

Chapter 6: The First Two Arms of the Starfish

In this section, we look at the role that government and faith, the first two arms of the Starfish Model, play in giving structure to community. America's town square has long been built around the duality of these two institutions, even as the Constitution provides that the Church and State shall remain separate. We look at police use-of-force and misconduct cases and mass incarceration as we take on the thorny issue of race and justice and see how peace and calm, restoration and reconciliation can come through incredible acts of forgiveness and through honestly confronting our past.

Protests in the Port City

Tear gas hung heavy in the air over the streets of downtown Wilmington on May 31, 2020. George Floyd, a black man from North Carolina, had died begging for his life while a white police officer in Minneapolis, MN put a knee on George's throat for 8 minutes and 46 seconds. The officer and three of his colleagues, who stood by but did not act to save a helpless citizen they took an oath to protect, had been charged with murder. Now protests erupted around the country, including in my hometown.

Mayor Bill Saffo and I walked through the crowd of protestors, a bubble of SWAT team members surrounding us, to join NHSO Sheriff Ed McMahon and WPD Interim Chief Donny Williams, to announce a citywide curfew and call for calm. To the crowd, at least four with guns, and the thousands at home watching live on TV and social media, I asked the same question that Dr. Martin Luther King, Jr. made the title of his last book, "Where Do We Go From Here: Chaos or Community?"



Figure 6.10. The view from the District Attorney's Office as police in Wilmington prepared for protests on May 31, 2020 in the wake of the George Floyd murder. Protests the day before were peaceful, but indications that this protest would turn violent led police to prepare for unrest.

In re McIver¹

On April 5, 2007, Phillippe McIver, a 23-year-old African-American man, lay dead in the center of the road. The cause of death was a gunshot wound to the head. The young man was wearing only a white t-shirt. Two armed, white police officers with the WPD stood over him. To most of the crowd that gathered outside Creekwood's Section 8 Housing Community, it appeared that a "cover-up" was in the works. While the officers awaited the arrival of SBI agents from outside the city to handle the investigation, some members of the crowd fired shots into the air. A police tactical team was called in to disperse the crowd.

The city's collective fear was that Wilmington might soon descend into looting and violence. Rumors were flying around that there might be citywide riots; marches took place. Some walked with signs that read "Just Us," referring to the prospect of getting "justice" against the police. At the height of it, a group of concerned citizens pled with me to prosecute the officers. These leaders were men and women whom I admired: heads of the NAACP, and pastors and bishops who presided over large congregations of law-abiding citizens. Felicia McIver, Phillipe's mother, was prominent in the group. I asked her to join me in calling for calm.

If there was ever a time for using a case as an opportunity to build trust with a disenfranchised segment of the community, this was it. Here was a chance not only to get justice for McIver, but also for all other similarly-situated victims who did not have a well-publicized case attached to their names. The community was watching. The group of leaders who came to my office wanted me to send a message, one they had heard me declare before: "no one is above the law, and no one is beneath its protection."

There was one big problem with prosecuting the officers who fired the lethal shots: they were innocent of any crime. An independent investigation later showed that the shooting was entirely justified, and in-car cameras captured the entire event on film. Toxicology tests confirmed that McIver was high on "love boat," a combination of marijuana and formaldehyde, which was likely the reason that he was wearing just a shirt and sitting in the street blocking traffic at the time the officers approached him. As they attempted to remove him from the road, McIver wrestled one of the officers to the ground, removed the officer's service revolver, and began shooting at him at point-blank range. The other officer, seeing that deadly force was being used against his partner, shot and mortally wounded McIver. Both officers then secured the scene, removing the weapon from McIver's hands, before the crowd came.

Confronted with these facts, the legal conclusion was clear: McIver's death, while clearly regrettable, was precipitated by his illegal and violent conduct and not due to any racism on the part of the officers. The officers' actions were consistent with their training and any other response would have been unreasonable and potentially fatal for them or for others. I made the decision not to release the videotape, which showed a close-range shooting of a young man to his head. I also did not show the tape to Ms. McIver, knowing it would be too painful for her to watch. Instead, I showed the tape to the African-American leaders who came to my office and I released a detailed synopsis of the case to dozens of pastors to help spread the word about the true facts.

It turned out to be the correct course of action. There were no fires or looting in the days following the press conference. And yet, when the case was over, the conversation about race and justice in our community had ignited a movement. While the leaders who met with me admitted that the McIver case was not an example of profiling or racism, there had been other examples, too numerous to be coincidence, that needed to be addressed. Real peace and lasting calm could only come through confronting these much larger concerns.

Race and Police Shootings: Lighting the Long Simmering Fuse

Deadly encounters between the police and minority motorists and pedestrians are now filmed on squad car dash cameras, officer-worn body cameras, and bystanders' cell phones. Many of these videos have gone viral and play continuously on 24-hour news channels hungry for ratings. Riots and marches, and sometimes violence and looting, have followed in cities as diverse as Ferguson, Baltimore, Cleveland, Oakland, and Charlotte. Officers have been specifically targeted for murder following these use-of-force cases in New York, Dallas, and Baton Rouge.

The lack of trust between police and minority communities has been present for years, fueled in part by disproportionately high minority contact involving the war on drugs and mass incarceration. Code enforcement, heavy fines, and court costs have also become a de facto "poor tax" that fuels the hatred that explodes when use-of-force cases occur.²



Figure 6.1.

The familiar blue line bumper sticker is heavy with symbolism: a solid black line on top and bottom with a blue line in the center. The top black line represents law-abiding citizens in the community. The bottom black line represents the criminal element that would do them harm. In the middle, separating them, is the Thin Blue Line, the men and women of law enforcement who are there to serve and protect us.

Many are now asking the question openly: if this is “Us” against “Them,” who is the “Us” and who is the “Them?” It should be obvious that all peaceful members of the community should support the police in fighting crime, even as they simultaneously call for transparency in the investigations of police misconduct and criminal prosecution when warranted. But when the community turns against the officers, we observe that officers begin to retreat from the very neighborhoods that need them most, fearful that aggressive stop-and-frisk policies will be viewed as racial profiling and heavy-handedness. In instances where this has been the case, community-based policing was replaced with the “Blue Flu”³ or “The Ferguson Effect.”⁴ The response has been disastrous. With the Thin Blue Line erased, “black on black crime” has run rampant,⁵ the disastrous display of the Mirror Image Rule discussed in Chapter 1.

How did this happen? Historically, when officers were involved in use-of-force cases, other officers who witnessed the encounter would either turn a blind eye to the abuse or fabricate details to back up a false account of what occurred. This “Blue Wall of Silence”⁶ led to deep mistrust about whether truthful internal investigations into police misconduct were even possible. It also led to the opinion that the authorities were modeling the very worst kind of behavior—expecting cooperation on the street from reluctant witnesses—when these same officers were unwilling to speak up themselves.

The response in my District has not been to retreat and thereby fuel the victimization that runs rampant in high poverty, largely minority communities. Instead, I have advised law enforcement to step up patrols in these areas and have applauded them when they have relocated sub-stations and training centers to high crime areas. The important shift is for officers and community members to reimagine the role of police in these areas from warriors to guardians, where police are not seen as an occupying force, but rather allies who earn respect through sincere outreach.

Prosecuting the Police

There is a profound question that has been asked for over two millennia, “quis custodiet ipsos custodiet?,” which translates to “who guards the guardians?”⁷ The answer to that question is the District Attorney. When a use-of-force case happens, we must decide whether a crime has or has not been committed. Doing that involves employing a process that I call “The Integrity Diamond.”

The hard call cases are not when officers commit crimes, but when they use force and there is a question as to whether the force was justified. When a suspect is killed by the police or dies in custody, there will be many questions asked by many people. Public scrutiny can be especially intense in cases involving police shootings, inmates hanging themselves in jail cells, or high-speed pursuits. A triangle is formed between the three P’s: prosecutor, police officers, and the public. Perceptions are formed about whether justice can truly be done. Some may scream for leniency, while others demand maximum punishment. These reactions, however, are typically based more on relationships and agendas than on the facts of the case. In these situations, the key for building and promoting trust among all parties is for the DA to remain independent and transparent while maintaining a commitment to doing the right thing.

The protocol never changes for these cases and the goal throughout is to adhere to the three T's: truth, transparency, and trust. When an officer is a defendant or a victim of a serious felony, I call for an outside investigation by the SBI. I also give the head law enforcement officer of the involved agency a chance to make a joint request for an external investigation so that it is clear to everyone that we both welcome outside scrutiny.

If felony charges are filed against an officer, they come from the grand jury, not from the prosecutors. While these cases often cause division in the community, it is the community that ultimately decides the outcome through its charges and verdicts.

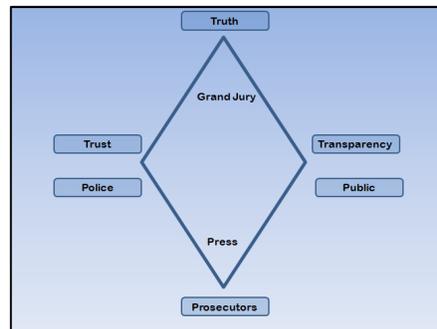


Figure 6.2. The Integrity Diamond

In cases where there are no charges and no grand jury is impaneled, I release a detailed synopsis of the investigation to the press and invite a member of the deceased's family and his or her attorney to review the complete file and interview the lead SBI agent. I also hold a press conference and answer questions when possible. While it would be easier to duck from the responsibility of handling these controversial cases, I choose to involve myself in their prosecution and only refer the case to an outside prosecutorial authority in extraordinary circumstances.⁸

Media and Police-Involved Uses of Force

When a use-of-force case occurs in my District, I am frequently in front of the cameras within the first few hours. My goal is to keep the calm by focusing on the process rather than the facts. I promise a complete and thorough outside investigation. I tell the community that my office will go wherever the truth leads. Most importantly, I promise full transparency. Essentially, I try to project calm by focusing on the three T's and the three P's which make up The Integrity Diamond.

The press is responsible for reporting the pertinent facts so that the public can keep a check on those in power. Tension arises when a use-of-force case occurs because the media moves fast while the wheels of justice grind slowly. Prosecutors and police will not talk about a pending investigation for fear of getting the facts wrong and potentially causing prejudice to future court proceedings. There are also ethical rules prohibiting pre-trial publicity by police and prosecutors.⁹

When a high-profile use-of-force case occurs, I know that if I say nothing, there will be others, from the decedent's family members, witnesses, or policemen's leagues, who will rush into the vacuum, potentially setting the tone and often spreading misinformation. Saying nothing can feed the fear and conspiracies that may be swirling out on the street and through social media.¹⁰

Optics are important during these press conferences. I frequently stand with the head of the law enforcement agency in calling for this outside investigation.¹¹ I try to simultaneously convey that everyone in the justice system is committed to the truth, and that I will remain independent when making the call on whether a crime has occurred. I am the District Attorney, not the police attorney.¹²

When a racially-charged use-of-force incident occurs or a contentious trial is about to take place, a group of African-American pastors remain on call to meet with me and the head of the affected law enforcement agency. When there is a damning video that is about to go public, we show it to them first. When I have decided that a case may be perceived as controversial, I do not try to explain my reasoning to the media in sound bites. Instead, I send out a detailed summary of the facts, together with my legal analysis of the decision. Approximately 100 of these faith leaders receive this packet of information so that they can talk to community members with the benefit of all the pertinent facts.



Figure 6.3. I joined Chicago Police Superintendent Garry F. McCarthy and Judy Woodruff on the set of PBS News Hour. During this appearance, Woodruff asked McCarthy about rumors regarding a video of a police shooting in his city. Within two weeks McCarthy was fired, the video was released, and the officer was indicted for first-degree murder.

In the time since the McIver shooting, the use of The Integrity Diamond has been tested many times, and it has withstood the test. For example, during a four-month period, from October 2013 to January 2014, four people were killed in three different police-involved shootings in Wilmington.¹³ A few months earlier, George Zimmerman was acquitted in the shooting death of Trayvon Martin in Florida in July 2013.¹⁴ This incident gave birth to a national movement known as “Black Lives Matter.”¹⁵ The riots in Ferguson, Missouri, began in August 2014.¹⁶ The Wilmington shootings fell squarely within the time frame when Americans were having a big debate about race, justice, and officer involved use-of-deadly-force incidents.

