

HEARING FOURTEEN

Trust and Respect for Law Enforcement

July 8–July 22, 2020

The following summary is intended to provide an overview and highlights of the testimony and discussion during the hearings. For a full and detailed account of the hearings, please refer to the [Commission website](#) and the audio recordings and transcripts located there.

Trust and Respect for Law Enforcement: Introductory Remarks, July 21, 2020

Speaker: *Michael Mukasey, 81st U.S. Attorney General, and U.S. District Court Judge, Southern District of New York*

Highlights:

- Personal taste and preference has started to impinge not only on how people behave with respect to themselves and toward one another both in public and in private but also on how people view reality, the degree in which they are willing to accept the fact of our history and the idea of objective truth, particularly to the extent that it may conflict with a belief that they consider important.
- An objective truth is something we have to accept if, among other things, our legal system is to function as it should. It's something we should also have to accept if we are able to make important political decisions in a sensible way.
- An alternative approach has increasingly caught hold that threatens to overwhelm even how legal disputes get decided but certainly how political disputes get decided: That approach makes facts secondary to narratives.
- One way this tendency has manifested itself is the claim that our laws, including the founding document the Constitution, could be read or made to be read to guarantee, not equal rights in the sense of equal treatment or opportunity, but equal rights in the sense of equal outcomes.
- Although the tendency to prefer narrative to fact has grown substantially in our own society when either personal or political preference is at stake, it's not deep seated in the culture of this country as it is in some other countries. Here it results from choices. Reversing it is going to involve drawing distinctions and reasoning from facts to conclusions rather than the other way around.
- We draw our identity not only from adherence to a system embodied in the law that we call Constitution but also from a consensus in general terms about what that means. Once that's up for grabs, the whole point of having a country at all as opposed to being just citizens of the world at large is up for grabs as well.
- The actions of all of us with a stake in the law ought to be informed by a common understanding of who we are and the great path that we come from that will give us the confidence to defend the legal system in which we function. The mindless attacks by people who are either ignorant of our history or assume they are talking to an audience that's ignorant of it, we can help do that; we may yet help avoid the fate that we were warned against by Ronald Reagan, the fate of having to explain to our grandchildren what it's like to be free.

Speaker Question-and-Answer Session, July 21, 2020

Q: [Donald Washington for Michael Mukasey]: Can you add a little bit more meat around the idea of the skill sets that are going to be required to address this concept of preferring narrative over facts?

A: [Mukasey]: That is generally the skill set that we attribute to lawyers, the ability to make relevant distinctions and to draw conclusions from facts. Juries have to confine themselves to what they saw in the court room and the evidence, rather than anything they read on the outside or their own preconceptions. Here, the danger is that people bring to bear their preconceptions on the objective facts; we have to stress the facts, gather the facts, and then draw the conclusions from that, rather than start out with a preconception and work toward finding what the facts are.

Q: [Washington]: Do you have any advice as to how we might be able to spread that ability outward in terms of training, for example, for law enforcement officers or for public affairs officers or for even for our children? How do we get that going again, because obviously if there is a preference for narratives over facts, how do we embed this mind set of examining facts into the population in general?

A: [Mukasey]: Suggesting readings might help. I hate to fall back on recommending somebody else's work, but there is a book by a historian named Wilfred McClay called *Land of Hope* that if I had the money I would buy a copy for everybody in this country and ask them to read it. It lays out a lot of facts relating to our history that a lot of people think they have trouble keeping straight. Anybody who reads that can then energized to go out and spread the message.

Q: [Katherine Sullivan to Michael Mukasey]: Regarding your theme of history, how do we fight back against a revisionist history? How do we make sure that history is being taught accurately?

A: [Mukasey]: Other than the book I recommended . . . They used to say in the Soviet Union that the future is always the same; it's the past that changes. And we have to avoid having that happen in this country. It's the future that's got to be something that people create and the past that is there for people to see. This is a job of school boards, it's the job of citizens, and it's our own job in dealing with our neighbors on a day to day basis.

