DANE COUNTY
DISTRICT ATTORNEY
ISMAEL R. OZANNE

August 13, 2020

Sent via email: KFerral@madison.com

Ms. Katelyn Ferral
The Cap Times
1901 Fish Hatchery Road
Madison, WI 53713

Re: Your Questions for DA Story

Dear Ms. Ferral:

Here are my responses to your questions as well as one attachment with a list of trainings.

1. How, specifically, with what policies and programs, has your office confronted systemic and institutional racism in the criminal justice process? If you could point me to some concrete examples, that would be great.

Answer: I think that there are several actions my office has taken. First, I am providing you with a list of recent activities related to equity issues in the criminal justice system from September 2018 through the present (including some events already planned this fall). Please note that this does not include all of the in-house training conducted in my office on other issues, nor does it include other external trainings in which my staff may have participated. Second, both I and a deputy district attorney have participated in training provided by the Institute for Innovation in Prosecution at John Jay College in an effort to make sure we are connected with national trends in criminal justice reform. Third, I have worked to expand access to diversion programming through the Community Restorative Justice Court and my office's Deferred Prosecution Program. Fourth, I have assessed prosecutor applicants for their views and knowledge on racial disparities in the criminal justice system and in Dane County as part of the hiring process.

Finally, I have asked the County Executive to include in his budget proposal to the County Board a new position for my office: a Director of Social Justice. This person will be responsible for a wide range of tasks to ensure that my office makes racial equity a core part of our operations both by conducting internal training and tracking criminal justice research and initiatives to make sure we are implementing forward-thinking best practices to enhance public safety. Although I and my staff have worked to improve our organization and evaluate our policies, I feel that a central person in my office to oversee the many initiatives we have developed – and new ones we hope to implement – will produce clear benefits to the county.

2. In this 2012 Isthmus article you stated:
https://isthmus.com/news/news/dane-county-da-ismael-ozanne-tackles-one-of-the-worst-racial-gaps-in-the-nation/

"In two to five years, he continued, to applause, "People will no longer be able to say that racial disparities in Dane County are the worst in the nation."

Dane County still struggles significantly with racial disparities. What would you say to someone who says you failed to tackle this issue?

Answer: I would say a lot of things. First, I would say read that quote in context of the article. I also spoke in the article about the need to better protect children from abuse and neglect. A few years ago, I was attacked by many people locally for supporting a proposed change to state law that would have better ensured that law enforcement was aware of abuse and neglect investigations and could provide support to child protective services. The law did not pass but I stand by my position. In that article you have quoted, I also talked about the need to focus on racial achievement gaps in education and how failures to make sure Black and minority children – even as young as elementary school age – are given support and assistance to succeed can create lifelong deficits.

Second, I think I made clear in that article and will repeat it today that we should not look to the criminal justice process by itself to solve longstanding issues locally – and nationwide – that have produced racial disparities. We cannot accept tolerating shootings, burglaries, and domestic violence crimes – to name a few – as necessary to achieve racial justice. More simply stated, we should not seek to balance the racial disparity numbers on the backs of crime victims and without regard to public safety. I have tried and will continue to try to divert low level offenders out of the formal criminal justice system and to eliminate or change practices that perpetuate racial disparities without protecting public safety, but I also will oppose things that I think inappropriately endanger victims or the public. We need to build a better society, including a more just and equitable criminal justice system that garners support from the public. I think part of what we are seeing in Dane County, and in other parts of the country, is that police, courts, and prosecutors lack legitimacy in the eyes of many people because those people have been the victims of racial injustice and prejudice over generations. I do not think it is unreasonable for people in oppressed communities to have hostility towards police, courts, or prosecutors, but I also do not think that hostility means those communities do not want effective and fair interventions to stop criminal conduct and hold offenders accountable. I think anyone in government needs to take stock of what he or she can do to reach out to these communities, listen to what they are saying, and work to deliver the benefits of good governance to all people.

