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THE NEED FOR CRIMINAL JUSTICE
REFORM IN AMERICA

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Keynote Address:

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P R O C E E D I N G S

MR. WEST: Good morning, I'm Darrell West, vice president of Governance Studies at the Brookings Institution, and I would like to welcome you to this forum on criminal justice reform. And we are webcasting this event live, so a warm welcome to all of our viewers from around the country and also those of you who are watching it live on C-SPAN. So we will be archiving the video for this event, so you'll have an opportunity to view it later if you would like at Brookings.edu. We'd also welcome any questions or comments that you have. We've sent up a Twitter feed at #CJreform, that's #CJreform. So you're welcome to post any comments that you have during the forum.

So the United States has one of the highest incarceration rates in the world. Our prisons are overcrowded and there are racial disparities in convictions and sentencing. We need to reform our criminal justice system and develop alternatives to the existing policies. Today we're going to be discussing criminal justice reform and how to approach that issue.

To help us think about that subject I am pleased to welcome Governor Terry McAuliffe to Brookings. Many of you know him as the Governor of the Commonwealth and a lifelong entrepreneur. He was elected in 2013 and has worked to create jobs and build a 21st century economy. But he also is committed to bettering the lives of ordinary people. After the tragic violence at Charlottesville he spoke our forcefully against hatred and bigotry. And just over the weekend he hosted a family day at a juvenile correctional center which brought together inmates and family members. He's been a trailblazer in restoring civil voting rights for those released from prison, and during his time in office he has restored voting rights to thousands of ex-felons in Virginia.

So please join me in joining Governor McAuliffe to the Brookings Institution. (Applause)

GOVERNOR McAULIFFE: Thank you. Good morning, everybody. It's great to be back at the Brookings Institution. I appreciate you all coming out today. Darrell, I thank you for that introduction. We have some great panelists here with us today and I appreciate all you're doing.

So, to all of you, good morning. It's a privilege to be among so many people who share my passion for such an important issue that faces our country. And it's fitting that we're gathered here today on the 54th anniversary of the March on Washington.

I first want to recognize the four people who have been very instrumental in working with

me today. If they could stand up, my secretary of Public Safety is here, Brian Moran, my deputy secretary Victoria Cochran, Tracey DeShazor, who is here with us who is from the Secretary of the Commonwealth. And my secretary of the Commonwealth is coming but I don't see her here yet. But these folks have really done a job. Virginia has now led the nation on so many of these very important issues, and I do want to thank the team that we've assembled.

One month ago I may have given a very different speech, but today I speak with you with a strengthened resolve to what we've seen over the past several weeks. For many of us we found it disgusting, deplorable, not acceptable in this great country. We saw hatred, bigotry, and deeply rooted racism on display in Charlottesville and across the nation. The grief and shock at the senseless death of Heather Heyer, a 32 year old woman who was out exercising her Constitutional right and was killed by a terrorist driving a car, to the two state troopers in Virginia who we lost, both individuals very close to me personally. Trooper Burke Bates had been part of my private security detail, my executive protection unit. Lieutenant Cullen had been the pilot of the helicopter that I have flown on for the last three and a half years. I could tell you, folks, heartbreaking to go visit the families, to see Karen Cullen and her two children, to see Amanda Bates and go visit her at her home and to see her with her two children, husband not coming home, father not coming home. And to the Heyer family who lost their daughter, our thoughts and condolences to all of them.

Also the swift and unequivocal outpouring of love and solidarity from the vast majority of our citizens. That unabashed and disgusting display that we saw of white supremacists and neo-Nazis and other protests that followed elsewhere was so shocking to so many of us. As I said in Charlottesville that Saturday night, there is no place for Nazis, for white supremacists, or Klansmen in Virginia. I said on that Saturday evening to get out, to leave our beautiful State, you are not wanted, to go home. Your hatred is not in Virginia, we don't want you in America. These people, as they paraded down our streets, pretended they were patriots. They are not patriots, they are cowards. Patriots are Virginians like Barbara Johns, a 16 year old woman in Prince Edward County in Virginia in the 50s, a young African American girl who walked out and took her class of 400 people and said we will not come back until we have equal school facilities. Patriots are the young men and women who wear the cloth of our country to protect those basic freedoms and liberties that we enjoy so much.