Trust and Respect for Law Enforcement: Rule of Law Panel, July 21, 2020

First Panelist: *Rafael Mangual, Fellow and Deputy Director, Legal Policy, Manhattan Institute*

Highlights:

- Respect for law enforcement is quickly eroding because of a false or misleading narrative about incarceration, policing in our criminal justice system more broadly. That problem has been compounded by the fact that the narratives that are informing meaningful political action are also resulting in consequential shifts in public policy on matters of criminal justice. The stakes involved in pulling criminal justice policy levers are quite high, sometimes life and death.
- The international comparisons of incarceration that are often cited as *prima facie* evidence that the U.S. over-incarcerates ignore essential differences that take the wind out of the comparisons' rhetorical sails.
- The misdirections and obfuscations that I've examined so far do more than just lead voters to support misguided decarceration policies. They also undermine respect for the system that we've designed to address serious law breaking by convincing the public that the system by and large produces results that they would find offensive.

- Police use of force is extremely rare. More than 99% of arrests by police are made without the use of force. And in more than 98% of cases in which force is used, there is no injury or mild injury sustained by the suspect.
- Ignoring these facts has allowed a misperception about police to exist. That's had real consequences, particularly for the populations most vociferous police critics purport represent. For example, Black men are more than 10 times more likely than their White counterparts to be the victims of homicide; the risk of death at the hands of police is far lower than homicide more generally.
- Police departments around the country have been defamed in various ways, emboldening the criminal class whose members have taken advantage of the vacuum created by these reports. In East Harlem's 23rd precinct, murders are up 500% year to date through July 12. Yet the Upper East Side's 19th precinct has had only one shooting all year. Radical reforms make life more dangerous, and those dangers disproportionately fall on America's most vulnerable communities.
- Despite New York being the epicenter of the COVID-19 pandemic in early April 2020, police throughout the state continued their service to the public. By April 1, more than 1,000 members of the NYPD had contracted the virus with five losing their lives to it. That commitment to continued service should be painting the public image of men and women who protect and serve communities across our great nation.

Recommendations:

- The best way to restore the respect that this group acknowledges has been lost is to fight innuendo with empiricism, to fight obfuscation with analysis, and to fight lies with truth.

Second Panelist: *Gail Heriot, Professor of Law, University of San Diego*

Highlights:

- Many Americans today have never lived through a period of high crime. They're unfamiliar with what it's like to really feel unsafe. Instead of staying home after dark, they can take an accounting course at the local community college. Or they can earn money for a down payment on a house by working a part-time job somewhere. Whole neighborhoods blossom when crime goes down.
- Today's incarceration rates are part of why U.S. crime was down over several decades, that sending more officers into neighborhoods with higher crime rates is also part of authority. Now all of these issues have gotten linked up with race in recent years.
- Historically, a severe problem African-American communities faced in the Jim Crow South was that many officers during that period just didn't give a damn. Grassroots African-American organizations in New York had to organize to get more police protection, not less, during the 1960s, '70s, and early '80s. The general public knows little about this history.
- The media narrative has largely been that incarceration rates for African-American men tend to be higher than for other races, but African Americans are also disproportionately victimized by crime, and that part of the story gets left out all too often.
- There's a direct link to diligence in industry; a salesman who doesn't sell anything doesn't earn commission. But when a police officer saves a life, he doesn't get a percentage for that. If only his

errors, and not his successes, will affect his fortunes, then there is going to be a likely reluctance to act. That's what qualified immunity is supposed to help with.

Recommendations:

- I caution against precipitous action. There's a lot of irrationality out there lately. The "Defund the Police Movement" is its most prominent manifestation. But we all need to stop and take a deep breath. Treating over-the-top demands as serious is not going to enhance respect for the rule of law or for law enforcement.
- Policy makers need to refrain from making this situation worse by discouraging the appropriate enforcement of criminal law.
- I oppose entirely doing away with qualified immunity. That doesn't mean the doctrine of qualified immunity cannot be refined or improved upon. A clarification might be in order here, but doing away with it would be a big mistake.

Third Panelist: Jonathan Turley, Maurice C. Shapiro Professor of Public Interest Law, George Washington University Law School

Highlights:

- Biometric technology does allow for governments to identify, monitor people in real time. That has raised significant issues, particularly because some countries have gone all in on biometrics, and some for all the wrong reasons.
- For law enforcement, there is some real value here in facial recognition technology (FRT) that might actually coincide with values of civil liberties. For example, FRT can actually reduce the number of false stops and arrests under Terry and other cases. And if we had FRT capability after the Boston bombing, could we have avoided the more serious deprivation of privacy for everyone in that search area?
- If you show a police officer an APB or some type of image and expect them to recognize someone walking on the street, you're going to have considerable errors. FRT radically improves that prospect.
- Existing case law and approaches to privacy are woefully inadequate in dealing with this new technology. The law has always been a race between privacy and technology, and technology has often won.
- Privacy is not a particularly useful focus when looking at biometrics, certainly not in its classic form. We need to focus on what we are trying to achieve by regulating biometrics, connect it to the democratic process, and look as much at anonymity as we do privacy, because the greatest danger of biometrics is to turn us into a fishbowl society.

