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Foreword: Can a Good Person Be a Good Prosecutor

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FOREWORD

*Bruce A. Green**

In 2001, Abbe Smith asked provocatively whether you can simultaneously be a good person and a good prosecutor,¹ and she concluded that you cannot. She observed that “prosecutors routinely validate and perpetuate [a] sorry state of affairs”² characterized by the incarceration of residents—disproportionally people of color (resulting in “[t]he virtual banishment of an entire generation of black males”)³ and people with mental illnesses⁴—under physically debilitating prison conditions⁵ at a rate far exceeding the incarceration rate of all other developed countries.⁶ Professor Smith wrote: “The government has devoted an arsenal of resources to a mean-spirited and misguided criminal justice policy that has literally stolen hope for the next generation from entire communities,” and “[i]t is the role of the prosecutor . . . to carry out these policies.”⁷ She argued that well-intentioned prosecutors cannot overcome the racially and socially unjust context in which they work because most prosecutors have too little discretion and are under institutional pressures to exercise their discretion harshly and without empathy.⁸ While she would not end prosecutions, Professor Smith urged “those who are committed to social and racial justice” to not become prosecutors.⁹

The following online symposium, hosted by the *Fordham Law Review Online*, revisits Abbe Smith’s question. Even if she was right in 2001, is the answer the same seventeen years later? The problems of criminal justice in this country have in many ways gotten worse. But at the same time, one might argue, there is broader public acknowledgment of these problems, which has led to social movements such as the Innocence Movement and Black Lives Matter that have strengthened efforts for criminal justice reform. And while Professor Smith identified various prosecutors whose offices were

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1. Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?*, 14 GEO. J. LEGAL ETHICS 355 (2001).

2. *Id.* at 374.

3. *Id.* at 368–72.

4. *Id.* at 367.

5. *Id.* at 366.

6. *Id.* at 363–65.

7. *Id.* at 374.

8. *Id.* at 375–96.

9. *Id.* at 400.

considered to be “progressive” even in 2001,¹⁰ the contemporary movement has included successful efforts to elect prosecutors with civil rights and criminal defense backgrounds, such as Philadelphia District Attorney Larry Krasner, who campaigned against mass incarceration and promised reform.¹¹ At this moment in history, should lawyers committed to racial and social justice consider joining prosecutors’ offices—or at least the offices of progressive prosecutors such as District Attorney Krasner—in order to attempt to ameliorate the sorry state of criminal justice?

The *Fordham Law Review Online* is pleased to publish the contemporary reflections of Abbe Smith and six others who bring varied perspectives, and take different sides, regarding the question she asked in 2001. The Symposium serves as an occasion for considering the present state of the criminal justice system and of prosecutors’ role in it, and an opportunity for an interesting exchange of views.

10. *Id.* at 398.

11. See German Lopez, *If You Care About Ending Mass Incarceration, Look at What Philadelphia Just Did*, VOX (Nov. 8, 2017, 10:30 AM), <https://www.vox.com/policy-and-politics/2017/11/8/16622438/larry-krasner-philadelphia-election-prosecutor> [<https://perma.cc/8N4D-2BJR>].