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Books Have the Power to Shape Public Policy

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FOREWORD

BOOKS HAVE THE POWER TO SHAPE PUBLIC POLICY

*Barbara McQuade**

INTRODUCTION

In our digital information age, news and ideas come at us constantly and from every direction—newspapers, cable television, podcasts, online media, and more. It can be difficult to keep up with the fleeting and ephemeral news of the day.

Books, on the other hand, provide a source of enduring ideas. Books contain the researched hypotheses, the well-developed theories, and the fully formed arguments that outlast the news and analysis of the moment, preserved for the ages on the written page, to be discussed, admired, criticized, or supplanted by generations to come.

And books about the law, like the ones reviewed in these pages, can spark ideas that lead lawyers and policymakers to consider new issues and think in new ways. Legal books are not merely academic musings, but vehicles of thought that can lead decisionmakers to develop programs and priorities that can shape public policy.

When I served as U.S. attorney for the Eastern District of Michigan during the Obama Administration, books frequently influenced the work of federal law enforcement, the Department of Justice, and its ninety-four U.S. Attorney's Offices around the country. I would hear about these books at conferences or in conversations with others in law enforcement, and the books became must-reads. Some books were more scholarly than others, but they each had great influence on decisionmakers.

I. MASS INCARCERATION

One such book was *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander, a civil rights lawyer and former law professor.¹ The fact that Alexander is married to one of our colleagues, Carter Stewart, the U.S. attorney for the Southern District of Ohio, probably helped the book gain attention among our group. Professor Alexander wrote about the disparate impact that the war on drugs has had on communities

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1. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (rev. ed. 2012).

of color, effectively depriving minorities of their civil rights, such as the right to vote and serve on juries.

Although we did not all agree with every premise in the book, many of us who were career prosecutors found Alexander's arguments eye-opening, and these arguments caused us to question the wisdom of these tough-on-crime policies. First, it was worth considering the effectiveness of long prison sentences. Were lengthy sentences an effective deterrent or could the same result be achieved with shorter sentences? Were lengthy prison sentences consistent with the rehabilitation goals of incarceration, or were they just hardening inmates into becoming career criminals? In addition to effectiveness, the cost of lengthy prison sentences also raised issues. What was the dollar cost to taxpayers to incarcerate drug defendants for twenty years or life into old age, when incarceration becomes more expensive because of medical issues and when individuals are less likely to be violent? Could those resources be better used by putting more police officers on the street to ensure that justice were more swift and sure and public safety better protected? Could a portion of those funds be better spent on prevention and treatment programs? And finally, we needed to consider the other consequences of long prison sentences: What is the lasting cost to communities who lose their young men and father figures to decades in prison?

Alexander's book, along with other research and scholarship in the area of sentencing reform, led the Department of Justice to implement a program it called "Smart on Crime," borrowing the name of yet another book—this one by former California Attorney General and now-Senator Kamala Harris.² In her book, Harris argues for using strategic approaches to reducing crime from both the supply and demand sides, based on her experience as a prosecutor. Embracing some of these ideas, U.S. Attorney General Eric H. Holder Jr. launched DOJ's Smart on Crime program in August 2013 to address the monetary, social, and public safety costs of mass incarceration in America. The Smart on Crime strategy encompassed enforcement priorities, sentencing reform, alternatives to incarceration, prisoner reentry, and the surging of resources to crime hot spots to protect public safety and vulnerable communities.³

One component of the Smart on Crime program was a revised charging policy.⁴ That policy directed prosecutors to make an individualized assessment of each offender and offense and to consider whether the heavy hammer of a charge carrying a mandatory minimum sentence achieved a just result in each case.⁵ Prosecutors were asked to use discretion in filing such

2. KAMALA D. HARRIS WITH JOAN O'C. HAMILTON, *SMART ON CRIME* (2009). Harris was serving as district attorney for San Francisco when the book was published.

3. U.S. DEP'T OF JUSTICE, *SMART ON CRIME: REFORMING THE CRIMINAL JUSTICE SYSTEM FOR THE 21ST CENTURY* 2–7 (2013), <https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf> [<https://perma.cc/K5CA-ERP2>].

4. *Id.* at 3.