Recommendations:

- I've suggested a comprehensive act that covers the use of biometrics that can protect privacy, values, and interests. It governs both civil and criminal issues, both government and private uses of biometrics.
- The way we don't become a fishbowl society is to create forms of what's called obscurity to protect people from having their images used and stored in particular ways and to give people the

assurance that when they go to a protest, they're not going to be recorded and followed and tracked. Their associations and beliefs are not going to be documented or put into a dossier.

- Any progress on biometric privacy will require a comprehensive re-examination of what interests we are seeking to protect—not in an anonymous world, because we no longer have anonymity in the classic sense—in a nonymous world, a world where we are being seen. We have to find ways to make that obscure. We need to look at traditional definitions and update them to the reality of the age of biometrics.

Rule of Law Question-and-Answer Session, July 21, 2020

Q: [Erica McDonald for all panelists]: What can we do as community leaders to push back on those false narratives—about a broken criminal justice system—and what can we do as the Law Enforcement Commission to push back on that narrative?

A: [Rafael Mangual]: One of the most important things that our leaders can do and that this Commission can do is to forthrightly pound the table with the empirics in a way that pokes holes in that narrative and illustrates the falsehoods that underlie it. An honest look at the data on a lot of these claims, whether we're talking about police use of force, incarceration, so-called coercive plea-bargaining, etc., the reality is often a lot less pernicious than what the trackers of the system claim, and a first step has to be an outwardly visible commitment to truth here.

A: [Johnathan Turley]: Part of the problem in dealing with this issue is a shocking loss of free speech in the United States on our campuses, and even in the media. Academics who have voiced many of the views that Rafael voiced have found themselves subject to campaigns to have them fired. The media rarely publishes the type of discussion that we are having today. We need to create forums for the public to be able to hear both sides of these issues, to hear a frank discussion of what we can do to reform our system because those forums are being lost. At one time, you would find those at colleges and universities. I'm afraid that's no longer the case.

A: [Gail Heriot]: If people talk about the issue enough, real progress can be made. Whenever somebody is given the authority to use force, there are going to be problems, but we can make a lot of progress by explaining why things are done the way they are done and how they can be improved. We can certainly increase the public's respect for the rule of law and for law enforcement simply by getting the truth out.

Q: [James Smallwood to Gail Heriot]: You talk about potential refinements being made on qualified immunity. With the last 200 cases, only 57% of officers were actually granted qualified immunity. I'm curious to know what your refinement to qualified immunity would be, knowing that it's not just a blanket protection, that it actually has a process to go through.

A: [Heriot]: I've only read a few cases, and some have been described in ways where I thought it wasn't a good interpretation of *Harlow*. My basic view is that qualified immunity is important and that we need to keep it. We need to make sure that courts properly interpret *Harlow*, and not too rigidly. That's the best I can do at this point.

Q: [Smallwood to Heriot]: Do you support giving officers the ability to review those body camera videos in use of force instances?

A: [Heriot]: I don't have an opinion on that. I know there are differing opinions on at what point should the officer be able to look back, and there's obviously arguments on both sides of that.

Q: [Phil Keith]: I'd like to give Professor Turley and Professor Mangual an opportunity to respond to Commissioner Smallwood's question.

A: [Rafael Mangual]: I will add a couple of things, particularly on the question of qualified immunity. While it is necessary to retain at least some of the immunity offered to police officers by that doctrine, one way to draw the line and set out a middle ground here would be to think about the sort of cases that often draw a lot of the criticism that qualified immunity doctrine has become susceptible to. A lot of courts misinterpret what the rule is supposed to be and make these idiosyncratic factual distinctions to allow officers to proceed with immunity, and that understandably upsets a lot of people.

A better way to think about drawing a reform would be to carve out immunity and restrict it to spaces in which courts are actually making a real shift in the law or actually expanding on the legal doctrine in question. Also it's important to understand that qualified immunity is not exactly the shield of liability that many people make it out to be.