The Revolutionary Black Panthers



Figure 6.4. Members of the Revolutionary Black Panthers on the New Hanover County Courthouse steps, January 30, 2017. Source: Star News.

One feature of the protests that occurred throughout the country is that an outside group typically arrives in the affected community to lead the protest. Such was the case in my District. The Revolutionary Black Panthers employed anti-police protests in several such instances and marched with weapons to underscore their militant opposition to a system that, they believed, oppressed people of color.

The group hailed from Milwaukee and knew little about our community. In requesting a parade permit to gain attention for their cause, they requested to carry loaded firearms during the march. In response, I, along with the City Attorney, issued a public statement notifying the Panthers of a state statute prohibiting marches with weapons. The First Amendment guarantees peaceful assembly but does not allow for an armed gathering that can potentially turn violent.

The permit was denied, but that did not deter the group from coming to town. They announced plans to gather in Creekwood to recruit participants for the parade. Almost no one showed up. The Panthers, failing to see why no one would engage with their effort, accused law enforcement of creating an atmosphere of fear where people would be afraid to join in the protests.

Next, with guns in hand, they marched on the sidewalk, instead of the street, claiming that this would not constitute a parade subject to state laws. Soon after, they assembled on the steps of the courthouse to hold a press conference. Having loaded weapons on county property, including the courthouse, violated a county ordinance, punishable as a class 3 misdemeanor.

Instead of making an arrest on this technical violation, the Chief of Police, Sheriff, and I made a joint call from our command center and gave the group a verbal warning: the group was ordered to either put down their weapons or be arrested. Numerous deputies, who were also armed, approached the group and asked them to lay down their guns. The Panthers complied and the weapons were seized.

The Panthers disbanded after this encounter only to regroup later in the day at a private residence in downtown Wilmington. Taking up new weapons, the Panthers stood on the front porch and conducted a “tribunal.” They had a list of grievances about the Chief, the Sheriff, and me, ultimately accusing us of genocide and other war crimes. Their call and response to the crowd included other grievances, specifically 1898, the closure of Williston High School, and The Wilmington 10, discussed below. They stomped on an American flag, all the while remaining on private property.

I was with law enforcement officers throughout the day, monitoring the events through several hidden cameras used by undercover officers in the crowd. As much as we disagreed with what was being said and done, we respected the First Amendment and the Panthers’ right to free speech. We also could in no way countenance an illegal arrest—one that would have given them a larger platform and prove their assertion that the law and courts overreach and deprive people of their rights. Bored by our show of restraint and by speaking for several hours to a crowd that was not growing, the Panthers quietly returned to their hotels and ended their protest.

We agreed to return the Panthers’ weapons the next day, provided they could prove ownership and lawful possession. Two of the guns were determined to be stolen from Wisconsin and one of the individuals attempting to retrieve a weapon had an active domestic violence protective order issued against him from the same state. With those exceptions, the guns were returned within 48 hours of their seizure. The group left Wilmington without incident.

Legitimate Grievances

Protesters take to the street with legitimate grievances and it would be smug for anyone in the criminal justice system to say otherwise or ignore their pleas for reform. The mistrust that bubbles to the surface following a racially-charged police shooting is boiled in a cauldron that is heated by the slow burn of a painful history. Confronting that past is important and speaking honestly about the court’s role in perpetuating racism through the years is necessary.

Our laws, starting with the Constitution itself, have given lip service to equal protection while that ideal has frequently been lost in the interpretation or implementation of the law. Profiling does occur and mass incarceration has disproportionately impacted communities of color.

As justice officials, we can do better and we must do better. Especially after the murder of George Floyd, there will be sweeping criminal justice reform around racial equity during arrest, conviction, and sentencing. This will include bail reform and the establishment of citizen review boards in communities where they did not previously exist. Every district attorney should welcome those conversations and want to be a part of those efforts. It will be our handling of cases, especially in violent crimes where overwhelmingly the victims are minorities and below the poverty line, where our actions will demonstrate that black lives matter.

And of course, people in power, including elected officials and the police, do commit crimes and must be held fully accountable. The impact goes far beyond the individual officer and official and can impact the entire system as cases are affected and trust is further eroded. And where an official or officer relies on his status to either perpetuate a crime or attempt to escape punishment, he should be punished more severely as a result.

In the sections to follow, we will look at how the government arm of the starfish is most responsible for spearheading reform. This includes holding police officers and public officials accountable, as well as a policy to ensure that damage is limited to the extent possible. We will look at how education, through officer and community training, can reduce harm and build trust. We will also explore efforts to reduce crime and mass incarceration at the same time. Finally, we will see how confronting the past, not denying it, can bring about a better community for everyone.

State v. Sloan¹⁷

The car looked a little too nice to be prowling around Houston Moore, a Section 8 housing community. The new model Buick was furtively starting and stopping, coming to a crawl by alleys and staying too long at stop signs. Was this a stolen vehicle? Was it a drug deal in the works? WPD Officer Stephen Griffith ran the license plate and the registration was valid. With no basis to stop the car, Officer Griffith let it go.

An hour later, he saw the same car again. This time there was a passenger in the front seat. Officer Griffith fell in behind it and followed at a distance. When the vehicle failed to use a turn signal and cut off a taxi, he initiated a pretext stop, using a minor traffic offense to conduct a more thorough investigation.

The car was driven by Mark Sloan, age 46, who spent his entire adult life working in Pender County law enforcement. Sloan's home was located only 30 miles up the road on US-17, but a world away from Houston Moore. Over more than two decades, he rose to the rank of captain with the Pender Country Sheriff's Office. His primary duty was operational authority over the entire patrol division.

Sloan was a deacon and active member at his Baptist church. He was also an elected official, serving as a town council member in Topsail Island. When visiting his office, it was not uncommon for visitors to hear the voice of Rush Limbaugh on the radio. A picture of Ronald Reagan hung prominently behind Sloan's desk. If a casting agency called looking for a white, law and order, God-fearing, conservative law officer, they could have asked directly for Sloan.

"What brings you to this part of town?" Officer Griffith asked, while also requesting license and registration. Sloan produced his license, showing himself fully dressed in his captain's uniform. "I just dropped off my nephew at his apartment around the corner and now I am completely lost," he replied.

It seemed unlikely that the passenger was Sloan's relative: Alton Ross was a 25-year-old African-American man who, at first glance, appeared to be a woman. Sloan added, "after leaving my nephew's house, I became hopelessly lost in this neighborhood. This nice young man has offered to show me back to civilization if I drop him off at a Burger King."

Officer Griffith was skeptical, and asked Sloan if he had dropped off his nephew in the last few minutes. Sloan said yes. But Officer Griffith knew he was lying, as he had seen him an hour earlier. "What is the name of his apartment complex?" Officer Griffith asked. "I don't know," Sloan replied, and pointed in a direction where there were no apartment complexes. "And what is your nephew's name?" asked the officer. "Cody Suggs," Sloan said. "We will be checking into that one, Captain," Officer Griffith said, and radioed for backup.

When the backup officer arrived, Sloan and Ross were separated. Officer Griffith again interviewed Sloan, this time in front of his squad car to capture the questioning on film. The lies continued. Sloan reiterated that he had dropped off his nephew and was lost. He had passed Ross on the road and said that Ross had flagged him down and he was giving Ross a ride to Burger King.

Meanwhile, Ross was giving a different story to the assisting officer. He was a male prostitute from Durham (a background check confirmed his address there as well as a recent conviction for solicitation). He had come to the Port City to stay with relatives and hustle on the street when Sloan flashed his lights at Ross, a signal that the driver was soliciting prostitution.

Ross further told the officer that he got into Sloan's car and they negotiated the terms of their arrangement, though Ross tried to put him off initially, telling Sloan, "you're not my kind of guy." Sloan offered Ross \$60, which he put in the center console of the vehicle.

As he pulled across the street from some apartments on Wellington Avenue, Sloan asked Ross to expose himself to ensure that Ross was not an undercover police officer. Ross complied. Sloan then started to search for a more discreet location, but cut off the taxi without signaling, leading Officer Griffith to initiate a traffic stop. Ross never asked Sloan to drive him to Burger King. "I know what I am," Ross told the assisting officer. "Apparently you don't know who he is."

The name of the "nephew" came back as an unrelated white male who lived in rural western Pender County and wasn't related to Sloan at all. In an interview later that same day, Cody Suggs confirmed that he barely knew Sloan. Suggs stated he did not have an apartment in Wilmington, and he had not been in a car with Sloan the night before or ever, for that matter.

"He kept coming by my house to talk to me after the call," Suggs said, referring to a noise complaint that Sloan had responded to six weeks earlier. After that incident, Sloan returned several times for no obvious reason, leaving Suggs uncomfortable. "...I did not report it. Who was I going to tell?" Suggs' name was simply part of the cover story, the first thing Sloan came up with when being questioned.

Sloan relied on the fact that, between his word and the word of a common criminal, his version would go unquestioned. He was wrong. Officer Griffith arrested Sloan on three charges: soliciting prostitution, soliciting crimes against nature, and directional signal equipment violation. To the friends who knew him, or thought they did, Sloan's arrest was baffling.

Pender County Sheriff Carson Smith called me before the sun was up. "There has been a mistake," Sheriff Smith said. "Mark was giving a young man a ride to safety when he was pulled over by WPD officers who do not know him." Sloan had obviously called his Sheriff, who now repeated the same version that Sloan had given to Griffith hours earlier. "Why don't you come to my office, Sheriff," I said. I had already received the call from WPD and had anticipated Sheriff Smith's involvement.

Sheriff Smith came to my office later that morning and we watched the videotaped interrogation together. The facts spoke for themselves. Whatever the outcome of any future trial, Sloan was caught lying to fellow officers. Putting aside his personal friendship with Sloan, Sheriff Smith took immediate action and fired Sloan within 24 hours of the incident.

Sloan was unrepentant and continued to profess his innocence, presumably confident that Ross would not return for the trial. He was wrong again. Months later, at trial, DA Investigator J.W. "Skip" Hedge located

Ross in Durham, and the young man agreed to cooperate. Sloan was convicted of soliciting crimes against nature.

While the misdemeanor charge did not carry active jail time, District Court Judge Shelly Holt stripped Sloan of his badge and sent the judgment to Law Enforcement Training and Standards, effectively banishing Sloan from law enforcement for life. Limiting the damage that an officer, like Sloan, causes to the larger system is not only achieved in individual cases but through a policy known as *Giglio*.

***Giglio* and the Police Integrity Policy**

People are presumed innocent until proven guilty. This right frequently makes it difficult for employers to act while charges are pending. “Let’s wait and see and let the process run its course before taking any action,” is the common refrain. But what happens when a police officer is charged? There are a whole host of concerns other than the crime itself. In Sloan’s case, for example, we can no longer rely on his word as a witness in other pending cases when he lied to fellow officers. If his veracity is called into question, it calls all his arrests into question.

Following Sloan’s November 3, 2011, conviction, I formalized a district-wide policy to handle these situations. The policy is based upon two United States Supreme Court cases, *Brady* and *Giglio*, which frame a prosecutor’s obligations to be transparent with the court and with defendants’ attorneys.¹⁸ In introducing the policy to every officer, I emphasized that the credibility of the judicial system rests on the foundation that public servants are truthful and have integrity that is beyond reproach.

Brady material includes “exculpatory evidence,” either testimonial or physical evidence, which might be favorable to the defense. *Giglio* material requires disclosure of “impeachment evidence” of any witness who is called to testify at trial. That includes not only criminal convictions, but anything that bears on the veracity of the witness (such as a prior statement by a witness that is inconsistent with the witness’s testimony, false reports, etc.), as well as evidence of prejudice or bias (racial, religious, or personal bias against the defendant individually or as a member of a group). This evidence is important for jurors who will weigh the credibility of the witness testifying in court.

The *Giglio* policy puts the burden on the Internal Affairs (IA) Division of each police agency to review the file of every sworn officer, reaching back a period of 10 years, and disclose to the DA’s Office the information mandated by *Giglio*. Next, three senior prosecutors in my office examine the file. If disclosure is required, prosecutors meet with the “*Giglio* impaired” officer to inform them that the information will be disclosed to the defense attorney and the trial judge and will be the subject of examination in open court whenever the officer testifies in the future.

In egregious cases, like Sloan’s, where the conduct is such that a witness’s credibility cannot be rehabilitated, we send a letter notifying the officer and their supervisor that we will not call them as a witness in the upcoming trial or in any future case. We call this the “death letter” because it may cause the officer to lose his or her job.