Charlottesville was a painful and vivid reminder that although we have made significant progress we still have so much work to do. It is also forcing those whose privilege has allowed them to remain silent to reconcile two different views of America. Let us be clear, this isn't a debate about monuments. These folks weren't just protesting in the name of preserving Southern heritage, they want to maintain inequality in everything that they do, from criminal justice, to education, to housing, and they want to elevate racism to the highest form. So far, unfortunately, the pendulum has swung in their direction. African Americans, particularly men, are incarcerated at an alarming rate that is disproportionate. African American children are more likely to live and attend school in an area of concentrated poverty. At school they're disproportionately disciplined and suspended. And they've been the target of legislatures around the country that have pursued policies intended to rob them of their most basic dignity and civic duty, the right to vote. It's no secret that Virginia has adopted and perpetuates some of those same policies and practices. We know that our history is far from perfect in Virginia, but that is exactly why I believe that Virginia should serve as an example to other states looking to take on reform.

When I first became governor it was clear that one place that badly needed attention and resources was our juvenile justice system. We were spending 40 percent of our funds on just 10 percent of the youth in our state corrections system and nearly 80 percent were rearrested within 3 years. To house just one juvenile it costs Virginia \$155,553 per year. And that does not include the educational services, which total \$31,644 a year, for a total of \$187,000. And yet 80 percent were rearrested within 3 years. I was proud to be the first Virginia governor to ever visit one of our juvenile facilities and, in fact, have now visited both. I had the opportunity to speak with a group of teenage boys at one of Virginia's oversized, maximum security, adult style facilities. The group asked me, why is it, Governor, that the recidivism rate is so high. In fact, the longer that they stayed incarcerated the more likely they were to reoffend. These boys knew as well as I did that the system was clearly working against them instead of working for them.

So, I decided to close down both of these outdated institutions and replace them with smaller community based centers that focused on therapy, training, and education. Today I am proud to say that our population of incarcerated youth has been cut now by two-thirds from nearly 600 to just over

200 today. I've directed the millions in savings from this declining institutional population to be reinvested, to support the new centers and create an effective statewide system of evidence based services and supports aimed at preventing incarceration in the first place. To date, I'm proud to say that we have not found any other state that has been able to replicate what we've been able to do in Virginia. I'm proud that we have secured funding that we now offer free travel to families to visit their children. With the new regional options 75 percent of our youth will now live within an hour's drive of their family. Today, unfortunately, that number is only 25 percent. All of these steps will help us strike the right balance between public safety, cost effectiveness, and rehabilitation. And they support our ultimate goal of giving these kids a shot at a better life when they leave.

Just yesterday, as Darrell mentioned, I visited the Bon Air Juvenile Correctional Center, one that I'm closing, just outside of Richmond for a family day festival. It was a day for them to celebrate with their families the progress and success that they have had, and to just give them just a couple of hours to feel like regular kid. I was amazed by their incredible talent. One group even performed a spot on rendition of songs from Hamilton and we heard moving stories from former incarcerated youth who are now finding tremendous success in their new lives because of the new tools that we've been able to provide them. I met a young man named Jaelyn who had recently been released from the facility where he had spent the last five years of his life. But while some people might see a troubled youth I saw someone who has the respect and admiration of his peers and his mentors. Jaelyn is an avid reader and a poet. While incarcerated he was a mentor at the University of Virginia led Russia literature program and served as the president of the Bon Air Student Association. And now, with 24 college credits already under his belt, he walked out of Bon Air last month with a college acceptance letter in his hand. That's exceptional (applause), because when I became governor there were no college courses available to them. Today these youth are taking up to seven college courses, including earning their high school diplomas or GEDs and getting now workforce credentials. This marks the first time in Virginia history that such robust educational offerings have been made. That speaks to our dedicated team at the Department of Juvenile Justice and the great educators who work with these youths.

While Jaelyn's story is inspiring he isn't alone. I believe that each of these young men and women deserve a chance to succeed when they leave the confines of juvenile detention. For our

Juvenile Justice Agency that work starts the moment that they enter our care. But for our Education Department, for example, that work starts much earlier. Like many states, far too many of our Virginia students spend time outside of the classroom as a result of disciplinary action. We've heard of stories of students being handcuffed and arrested. And the data clearly shows that African American children and students with disabilities are disciplined at a much higher rate. And according to the Virginia Department of Education African American students make up 24 percent of the student population. And yet they account for 53 percent of the school discipline. And while recent data show a decline in the overall number of suspensions and expulsions these numbers, folks, are still far too high and continue to disproportionately impact certain students. Totally unacceptable. There is no room in the Commonwealth of Virginia for excessive, discriminatory treatment of our students.