Q: [Smallwood to Mangual]: Can you give specific examples of where qualified immunity has been granted but has failed to actually be a good situation? We're talking about refinements, and I am generally curious where qualified immunity has not acted in the manner it was intended to be when it was implemented.

A: [Mangual]: I'm trying to think of the case off the top of my head here, but on the one side, you have a case like *Miranda*, which represents a real shift in the law that could not have been foreseen by officers. I don't think it's fair to hold officers accountable for violations that they could not have known would be violations at the time.

Q: [Katharine Sullivan to Jonathan Turley]: How do we protect First Amendment rights on college campuses and elsewhere? How much does this concept of a nymous society play into the difficulty of upholding someone's First Amendment rights?

A: [Turley]: Starting with the nymous issue, anonymity can produce negative as well as positive conduct. People who are given anonymity on the internet can engage in vile, racist, and obnoxious types of commentary. But anonymity is also important to the democratic process, so people can go to a protest, to associate with people, to see what a group or a person has to say. If people believe that they are being surveilled, it will chill that type of conduct.

I suggested that we no longer have a truly anonymous society when it comes to public movements, and it's going to become less likely with biometrics. But there is some valid need for biometrics, as we've seen in the identification of people trying to destroy statues and public buildings. Instead, we should obscure certain types of data held by the government and by private sources, so that people can feel assured that this type of information is not being logged and preserved.

Regarding free speech, in 30 years as a law professor, I have never seen the level of fear and intimidation that I am seeing now on college campuses from law professors and students that have dissenting views of these protests or their underlying causes. We can't deal with these important issues unless people feel free to discuss them. Brilliant minds can be brought to bear on these issues, but they won't because now it takes a huge amount of courage to be able to say the things that have been said in this hearing.

If you go to my blog, you will find case after case of academics who have been investigated or fired. We have academics who have had to be put under police protection because they bucked this orthodoxy that has taken hold. It is something that needs a priority from the government, from academia, and from people of good faith. I don't believe that we will be able to resolve rule of law issues until we are able to talk about them.

A: [Gina Hawkins]: Everyone should be listening to all different aspects without retribution, without retaliation, to evaluate data and facts from all sources, and to listen so we can start taking steps together, and not one side is better than the other, but to listen as a commission and as a society to where we go to now.

Although it is actually occurring now where people are in fear of speaking up and saying how they feel, the question should also come up, "Why is that?" Is there some self-reflection to how individuals feel? Do I need to self-reflect on my opinion, and am I looking at everyone's data? I just wanted to make those comments.

Trust and Respect for Law Enforcement: Attorney Panel, July 21, 2020

First Panelist: William McSwain, U.S. Attorney, Eastern District of Pennsylvania

Highlights:

- One of the problems with some progressive prosecutors and their agenda is that they literally have an agenda to reduce the jail population by X amount, instead of thinking about reasonable incremental reforms that will protect public safety and may lead to reduced incarceration. Then they take what other steps they think they need to hit that number, and oftentimes that has really unfortunate consequences for public safety.
- My office has tried to be a counterweight to some of the worst excesses of that movement. Hopefully some of the things we've done can be a model for other districts who are facing predictable results, specifically a rise in crime and a rise in chaos that can result from radical reform policies. Reform should be incremental and reasonable.
- Philadelphia's increase in shootings and homicides is due to criminals feeling emboldened for two reasons. First, they think the local criminal justice system isn't going to hold them fully accountable. Second, they think they won't be caught at all because the message to the community is that the police are the enemy, which discourages witnesses from coming forward and cooperating with law enforcement; thus, criminals get away with the crimes, which just continues the downward cycle where more crimes get committed and not solved.
- We focused on three main areas to take an aggressive response to the rise in crime and to be a counterweight to the worse excesses of the progressive prosecution movement. First, we've put a lot of resources into violent crime prosecutions. Second, we've tried to take on high-impact cases that have a lot of deterrents that will get a lot of public notice. Third, we've done everything we can to communicate support for the police and to share our message with the public.
- We, as U.S. Attorneys, have an important platform and a voice to stand up for the rule of law and respect for law enforcement, which the two of those go hand in hand. We should use our platform responsibly and forcefully.