A brief example will illustrate the policy. Suppose that Officer Green routinely drives his patrol vehicle to and from work and typically leaves it at his residence when off duty. Department policy requires that the vehicle be used for work purposes only. On one occasion, Officer Green drives his patrol vehicle to the supermarket to go shopping on the way home from work. A concerned citizen takes a picture of his license plate and sends an email to the chief, upset that the officer is wasting taxpayer money. Confronted by IA about the incident, Officer Green lies and denies that he ever took the car to the store. The IA investigator then shows Officer Green the picture of his license plate and Officer Green is reprimanded.

In this example, had Officer Green been truthful when first questioned, there would be no *Giglio* violation. Misusing a company vehicle may or may not constitute an internal departmental policy violation, but it does not affect Officer Green’s credibility as a witness. But his lie during an internal affairs investigation

calls his veracity into question. He would then become “*Giglio* impaired” for 10 years and would be questioned about this incident each time he testifies in the future in any proceeding where he is an officer.

Of course, when an officer commits a crime, a conviction would automatically call his or her credibility into question. When that crime involves moral turpitude, it may result in the officer losing his or her badge. In extreme cases, where that officer is the only witness, it may require the DA’s Office to dismiss all pending cases of that officer: better to set several guilty people free than risk sending an innocent person to prison on the word of a disgraced officer.

Ending Mass Incarceration

Many see mass incarceration as disproportionately affecting people of color. Some claim that prison growth has exploded over the last few decades as a way of separating and segregating minority communities from privileged society.¹⁹ The argument continues that after the 13th Amendment outlawed slavery, a racist criminal justice system has re-institutionalized the economic engine of the South as prisons house mostly men of color. Chain gangs have become free “slave labor.”

Today there are about 2.5 million people in jail or prison in America: 1.5 million in state prisons, 300,000 in federal prisons, and approximately 700,000 in local jails.²⁰ In a country with five percent of the Earth’s population, we account for over a quarter of the Earth’s incarcerated. The prison industrial complex has exploded in growth over the last few decades. And, while crime rates have generally decreased, big concerns about prison practices remain.



Figure 6.5. Law Enforcement Leaders to Reduce Crime and Incarceration Event at the National Press Club, October 2015.

In 2015, police, sheriffs, and prosecutors from all 50 states traveled to Washington, D.C. to call our nation to a higher purpose. The mission of the Law Enforcement Leaders to Reduce Crime and Incarceration was to simultaneously lower crime rates and the prison population. Major metro chiefs, rural sheriffs, and DAs from big cities and small towns stood united in their purpose: by locking up only the right offenders, we can make our communities safer.

Of course, this group was not advocating for going light on crime. The founding members had made a career of being tough on criminals and rose through the ranks of their respective professions by being good at what they do. Many of the members are conservative politically, and few likely voted for President Barack Obama, with whom we met after announcing our group’s mission to the National Press Club.



Figure 6.6. President Obama met with members of the Law Enforcement Leaders to Reduce Crime and Incarceration in October 2015 at the White House.

After the leaders assembled, five of us were asked to speak—to give our perspective on the importance of the issue. The police chiefs for Los Angeles, Chicago, New Orleans, and Houston all spoke passionately on topics ranging from community policing to outreach efforts to use-of-force protocols, as well as the need for more drug and mental health treatment. I was honored to be the only prosecutor or official from a small community to make remarks.²¹

Freed from the political pressure that many lawmakers face, these law enforcement leaders were telling the country that there can be a different path forward, one that works more intelligently and dispels several myths that have become part of the national discourse. Here are some myths and the reforms that we sought:

Myth 1 of Mass Incarceration: The government is making money by re-institutionalizing slavery.

Fact: Prison is expensive, averaging \$30,000 per year per inmate, and nearly all prisons are run by governments, not private individuals or business, and are funded by state and federal taxes. While politicians who maintain tough positions on crime across the country agree that locking up offenders scores high on approval ratings, reality set in during recessionary times that government cannot continue the pace. Far from building more prisons, states, including North Carolina, are starting to close them.

Reform: Widely viewed as a non-partisan issue, efforts to confront mass incarceration have been undertaken by all areas of government. The legislative branch has written new laws; the executive branch (police and prosecutors) has come together to advocate for a shift in resources and priorities; the judicial branch has followed suit with a change to the sentencing structure and even a deep examination of the goals of punishment. In 2012, the North Carolina Legislature, working closely with law enforcement and judicial officials, passed the Justice Reinvestment Act (JRA).²² The goal was to reduce the number of people serving time in prison for drug and property offenses in order to make room for more violent offenders. With savings realized from fewer inmates, the money was “reinvested” into probationary community-based punishment that was able to focus on treatment. Seven years after the law was passed, the prison population in North Carolina fell by over 10 percent, or more than 3,000 people. Eleven prisons have been closed (even as the State population continues to grow) and there are 14 percent fewer people returning to prison now than in years past.²³

Myth 2 of Mass Incarceration: Prisons are filled with nonviolent drug addicts and young men of color who have been caught with marijuana cigarettes. The war on drugs is really a war on people in poverty. We should follow the European model and save scarce bed space for violent offenders.

Fact: If we let everyone out of prison today, except for murders and rapists, the United States would still maintain a higher rate of incarceration than most industrialized countries.²⁴ Over 53 percent of state prisoners are incarcerated for violent crimes—murder, manslaughter, rape, robbery, and assault.²⁵ Violent criminals receive lengthy sentences, not property offenders or drug addicts. The content of the crime and the magnitude

of a defendant's criminal record, not the color of a defendant's skin or whether their attorney is retained or court-appointed, are the driving factors at the time of sentencing.

Moreover, less than one percent of federal prisoners are incarcerated on drug possession convictions. In the state system, only 14 percent of the prison population is there on any type of drug offense; of those, nearly all are incarcerated for trafficking and selling.²⁶ Still more of these drug-dealing inmates are serving time for cases where prosecutors have pursued violent criminals by using the drug laws, which are easier cases to prove than violent crimes.

Reform 1: An important reform at the federal level corrected a racial injustice. Crack cocaine, long viewed as a drug of impoverished users, was sentenced much more harshly than powder cocaine, a drug preferred by wealthier, more privileged users. These differential punishments had a disproportionate impact on the minority community. Federal courts found the sentences violated equal protection. In 2010, the Fair Sentencing Act was passed that drastically reduced, and in some cases commuted, sentences to rectify the injustice.²⁷ Additionally, the Law Enforcement Leaders to End Mass Incarceration advocated eliminating or greatly reducing mandatory minimum sentences for drug cases, getting judges and prosecutors back into the job of sentences and plea bargains, rather than having their discretion handcuffed through legislative decrees.

Reform 2: The JRA required that defendants receive deferred prosecutions for first-time drug offenses, meaning that while probation is mandatory, offenders have a chance to keep the conviction off their records. The law further allowed for expunction—permitting one nonviolent felony or misdemeanor to be removed from a record after a certain period of time.²⁸ Additionally, the JRA reduced the time that habitual felons serve in prison for nonviolent underlying felonies.

Myth 3 of Mass Incarceration: The greatest abuses are done at the local level in jails where nonviolent offenders, who are presumed innocent and frequently destitute, languish in custody awaiting trial.

Fact: Local officials, like DAs, Sheriffs and County Commissioners, must bear the cost of incarceration at the local level, about \$80 per day per inmate in my District, and are accountable to the voters. Many defendants in jail have been convicted and are serving out sentences of six months or less (longer sentences get shipped to prison).

Reform: My office teamed with the NHSO to hire a full-time deputy to work daily alongside my prosecutors to monitor the jail population. Non-violent persons who cannot afford small cash bail (for example, a homeless person panhandling or a teenager shoplifting) are released from custody even before the defense attorney meets their client. In just the first two years of operation, this program saved more than \$2 million in the cost of incarceration and resulted in dozens of low-risk defendants being released from custody prior to trial.²⁹

Respecting Authority, Not Fearing Power

While deadly police encounters are extremely rare, what is very common is the everyday heroism of the men and women who serve and protect our communities. Most officers do their jobs with honor and distinction, with little pay or recognition. To help create a better awareness of their roles and a respect for their positions, we have created two programs in my District.

The first program is called “Know Your Rights,” where members of my office join with police officers to conduct a series of summits with community members. The meetings are held at non-profit centers and houses of faith, frequently in high-crime areas. Participants learn that if they are stopped by the police on the street, in a car, or at their front door, they have basic protections guaranteed by the Bill of Rights.³⁰ We give real life examples of how these rights may be involved in everyday circumstances.

Searches require probable cause or an admission of guilt for a specific crime. For encounters on the street, participants learn they have the right to calmly leave if they are not under arrest, or they may invoke

their right to remain silent. If they get stopped in a car, they have the right to pull over in a safe and well-lit area or to put on their hazard lights and call 911 to explain that they are looking for such an area. Drivers should keep their hands on the wheel. They have a right to know the reason for the stop, to record the incident, and to get the officer's name. If there is an arrest roadside, the participant is told they have a right to leave their car in a secure place so it will not be towed.

If police stop by someone's home, participants are told they have a right to know that the person knocking is an actual law enforcement official by asking for credentials or calling 911 to see if officers have been dispatched to the property. Participants also learn that they have a right to ask why officers are at their home, and to view a search warrant before allowing anyone to enter.

In all these instances, the basic message is reinforced: officers are there to do their job, which is to serve and protect. Law enforcement officers will have an open dialogue with the subject of their investigation and, if the situation allows, they will listen to concerns raised at the time and explain their actions during a stop, search, or arrest. For their part, citizens are expected to comply with the officers' commands, even if they object to the law enforcement action at that moment. Citizens at the summits are given contact information for the Internal Affairs Division of the police agency as well as my office, in case they ever want to file a formal complaint to have the matter reviewed.

These summits start the conversation and set the tone that law enforcement officers uphold rights that are the same for everyone under the Constitution. As part of these outreach efforts, the heads of area law enforcement agencies joined forces to illustrate the best way for citizens to interact with their officers to prevent misunderstanding and escalation. The campaign is called "Listen, Explain, Comply, Complain." With the motto "We are all in this together," their goal is simply to "make sure everyone gets home safe, and to encourage positive relationships and mutual respect." The compact is simple: officers will listen and explain; citizens should comply then complain.³¹



Figure 6.7. From left: UNCW Police Chief David Donaldson, Wrightsville Beach Police Chief Dan House, Kure Beach Police Chief Dennis Cooper, New Hanover County Sheriff Ed McMahon, Wilmington Police Chief Ralph Evangelous, and Carolina Beach Police Chief Chris Spivey. Source: PositiveEncounters.com

The second program in my District to build better relations that officers have with the community is the "Service Above Self Awards," named for the motto of the host organization, the Wilmington Downtown Rotary Club. When out of uniform, only a few people in law enforcement are recognizable to the community at large. Most officers work in obscurity and become famous only when they are injured or killed in the line of duty, criminally charged, or when a use-of-force incident gets media attention. In this respect, heads of agencies are like the quarterback of a football team, receiving the praise, and occasionally the blame, for the whole team's work. Most officers, by contrast, are like the offensive linemen who do the hard, punishing work and only get singled out for recognition when they jump offsides. Rank and file officers need to be made famous in their hometowns for their everyday acts of heroism.

At the "Service Above Self Awards" ceremony, officers from several different police agencies are recognized for valor in the line of duty. Friends and family are invited to hear the stories of these men and women, sometimes for the first time in public. Life-saving decisions, major arrests, courage in high-stress situations, and simple acts of kindness are all recognized as honorees hear their stories and biographies retold

by the peers who nominated them. Alex Haley, the author of *Roots* and *The Diary of Malcolm X*, held as his personal motto, “Find the good and praise it.” On this day, with this ceremony, we do.

History: Sometimes the Truth Hurts

Our country’s founders ignored the reality that slavery remained even as they “secured the blessings of liberty” by guaranteeing “equal protection” and “justice for all” in the Preamble of the Constitution. Our courts were complicit in the sin of this contradiction. The *Dred Scott* decision declared that the Constitution does not apply to slaves.³² Then, in the wake of the 13th Amendment abolishing slavery³³, a series of US Supreme Court decisions, *Plessy v. Ferguson*³⁴ prominent among them, created the absurd fiction that people could peacefully coexist in a “separate but equal” world.