5. *See id.*

charges.⁶ While such lengthy sentences might have been appropriate for drug kingpins and violent offenders, they were not always appropriate for lower-level offenders. Smart on Crime provided guidance to prosecutors to seek mandatory minimum sentences and enhancements when certain aggravating factors were present, such as firearms, violence, significant criminal history, leadership role, and connections to cartels and gangs, among others.⁷ In other cases, prosecutors were asked to charge an offense that would be governed by the U.S. Sentencing Guidelines without requiring a statutory mandatory minimum sentence, permitting a judge to fashion a still lengthy but proportional prison term consistent with the goals of federal sentencing.⁸

During its short life, the strategy appeared to be working. According to a DOJ press release, as a result of the Smart on Crime initiative, “charging decisions by federal prosecutors in fiscal year 2015 resulted in prosecutors’ focusing on more serious drug cases and fewer indictments carrying a mandatory minimum sentence.”⁹ At the same time, “prosecutions of high-level drug defendants [rose] and cooperation and plea rates remained effectively the same.”¹⁰ For example, the percentage of drug cases against defendants with a weapon or with an aggravating role increased.¹¹ By using charges that carried mandatory minimum sentences more selectively, prosecutors were focusing on the most violent offenders to improve public safety, use scarce federal resources judiciously, and engender greater community trust in the criminal justice system. And because of the initiative, along with other criminal justice reform efforts, the federal inmate population decreased from nearly 220,000 in 2013 to fewer than 190,000 in 2017.¹² These outcomes have their origins in the books by Alexander and Harris.

Although current DOJ leadership has rolled back the Smart on Crime program,¹³ criminal justice reform continues to be considered at the state level and even at the federal level among lawmakers in Congress. Alexander’s

6. See Press Release, U.S. Dep’t of Justice, New Smart on Crime Data Reveals Federal Prosecutors Are Focused on More Significant Drug Cases and Fewer Mandatory Minimums for Drug Defendants (Mar. 21, 2016), <https://www.justice.gov/opa/pr/new-smart-crime-data-reveals-federal-prosecutors-are-focused-more-significant-drug-cases-and> [https://perma.cc/EH2W-FFP8].

7. OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, REVIEW OF THE DEPARTMENT’S IMPLEMENTATION OF PROSECUTION AND SENTENCING REFORM PRINCIPLES UNDER THE SMART ON CRIME INITIATIVE 2 (2017), <https://oig.justice.gov/reports/2017/e1704.pdf> [https://perma.cc/N4NC-6MF8].

8. See *id.* at 55.

9. Press Release, U.S. Dep’t of Justice, *supra* note 6.

10. *Id.*

11. *Id.*

12. Ed Chung, *Smart on Crime: An Alternative to the Tough vs. Soft Debate*, CTR. FOR AM. PROGRESS (May 12, 2017, 8:53 AM), <https://www.americanprogress.org/issues/criminal-justice/news/2017/05/12/432238/smart-crime-alternative-tough-vs-soft-debate/> [https://perma.cc/5VHB-HNYE].

13. OFFICE OF THE INSPECTOR GEN., *supra* note 7, at i.

and Harris's ideas will continue to be discussed as we wrestle with the most effective ways to address crime, punishment, safety, and justice.

II. GUN VIOLENCE

Another book that was highly influential within the law enforcement community was *Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-City America*, by David Kennedy, the director of the Center for Crime Prevention and Control and a professor of criminal justice at John Jay College.¹⁴ In his book, Kennedy chronicles his research into reducing gang- and group-related gun violence.¹⁵ He created an evidence-based violence-intervention program in Boston that he called "Ceasefire."¹⁶ A key component of Ceasefire was a "call-in" meeting, in which law enforcement leaders and community members talked directly to gang members and asked them to stop using guns.¹⁷ The Ceasefire promise was that law enforcement would vigorously enforce the laws against violent gangs, but if anyone wanted out of gang life, help was available.¹⁸ According to Kennedy's theory, individuals in large urban centers often feel anonymous and believe that no one knows who they are or cares about what they do.¹⁹ By calling in members of gangs and groups and showing respect for their intelligence by giving them useful information, Kennedy argues, these gang members would make better decisions.²⁰ As a result of his work, Boston saw a two-thirds reduction in gang violence during the 1990s.²¹

Many communities embraced the Ceasefire model. In Detroit, Kennedy and others working in his program consulted with law enforcement leaders and community partners to form the Ceasefire Detroit gang-intervention program.²² Starting on Detroit's east side, organizers scheduled quarterly meetings at which we would call in gang members with a felony conviction who were on probation or parole. As a condition of their supervision, the participants were required to attend.

During the call-ins, participants would hear presentations from three groups—law enforcement leaders, community outreach workers, and someone serving as "the moral voice of the community." The law enforcement

14. DAVID M. KENNEDY, *DON'T SHOOT: ONE MAN, A STREET FELLOWSHIP, AND THE END OF VIOLENCE IN INNER-CITY AMERICA* (2011).

15. *Id.*

16. *Id.* at 44–76.