Third, I would say I was too optimistic about how far Dane County could travel in two to five years. I do not regret being optimistic but I do regret I was wrong. When I reflect on the last 10 years, I think I did not do enough in times of what seemed like stability in our county to advocate for change outside my office. In 2020, there has been an eruption of calls for change which I want to help answer, but I certainly wish I as a

leader had done more to demand changes and to talk about these issues in a constructive way that would have produced results for people in Dane County earlier. I feel confident we can get there and that is still my goal.

That article also states: "Ozanne has eased the burden on prosecutors by encouraging them to fast-track defendants into diversion programs and to offer deals during a defendant's initial court appearance." Many defense attorneys I have spoken with say that is not the case. That, rather, charging decisions are very strict and that there is an ethos in the office of ADAs needing to rack up convictions.

What is your response to this? Can you point me to some data that shows how the office has fast tracked defendants into diversion programs and/or offered deals during initial appearances?

Answer: I have supported different efforts in my office to more rapidly resolve cases in a manner that was fair to defendants and met the needs of protecting the public and crime victims. I have tried to encourage the use of pre-charge diversion when it makes sense in some cases and I think those results have been mixed, mainly because not every defendant wants to follow through. For a period of time, my office provided discovery prior to waivers of preliminary hearings based on some defense attorneys saying it would lead to earlier resolutions and fewer preliminary hearings; it actually led to more preliminary hearings. We also tried for a period of time with very limited success to make early offers to resolve cases. I think part of that was the normal reluctance of defendants or their attorneys to make a decision on resolving a case until they knew more about the evidence against them and part of that was a desire to negotiate a better outcome.

Since I have been involved in this office as a prosecutor, going back the 1990's, I think the courts and the District Attorney's Office have tried different scheduling practices or policies to more rapidly resolve cases that are capable of early resolution. If done properly and appropriately, I think this can be a benefit for both defendants and victims. Prior to the COVID-19 disruptions, I met with members of the local State Public Defender's Office and private defense bar to discuss how we could create a process that would allow cases to resolve more rapidly. Some of that has carried over into discussions two of my supervisory prosecutors have had with a committee of judges and defense attorneys that I think will bear fruit and allow earlier case resolutions as the court system increasingly resumes operations.

I take what the defense bar says with a grain of salt. I personally think the overwhelming majority of the local defense bar is highly ethical and represents their clients well but they frequently see things through the lens of what is best for their client. After all, that is their job and they take it seriously. A lot of the time, that just means they want their client treated fairly and sometimes it means that they want an exceptional outcome. I have no problem with either approach. The right to an attorney would be meaningless if the attorneys did not work hard for the people they represent.

But I think the public deserves prosecutors who also fight hard – fairly, but hard – to advocate for the community and the interests of crime victims in how cases are resolved. Prosecutors in my office have a tremendous amount of discretion to resolve cases subject to some very broad guidelines that I think are necessary to ensure a level of consistency across cases. Every prosecutor also is free to come to me or one of my supervisory attorneys and discuss a deviation from those guidelines or an exception if they think it is the right thing to do. I do not think most of the prosecutors in my office are worried about just "racking up" convictions, but I do expect them to think about whether the plea agreements they offer adequately reflect a defendant's conduct and are in the public interest. The same is true at the charging stage. I want to see charging decisions reflecting what we are going to prove if a case goes to trial and we cannot settle it. This means that I am not going to support over-charging to induce a plea agreement, but I also think it unreasonable to think that the charged offense (or offenses) is irrelevant to what my office thinks is a just outcome.

3. Since you won't release the results of the audit on the Deferred Prosecution program, can you give me information on what the overall result of it was? Has your office made any changes because of it? How many people have gone through the program since it was created? If you could give me a year by year breakdown of that that would be great.

Answer: Given your deadline, I cannot provide you with numbers. I can tell you that the main change my office has made is tightening up accountability for people in the program and trying to make sure that defendants are moved into treatment and through the program more rapidly. The counselors who work in our Deferred Prosecution Program want to help people succeed and not come back into the criminal justice system. I support their efforts but also want to make sure I am not asking them to expend time or resources on people who just do not want to cooperate with change and rehabilitation.