That is why I announced in October of 2015 a major new statewide initiative, Classrooms not Courtrooms. It is why I directed my Children's cabinet to reduce the number of students who are referred to law enforcement, experiencing unnecessary school suspensions and expulsions and suffering under disproportionate disciplinary practices. As a result our agencies have been hard at work to support the local efforts to stop this practice. In June we unveiled a new model memorandum of understanding for all of our local partners that all had to sign. And we now have a new rewritten Virginia School Law Enforcement partnership guide. There are very strict guidelines now when someone can be disciplined. And I recently signed legislation directing the Virginia Board of Education to establish new alternatives to short-term and long-term suspensions. Together these steps will contribute to a healthier and more productive learning environment for all of our children, and I hope it will help prevent our young people from entering the juvenile justice system in the first place.

These community focuses efforts aren't just important for early intervention and prevention, they are also critical to adults who are reentering society after they have gone through a period of incarceration. Having a sense of community is critical to making this transition a successful one. Just as important, our adult reentry population needs the skills and preparation to be successful in today's economy. In Virginia we have taken steps now to offer college credit coursework and career and technical training in all of our facilities. This prepares them for a smooth transition into the new Virginia economy that we've all worked so hard to build. We're proud to have one of the highest number of GEDs

now among adults in correctional facilities. And I am very proud, over the last three years because of these efforts, today Virginia can boast the lowest recidivism rate of any state in the United States of America. (Applause)

These measure point to the success of the historic transformation underway in Virginia, but we cannot stop there. As I alluded to earlier, insidious policies to hamper our citizen, including the lifelong label as a criminal in the name of public safety and justice -- the burden of that label can be life altering after you've served your time. To learn more about that firsthand I invited four Virginians to have dinner with me last week at the Governor's Mansion. They were students, faith leaders, and professionals. They came from every walk of like, each had their own unique pathway to success today, but the one common thread among them was their wish not to be defined by a mistake that they had made so many years earlier. That's because each of these Virginians had been convicted of a crime and had all received a pardon from me. Well, most had long since moved on from their mistakes that they made. One of my guests hadn't even made a mistake in the first place. His name was Robert Paul Davis and when he was 18 years old he was wrongly convicted of a double murder after being forced to confess to a crime that he did not commit. On the day I signed his pardon I ordered his immediate release from prison. He had spent 13 years of his life behind bars. In fact, I've pardoned many Virginians who never should have been charged in the first place.

In May of 2015 I granted an absolute pardon to 58 year old Michael McAlister who had been wrongly convicted of attempted rape and abduction of a young mother in Richmond in 1986. After more than 28 years in prison he was finally exonerated as a true criminal. A serial rapist who bore an uncanny resemblance to Michael came forward and confessed his role. And in March I just pardoned a group of men known as the Norfolk Four. These four Navy veterans were wrongly convicted of raping and murdering a young woman in Norfolk in 1997. Together they spent years in prison for a crime that they did not commit after being coerced into falsely admitted guilt by the lead Norfolk Police detective on the case. Today that police investigator is in prison for extortion and lying to the FBI about investigations. Sadly, this decades long process has irrevocably changed the lives of these four men. I cannot give them back those years of their lives.

Our system of justice is clearly an imperfect one, which makes the duty and authority to

pardon such an important one. But it's not just for people who are wrongly convicted. Also at my dinner with me last week was a 64 year old reverend and Army veteran who unfortunately had been hurt while he was in Viet Nam, severely. Became addicted to drugs. Came home and at 23 years old was convicted of marijuana possession. That 40 year old felony conviction followed him until the day he received a pardon from me. It had always bothered him and prevented him from getting certain jobs. Through my pardon power I made sure that they knew that the Commonwealth of Virginia would never ever again define these individuals as criminals.