17. *Id.* at 64–66.

18. *Id.* at 63–66.

19. *See id.* at 63.

20. *Id.* at 63–70.

21. *Id.* at 74–75.

22. For additional background of Operation Ceasefire in Detroit, see Heather Catallo, *Operation Ceasefire Aims to End Gun Violence in Detroit*, WXYZ DETROIT (Dec. 30, 2016, 11:35 PM), <https://www.wxyz.com/news/local-news/investigations/operation-ceasefire-aims-to-end-gun-violence-in-detroit> [<https://perma.cc/2Y5P-9WDD>].

representatives would discuss the consequences of additional criminal conduct for individuals with felony convictions. We would highlight a case from that community, explaining the lengthy prison sentence imposed for violent firearms crimes committed by a defendant the participants knew from their own neighborhood.

Next, a community outreach worker would distribute cards containing a telephone number, telling participants that they could obtain help leaving gang life by calling the number. Gang and group members were offered assistance with job training, connections to felon-friendly employers, drug treatment, vital documents, and other services. The outreach worker was often himself someone with a felony conviction who had served prison time and successfully rebuilt his life, serving as a role model for the participants.

The third speaker was the most powerful—the moral voice of the community, often the mother of a young murder victim. This speaker would state in personal terms the terrible impact of the murder of a child. The presentation was often emotional, and sometimes the gang and group members rose from their chairs to offer consoling hugs.

After the presentation, we would all gather for a meal with the participants and engage them in conversation. This would reduce the feeling of participants' anonymity and let them know that we all had a stake in their success.

The program on Detroit's east side resulted in a 49 percent reduction in gun violence. The program has since expanded to the city's west side and north-central region. Other communities around the country have built similar programs based on the Ceasefire model. People in Detroit and elsewhere are alive today because of the ideas expressed in Professor Kennedy's book.

III. OPIOID ADDICTION AND OVERDOSE DEATHS

Another book of influence in law enforcement circles was *Dreamland: The True Tale of America's Opiate Epidemic* by journalist Sam Quinones.²³ The book tells the origin story of the opioid crisis, drawing its title from the name of a former neighborhood swimming pool in Portsmouth, Ohio, where the community had crumbled amid the opioid epidemic.²⁴ My office had prosecuted opioid-distribution cases with ties to Portsmouth, but it was *Dreamland* that opened our eyes to the roles of pharmaceutical companies in supplying opioids, doctors in prescribing them, and criminal organizations in exploiting users. The book's account of the resulting addiction and overdose deaths put the magnitude of the opioid crisis in perspective.

According to the Centers for Disease Control, drug-overdose deaths from prescription opioids in the United States quintupled between 1999 and

23. SAM QUINONES, *DREAMLAND: THE TRUE TALE OF AMERICA'S OPIATE EPIDEMIC* (2015).

24. *Id.* at 1–9.

2016, a total of more than 200,000 deaths.²⁵ The number of prescriptions for opioids also quadrupled during that time period.²⁶ Although alarming data about opioid-related overdose deaths was readily available from many sources, *Dreamland* provided the background and narrative that helped us understand the sources of the problem and focus our attention on how best to respond.

As a result of the lessons of *Dreamland*, we directed our enforcement resources at opioid trafficking organizations whose distribution resulted in overdose deaths. We brought enforcement actions against pharmaceutical companies. We also tackled health-care fraud schemes that used prescription pills as kickbacks to patients who would undergo expensive medical testing so that providers could fraudulently bill Medicare for reimbursement. Sometimes the patients would receive no medical treatment at all, but they would, in exchange for a kickback, sign fraudulent forms stating that they had. The pills in these schemes then ended up on the streets in the hands of distributors or users, fueling the addiction problem. We also engaged in outreach to provide information to schools and community groups about the dangers of opioid use, which often started innocently following a medical or dental procedure for which a patient was prescribed pain medication to which they became addicted. While the problem of opioid addiction remains far from solved, *Dreamland* helped spark action to address the problem.

IV. SEXUAL ASSAULT ON COLLEGE CAMPUSES

A different threat was brought to light in another book, *Missoula: Rape and the Justice System in a College Town* by Jon Krakauer.²⁷ This book takes a hard look at the problem of sexual assault on college campuses. Krakauer views the University of Montana and its football program as a microcosm of the way that society and even law enforcement sometimes enable assailants to get away with their crimes by excusing acquaintance rape and blaming victims.²⁸

The book includes a description of the work by our colleague, U.S. Attorney Mike Cotter of Montana.²⁹ Cotter and his team partnered with the Civil Rights Division of the U.S. Department of Justice to investigate sexual assault as a civil rights issue in Missoula, ultimately entering into consent decrees in 2013 and 2014 with various government entities, including the university, the Missoula Police Department, the Missoula County Attorney's

25. *Opioid Overdose: Prescription Opioid Overdose Data*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/drugoverdose/data/overdose.html> [<https://perma.cc/DK4A-TZ3Z>].