Jim Crow laws kept blacks and whites separated at restaurants, hotels, athletic fields, and schools. In the years that followed, local police and prosecutors were cast into the role of upholding these evolving laws as lunch counters in Greensboro and buses in Birmingham became battlegrounds. Many faith leaders, including Dr. Martin Luther King, Jr., called the contradiction out, noting that politicians in every branch of government were feeding their constituents “the stale bread of hatred and the rancid meat of racism.”³⁵ Non-violent protests were often met with police brutality.

The History of Wilmington in Black and White

In the weeks surrounding McIver’s death, I watched the Duke Lacrosse scandal play out in Durham (discussed in Chapter 2). At the height of the controversy, Duke embarked on a quest to hold a citywide discussion around the thorny issue of race and justice and it enlisted the assistance of Dr. Tim Tyson. Dr. Tyson, who is white, majored in African-American studies as an undergraduate. He gained a national reputation for his writing about the civil rights struggle both in formal studies and in novel form.³⁶ The son of a preacher, Dr. Tyson approached the issue of race relations with a fervor that was just short of religious zealotry, and he considered equality for all people to be a moral imperative.³⁷

Dr. Tyson, who grew up in Wilmington, witnessed its racial history firsthand, and became a celebrated author for chronicling it.³⁸ His approach was original and bold in its execution. Instead of having an academic lecture on Duke’s campus (that few would likely attend), he instead opted to teach a class to 300 students, diverse in many respects, at the Hayti Heritage Center, a historic African-American church.³⁹

One hundred community members (including my mother, who had attended Duke as a young woman and lived five houses from the Duke Lacrosse house at the time of the incident) were invited to audit an eight-week course that would explore the history of race and justice in Durham. The lectures might address the Greensboro sit-ins one evening, while another night might have involved race relations in Durham during World War II. Toward the end of Dr. Tyson’s talk he would moderate a panel of local leaders who would provide their own firsthand accounts. Time was devoted to either an open microphone discussion or breakout sessions in small work groups for community-based action on current issues.

To underscore that the purpose of the gathering was not merely an academic exercise, Dr. Tyson elevated the conversation by inviting a gospel singer to teach the class with him. Mary Williams, with a powerful singing voice reminiscent of Aretha Franklin, could take over the room at any moment. Williams drew everyone into singing well-known songs from the civil rights struggle and hymns from the slave era. When the songs were finished, Williams would explain the oral history that was transmitted through the music. As she did, she peeled back the secret codes and buried lessons that inspired the crowd in a way that Dr. Tyson could not do alone.

I audited one of the classes and explained to Tim and Mary that while I was a DA, I had a much different approach to handling cases than did my counterpart in their community. Within minutes of observing

the class, I knew that I had found a great vehicle to engage community outreach in Wilmington. Over the next several days, I met with the same leaders who had come to my office after the McIver shooting. I encouraged them to come to see firsthand what I had witnessed and brought 16 of them to the next class. All were similarly impressed and agreed to approach Tim and Mary about replicating this class in our community. Both were excited by the opportunity and said yes.

The group was called the “Big Picture Talkers.”⁴⁰ Our goal was to bring together unofficial leaders of the community: public educators, pastors, and heads of non-profit agencies. We were not aiming for one event, but for the beginning of a process, one that would reflect the words of the class mission statement: “We are committed to bringing together a new multicultural community in order to create a space and time to dissect, discuss, and confront Wilmington’s racial history. Furthermore, we wanted to attempt to understand history’s persistence in the present and its possible effects in the face of the future.” Our purpose was not to wallow in our city’s painful history but to celebrate its many triumphs and highlight the achievements of our residents.⁴¹

The class we created, “The History of Wilmington in Black and White,” was held in the old Williston High School building, to underscore its historical significance. (In the 1970s the facility was reopened as Williston Middle School and it remains open to this day.) First-year attendance numbered over 300 participants. The class was held for four consecutive years and came close to reaching 1,000 graduates. It was funded through grants from the Z. Smith Reynolds Foundation and was run, in its first year, through UNCW’s Osher Lifelong Learning Institute. In subsequent years, the class was run through the YWCA.⁴² The friendships that were formed out of this shared experience survived the end of the semester and led to community action.

Three historical events covered in “The History of Wilmington in Black and White” deserve special mention: The coup d’état of 1898, the assassination of Dr. Martin Luther King, Jr., and the Wilmington 10.

1. Coup d’état of 1898

Going back over 100 years, a great divide had been created in our community along racial fault lines. Once a shining example of racial equality in the Jim Crow South, Wilmington’s black middle class was run out of town in 1898, and black elected leaders were forced to resign at gunpoint in the only coup d’état in American history. The Cape Fear River was said to be “choked with black bodies” after the massacre.⁴³

This defining event in the life of our region is highlighted in the National Constitutional Center Museum in Philadelphia as a watershed event in our country. Unfortunately, it is all but forgotten in textbooks and class studies in our area schools. The diaspora of the black middle class that followed forever altered the neighborhood structure and economic vitality of the minority community in our region that remains to this day.

Obviously, no one is alive today who directly witnessed the events of 1898. But the “massacre,” “riots,” and “coup d’état,” as it is alternatively known, is still with us in quiet whispers and in public discourse. Some call it “The Ghost of 1898.”

2. Wilmington’s Tie to Dr. Martin Luther King, Jr.

When the U.S. Supreme Court finally ordered the desegregation of public schools through *Brown v. Board of Education*, they added an important qualifier that it should be done “with all deliberate speed.”⁴⁴ With no real timetable established to implement the law, needed integration was delayed, in some cases for years. In Wilmington, that delay lasted 14 years.

Williston High School was long considered a model for education and boasted many elite graduates who went on to prominent colleges and universities, making the school the pride of the African-American community. When the New Hanover County School Board ordered its closure and required black students to attend the formerly all-white New Hanover High School, the black community was outraged. This plan would

surely relegate their children to second-class status and a loss of community identity. Dr. Martin Luther King, Jr. agreed to visit and to speak at a rally in April 1968, less than two months before the school doors would be shuttered.

Dr. King was in Memphis, Tennessee, lending support to sanitation workers who were demanding higher wages and better conditions in the days before his scheduled appearance in Wilmington. He was to arrive in Wilmington on April 4 to deliver a speech encouraging voter registration at Williston. But the sanitation strike gained momentum and he decided to remain in Memphis to support the effort. The *Wilmington Morning Star* newspaper made a passing reference to the cancellation, noting in the Tuesday, April 2 edition that “King Cancels Stop in Wilmington Thursday.” His decision to stay in Memphis proved deadly. King was shot by James Earl Ray as he exited room 306 of the Lorraine Motel at 6:01 p.m. CST at the very moment he was to speak at Williston.

The April 5, 1968, edition the *Wilmington Morning Star* led with the headline, “Dr. King had been slated to speak here.” The next day, the same newspaper wrote: “200 students and adults from Williston High School paraded to downtown Wilmington for a short prayer service at the New Hanover County Courthouse. WPD Chief H.E. Williamson lauded the citizens’ restraint and noted that ‘no parade permit was needed for the march since the group stayed on the sidewalk.’”⁴⁵

On the 50th anniversary of his assassination, I called upon Bertha Todd, a career educator who was born two months before Dr. King and who taught at Williston High School on the day he was murdered. Even at 89, Ms. Todd proved to be a tireless strategist and agreed to be my co-chair of the MLK50 Commemoration Commission.

The initial idea to hold one event quickly evolved into two: a daytime assembly for students and an evening event for members of the community. On April 4, 2018, hundreds of students from several area schools assembled at Williston during the school day to honor King’s legacy by calling out school violence and bullying. Later that night, nearly 2,000 community members filled every available seat and stood in overflow spaces to hear the Williston choir, elected leaders, and other community members laud Dr. King (an open letter I penned to Dr. King was read aloud: see Appendix 1). At both events student essay writers were honored for standout passages they prepared about Dr. King’s mountaintop speech.⁴⁶ They wrote about how the world looked from the mountaintop today and how it might have been different had King come to our city.

At the appointed hour, 7:01 p.m. EST, Major General Joseph McNeil, a graduate of Williston Senior High School and one of the four young men who refused to stand up from a white’s only lunch counter at Woolworth’s in Greensboro, rang a bell to remember the precise moment King was shot. The bell was rung an additional 38 times at Williston and in churches throughout the city to honor the 39 years that Dr. King walked the earth. (In 2020, Major General McNeil returned to his hometown for a ceremony finally recognizing his contribution to the Civil Rights Movement. The street in front of the courthouse was renamed Major General Joseph McNeil Commemorative Way through a vote by Wilmington City Council.⁴⁷)

A plaque was hung at the entrance of Williston that, like a plaque outside the Lorraine Motel in Memphis, bore an inscription from the Book of Genesis 37:19: “Behold, here cometh the dreamer. Let us slay him. And we shall see what will become of his dreams.” We also engaged members of the non-profit and faith-based communities to hold joint services and stand against racism throughout the year in regional public and private events.

3. The Wilmington 10⁴⁸

The race riots that followed the painful closing of Williston High School spawned the celebrated trial of The Wilmington 10, at which nine African-American men and one white woman were convicted of firebombing a white-owned grocery store and sentenced to prison for a collective 280 years. Much of this history was never documented in school textbooks, but it has been handed down through oral tradition. This was especially true in Wilmington’s African-American community, leaving an entrenched mistrust of established power for

decades. Dr. Tyson invited some of the members of The Wilmington 10 in for a panel discussion, and the heavy-handed tactics of the lead prosecutor, Jay Stroud, became evident to me and others watching.

When the Wilmington 10 were convicted in 1971, many questioned their guilt. Their case made international news and Amnesty International declared them to be political prisoners. In 1978, their sentences were commuted by Governor Jim Hunt. In 1980, the Fourth Circuit Court of Appeals reversed their convictions.

The case file, made up of press clippings and the trial notebook of Assistant District Attorney Stroud, sat in a closet in the District Attorney's Office, gathering dust, for the next several years. I gave Dr. Tyson the case file, thinking it belonged more to history than to my office. What Dr. Tyson discovered during his in-depth review of the file was jaw-dropping.

Notes taken during jury selection by Stroud made clear the worst kind of tampering and racial discrimination. Stroud's own words left no doubt that he tried to select jurors who were known members of the Ku Klux Klan (KKK). He also selected token African-Americans who were likely to go along with a guilty verdict. When 10 African-Americans and two whites were selected to hear the case, Stroud knew that a guilty verdict would be less likely than if more white members were on the jury. His notes document a deliberate plan to fake an illness (before the jury was empanelled and double jeopardy would attach to the proceedings) so that a mistrial would be declared.

Stroud got his wish. A mistrial was declared, and the re-trial of the case was moved to Pender County, a far more favorable venue for the prosecutor. Ultimately 10 whites and two African-Americans were selected onto the jury, a complete reversal in the racial composition of the first jury. The Pender County jury convicted The Wilmington 10 of all counts.

When the details of this injustice came to my attention, I knew that action was required, even four decades later. Stroud's behavior was not merely unprofessional, it was unconstitutional. While all 10 defendants had been let out of prison many years earlier, the criminal stain remained. All faced the same challenges that every convicted felon faces, and nearly half of the defendants had died without ever getting closure.

The only person who could pardon them (a move long-sought by the surviving members of The Wilmington 10 and their family members) was the governor. Dr. Tyson and I reached out to Governor Beverly Perdue and her legal team with this newly discovered evidence. On her last day of office, Governor Perdue pardoned The Wilmington 10.⁴⁹

The Town Square: The Power of Symbols

America's earliest settlements reflected the significance that Church and State played in moderating human conduct. Even before building their own homes, the first two structures erected in many of the colonial-era town squares were a church on one side of the town square and a jail on the other. Together, the pulpit and the prison acted as a hammer and anvil to shape the behavior of the townspeople. The same organization of buildings exists in towns across America. Religion inspires while the law requires.