Second Panelist: McGregor Scott, U.S. Attorney, Eastern District of California

Highlights:

- The first fundamental problem with progressive prosecution is that they do exactly what we were taught not to do: i.e., impose their own views, their own morals, their own ethics, their own opinions, as opposed to enforcing the law as it has been crafted by the legislature and the

governor. When they do that, when they announce they will no longer wholesale enforce entire categories of crimes that have been created by the legislature, they are undermining the rule of law because they are usurping the constitutional role of the legislative branch. It is not the role of the local district attorney to do that; if you want to change the law, run for the state legislature, not for district attorney.

- The second fundamental problem with progressive prosecution is that they seem all too concerned with doing everything they can to safeguard the rights and interests of a criminal defendant while forgetting that their role is, in fact, to represent the people.
- Third, all too often, in jurisdictions that have progressive prosecutors, the violent crime rates have gone up dramatically. All too often, when the violent crime rates go up, minorities are disproportionately affected.
- If we don't enforce the laws equally, which is the sworn duty of all of us as prosecutors, then people lose respect for the system. People lose respect for the rule of law.
- Because people are not being held accountable for their crimes by the state system, we have become a second district attorney's office for the Eastern District. My prosecutors sit down with deputy district attorneys on a weekly or biweekly basis, and they go through the cases: "Who should take this person? Who should take that person?" We work collaboratively to ensure the safety of our communities.
- The rule of law has been undercut at so many different levels that people are not being held accountable, crime rates are going up, and our communities are suffering. We as prosecutors can't just stand by and let that happen. We've got to do everything that we can to step up and fill that gap.

Third Panelist: Nick Trutanich, U.S. Attorney, District of Nevada

Recommendations:

- The community's leaders and law enforcement should consider forming partnerships through regular meetings to build and maintain trust. Those meetings are a good opportunity for law enforcement to solicit feedback about what they're doing well and what the community's concerns are. Executive level officers attend those meetings to reinforce the importance of partnerships and the community's views.
- To the extent law enforcement agencies may be asked to shift priorities in today's difficult environment, law enforcement must provide a baseline of security for our communities to stop the fear of violence from oppressing our communities. That is, we should sufficiently resource law enforcement to adequately stem violent crimes and make our neighborhoods safe.
- To address the issue of arbitrary enforcement or non-enforcement, prosecutors must not allow personal or political agendas to interfere with their oath to uphold the law. If a prosecutor disagrees with the law, she or he should work with the legislative branch to change it. Accounting for individual discretion and resourcing, prosecutors should be discouraged from non-enforcement of broad categories of crimes, and when they do, they should be held accountable.

Attorney Question-and-Answer Session, July 21, 2020

Q: [Erica McDonald to all panelists]: How do we course correct on the progressive prosecutor position that we've all been wrangling with? We have limited resources, as we know, and to take on that role as also being the local DA is just not going to be a long-term solution. What specific concrete recommendations shall we make to our boss?

A: [Nicolas Trutanich]: It's a separation of powers issue. Generally speaking, legislators make the laws, prosecutors enforce them, and courts and judges decide whether they're Constitutional. So, first, step up our own enforcement, and highlight the non-enforcement of individual prosecutors that are refusing to prosecute broad categories of crimes. And second, reserve the right to appropriately call out the potential dangers of non-enforcement.

A: [William McSwain]: One thing we can do is focus on our public messaging. So much of this is about public messaging and winning almost like the culture battle. When we do that in the Eastern District of Pennsylvania, when we get out there and try to lead the public discussion, the public really appreciates it. It's about educating the public because we have the facts on our side—facts about the crime rates and the impact to the community.

One recommendation you could make to the senior folks at DOJ is to turn your U.S. Attorneys loose. I mean, the U.S. Attorney community is very good with public messaging. We need to get into the fray and communicate with the public as much as possible, and we are very effective at it. D.C. should be shoving us out there and saying, "You've got to get that message to the public because this battle is not just won in the courtroom. This battle is won via public opinion."

Q: [Erica McDonald to all panelists]: Do you think it would be a wise recommendation that each of the 93 U.S. Attorneys have specific funding so that we have people who can work on our social media and our messaging, as opposed to having to try to find those resources from what we currently have?

A: [McSwain]: That's a great idea. That's a minimum of what every office needs, a funded, competent, useful PIO. We've gone beyond that in our office to actually put some of our more senior leaders in our Office of Public Affairs, and it's paid great dividends. I've even heard stories about that in some of the bigger districts, not even having a PIO whom they can rely on because of budgetary restraints or just issues with the position. So, that's a very practical, specific thing you could recommend that would really help with the fight.