While executive clemency is an important power and responsibility of any governor, I've actually taken it to the next step. I've also taken executive action to ban the criminal background check on state job applications and I've fought to end the ridiculous policy where in Virginia we would strip your driver's license for people who could not pay their court fines and fees. You've got court fines and fees, so you take the driver's license so they can't drive to work to make money to pay the court fines and fees off. Is that not ridiculous? I found this one so baffling. And I reminded our legislators that, you know, there is no metro system in Martinsville, Virginia or Abingdon. In our rural communities, where this is very prevalent, the only way they can get to work is to drive. So, this year, after a long concerted effort, I'm proud that I signed six bills that now makes it much more difficult for our courts to suspend driver's licenses and to give drivers a lot more options to get their driver's license back if it is suspended because of an unpaid court fine. In addition, as Governor I've also led the fight these past several years to raise the minimum felony threshold level. I'm embarrassed to say this, but today in Virginia if you are convicted of stealing anything worth \$200 or more you are now a felon in Virginia for life. If \$200 seems low to you, that's because it is. Virginia now ranks 50th out of 50 States, tied with New Jersey. I'll leave that there. (Laughter) Think about it. The \$200 floor was first set in 1980, 40 years ago. It means that a kid who just turned 18, steals a pair of Air Jordans or takes an iPhone is now a felon in Virginia and that label will be with that individual for the rest of his or her life. You should know that in 1985 it would have been a misdemeanor. So in 2016 I called for raising the minimum felony threshold to \$500. Unfortunately, that never even made it out of Committee. But if you know anything about me, I was not deterred. So we went back at this year's Legislative Session and I proposed this modest increase again, from \$200 to \$500. Just to keep up with inflation that's where it would be. Unfortunately, it was rejected again.

Just yesterday I signed a pardon for a 47 year old man, his name was Paul, who at 24 stole cash, more than \$200 from the cash register at the department store where he worked. He had a new baby, he had a broken down car, and he had no money. Today he owns a thriving plumbing business, but his felony conviction sometimes prevents him from doing business on any military bases. At Christmas time he donates free plumbing supplies and services for families in need. Paul was wrong to steal that money, of course, but it doesn't mean a mistake that he made nearly 25 years ago should follow him forever.

In Virginia that felony conviction also permanently strips you of your civil and voting rights for life unless restored by a governor. That draconian process was the basis for the most contentious battle I have had as Governor. When I came into office 40 states automatically restored these rights to former felons and gave them an opportunity to have a meaningful second chance with their lives. I set out to bring Virginia into line with the rest of the country. In April 2014, just three months after I took office, we made some changes. We shortened the request form from 13 pages to 1, got rid of the notary public, got rid of the waiting period. We streamlined the process so that everybody has the same eligibility requirements. Later, in December 2014, I announced that I had restored the rights of 5100 Virginians, more than any other governor in Virginia history had done in a year. We systematically removed burdensome requirements and ended the practice of withholding these rights simply because of outstanding court costs. In June of 2015 I was proud that I had restored more voting and civil rights than any governor in the history of the Commonwealth of Virginia. But for me that was not enough.

So, on April 22, 2016 I stood on the steps of the Virginia State Capital, which was designed in 1785 by Thomas Jefferson, and I issued an executive order to restore the rights of all Virginians who had served their time and had completed any supervision. That day more than 200,000 Virginians earned back their right to vote. It was my proudest day as Governor.

We must ensure the rights of every citizen, which must also include those among us who have made mistakes, served their time, returned to our communities to make the most of their second chance. Unfortunately, when they do get out their criminal record follows them as they look for work and housing, which are the basic necessities to help you have a second chance. And in Virginia it's a mistake that stays with them even when they try to partake in democracy by voting. And there's a reason why

folks, 115 years ago a felon disenfranchisement, a poll tax, and a literacy test, were written into Virginia's Constitution. It is ironic that in this great country, with our imperfect history, we would punish those who've made a bad decision for the rest of their lives. Where would we be as a country if we were only judged by our mistakes? Why then do we just and perpetually punish our fellow citizens who maybe got lost along the way? I've always said you show me someone who's never made a mistake and I'll show you a liar. (Laughter)

These are the questions that I've asked myself as I've travelled around Virginia and heard story after story from people who had been denied their basic rights for years, and some of them have never been able to vote in a single election. There was a reason why this happened. That 115 years ago a State Senator by the name of Glass put these into our Constitution, stood exactly where I stood 115 years ago, and to quote him precisely, we're doing this "to eliminate the darkey from being a political force in Virginia". Think about that for a second, folks. So on that April day I was proud to restore the rights to folks like Terri Garrett, who had been stripped of her rights after years of substance abuse and frequent incarcerations. Terri made mistakes, she served her time, she turned her life around, in addition to being a loving mother and grandmother is now a respected community leader and a sponsor to recovering addicts and former offenders. Yet, as you know, Terri had remained a second class citizen. Before that day in April of last year this mother and grandmother did not have the right to vote even though she had turned her life around and used her second chance to help others in need, especially those facing addiction. It was a sad legacy for the Commonwealth of Virginia. This policy was among the many Jim Crow era voter intimidation tactics that had been used to block people of color from voting every again. As Governor I could not accept this grave injustice. But like so many other paths to justice ours was not without obstacles.