4. I have interviewed several former ADAs and defense attorneys for this piece, many of whom say there is no transparency or flexibility on how charging decisions are made. What is your response to this? Is there flexibility in your sentencing guidelines for ADAs?

Answer: I think part of my job is to be accessible both to my ADAs and to defense attorneys if there are concerns or questions about how a case is being handled. I routinely discuss cases with people when they contact me and – if it is a defense attorney – will speak with the ADA about it. This does not mean I am going to overrule the ADA's decision or direct him or her to do something different. If this means that a defense attorney cannot talk a young prosecutor into something he or she should not agree to, or expect me to do that for them, I guess that could be called a lack of flexibility, but I do not think that is a negative for the county.

My office does not have rigid charging or plea negotiation policies. For several years after I took office, we still had a mix of experienced prosecutors and new prosecutors and I could generally default to letting the experienced people handle more serious and complex cases that required a higher level of judgment and discretion while also having

my experienced deputy district attorneys work to assist the younger prosecutors with developing that judgment and discretion through handling a higher volume of lower level cases. As the balance started to shift, in 2017, I decided to implement case settlement guidelines to provide some broad parameters to prosecutors in light of the fact that I had newer people having to step up and handle more serious cases. I have amended the guidelines several times and have waived them for some people who have demonstrated the judgement and skills I think allow me to have confidence in their decision making. Under any set of guidelines, any prosecutor could always go to a supervisor and seek an exception or modification in a case.

I think that these guidelines have been an effective way for me to communicate to my staff my views on how they should approach plea negotiations and I think they balance the interests of justice that go into any good plea agreement.

5. In my piece I plan to discuss a case that resulted in a plea hearing from Feb. 2018. During that hearing, Judge Hanrahan said the plea and charge were inappropriate. He noted that such pleas, deals were not afforded to other defendants in similar circumstances, defendants who were low income, people of color, etc. ADA Hart affirmed that the deal in this case was not going to be afforded to others. Is that still the case? What is your response to Judge Hanrahan's comments here?

I have attached the transcript for you to review.

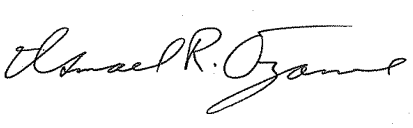
Answer: After this settlement, I reflected a lot on what had happened in this case and concluded that it was wrong to have approved this and I communicated that to the attorneys in my office so they would know not to repeat it. I cannot say it more plainly than that.

6. I have also heard concerns about culture in the office, especially as it pertains to younger DAs being hired with no experience and few tenured DAs remaining there. I understand there are external structural challenges in recruiting and retaining prosecutors that are outside of your control. What kind of workplace culture are you working to build in your office and how are you doing that? Do you have any kind of mentoring programs or protocols for new ADAs?

Answer: I expect prosecutors whom I hire to be motivated to do the work they are assigned to do and to do it in collaboration with law enforcement officers and the non-attorney staff in our office. I feel I have had both successes and failures in hiring new people with little or no experience, and I have also had successes and failures hiring people who did have more experience as attorneys. My office does provide people with in-house training they need to do their jobs but ultimately it comes down to each person's commitment to their work. We have had some very good people leave this office because they felt that they could not produce the work product they wanted to produce under the conditions they worked in here. Those people are a loss to this office. At the same time, we have had some people leave because they did not like to be challenged and held accountable to the standards of this office.

What we lack in a formal mentoring program is made up for in the deep experience of some people in our office as well as the collegiality of our office; there is always someone who will step up and help a new prosecutor or a prosecutor who is struggling. That does not mean we can always turn everyone around, but the people who stay here and work here care very strongly about justice and want everyone here to succeed.

Sincerely,



Ismael R. Ozanne
Dane County District Attorney