Law sets the ground floor, the minimum standard for a decent society. These codes were enacted in view of what the "bad man" might do. The church was more aspirational, promoting ideal behavior that people might attain, even unwitnessed, because God would be watching. Both sides of the town square support each other. As President John Adams wrote, "Our Constitution was made ONLY for a moral and religious people. It is wholly inadequate to govern any other."⁵⁰

Thomas Jefferson, who authored the Declaration of Independence and the Virginia Statute of Religious Freedom, later recognized that core rights are fundamental and that keeping the church and state separate was essential. That did not mean that citizens should abandon faith. As Jefferson wrote, “God, who gave us life, gave us liberty. Can the liberties of a nation endure when we remove a conviction that they are a gift of God?”⁵¹

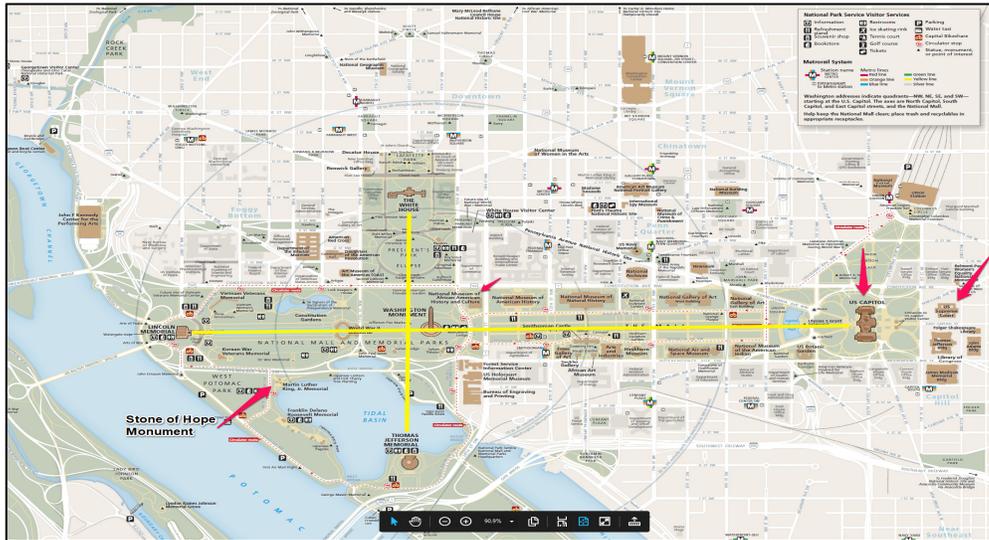


Figure 6.8. The National Mall in Washington, D.C., showing the Lincoln Memorial at the bottom, the Washington Monument at center, and the U.S. Capitol at the top. Source: Newhousefoundation.org

In our nation’s capital, the balance of power and the larger goals of our government are reflected in the city’s design, where symbolism is heavy. The three branches of government and monuments to three great founders of our democracy are aligned in a cross. At one end of the cross is the U.S. Capitol. Immediately behind the Capitol, keeping a check on the laws that are created there, stands the U.S. Supreme Court (iconic turtles appear throughout the architecture, representing the slow and deliberate pace of justice).

In the center of the cross stands the Washington Monument. On the side opposite of the Capitol and Court is the Lincoln Memorial, which honors the president who oversaw the creation of the 13th Amendment abolishing slavery. On the other side of the cross is the Jefferson Memorial. Jefferson faces the White House on the far side of the cross and, not by coincidence, looks toward the Oval Office and over the shoulder of every president who would follow him.

Two new monuments have recently been added, giving recognition to the struggle that has been ongoing for over 200 years in our country. Next to the Washington Monument, an important addition has been added: The National Museum of African American History and Culture. Sandwiched between the Jefferson Memorial (honoring the president who owned over 600 slaves yet wrote that “all men are created equal”) and the Lincoln Memorial stands an exhibit honoring the legacy of Dr. King. Appropriately, the monument is called “A Stone of Hope.”

History does not change but the lens through which we view it can evolve. And what we choose to emphasize will guide us, now and in the future. In my District, statues of Confederate heroes guard both courthouses. Many question why this history is celebrated next to the halls of justice, rather than at the Fort Fisher Battlefield, one of the defining battles of the Civil War. There is a difference between remembering this history and venerating it. Conversations about the continued prominence of these memorials throughout cities in the south are challenging how history is portrayed in public spaces.

In addition to the memorial to the Coup d'état of 1898, we should erect a monument to the greatness of 1897. Freed slaves and poor whites formed a Fusion Party to create an inclusive community that was so politically powerful and so ahead of its time that it was perceived as a threat by some whites in the Jim Crow South. By recasting the pain of 1898 into the glory of the years that proceeded, we can remind everyone that it is possible to recapture the greatness that is in the DNA of the Port City.



Figure 6.9. Wilmington Police Department Interim Chief Donny Williams addresses a crowd at the 1898 Memorial Park in June 3, 2020, the terminus of a peace march calling for reform following the murder of George Floyd.

The Faith Arm of the Starfish

Many people violate the Ten Commandments in search of the happiness that Jefferson included in the Declaration of Independence. Some seek pills or alcohol; some look for affection outside their marriages. They face consequences for these actions when they come to the side of the town square that dispenses justice.

Others pursue happiness by engaging in conduct that takes them to the other side of the town square. For them, true happiness comes from JOY: Jesus first, Others second, Yourself third. That sense of belonging comes more readily when there is a belief in something larger than oneself. For people who live by The Golden Rule, it is easier to obey the law. On this side of the town square, the truth can set them free.

When we talk about peace, we recognize that the word connotes something more than the absence of conflict. If malice is defined as having a depraved heart, peace speaks to having an untroubled one. And when we speak of doing justice, we are talking about more than punishing the wicked—it equally means uplifting the poor.

Ours is a nation that was founded on the belief that everyone is free to choose which god to worship, or even whether to worship at all. Yet we also recognize that we are one nation, under God, indivisible with liberty and justice for all. We are rooted in ancient traditions with profound implications: “And what does the Lord require but to do justice, love mercy and walk humbly.”⁵²

In Chapter 1, I shared the case of a baby who was accidentally left in a hot car to illustrate the four reasons that we punish: general deterrence, specific deterrence, retribution, and rehabilitation. There is a fifth reason we punish that is gaining ground in modern day thought: restorative justice.⁵³ In this process, victims who have been harmed are given the opportunity to have the defendant make amends by coming face to face with them. For many, real healing involves confession and forgiveness. These concepts, of course, are at the core of the Christian faith, and they have sustained some families in heart-wrenching moments. Consider this next case as an example:

State v. Deans⁵⁴

On Saturday, May 23, 2015, around lunchtime, Matthew Deans was traveling south on US-17 near the intersection of Sloop Point Loop Road in Hampstead. He drove a red 2012 Freightliner commercial box truck, carrying a full load of seafood.

Up the road were three cars, occupied by three generations of the same family, parked in a single file line at a traffic light. In the first vehicle, a 2008 Ford Edge, sat Gentry Dobbs Eddings and Patricia Eddings, a retired couple who just watched their daughter get married. In the second vehicle, a 2012 Kia Sedona, was their daughter-in-law, Hadley Eddings and her two-year-old son, Gentry Dobbs Eddings III (“Dobbs”). The third vehicle was a 2015 Kia Soul, occupied by Gentry Dobbs Eddings II, Hadley’s husband and a pastor, who had just officiated his own sister’s wedding.

When questioned later, Deans admitted that he was looking down to eat a sandwich and returned his eyes to the road just in time to see the back of the Kia Soul. He locked the brakes, but there was not enough time. After jerking the wheel to the left, Deans’ vehicle struck the Kia Soul in the rear, sending the car, driven by the senior Eddings couple, flying into the median of US-17 where it came to rest on its roof. After impact with the Kia Soul, Deans’ truck next collided with the Kia Sedona, thrusting it forward and striking the rear of the Ford Edge. Deans’ truck rolled over onto its right side and crushed the back roof of the Kia Sedona in the process. Gentry, in the Soul, and his parents, in the Edge, were uninjured. Things were far different in the Kia Soul, the car Hadley was driving.

At the time of the collision, Hadley was eight months pregnant. Her two-year-old son, Dobbs, was secured in a car seat in the back, the area that had been crushed under the weight of Deans’ truck. Rescue personnel focused their efforts on removing Dobbs from the vehicle. Tragically, he had been killed on impact. Hadley was transported to NHRMC, where an emergency cesarean section was performed to save Reed, the unborn baby. The great joy that everyone experienced when he was born alive gave way to unspeakable grief when he succumbed to his injuries and died two days later.

Back at the scene, over a dozen law enforcement officers from three different police agencies, along with personnel from Pender Fire and EMS, began their investigation into the cause of the collision, starting with Deans. Several officers who were trained to investigate impaired driving cases spoke with him and knew to look for specific signs of impairment: slurred speech, problems with coordination and balance, and lack of mental focus. While they observed that Deans was visibly shaken, no officer observed anything to suggest that he was impaired.

Trooper Hendrickson, the lead investigator with the North Carolina Highway Patrol, escorted Deans to NHRMC to draw his blood as required by state law.⁵⁵ When questioning Deans as to what he thought he would test positive for, Deans replied marijuana. When pressed further, Deans stated he smoked marijuana a few days prior. The blood draw was conducted at approximately 6:30 p.m., more than six hours after the collision.

Deans was charged with one count of misdemeanor death by motor vehicle in the death of Dobbs Eddings and taken to the Pender County Jail. After Reed died, Deans was subsequently charged with a second count of misdemeanor death by motor vehicle on May 26, 2015. Both charges, while involving death, do not typically result in incarceration upon conviction.

Around 8:30 p.m., while at Pender County Jail, Deputy Patience Shepard was conducting a frisk search of Deans when he suddenly bent over in pain. Deans admitted to Deputy Shepard that he was withdrawing from heroin, a drug he now claimed he had used approximately two days earlier.

In the days and weeks after the collision, Trooper Hendrickson and the State Highway Patrol established a timeline of Deans’ movements in the 24 hours leading up to the collision. They determined that Deans began his workday at around 7:30 a.m. by picking up a spare refrigerator truck from his employer, Blackburn Brothers Seafood in Carolina Beach. He was asked to make a seafood run to Beaufort and Sneads Ferry, N.C., and was returning to Wilmington when he caused the fatal collision on US-17. None of the co-

workers and customers who had encountered Deans in the hours leading up to the collision believed he was impaired.

Trooper Hendrickson executed a search warrant on Deans' phone. Deans' text messages revealed that he was a daily heroin and marijuana user. These text messages further revealed that he purchased heroin from the same dealer every day in Wilmington and that he smoked it to get high. At approximately 2:45 a.m. on May 23, 2015, less than 10 hours before the fatal collision, Deans purchased and used what he believed to be heroin from an unknown drug dealer near the area where he usually purchased his drugs. He sent a text to his regular dealer, who had made the referral to the other dealer, at 10:34 a.m., complaining that the substance he had purchased "tasted like sh... but got me high tho..." Deans' phone records also revealed that he texted and made phone calls throughout the lengthy drive before the crash.

On July 6, 2015, investigators received a toxicology report detailing the findings from Deans' blood sample. It was found that Deans had trace amounts of: (1) THC (the derivative from marijuana), (2) fentanyl, and (3) acetyl fentanyl. The report also concluded that the trace amounts of THC and fentanyl were not psychoactive, meaning they were not likely impairing at the time the substances were drawn from his blood, six hours after the collision. Heroin is undetectable in blood after a delay of this long.⁵⁶

At the time of the incident, fentanyl was available on the illicit market in powder or tablet form,⁵⁷ and had no accepted medical use in the United States.⁵⁸ Drug addicts, like Deans, were beginning to seek it as an alternative to heroin or were unknowingly ingesting it when the highly potent substance was mixed with heroin. At the time, acetyl fentanyl had been responsible for numerous deaths across the United States.⁵⁹ Before May 23, 2015, the federal government and the North Carolina General Assembly began the process of including this deadly substance on the controlled substances list, but at the time of the collision it was still not listed as an illegal drug.⁶⁰

On July 17, 2015, Session Law 2015-162 was signed to include acetyl fentanyl as a Schedule I controlled substance under the North Carolina Controlled Substances Act,⁶¹ and came into effect December 1, 2015. (This law change would mean that driving with any amount of fentanyl would constitute Driving While Impaired, subjecting a defendant to far harsher punishment when causing a fatality. We will see this in Chapter 8 in the case of *State v. Hayes*). This law was not retroactive to the collision and the deaths of the Eddings children.

The driver of a commercial vehicle, such as a Freightliner box truck, has a special duty to operate his vehicle with heightened caution and care. The State contended that Deans violated this duty in three ways when he (1) ate a sandwich while driving; (2) continuously texted and talked on the phone, including making a call at 12:18 p.m., which was determined to be the exact moment that the collision occurred; and (3) operated the vehicle with no more than 4 hours and 45 minutes of sleep and after ingesting a deadly substance (even if the state could not prove that he was impaired at the time).

