

# JOINT HEARING OF THE SENATE JUDICIARY & LAW AND JUSTICE COMMITTEES

Ensuring Accountability and Equality in Law Enforcement and the Criminal Justice System

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## INTRODUCTION

The actions that led to the killing of George Floyd were despicable and reprehensible. His death raises larger systemic and historical issues that must be addressed. Bias, both explicit and implicit, must be eliminated. Black people must be free from fear and deserve the reality of an equitable criminal justice system, not just the intention of one. This principle must guide every step forward.

Our nation's history must inform us. In 1619, the first African slaves were brought to America. Our country fought a civil war over both the existence and spread of slavery. The promise of Reconstruction was never realized and was replaced by indentured servitude, Black Codes, the Klan, and Poll Taxes. Segregation was the norm in many parts of our country. And yet out of tragedy came some progress: *Brown v. Board of Education*, the Civil Rights Act, and the Voting Rights Act, to name a few. But the legacy and stain of slavery and discrimination live on.

Prosecutors have an important role to play here to address racial bias and inequality in our justice system. And our work to address these important issues is not mutually exclusive with protecting victims.

While this is a joint hearing between the Senate Judiciary and Senate Law and Justice Committees to examine extremely important issues, it could just as well have been a joint hearing with the Education, Health and Human Services, Environmental Resources, and Urban Affairs and Housing Committees. The criminal justice system is almost the system of last resort. Too often, the lack of opportunity, education, employment, or treatment play a significant role in the criminal trajectory. As does exposure to lead, as well as exposure to trauma and child, sexual and domestic abuse. In addition to addressing the issues related to bias and inequality in our criminal justice system directly, meaningfully addressing them also requires a comprehensive examination of our policies in so many different areas.

### Montgomery County (Kevin Steele)

Thank you for allowing us to testify before you this morning. This hearing, and really all conversations about equality and fairness in the criminal justice system, are welcome and needed. All Americans, all Pennsylvanians need to be engaged and need to be discussing this very important topic. We are at a pivotal moment in our history, and it leads to the big question of where do we go from here? What reforms are needed? What are the strong aspects of the criminal justice system upon which we can build?

These are questions for continuing discussion, and considering the time constraints you are operating under, it would be impossible to touch upon them all today. I should also say that I certainly don't have all of the answers. But what I do know is what happens in Montgomery County in general, and in specific, about a couple of initiatives and ideas that hopefully can contribute to the conversation and move the conversation forward.

As you know, Montgomery County is the third most populated county in the Commonwealth. We have a large land area with a population of about 830,000, kept safe by 49 different police departments, along with a couple of areas where the Pennsylvania State Police have primary jurisdiction. We are not a homogenous county. We have some rural areas and some urbanized areas. In two urban areas, we have had some challenges with crime and gangs: Pottstown and Norristown.

So let me begin with Pottstown. Pottstown was an idyllic little town for much of its 200-year history. But in 2014, the lives of the borough's residents were shattered by chaos. Two rival gangs were warring throughout that summer and fall, fighting over drugs, money and turf. There were nightly shootings, witnesses were reluctant to come forward, residents were scared and calling for help. The District Attorney's Office and the Montgomery County Detective Bureau's Violent Crime Unit joined with the Pottstown Police Department to go after these gangs, and long story short, about seven months later, dozens of gang members from both sides of the unrest were arrested and successfully prosecuted. But there was still work to be done.

We realized that targeting these violent gang members was just the first step in restoring the community. In July of 2016, we launched our first Community Justice Unit in Pottstown. Community Justice is based on the principle that a District Attorney's Office can do more than just prosecute crimes. We can make a positive, proactive difference by providing increased attention to communities that need it. The goal of the Pottstown Community Justice Unit continues to be to provide an integrated prosecutorial effort that works to prevent crime, systematically prosecutes violent and repeat offenders, and ultimately improves the overall quality of life through collaboration with the Pottstown Police Department, government officials, community leaders and other stakeholder groups.

Now nearly four years later, the results are positive: crime is down and economic development is on the upswing. The members of the Community Justice Unit work proactively with the Pottstown Police in criminal investigations, but they also work on community projects and are known to leaders and residents, establishing a level of trust.