Virginia's republican legislature sued me the day I took that action, arguing that I did not have the authority to do a blanket restoration. On July 22 the Virginia Supreme Court ruled against us, not based on Constitutional grounds, but because "No governor had ever done this before". Now, I'll be very frank with you folks, I went to Georgetown Law School. I went full-time day. While I was there I ran three companies. I wasn't in the building much, but even with my limited legal knowledge (laughter) I knew I had the authority to do this. I think the statute of limitations has passed on how much time you're

supposed to spend in law school. So think about this, Terri had gotten her rights back, overjoyed, and here the Virginia Supreme Court had ruled against us and she lost her right to vote again. I talked to her on that day. She was devastated. She couldn't talk. However, we weren't done fighting. On August 22, 2016 I stood before Virginia's historic civil rights monument and initiated the new process of restoring rights. They had told me if the Governor is going to do it he has to sign every single one individually. I said line them up, I'll sign every one individually if that's what it takes. (Applause) So, guess what happened? They didn't like that. Once again I was sued. This time the General Assembly republicans sued me for contempt of court. I now have the honor of being the first Virginia governor to be sued for contempt of court. This time the Virginia Supreme Court sided in my favor and said he's doing it right by doing it individually. And Terri Garrett got her rights back again that day. And in November of last year, for the first time in her life, she walked into a voting booth to cast her ballot. With that vote she officially regained her place in our society and showed us how powerful a second chance can be. Terri fulfilled this hard fought civic duty with pride, something that nearly 100 million eligible Americans did not exercise last November.

Earlier this year I invited Terri to join me for my annual State of the Commonwealth address to the Virginia General Assembly in our historic capital. Terri stood in the balcony with tears streaming down her face as I honored her in the room with the very same people who had thought she was a second class citizen and actually sued me to keep it that way. Over the past year as I've met countless people whose rights I have restored just like here, these are our family, they are our friends, they are our neighbors. They send their children and grandchildren to our schools, they attend our churches, and they pay taxes. And now they can once again have a say in how their communities will grow. This is not just a Virginia problem. Nearly 6 billion Americans with felonies around the country today cannot vote. Think about that, 6 million Americans. These are people just like Terri, who have served their time and ready for a second chance only to be shut out from their community, the community that they contribute to. When people return to their communities after being incarcerated we want them and we need them to make the most of their second chance.

Progress is rarely easy. And I knew this would be the start of a hard fought battle, but clearly one worth fighting. As I look back on the past year and a half I'm proud of the remarkable

accomplishments that we've achieved because we never gave up on that fight. We stood up to take action that will become a hallmark of significance in the history of civil rights. And today, because of this work, I'm proud to stand here and say that we've restored the rights of more than 161,000 Virginians who had deserved a second chance. I now have the honor of restoring more rights than any governor in the history of the United States of America. (Applause)

Our work must continue until every person is ensured their basic human and basic civil rights. No voter should ever be barred from fulfilling their civic duty. No person should ever fall through the cracks of a broken criminal justice system. No child should be subjected to failing schools simply because of their family's economic status. Our efforts to date have started a long overdue conversation about how we view justice and how we can live up to our own American ideals. But we cannot continue that conversation without acknowledging how we got here in the first place.

So, yes, let's tear down those monuments and put them in the museums and the battlefields and the cemeteries, where they truly belong. But let us also tear down the insidious policies that keep inequality and racism alive in our institution and in our attitudes. The greatest monuments that we could build to our nation's core values are not made of stone. We must actually live the American legacy that we all seek to honor, by ensuring that every single child in this country has an equal shot to succeed, that every single man and woman who's made a mistake has a second chance to make it right, and that every American has a place to call home. That's what we've worked hard to do in Virginia under my watch. The progress that we've seen is just the start of a transformation that could take generations to be fully realized. That's why I hope this important work continues in January under my successor because this isn't a Democrat or a Republican idea, it's an issue that cuts across economic status, race, origin, age, and political party. Incarceration and disenfranchisement have torn apart far too many families for far too long. And they've been used as legal tools to suppress the political and economic rise of our African American friends and neighbors. Folks, it's past time for criminal justice reform. It is time for a criminal justice revolution.

Thank you very much. (Applause)

MR. WEST: So I want to thank the Governor for his thoughtful presentation. We appreciate him taking time out of his busy schedule. He had to leave because he's running to his next

event, so was unable to stay longer.