Involuntary manslaughter is the unlawful killing of a human being, unintentionally and without malice, that results from either the commission of an unlawful act, not amounting to a felony (like careless and reckless driving or texting and driving) or when a person acts in an unlawful or culpably negligent manner, where fatal consequences are foreseeable.

Culpable negligence in the criminal law requires more than mere "negligence" as that term is used in the civil law. Rather, culpable negligence is reckless or careless behavior that demonstrates a thoughtless disregard of the consequences or shows a heedless indifference to the rights and safety of others, such as gross and flagrant conduct, evincing reckless disregard of human life. (Like the definition of "implied malice" discussed in Chapter 3 in *State v. Grooms*, the degree of recklessness is proven through a combination of circumstances). On a continuum of guilt, culpable negligence for involuntary manslaughter is less in degree than implied malice necessary for second-degree murder.

Deans' actions, taken as a whole, prevented him from stopping his truck before slamming into three stopped vehicles, thereby causing the deaths of a young boy and an unborn baby. His actions constituted reckless behavior that showed a heedless indifference to the safety of others. These facts supported two counts of involuntary manslaughter, charges we indicted him on when the circumstances of the collision came to light.

Even two counts of involuntary manslaughter seemed to be an inadequate label for the crimes that Deans had committed. Had we been able to prove impaired driving, Deans would have faced at least a decade in prison, for two counts of felony death by motor vehicle, with the possibility of more than twice that amount of time if his recklessness rose to the level of malice for second-degree murder. (Refer to the sentencing chart in Chapter 1: Involuntary manslaughter is a class F felony; felony death by motor vehicle is a class D felony; second-degree murder, under an implied malice theory, is a B2 felony).

Far from wanting the maximum sentence, however, the Eddings family did not wish to see Deans spend a day in jail. Their focus was on healing and forgiveness, not punishment. Their statements to him, as well as what Deans, the judge, and I said during the sentencing hearing, will take you inside the courtroom when Deans threw himself on the mercy of the court.

Matthew Deans

I'm sorry. There's not enough words to explain to you guys how sorry I am. And if there was anything I could do to trade places, it wouldn't take me a second to think about it. There's not enough words to tell you how sorry I really am and how my irresponsibility ruined you-all's lives. And you seem to be some of the nicest people I've ever seen.

I'm going to live a better life, living it for you and your kids, you-all, and your whole family. That's just something I'm going to work on. And after everything is said and done, I'm going to work on it. And I will make a better--I will improve my life and make it better and live a life for both Reed and Dobbs.

Hadley Eddings

From the day this happened, I've been very concerned about you...while losing my children has been the most devastating thing of my entire life, I know, without a doubt, that they are in heaven and that they are whole and that they are perfect. So I look at you and I say, I want you to have that too. I know that you did not intend for this to happen. I know you didn't do it on purpose. I know that mistakes happen and accidents happen and we make poor choices. I just want you to know that. I'm not mad at you. I forgive you. I want you to be rehabilitated. I want you to have a good life. I don't want this to be the end for you. I want you to have, I want you to make something of yourself.

Gentry Eddings

Dobbs' and Reed's life obviously was so significant to us. Words cannot describe how important they are to us. I firmly have hope--our resurrection hope to see them again. And that gives us hope. So we understand the magnitude of what's happened.

We know that it was not your intention for them to die. And that is significant and meaningful for me and for Hadley, and it's important for you to remember as well. And I know that that impacts the way we look at everything that's happened.

Still, mistakes were made that led us to this place. But I want you to know that I sincerely forgive you completely for everything that's happened. I have no grudge or ill will for you. I forgive you completely, because I've been forgiven much as well. I was a sinner in need of a Savior. I hope that you know that resurrection hope. That there's life after death for our sons, for us, and that God, Jesus Christ, loves you. He's a merciful and gracious God. It would bring us joy to hear that you are doing well in the future. We want to know a Matthew Deans that is free from addiction and that's doing well with his life.

Dobbs and Reed would want you to one day experience a life of peace and joy. I just have an image of them wanting to give you a hug. They are gracious boys. I believe they want to give you a hug and want what's best for you as well. We will continue to pray that that would be true for you. Ultimately, we pray that you would see--that we will see you in heaven with us in the end. We want you there. Our sons want you there too. I hope to one day join hands with you to worship the God who is our redeemer that's gracious to all of us. So we will be praying for you. And we love you. God bless you.

Ben David

Speaking for the dead and remembering the absent is the highest duty of a prosecutor. The obligation to see that justice is done is even more pronounced when, as here, two innocent children have been killed. The deaths of Dobbs and Reed Eddings ripped out the heart of our community. The sympathy that all of us feel for the Eddings family has been exceeded only by the compassion that they have displayed for the man responsible for causing their unfathomable loss....

The Eddings have forgiven Deans because they know that they have been forgiven. Their faith has not been shaken, it has been deepened. They have about them a peace that passes all understanding, and, in that peace, they have expressed great compassion. All of us are in awe of their example. While compassion plays a vital role in this case, my duty is to focus on consequences.

Today Deans is pleading guilty to the highest charges possible under North Carolina Law. He has come into court, without a negotiated plea, and thrown himself on its mercy....

The Eddings have asked for some good to come out of this tragedy. There has been. The North Carolina legislature has moved very quickly. On July 17th, after this incident and before this plea, Governor Pat McCrory signed into law that acetyl fentanyl will become a Schedule I controlled substance effective December 1st of this year. What that means and the message that will hopefully resonate from this courthouse all through North Carolina today is that ... driving with any amount of acetyl fentanyl is now impaired driving... And so that is a good thing today....

While the family talked about compassion, I must speak of consequences. Some amount of incarceration is absolutely warranted and necessary here. And that's not coming from this family. That is coming from this District Attorney. I have a community to represent and a message to send. And that message is: Accidents happen when you engage in conduct like this--and this is in fact no accident at all...and should be punished that way.

I would like to end by saying something to Mr. Deans... There's a reason why you lived. You need to find what that is. You need to do something with your life that goes beyond just living for yourself now...If you ever put a pill in your mouth or a joint to your lips or any illicit drug in your body, you're dishonoring these children. But if you lead a good life, do everything that Hadley and Gentry said far better than I can, that will be a life well

lived. You can be defined by this tragedy or your response to it. And we're all hoping that your response is a good one. Be somebody.

We have a job here on earth to assign labels to certain conduct. That's what our justice system does... It gives you, your Honor, some discretion in terms of what to do next. And I think anything you could hand out would pale in comparison to the prison that this young man's conscience can become if we don't handle this correctly.

So, compassion does play a role, forgiveness plays a role, and it's a beautiful thing to see. But we also must send a message. The reasons we punish are not only to look at a specific individual, but to look at society in a larger sense and say some conduct is not okay. The reason that we elevated this charge is that what we had at the time of this incident was more than a mere accident caused by a distracted driver. It was a collision really of two worlds.

Having met the Eddings family, it's impossible not to feel the magnitude of the loss and the deep regret that the world will be deprived of getting to know the men that their children would have become. This is a day for Matthew Deans to stand before you in judgment. But make no mistake, this is also a day that Dobbs and Reed have their day in court. We're here for justice for them.”

Judge Gorham

First, I want to say to the Eddings, I am so sorry for your loss. I cannot fathom the loss that you have and what you've been through. But it is clear that you have a hope. And I am thankful for the hope that you have; thankful for the compassion even that you have for the defendant in this case. It is a very difficult case. It is a very difficult time for you. I do wish you well.

Mr. Deans, if you will stand up, sir. And even as for you, I can't even imagine what you are suffering through because of what happened. I can tell that you are sincere and that you are very remorseful.

Madam Clerk, there will be two judgments. The Court orders that the defendant be imprisoned for a minimum term of 15 months and a maximum term of 27 months in the custody of the North Carolina Department of Correction.

The next judgment. 15 CRS 1117, count one, the defendant has pled guilty to involuntary manslaughter, Class F felony. In this case, the Court does find mitigating factors, numbers 11A, 17, 18, and 19. The Court finds that the mitigating factors outweigh the aggravating ones. The Court finds that the defendant shall be sentenced in the mitigated range of punishment. The Court orders that the defendant be imprisoned for a minimum term of 12 months and a maximum term of 24 months in the custody of the North Carolina Department of Correction. This sentence shall run at the expiration of the (prior) sentence imposed.

Subject to the following conditions, the execution of this sentence is suspended, and the defendant is placed on supervised probation for a period of 36 months. The Court imposes special condition of probation that the defendant is to report for initial evaluation by Treatment Accountability for Safer Communities (TASC) and follow all of the recommended treatment. The Court orders special condition of probation that the defendant is to serve an active term of five months in the custody of the North Carolina Department of Correction. This shall run at the expiration of the (the prior) sentence imposed.”

Effectively, Judge Gorham sentenced Deans to approximately 3.5 years in prison. This was followed by three years of supervised probation for drug evaluation and treatment. If Deans violated either the terms of his probation or committed a new offense, he would face one to two years of confinement.

New Life

In the immediate aftermath of their loss, the Eddings, together with members of their church, opened a child center in Haiti after raising \$2 million on a Go Fund Me page. They named the center after Reed and Dobbs. In the following year, the couple continued to inspire many with their message of faith and forgiveness. On July 10, 2017, Hadley gave birth to identical twin boys: Isaiah Dobbs and Amos Reed. Their birth made international news and confirmed for many the existence of a good and benevolent God.⁶²



Figure 6.9. Gentry, Amos, and Isaiah Eddings.

Charleston

Less than a month later, three hours down the same highway where the Eddings lost both of their children, another agonizing story of loss and the power of forgiveness happened in the city of Charleston, South Carolina. On June 17, 2015, Dylann Roof, a troubled young man who had white supremacist leanings, went into Mother Emanuel AME Church, the oldest African Methodist Episcopal church south of Baltimore. After quietly praying with the group for nearly an hour, he opened fire on the dozen African-American congregants who had welcomed him into their prayer circle. Nine were killed. Roof ran away but was soon apprehended in North Carolina. He was returned to Charleston for his first court appearance.

Roof confessed to investigators that he carried out the massacre in the hopes that it would trigger a larger race war, both in Charleston and around the country. National news networks had been covering stories frequently throughout the preceding year, sometimes on a weekly basis, of cities on fire across America. A similar pattern had emerged from these many flashpoints, showing an African-American suspect killed by a white police officer and the entire incident caught on film. Thereafter, the local authorities quickly cleared the officer of any wrongdoing. Furthermore, the justice system was slow to act in pronouncing guilt. Riots and rallies by groups like Black Lives Matter followed as protestors demanded justice.

Weeks before the Mother Emanuel Church massacre, Charleston had the classic case of excessive use-of-force by a white police officer on an African-American suspect. On April 4, 2015, Walter Scott was gunned down while running away from Officer Michael Slager. The officer, seemingly under no continuing threat to his safety, shot Scott five times in the back. The entire incident was captured on a bystander's cell phone. Even to dispassionate observers, the video was shocking. It looked like murder, caught on film.⁶³

The State was unable to secure a conviction in Officer Slager's 2016 trial, which resulted in a hung jury. Instead, he negotiated a plea with federal authorities to a charge of deprivation of rights under color of law. As part of the plea agreement, Officer Slager had to admit that he used excessive force, that he was not acting in self-defense, and that his use of force was unreasonable. In exchange, the State dismissed its second-degree murder charge.⁶⁴

While there were initial attempts by outside groups to duplicate the riots in Charleston that had only recently quieted down in places like Ferguson and Baltimore following interracial officer use-of-force incidents, the Charleston residents seemed willing to be patient. They trusted in the system and would await a decision in a courtroom, not the court of public opinion. Outside groups soon left. Roof, however, thought that one more high-profile interracial killing and the entire country might descend into chaos.

Despite his planning, something unexpected happened to foil Roof's desire to incite a riot. At his first court appearance, the families of the several victims were permitted to speak. They stunned the judge and the world by forgiving the defendant. They forgave him for the same reason that the Eddings family forgave Matthew Deans.