A: [McGregor Scott]: To go back to your first question, I agree that we have to engage in an effective campaign to win the hearts and minds of the public. We have to be accountable by explaining to the public what we do and why we do it. If we do that, then people are going to support what we do.

As for engagement with diverse communities that we serve, all of us, as U.S. Attorneys, would be well served reaching out to diverse communities to, again, explain what we do and why we do it. For example, in March 2018, there was a shooting by the Sacramento Police Department of a young African-American male. They thought he had a gun. It turned out he had a cell phone. And that sparked widespread unrest, protests, marches. Through the Greater Sacramento Area Hate Crimes Task Force, we, the U.S. Attorney's Office, convened it, and we invited the county district attorney to come in and explain, "This is the process. This is the law. This is how this works." So that people would be better educated to understand what the rules were, legally, for the prosecutor in that setting.

I can't tell you that everybody in attendance that day loved to get that message, but at least they were better educated and understood what was happening and why it was happening. And we asked those people to be ambassadors back into their own communities to talk about facts and law, not hyperbole and emotion.

So, U.S. Attorneys could really be encouraged to do that as a best practice, to fashion a way to reach into these communities directly and establish relations. And the first time I am calling the head of the Jewish Federation or the first time I'm calling the head of the NAACP better not be *after* something bad has already happened, because that relationship should already be established. And all that will do is to help increase the level of understanding and thus support for law enforcement and prosecutors going forward.

Q: [David Rausch to all panelists]: With the challenge of the misguided prosecutorial discretion that we've recently seen, is there a thought on the process of putting these prosecutors in place? Is the politics involved in it because they are elected officials? Is that a detriment to our system or is that a necessary piece of it?

A: [McSwain]: It's a delicate balancing act, and in Philadelphia we have a district attorney and a mayor and a city largely of one political party, and then we have federal law enforcement of another political party. What I've always tried to stress is the apolitical nature of what we are doing, and there's always going to be people who are going to find their political narrative no matter what, but it's very important that we unapologetically enforce federal law, even if that may at times bring us into conflict with what the locals are trying to accomplish.

A: [Scott]: At the end of the day, almost without exception, the county prosecutors, whether they're states attorneys or district attorneys, are elected, and so many of them do fit the politics of the cities and counties that they have been elected to serve in.

We all talk in our political system about the pendulum going back and forth, and the same thing happens with criminal justice, from soft on crime to strong on crime. Because we won the war on general crime and violent crime with dramatic decreases from the late '70s into the 2000s, criminal justice no longer was a front-burner political issue. That pendulum that has now swung all the back to the left again, and we are going to see horrific crime rates and bad things happen for that political pendulum to start to swing back.

These progressive prosecutors are really limited to certain jurisdictions in the country. George Soros has chosen to fund them in their elections for district attorney in many locations around the country, understanding that the local district attorney would have a huge impact on these issues in individual communities. For the most part, those candidates lost because the positions they were advancing were so far outside the mainstream that the public rejected it. So even though they have been able to establish in some places, it is really constrained. The vast swath of the country is not subjected to this concept yet and hopefully will not be.

A: [Trutanich]: When it comes to county district attorneys, whether elected or appointed, I put my faith in the people. If attorneys are accountable to the people and their oath to uphold the law, though it may slide one way or the other for a period of time, and if U.S. attorneys are stepping up our enforcement and talking about potential dangers of non-enforcement of areas of crime and the rising crimes as a result, I think that can help stem the rising tide of this particular idea of non-enforcement by district attorneys.

Q: [Phil Keith to all panelists]: How do we reengage this conversation to where victims resurface in the discussion and are who we defend?

A: [Scott]: We've got a group of district attorneys who think their job is to look after the best interest of the criminal defendant who has committed this horrendous act rather than the victim of that horrendous act.

Many states have essentially a victims' bill of rights, and many courts have found that victims have standing to assert those rights. The overwhelming majority of prosecutors' offices do the very best they can to look out for victims, to ensure that their rights are protected in the system. But in those circumstances where they are not, victims should not hesitate to speak up and assert their rights.

Given that these county prosecutors are almost all elected, people should not be afraid to speak up and make their voices heard when elected officials are not doing their jobs. Because one thing they are all terrified of is bad press.