A second Community Justice Unit was launched in Norristown in late 2018 with a goal of working collaboratively with the community, working with the strong Norristown Police Department, establishing ties to community groups, working with government officials and other leaders. The unit prosecutes or resolves the bulk of Norristown's criminal cases as the crime rate in Norristown continues to decrease. In addition, the three Assistant District Attorneys have established an outstanding working relationship with Norristown Police and have become a presence in area schools, promoting good citizenship among young people. The Community Justice Unit is building momentum in developing strong relationships within the community and establishing its reputation as a reliable partner in Norristown.

Heading up the Norristown Community Justice Unit is Assistant District Attorney Todd Barnes, who is also a resident of Norristown. He is going to share some additional details about the unit's efforts.

### Montgomery County (ADA Todd Barnes)

Thank you for the opportunity to speak with you about the value of having Community Justice Units in prosecutors' offices. This approach allows us to have assistant district attorneys paying closer attention to the needs and desires of a particular geographic community.

What we are ultimately talking about is looking beyond the traditional role of a prosecutor, understanding that our ethical duty is to serve as "ministers of justice," not just to seek convictions in appropriate circumstances. Perhaps our call to do justice, against the backdrop of a national history of racial injustice, requires us to push back against that history by making an effort to make a difference in people's lives well before any arrest.

Obviously, there are countless others both inside and outside of the criminal justice system who work diligently to be difference makers in our communities, so we are not talking about replacing those efforts. But

we believe the work of a Community Justice Unit includes working with those difference makers and working with the community to be a part of the solution as an aspect of crime prevention.

Now, in our line of work, we tend to focus on results, and it is natural to fixate on things that are “measurable,” perhaps sometimes to our collective detriment. We cannot measure the present-day weight that our history of racial injustice has on minority communities, but we see a manifestation of that weight when a seemingly isolated incident of another abuse of police power sparks a nationwide firestorm of protests and so much more.

Similarly, it would be difficult to realistically measure the impact of relationship building and community outreach, but we see a manifestation of that impact when young people approach us after in-school workshops or their participation in Youth Courts, saying things like: “I think I want to be a prosecutor,” “I want to be a detective; how do I go about doing that,” “do you have any internships in your office?”

It happens. And it happens in response to us putting ourselves out there to connect with our communities. As we look to make a positive and proactive difference, the people we engage, often young people, are those who will themselves become difference makers. While that impact is not measurable numerically, we know it is an impact we can make.

## Montgomery County (Kevin Steele)

Community Justice Units help to have fairness within the criminal justice system. We can have real change with these close connections between prosecutors and the community, and police and the community. Certainly, our two Community Justice Units are not unique. This type of integrated and cooperative approach has been tried and is working in pockets around the country.

However, these Community Justice Units are not the answer to all problems, so let me now turn to sentinel events with policing—or police interactions with community members or suspects that have gone terribly, terribly wrong, like the homicide of George Floyd. These sentinel events are a systemic failure, a failure that needs to be analyzed and looked at to determine precisely how that event could have occurred within the system and what can be done to prevent a future repeat failure event. This is a root cause analysis.

In Montgomery County, we had our own sentinel event and subsequent review in 2014. The case, thankfully, did not involve physical harm to a defendant, but led to a charge that could not be sustained because a lab report was misread. This failure caused us to review our charging system to determine whether we could put checks and balances in place so that this type of failure would not occur again.

In order to prevent something similar from happening, we enlisted the help of Penn Law School’s Quattrone Center for the Fair Administration of Justice. As some of you know, the Quattrone Center is a national research and policy hub dedicated to structural improvements in the U.S. criminal justice system. We went to the Quattrone Center because we needed to examine how the failure occurred and what new operations needed to be put into place to change the system that led to the failure.

The Associate Dean and Executive Director of the Center, John Hollway, and his team helped us dissect the initial report, the ensuing investigation, the review and the decision to file criminal charges as well as what those criminal charges were. His team also dissected the fallout from the entire series of events. But the

Quattrone Center's folks were not looking to point fingers or assess blame. They were looking to figure out why it happened and what measures and safeguards could be put in place to make sure it never happened again.

Out of the failure, grew a new position in our office: the Deputy District Attorney for Professional Standards. He is involved in two broad areas: as an independent check on significant investigations by someone who has no involvement in the investigative process to look at the evidence and assess whether charges should be brought and which charges; and second, in cases where we feel justice was not served by a not guilty verdict or suppression of evidence, then he looks at the evidence at trial, how the case was tried or what occurred at the suppression hearing. In each case, the effort is to make sure that we are always bringing the right and just charges and doing it the right way.