26. *Id.*

27. JON KRAKAUER, *MISSOULA: RAPE AND THE JUSTICE SYSTEM IN A COLLEGE TOWN* (2015).

28. *See id.* at 9.

29. *See id.* at 323–36.

Office, and the Montana Attorney General's Office to resolve DOJ's investigation of alleged gender bias in the way that sexual assault allegations were prosecuted.³⁰ Under the agreements, these Montana government entities agreed to undertake a number of steps to improve sexual assault investigations, such as developing policies and training, improving treatment of victims, and enhancing investigative processes by hiring in-house victim coordinators and using expert witnesses.³¹

Cotter and his team helped bring justice to victims and improvements to the system in Montana, and *Missoula* captured for the ages a vivid portrait of how law enforcement can unwittingly assist assailants by excusing their crimes and shaming victims—important lessons for anyone working in the criminal justice system.

V. PRISONER REENTRY

The final book I will mention is *Orange is the New Black: My Year in a Women's Prison*, by Piper Kerman.³² Kerman was a Smith College graduate working in New York City when she began serving a sentence in federal prison for a drug-related money laundering crime that she had committed years earlier. In prison, Kerman met fellow inmates who had lacked many of the opportunities that she had enjoyed in life, yet showed kindness, compassion, and value. She wrote her book to showcase the human side of people in prison.

In 2014, I had a chance to hear Kerman speak at a White House conference on prisoner reentry. Kerman spoke powerfully about the need for employers to give second chances to people who have been to prison. She noted the wasted talent of people like the women she met in prison, who made a mistake and paid for it, but often continued to pay for it for the rest of their lives because of the stigma attached to having been in prison.

I invited Kerman to Detroit to make a similar pitch to business leaders in Michigan, where more than 13,000 individuals return to their communities from prison each year. Without job opportunities, the chance of recidivism increases. Kerman agreed to come and speak and to waive her normal fee on the condition that we also arranged for her to meet with at-risk teenage girls about reclaiming their self-esteem and finding empowerment within themselves. She spoke to both groups and touched countless lives that day, all set in motion because of her book.

30. Press Release, U.S. Dep't of Justice, Department of Justice Reaches Landmark Agreement to Improve Missoula County Attorney's Office's Response to Reports of Sexual Assault (June 10, 2014), <https://www.justice.gov/opa/pr/department-justice-reaches-landmark-agreement-improve-missoula-county-attorney-s-office-s> [<https://perma.cc/A5WG-GCEU>].

31. *Id.*

32. PIPER KERMAN, *ORANGE IS THE NEW BLACK: MY YEAR IN A WOMEN'S PRISON* (2010).

VI. NEW BOOKS OF INFLUENCE

I'm sure that other decisionmakers rely on books to spark ideas and policy as well. One wonders which of the books reviewed in this issue of the *Michigan Law Review* will foster such an idea. It could be *The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries*. In that book, Professor Suja A. Thomas argues that the diminished roles of juries in civil and criminal cases is affecting justice in ways that the framers of our Constitution did not envision.³³ Or maybe it will be *Courting Death: The Supreme Court and Capital Punishment*, a study of death penalty jurisprudence in the United States.³⁴ The authors argue that excessive constitutional regulation by courts has made the future of the death penalty fragile and likely will cause its demise. These and the other books examined here are likely to affect decisionmakers in ways great and small.

CONCLUSION

While we continue to add to the countless types of media sources that inform us, let us never forget about the power of books to influence policy. Leaders must take time to read scholarly works and narrative storytelling in books to help fully understand problems, consider solutions, and motivate action. It sometimes takes the well-developed ideas that can be expressed only in books to provide a catalyst for social change and policy reform. To all of those who are busiest tackling the world's problems, even you must take the time to read books if you are to be truly effective. Read on.

33. SUJA A. THOMAS, *THE MISSING AMERICAN JURY: RESTORING THE FUNDAMENTAL CONSTITUTIONAL ROLE OF THE CRIMINAL, CIVIL, AND GRAND JURIES* (2016).

34. CAROL S. STEIKER & JORDAN M. STEIKER, *COURTING DEATH: THE SUPREME COURT AND CAPITAL PUNISHMENT* (2016).