Federal Sex Offenders*, 7(2) J. Crim. Psychol. 105–19 (2017); Mattew DeLisi et al., *The Dark Figure of Sexual Offending: New Evidence from Federal Sex Offenders*, 6(1) J. Crim. Psychol. 3–15 (2016).

21 18 U.S.C. § 3553(a)

22 *See* Memorandum from Jeff Sessions, U.S. Attorney General, to All Federal Prosecutors (May 10, 2017) (rescinding the Holder Memo).

23 Jeremy Bentham, Principles of Penal Law, 1 The Works of Jeremy Bentham 398 (John Bowring ed., 1962).