The victims' families of the Mother Emanuel AME Church massacre forgave Roof because they too had been forgiven. As followers of the faith, they were now compelled to do the same. Justice, of course, would still be handled by the system. But these families refused to let anger rule. In the book they believe in, you pray for your enemies.⁶⁵

After seeing this example, several leaders in Wilmington were moved to reach out to the leaders of Charleston, long considered a sister city and linked by a common history. When their Mayor, Joe Riley, announced his retirement a few months after what he called "the city's finest moment," a group of us drove to Charleston to see up close the people who kept the peace. We wanted to meet the people of Mother Emanuel AME Church. We wanted to meet the police officers who had operational control of the command station shortly after the church shooting. We wanted to know how it was done.

A few large points emerged from our discussions. First, as it related to the officer-involved shooting, focusing on the process and swiftly condemning the act proved to be crucial. Everyone knew that the criminal process would take months, but the officials, e.g., the Chief of Police, the DA (called the Solicitor in South Carolina), and the Mayor, moved to assure all that justice would be served. The tone they set muted the outside protesters' intent to burn the American flag in the city center. We are a nation of laws, and no one is above them.

Second, as it relates to the church massacre, in the immediate aftermath officials requisitioned a hotel across the street and gathered together numerous family members. There were many, of course, with very raw emotions. Roof was still on the run. Some family members spoke in private, just as they later would in public, about immediate forgiveness. Not all family members were of the same mind, but all agreed that a unified call for peace would be essential.

Third, without compromising the case, officials were transparent about the status of the investigation and the resources employed to find the shooter. They also called out the motive for the killing and offered no excuses that it was anything else. Together with the victims' families, they organized a march involving thousands of people, walking across the Cooper River Bridge as a demonstration of solidarity.

Finally, the events of that terrible summer tested the years of intentional work to create a city that lived up to the ideals of equal protection. Early in the 1970s, at the start of his term, a young Mayor Riley was repeatedly tested. Despite being raised in a white aristocratic Charleston family and attending the nearly all white Citadel, Riley was ahead of his time in his inclusive approach. For example, he embraced the arts community, establishing the Spoleto Festival as a major annual arts event, despite anxiety by some that the city would be overrun with gay and lesbian visitors.

Riley was also intentional about improving race relations. He gained the nickname “LBJ” or “Little Black Joe” as he went to AME churches, after the election, not just before, and worked with informal leaders to improve conditions for everyone. After Riley conducted a national search, he found a well-qualified African-American police officer from Florida, who was also Jewish, to serve as Chief of Police. When the KKK sought a permit to hold a march through downtown, Riley obliged, fully aware of the First Amendment. He asked Chief Reuben Greenberg to lead the parade. “All the Klansmen could see was a black guy in power watching over them and keeping them safe, and the ass end of his horse,” Riley told us. The KKK seemed ridiculous and they have yet to hold another public rally in the city.

What our delegation brought back to the Port City was this: justice is not an event, but a process. What the world witnessed in a racially-charged police shooting and a mass murder in a church could have happened anywhere. The peace that prevailed in the aftermath was years in the making. Different voices joined together in a call for peace, rooted in the shared traditions that had unified many of the formal and informal leaders for years. Through consistent inclusion, transparency, and a show of grace, Charleston did what a SWAT team in Ferguson and indictments in Baltimore failed to do: it kept the peace.

Healing the Divide

Many people of deep faith look at the root causes of crime—poverty, racial and income inequality, and the breakdown of the family—as moral issues, not political ones. Yet, political leaders are the ones who must give structure to communities in order to deal with these pressing moral issues. While the Church and State must remain separate under the Constitution, the faith and government arms of the starfish are vital to our outreach efforts when confronting the touchy subject of race and justice.

Reconciliation can come through shared understanding and suffering. For many people, that shared understanding of belonging comes from faith. As my friend Pastor Rob Campbell of New Beginnings Church in Wilmington said, “These are not black children or white children dying in the streets of Wilmington—they are God’s children.”

He and many of the other faith leaders I have befriended are committed to having the different congregations come together. As Dr. King once observed, 11:00 a.m. on Sunday is the most segregated hour in America. They are helping to heal the divide in our community by hosting each other’s congregations in their respective churches. The results were encouraging. Eight pastors from some of the most established churches, four white and four African-American, formed a joint Bible study to increase the bonds between the members of their congregations. They met weekly at rotating congregations. In time, they joined Habitat for Humanity to construct a house for a family in need.

A person’s zip code defines his or her destiny far more accurately than race, religion, or creed. At the core of crime and victimization is poverty. The fact that an overwhelmingly high number of people of color live below the poverty line can lead many to mistake causation with correlation. People who fight crime, and study it, acknowledge that preventing victimization and lowering the rate of incarceration starts with improving the economic conditions of the poor. We are better served when we strive for equality throughout an area code rather than a zip code.

Unquestionably, racism has existed and continues to exist in all segments of society. No group is immune, and no sector should be ignored in this analysis, especially the justice system. A strong police presence in a high crime area will lead officers to stop more cars carrying guns and drugs. However, a collateral consequence of these pretext stops will be innocent people who are profiled based upon the color of their skin or the neighborhood in which they live. Trust is lost when law-abiding citizens question if the law really is being applied equally.

It is not enough to talk about black-on-black crime to excuse the disproportionate effect that over-policing and aggressive prosecution has on the minority community. There are deep wounds. It is not inconsistent to both support law enforcement while also listening to and supporting groups who are raising

legitimate concerns about officer use-of-force incidents, disproportionate minority contact, or mass incarceration.

As Wilmington native Michael Jordan, a basketball star at the University of North Carolina at Chapel Hill and the National Basketball Association, said when donating one million dollars each to the NAACP and the Policeman's Benevolent Association: "As a proud American, a father who lost his own dad in a senseless act of violence, and a black man, I have been deeply troubled by the deaths of African-Americans at the hands of law enforcement and angered by the cowardly and hateful targeting and killing of police officers."⁶⁶ Promoting the general welfare of every citizen makes us all safer.

My last two decades as a prosecutor have given me more hope than concern when reflecting on the difficult challenges we face. The reality of the role of race and how people are treated from arrest to sentencing is far different than the viral videos and sensational cases that crowd the national scene. To be sure, there are segments of the community who do not like or support the police. But people from high-victim areas hunger for justice in a way that people in gated golf course communities can only partially understand. For this group, crime is not a theoretical threat, it is an ever-present reality. They respect the rule of law, support the police, and want crimes reported and solved.

We must also confront the reality that, while it is exceedingly rare, there are some people working in the justice system who are racist. But these actors are not merely outliers; they are outcasts who tarnish the badge and undermine the oath of office that all of us take. Most public servants choose the profession to help people, knowing that those most in need would be coming from challenging circumstances. Any dialogue to the contrary comes from people with agendas who have not looked through the eyes of people handling and experiencing the toughest cases in their community.

Police officers and prosecutors are not perfect; like all humans, we make mistakes. These issues are complicated and cannot be classified as black or white or blue; they are gray and must be considered in an appropriate context. True reconciliation, whether bringing a city together in the aftermath of police use-of-force cases, in heart-wrenching moments involving restorative justice, or throughout a community and even a whole nation in search of healing, requires forgiveness.

Respect for authority begins with confronting the truth, even when it is painful. Just as we have seen that unearthing the past gives insight to a defendant's crimes, confronting our nation's history gives insight to the depth of America's "original sin," the legalization of human slavery and the painfully slow abolition of it and its aftermath. The truth does hurt, but it also sets us free.

Notes

¹ There are many press accounts of the McIver Shooting. Co-counsel was Jon David.

² *In Riot-Hit Ferguson, Traffic Fines Boost Tension and Budget*, Reuters, (August 19, 2014).

³ Marty Roney and Alvin Benn, *Alabama Officers Call in Sick in "Blue Flu" Protest*, PoliceOne.Com (Copyright 2017) (August 12, 2016), <https://www.policeone.com/Officer-Safety/articles/209489006-Ala-officers-call-in-sick-in-Blue-Flu-protest/>.

⁴ Shaila Dewan, *Deconstructing the "Ferguson Effect"*, The New York Times, (March 29, 2017), <https://www.nytimes.com/interactive/2017/us/politics/ferguson-effect.html>.

⁵ See Richard Rosenfeld, "Documenting and Explaining the 2015 Homicide Rise: Research Directions," U.S. Department of Justice Office of Justice Programs, June 2016. Criminologist Richard Rosenfeld analyzed FBI crime figures and found that the murder rate in 56 major US cities went up a stunning 17 percent in 2015 after years of steady decline. The problem was even more pronounced in cities with increased tension. As Heather Mac Donald observed: "...it was in cities with large black populations where the violence increased the most. Baltimore's per capita homicide rate last year was the highest in its history. Milwaukee had its deadliest year in a decade, with a 72 percent increase in homicides. Homicides in Cleveland increased 90 percent over the previous year. Murders rose 83 percent in Nashville, 54 percent in Washington, D.C., and 61 percent in Minneapolis. In Chicago, where pedestrian stops are down by 90 percent, shootings were up 80 percent through March 2016."

⁶ Bill Berkowitz, *The Blue Walls of Silence among Police Enables Cop Brutality*, BuzzFlash.Com, (March 5, 2015), <http://www.truth-out.org/buzzflash/commentary/the-blue-wall-of-silence-among-police-enables-cop-brutality/19187-the-blue-wall-of-silence-among-police-enables-cop-brutality>.

⁷ Juvenal, *Satire VI*, lines 347-348 (First Century Rome).

⁸ In rare circumstances, an actual or apparent conflict requires the district attorney to refer the case to either the Attorney General's office or a neighboring prosecutorial authority. N.C. GEN. STAT. § 7A-64 (2004); N.C. GEN. STAT. § 114-11.6 (2010). I took this action after a NHSO deputy shot and killed an unarmed college student through the front door of the student's home on December 1, 2006. My office originally presented an indictment charging the officer with second-degree murder. When the grand jury did not return a true bill, I referred the case to the Attorney General's Office. They sent the case back before the grand jury on a charge of voluntary manslaughter. The Grand Jury again did not return a true bill, effectively ending criminal prosecution. Ken Little, *Long Cleared in Death*, Star News Online (July 12, 2007).

⁹ See Model Rules of Professional Conduct: 3.6, Trial Publicity and 3.8, Special Responsibilities of a Prosecutor.

¹⁰ Jim Salter and Eric Tucker, *Federal Report Faults Police Actions During Ferguson Unrest*, NewsOK.Com, (June 30, 2015), <http://newsok.com/federal-report-faults-police-actions-during-ferguson-unrest/article/feed/858010>. Consider what was said by the Department of Justice following the DA clearing the officer in the shooting death of Michael Brown in Ferguson: "Had law enforcement released information on the officer-involved shooting in a timely manner and continued the information flow as it became available, community distrust and media skepticism would most likely have been lessened."

¹¹ Rad Berky, *SBI Launching Investigation into Keith Scott Shooting, McCrory Says*, WCNC.com, (September 22, 2016), <http://www.wcnc.com/news/local/keith-scott-shooting/sbi-launching-investigation-into-keith-scott-shooting-mccrory-says/324039249>. In the Scott case, many of the factors that typically produce protests and riots were not present: the suspect was armed with a loaded firearm found at the scene; the officer who used deadly force was African-American, as was Scott; and the Charlotte Police Department, led by Chief Kerr Putney, who also happens to be African American, had a long history of great outreach efforts. The *Charlotte Observer* identified what many believed to be the problem:

The Charlotte-Mecklenburg Police Department is the only one in North Carolina that generally investigates its own officers' shootings, absent a request from victims' relatives for an outside probe. Real change, and real trust, will require a recognition by CMPD's leaders and officers that they must open themselves to new perspectives and potential changes... Showing openness to the outside investigations idea would be one way to help boost trust right now.

Charlotte DA Andrew Murray had immediately called for an outside investigation by the SBI and his senior prosecutor, Bill Stetzer, was at the scene to monitor the investigation. When DA Murray was ultimately able to speak weeks later, the outside investigation left no doubt that the shooting was entirely justified. By then however, riots had already occurred and the city had been damaged. The current DA, Spencer Merriweather, has recently changed the policy to require investigations by the SBI when police use-of-force cases occur.

¹² While DAs in my state advise officers in terms of enforcing the law, they cannot defend officers when they break the law, write policies for them, or give advice in civil proceedings.

¹³ There are many press accounts, including the detailed synopsis of each shooting and my legal reasoning for not charging the officers, available for all three cases by searching for the names of the deceased: Brandon Smith, killed by NHSO and ATF officers, October 13, 2013; Teven Robinson and Ronald Roland, killed by WPD officers, October 25, 2013; and Grace Denk, killed by a WPD officer, January 28, 2014.