A: [McSwain]: We always want to make sure that we are covering things thoroughly and that we have the facts on our side. But there is also power in anecdotes that can represent your point. For example, the Patterson case: An immigrant shop owner was almost murdered, rendered in a wheelchair and in a coma for weeks, when he defended his shop against a robbery with his children and wife inside. But in a secret-like local court hearing that wasn't advertised, the defendant was given three and a half years on the low end of the sentence. That is just outrageous. So we seized on that case, charged it ourselves, and tried to publicize it and make it part of our message. That became a rallying cry for the victim community.

We can look for those excesses that result from some of the progressive prosecution priorities where they prioritize looking out for violent defendants instead of looking out for the victims, and we can really get out in front and educate the public about what is going on. The segment of the public where the crime comes right to their door, they know it, and they are on our side. But for those who are fortunate enough that the crime is not at their doorstep, they need to hear what is happening to other people and how people are being victimized, and they need to know what side we stand on.

A: [Trutanich]: Unlike gangs or other criminal enterprises, victims are sort of a dispersed group. That could be a nine-year old that is accidentally shot on the playground or a shop owner. It is incumbent on us to tell those stories. But I also think it is incumbent on the Department of Justice to give victims a voice by perhaps through funding victims' rights groups through the justice grants program.

Q: [Katherine Sullivan to all panelists]: Is there a difference if something is passed by initiative in referendum versus say just a sanctuary city? Or do we say, well we elected those policymakers who then declared or governor who declared this a sanctuary state? I have wondered how much the state legalization at different levels of a federally illegal controlled substance led to the almost acceptance of the sanctuary city status?

A: [Scott]: I have been dealing with this issue since I was an elected district attorney almost 20 years ago because we had the "medical marijuana" law that was passed in California with absolutely zero guardrails around it. Now the legal marijuana law passed by a statewide vote of the people. So that is a statewide law that is in effect.

The city and county of San Francisco Board of Supervisors will pass a resolution saying we are a sanctuary city. And that only affects law enforcement and other governmental agencies within that limited jurisdiction as opposed to the entire state. I am not aware of a governor being able to unilaterally declare a city or a state to be a sanctuary state.

We also, unfortunately, in California have the dubious distinction, to the best of my knowledge, of being the only sanctuary state in the union. And that was passed by a vote of the state legislature signed into law by Governor Jerry Brown.

What we try to do in working through this contradiction between state and federal law both—well specifically on marijuana—is to focus on what we consider to be the classic federal marijuana cases, and that largely is interstate trafficking of marijuana. We focus on marijuana groves that are on federal land. But the street-level types, we just don't get involved in that because we don't have the resources.

The sanctuary city issue is one that we have been struggling with manifestly over the last couple of years. It is absolutely disheartening to be out trying to launch a major gang takedown operation, for example, against MS-13, gang that had killed something like 14 people in a town of 10,000 people in one year, and the state agencies wouldn't come anywhere near it because ICE was part of the enforcement operation. It is crazy that we let these politics get in the way of good law enforcement and community safety.

A: [Trutanich]: In Nevada we have legalized marijuana at the state level, and there is a federalism in the mix, so we focused on the heartland of what would be federal cases, illegal federal marijuana groves, and other cases with nexus to cartels and violent crime.

We are fortunate in Nevada that has not led to what I think the question implies, that the next step in the road is a sanctuary city or state. In fact, our state legislature had a bill up last legislative session that was going to potentially make the state a sanctuary state. It did not even reach committee for discussion or vote, if my memory serves me correctly.

A: [McSwain]: We don't have quite the same situation in Pennsylvania because we don't have recreational marijuana legalized in the state. We just have medical marijuana legalized. We don't have quite the clash between state and federal law that you have with the other examples.

When it comes to sanctuary cities, we have seen that clash. Although the clash is more about respect for the law as opposed to a blatant violation of the law. The locals are not really cooperating with us and not communicating with us and not doing the things we think they should be doing if they respected federal law and respected the rule of law.

There have been some times where we, for example, not just filed detainers with the local prison system but filed actual arrest warrants that have been ignored. The city has always said that was a mistake; it wasn't intentional. It happens more than it should.

It definitely is an issue where we've tried to preach respect for the rule of law, which includes respect for our democratically enacted immigration laws. And we have been a strong partner with ICE and have done everything we can to support their mission.