This type of event review is significant. The primary focus is not to assess blame or punishment, but rather the focus is on learning, understanding and education. These event reviews go by various names: "just culture event reviews," "sentinel event reviews" or "root cause analysis" in our case, but their philosophy is the same: when our law enforcement and criminal justice system generates undesirable events, we should review those events first to understand what went wrong and make recommendations for change in order to prevent something similar from happening again.

This type of sentinel event review is prevalent and accepted in many areas of society: the National Transportation Safety Board, and its review and recommendations related to airplane crashes; Child Fatality Review Boards, which assess how the system failed to protect that child; or Pennsylvania's newly established Parolee Homicide Review Team, included most recently in JRI 2, which is charged with reviewing homicides committed by recent parolees, to name just a few.

The implementation of a similar type of statewide review board for sentinel events in policing and criminal justice, separate from criminal and administrative reviews, could make a positive impact on reducing these undesirable outcomes in future events. The ability to learn from these events comes oftentimes not from the single event, but by looking at and aggregating data across multiple incidents, oftentimes system-level factors that contributed to the unwanted outcome of police violence might become more apparent. That necessitates a companion database that would allow sentinel events to be logged and reviewed across law enforcement and criminal justice agencies.

Finally, I have to turn to victims. Any of you who are familiar with me know that I speak frequently about victims and victims' rights. An important aspect of the criminal justice system is seeking justice for the victim. As all of you have discussed measures related to criminal justice reform, you have kept the best interests of victims in mind. Unfortunately, outside of this building, that does not always happen. We have to remember that victims are black, white, brown, male, female, gay, trans, straight, and of all ages and of different religions. But standing up for victims, and identifying perpetrators on one hand and making meaningful change to the system on the other are not mutually exclusive.

Recently, a group of black prosecutors in California wrote an op-ed that said, among other things, "equal justice necessitates that whether black people are the victims or suspects of crimes that they are entitled to both the full protection of the law and the faithful execution of the law by those entrusted to carry it out. If we are innocent, free us. If we are guilty, convict and sentence us fairly. If we are victims, treat us and our communities with the same respect, care, service, and protection as you would white communities. Equal justice demands nothing less."

Well said. And equal justice is what we are all seeking every day.

Today, we are at a moment in history. This moment demands that we have these important conversations. It demands we ensure everyone's right to equal justice. And it demands that our system treat everyone equally and fairly. Thank you for bringing us all together today and for beginning what I hope and expect to be a series of continued efforts to help all of us do what is right and just.

## York County (Dave Sunday)

It is a privilege to appear before you today. I am Dave Sunday, and I am the district attorney in York County. I join all who have demanded that we work to end racism, bigotry, and intolerance. A person's race should not determine the outcome in the criminal justice system.

To that end, this past Friday I announced the codification of my preexisting commitment to diversity and inclusion within my office. Standing with members of York County communities, I announced that my office "will neither make nor tolerate any actions, procedures, or decisions based upon invidious discrimination, as such measures are contrary to any notion of justice." My remarks from Friday are entirely relevant today:

As the District Attorney for York County, I am deeply saddened and concerned by the national loss of confidence and trust in our criminal justice system, placed in the forefront recently by the senseless killing of George Floyd. This erosion is occurring at a time when, ironically, we have generally seen the most productive changes in improving the criminal justice system, with prosecutors, law enforcement, and the courts embracing diversion and rehabilitation as keys to breaking cycles of crime, preserving public safety, and ensuring justice for all. But when there is a lack of trust between the criminal justice partners and the communities we serve; especially from our minority, underrepresented, and vulnerable populations; initiatives in and of themselves are not enough. Trust must be restored, and in criminal justice, that process begins with me, the District Attorney, and my office.

The York County District Attorney's Office shall serve as a leader in establishing justice system innovations that promote public safety and community well-being. This office will accomplish these measures through collaboration and developing partnerships with the diverse York County community, which include neighborhood leaders and stakeholders, law enforcement, business and professional institutions, service providers, faith-based entities, and other governmental agencies and elected officials.

In issuing this statement on diversity and inclusion, I told the gathered crowd that "without trust, nothing else matters."