¹⁴ Lizette Alvarez and Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, The New York Times (July 13, 2013), <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>.

¹⁵ *About the Black Lives Matter Network*, Black Lives Matter, (August 8, 2017), <http://blacklivesmatter.com/about/>.

¹⁶ *What Happened in Ferguson?*, The New York Times, (August 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html>.

¹⁷ *State v. Sloan*, 11CR055727. Counsel was Kristen Robinson.

¹⁸ *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

¹⁹ See for Example Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (2013).

²⁰ Bureau of Justice Statistics—Total Correctional Population (Last revised October 15, 2016).

²¹ <http://lawenforcementleaders.org/law-enforcement-leaders-launch-event/>

²² N.C. Gen. Stat. § 90-96, 15A-145.2 (2012).

²³ *Figure 21: NC Prison Population*, Justice Reinvestment Act Implementation Evaluation Report 2018, North Carolina Sentencing and Policy Advisory Commission, North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, Daily Unit Population Reports and Inmates on Backlog Reports (July 17, 2019).

²⁴ *American Prisons-The Right Choices*. The Economist (June 20, 2015).

²⁵ U.S. Department of Justice Statistics, 2013

²⁶ *Id.*

²⁷ See generally, www.sentencingproject.org, October 20, 2012, discussing the Fair Sentencing Act and the attempts to rectify disparities in sentencing between crack and powder cocaine.

²⁸ *Summary of NC Expunctions 2017*, The North Carolina Justice Center, (August 9, 2017), <http://www.ncjustice.org/?q=second-chance-alliance/summary-nc-expunctions-2017>.

²⁹ Ray Jazayeri, the NHSO deputy who monitors the jail population every day joined me in meeting with a group that organized a "black mothers' bailout" for Mother's Day. We explained to the group that we shared their goal of making sure impoverished

non-violent offenders should not languish in jail pretrial because of inability to pay a case bond. See Star News Online “Activists Give Jailed Moms A Mother’s Day Gift: Bail” May 11, 2019. However, we disagreed with their fundraising efforts to bail out four women who had a combined 100 convictions on their records. Three of these women reoffended within weeks of their release.

³⁰ U.S. Const. amends. I-X

³¹ *Listen, Explain, Comply, Complain.*, Wilmington Police Department, (August 9, 2017), <http://www.positiveencounters.com/>.

³² *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

³³ U.S. Const. Amend. XIII.

³⁴ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

³⁵ Dr. Martin Luther King, Jr. “Eulogy for the Martyred Children,” September 18, 1963. <https://kinginstitute.stanford.edu/king-papers/documents/eulogy-martyred-children>

³⁶ Tyson’s best-selling book, *Blood Done Sign My Name*, recounts the story of an interracial murder in Oxford, North Carolina, and the race riots that followed in that community and later in Wilmington, in the early 1970s. See generally TIMOTHY TYSON, *BLOOD DONE SIGN MY NAME* (2004).

³⁷ Dr. Tyson’s father and five uncles all attended Duke Divinity School to become Methodist ministers.

³⁸ See generally Timothy B. Tyson, *Wars for Democracy: African American Militancy and Interracial Violence in North Carolina During World War II*.

³⁹ One hundred students came from Duke, one hundred from North Carolina Central, and one hundred from University of North Carolina at Chapel Hill.

⁴⁰ The “Big Picture Talkers” reference is from the book *Their Eyes Were Watching God*. See ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* 1–2 (HarperCollins Publishers, Inc. 2006) (1937). “The sun was gone, but he had left his footprints in the sky. It was the time for sitting on porches beside the road. It was the time to hear things and talk. These sitters had been tongueless, earless, eyeless conveniences all day long. Mules and other brutes had occupied their skins. But now, the sun and the bossman were gone, so the skins felt powerful and human. They became lords of sounds and lesser things. They passed nations through their mouths. They sat in judgment.”

⁴¹ Great athletes who grew up in Wilmington include basketball superstar Michael Jordan; boxer Sugar Ray Leonard; tennis great Althea Gibson, the first African American to win Wimbledon; and NFL hall of fame quarterbacks Roman Gabriel and Sonny Jurgenson. Great artists include painters Minnie Evans, Ivey Hayes, George Pocheptsov and jazz musician Percy Heath.

⁴² To see a syllabus, please visit THE HISTORY OF WILMINGTON IN BLACK AND WHITE, <http://www.wilmingtoninblackandwhite.org>.

⁴³ *DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY* 253 (Timothy B. Tyson & David S. Cecelski eds., 1998).

⁴⁴ *Brown v. Board of Education*, 347 U.S. 483 (1954).

⁴⁵ *Wilmington Morning Star*, April 6, 1968.

⁴⁶ Often referred to as *I’ve Been to the Mountaintop*, this was King’s final speech, delivered in Memphis the night before his assassination.

⁴⁷ “Maj. Gen. Joseph McNeil Commemorative Way Signs Now Up on 3rd Street.” WECT, January 3, 2020. <https://www.wect.com/2020/01/03/maj-gen-joseph-mcneil-commemorative-way-signs-now-up-rd-st/>

⁴⁸ The Wilmington 10 were widely covered locally, nationally and internationally. The ten defendants were charged in New Hanover County and tried in Pender County. Counsel was Jay Stroud.

⁴⁹ “Gov. Perdue issues pardon of innocence for Wilmington 10.” WECT.com. December 2012.

⁵⁰ From John Adams to Massachusetts Militia, 11 October 1778. Founders online: <https://founders.archive.gov/documents/adams99-02-02-3102>

⁵¹ Quotations of The Jefferson Memorial, Thomas Jefferson Foundation, Inc. <http://www.monticello.org/site/jefferson/quotations-jefferson-memorial>

⁵² Micah 6:8

⁵³ See generally, restorativejustice.org. Frequently the defendant, victim and the community at large gather for a meeting to focus on the harm caused.

⁵⁴ *State v. Deans*, 15CRS00114. Co-Counsel was Jason Smith.

⁵⁵ N.C. Gen. Stat. §139.1(b5).

⁵⁶ Lautieri, Amanda, “How Long Does Heroin Stay in Your System?” November 12, 2019. <https://americanaddictioncenters.org/heroin-treatment/how-long-in-system>

⁵⁷ See Bahar Ghoulipour, *The New Street Drug to Watch: Acetyl Fentanyl*, Live Science, PURCH, (August 20, 2014), <https://www.livescience.com/47451-emerging-drug-acetyl-fentanyl.html>.

⁵⁸ Drug Enforcement Administration – Office of Diversion Control (Drug & Chemical Evaluation Section). *Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)*. July 2015.

⁵⁹ *Acetyl Fentanyl*, Office of Diversion Control, Drug and Chemical Evaluation Section Drug Enforcement Administration, U.S. Department of Justice, (July 2015), https://www.deadiversion.usdoj.gov/drug_chem_info/acetylfentanyl.pdf.

⁶⁰ *Rules-2015*, Diversion Control Division, Drug Enforcement Administration, U.S. Department of Justice, (May 21, 2015), https://www.deadiversion.usdoj.gov/fed_regs/rules/2015/fr0521_7.htm (“The Administrator of the Drug Enforcement

Administration is issuing this notice of intent to temporarily schedule the synthetic opioid, N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl), into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act.”).

⁶¹ H.B. 341/S.L. 2015-162, 2015-16 General Assembly, (N.C. 2015).

⁶² Jamie Gwaltney, *2 Years Ago a Tragic Wreck Killed Their Sons. Now They Have Twin Reasons for Joy*, The Charlotte Observer, (July 10, 2017), <http://www.charlotteobserver.com/news/local/article160639684.html>.

⁶³ www.nbcnews.com, April 8, 2015. A Closer Look at the Walter Scott Shooting.

⁶⁴ www.newyorktimes.com, December 7, 2017. Michael Slager, Officer in Walter Scott Shooting, Gets 20 Year Sentence.

⁶⁵ Washingtonpost.com June 19, 2015. “I Forgive You.” Relatives of Charleston Church Shooting Victims Address Dylann Roof.

⁶⁶ Michael Jordan “Can No Longer Stay Silent,” Donates \$2 million to Police, NAACP, After Police Shootings. July 25, 2016. *US Weekly* by Megan French.

APPENDIX

Dr. King frequently wrote letters, especially while incarcerated, to remind society about the injustices he experienced. On April 4, 2018, the Wilmington Star News ran this open letter that I wrote to him:

Dr. King, fifty years ago, in the midst of the civil rights storm, you planned to come to Wilmington and speak at Williston Senior High School, heralded by its alumni as the Greatest School under the Sun. Instead, events kept you in Memphis, Tenn., where you boldly proclaimed your mountaintop experience to the world and foretold your own death. Even in that darkest hour, you refused to despair.

From a jail cell, you wrote that “today’s despair is a poor chisel to carve out tomorrow’s justice.” In your time you had every reason to complain; the world rejects its prophets, and so it was with you. Your home was bombed on three occasions. You were punched, kicked and stabbed by strangers. You braved attack dogs, billy clubs and water hoses, while holding true to the principles of nonviolence. You were jailed 14 times. Yet you marched on.

You stood up for Rosa Parks, who remained seated on a bus in Montgomery, Alabama. You fought to desegregate water fountains, lunch counters and hotels across the Jim Crow South. You fought for voting rights, equal rights and you peacefully protested the Vietnam War. When four young girls were killed in the bombing of their church in Birmingham, Ala., you preached from its pulpit the next day. On the morning after returning from Norway to accept the Nobel Peace Prize, you marched with workers in your hometown of Atlanta, demanding better wages.

You took on the suffering of others and called our nation to a higher purpose. On the 100th anniversary of Abraham Lincoln’s Emancipation Proclamation, which granted freedom to 3 million enslaved Americans, you echoed the sentiments of conscientious humanity that while all men are created equal, we were not living as equals. You stood in Lincoln’s shadow to remind us of the better angels of our nature and of the unfinished work remaining for our republic.

Even today we turn away because reality is sometimes too painful to confront. But you did not run from the truth -- you embraced it. You knew that sometimes the truth hurts, but also that it sets us free. You looked beyond your present reality and told us of a dream. In that dream you said that from a mountain of despair we would hew out a stone of hope.

Your life, your words and your vision inspired others to march for freedom and commit to the greater good. Like the stone that David picked up to slay Goliath, you threw yourself against the injustice of the world and toppled giants of hate and intolerance. Chiseled by your experiences and your time, you emerged from a mountain of despair to sacrifice yourself for the cause, secure in the belief that your God was bigger than your enemies.

Fifty years ago today, your powerful voice was silenced on a hotel balcony in Memphis. But while a bullet killed the dreamer, it could not kill the dream. For you cast the stone of hope into the troubled waters of discrimination on both sides of our nation’s shores. Ripples brought about tidal waves of change from sea to shining sea.

Justice, you said, would flow like a mighty river, but only once we recognized that injustice anywhere is a threat to justice everywhere. Water raced over the lowlands of the American South, across the heartland plains, through dry deserts and up mountainsides to the far North and West. And as it spread, the water showed us that we are all connected to each other, and reminded us of the power of forgiveness.

Today, in our nation’s capital, your 30-foot statue emerges from a mountain in view of monuments dedicated to our founding fathers, symbolizing the enduring power of hope and reminding us all that one

individual can truly change the world. From the mountaintop today we can look back and see the miles we have traveled since you were taken from us. We can also look forward and see the miles we must go before we can take our rest.

At times it feels like an uphill fight--poverty, hate, racism and sexism still exist, and the violence that you decried is being visited on our schoolchildren. But just as you ran the race with perseverance, we know that the torch has been passed to our generation. This is a relay race that can only be won together.

The title of your last book is a question, "Where Do We Go from Here: Chaos or Community?" We answer community. We will go forward together. We will remain committed to each other and to the things that bind us. We are one nation, under God, indivisible, with liberty and justice for all.

Tonight we despair because you are not here. But we also rejoice in knowing that, just as you are our stone of hope, you also spoke about the light of hope, a resurrection hope. The final chapter of that story says that love wins.

When you died, you were indeed free at last. And although we were deprived of your presence in Wilmington 50 years ago, your words and deeds have transcended time and boundaries. They constantly remind us to recommit ourselves to one another and to keep hope alive. A bullet took your life in Memphis, but your dream lives on in Wilmington, Washington and the world.