During today's hearing, I want to highlight some of the important initiatives we have undertaken in my office. I am doing so for two reasons. First, I want you to understand my approach to trying to be smart on crime, advancing diversion, and trying to reduce incarceration. Second, and equally important, I want to try to offer the thought that perhaps our approach to these programs can provide some guidance to how we should examine and consider larger issues of change to our criminal justice system.

While we are accomplishing critical changes to our justice systems in York County, we know we can never be complacent and must continue to innovate to create a safer and more just community. Our daily responsibilities, of course, include ensuring the guilty are held accountable, the innocent are protected from unwarranted harm, and the rights of all participants – including crime victims – are honored.

One of the things we do in York County is to talk about how to get a defendant mental health treatment or substance abuse counselling. I believe that is one of the reasons why we see decreased recidivism, which keeps York County safe, reunites families, supports workforce development and establishes a continuous cost savings as these individuals are not entering back into the criminal justice system.

We have experienced for years that treatment may be a pathway to a safer community.

For example, our Wellness Courts, which include drug, mental health, DUI and Veterans Courts have saved York taxpayers \$1.8 million during 2018. And at the same time, we have seen a simultaneous decrease in recidivism. In doing so, we have been able to keep our communities safe, reunite families, and support workforce development.

Yet some crimes, due to the nature of the offenses and impact on the victim, outweigh rehabilitation as a sentencing consideration, and incarceration is required. These principles require a balancing act, as the scales of justice demand.

Mental health is an especially important component in many cases. We participate in the Stepping Up Initiative, which specifically focuses on diverting and managing defendants with mental diagnoses from prison at the time of arrest and identifying incarcerated defendants with mental health needs so they may be diverted for appropriate mental health treatment.

As a companion to Stepping Up, we are also engaged in the development of the Community Action for Recovery and Diversion (CARD) initiative. This is a public/private partnership aimed at diverting individuals with substance abuse issues in addition to mental health needs from the time of arrest. We look to break down silos by using and harmonizing existing resources and identifying additional ones so that eligible offenders can be diverted and provided community treatment and support, like housing and transportation.

For every \$2 we spend on treatment, we can save the community up to \$7 in community justice costs. This is a critical guiding principal and speaks volumes about why investing in the criminal justice system is an expenditure that will yield tremendous success – both in terms of safety and cost savings.

Additionally, as District Attorney I recognize that critical component for community safety and well-being of my community is a thorough commitment and investment to reentry initiatives. My office is a committed partner in the York County Reentry Coalition including my 1st Assistant District Attorney who serves as co-chair of our reentry coalition. I am committed to finding solutions to the systematic barriers that reentrants confront including areas of housing, employment transportation and public health. It is critical for a District Attorney's office to collaborate with a wide array of community partners including service providers to tackle these serious matters.

I realize that for any of this to achieve its ultimate success, law enforcement must be a backbone to these measures. We must never lose sight of the fact that law enforcement officers on the street are on the front lines dealing with the harshness of addiction and mental health issues. With each passing day, society puts law enforcement officers in the tenuous positions of protector, defender, servant and social worker. All at a

moment's notice. They are expected to have the answer to every question and solution to almost every problem. We must do everything we can to get them the resources and training to do their job. Their work is the cornerstone of every initiative I have discussed.

None of this means that we cannot address the many important issues that all of the testifiers will speak of today and tomorrow, nor does it mean that the voices of those that demand change cannot or should not be heard. To the contrary. We must address the incredibly important and painful issues of race. But the context of what our officers do and the challenges they face every single day have to be a part of the overall landscape that frames issues before us.

If this were a more traditional hearing, I would end here. I would say that we are doing great things in York County and that I look forward to doing more. Such statements would be sincere. We do great and innovative things in the District Attorney's Office.

But this is not a traditional hearing, nor is this a traditional time in our nation's history. So I do not make these points simply to congratulate ourselves or excuse ourselves from engaging in this important conversation and call to action to improve our system. Instead, I say it to highlight a method about how we can and must learn and grow and address bias and unfairness in the system: let us look at data, science, and best practices. Because that is how I came to be such a strong advocate for these kinds of important community-building, cost-saving, recidivism-reducing initiatives. And that is how I believe we can come to collectively identify the changes that our system needs.

## CONCLUSION

Thank you for the opportunity to speak with you this morning. We very much appreciate your time and consideration on such an important series of topics. And we look forward to continuing these important efforts and conversations going forward.