But we do have a distinguished panel of experts to continue the conversation. The moderator for our event is DeRay McKesson. He is political activist and organizer for Campaign Zero, which seeks to end police violence. Joining him on the panel will be Shon Hopwood, who is an associate professor of law at Georgetown Law Center. He is the author of "Law Man: My Story of Robbing Banks, Winning Supreme Court Cases, and Finding Redemption." And as far as I know I believe he is the first bank robber to actually speak at the Brookings Institution. (Laughter) Also on the panel is Brittany Packnett. She is the vice president for National Community Alliances at Teach for America. She also is a co-founder of Campaign Zero. Clint Smith is a doctoral candidate of education at Harvard University and also the author of "Counting Dissent." He has given Ted Talks on the danger of silence and how to raise a black son in America.

So I will turn things over to DeRay to start the conversation.

MR. McKESSON: Thank you. And thank you everybody for coming. Excited to be here; I'm excited to moderate this incredible panel. So, I know these two, and I just met Shon today.

When I think about Brittany, Brittany was appointed to the Ferguson Commission in Ferguson, and she was one of the original protestors out there in the beginning. Was also appointed by President Obama to the Taskforce in 21st Century Policing; Clint an incredible poet and academic who researches and studies the history of the civil rights movement in his work, and has also done work in prisons; and Shon, a scholar and a former bank robber who has written about how we change the system with everything from sentencing to the speedy trial.

So, excited to have this conversation. The first question that I pose is a reflection on the Governor's speech. We have just, as a country, come off the heels of the initial incidents in Charlottesville, and there's been a lot of conversation about that. I'd be interested to know what your take is, especially as we talk about the climate of race and criminal justice reform. And we can start with you, Brittany.

MS. PACKNETT: Well, thanks so much for that question. And thanks to Brookings for hosting this important conversation, and having us. I've got two kind of main reflections on the speech, one is that I appreciate the recognition of Charlottesville as an important moment, but we have to

recognize that it's a moment in a long series of moments, that is part of a system here.

In that, what we saw were some of the most vile evidence of white supremacy, racism, and kind of the indoctrination of hatred in this country, and yet we see that act out every single day in our criminal justice system, in schools, on the street, in acts of protest, or the things that we are protesting against.

And so I think it's really important that we frame this conversation properly in a broader system of white supremacy that does actually impact all of us every single day, and because it is systemic, it is institutionalized, and it is woven into the very fabric of this country, from policing, on down.

The other thing that the Governor mentioned that I think is really important for this conversation is about how much this starts in schools. And we often discuss the school-to-prison pipeline and it is; that phrase has become very well-known, thankfully, but the insidious ways in which this acts out for young people every day, I think we don't talk about enough, because it's not just about how quickly you can enter the system as a child.

It's also about the ways in which you internalize the idea that regular, normal childhood behaviors are indeed criminal, and they are especially criminal if you have brown skin. They are especially criminally, if you are indigenous to this country. So, we see African-American and Native American children far surpassing all other children in juvenile detention, and they are outpacing their representation in this country.

As the Governor mentioned, Black students being pushed into the school suspension and other disciplinary measures at alarming rates, but it's also important to recognize that the kind of training that not just police officers, but teachers and principals, and other folks are receiving, doesn't actually cover a lot of this stuff. And so I hope that's something we can talk about today.

MR. McKESSON: Thank you, Brittany. Clint?

MR. SMITH: Similarly, thank you so much for having me. It's a pleasure to be here. And I was heartened by a lot of what the Governor had to say. I was thinking a lot about the social science, and how often, you know, for me, as someone who is thinking about this, and reading the social science and the empirics of it, you often see a disconnect between what is politically expedient, or politically palatable, and what is actually proven to be effective through empirical evidence.

And one of the things that the Governor mentioned, that I don't want to slip under the radar, is that they've improved, or made easier and facilitated and streamlined processes by which the families of young people who are incarcerated can visit them. Because if you go through the social science, that is one of the most important things that can be done in order to reduced recidivism, is making sure that family ties, both in the juvenile context and in the adult context, are maintained, because once people lose a sense of the community they have on the outside, because they become a lot more disillusioned, and it becomes a lot more difficult to reintegrate yourself into the community once you are released, and we know that.

Well, I worked predominantly with men and women who are serving life sentences, and that's what I'm thinking about in my own research, in my dissertation; 95 percent of people who end up in prison or jail are eventually released. And so it's important for us to be thinking about, not simply how this operates from the frontend but also recognizing that so much of this work has to be done on the backend.

And I'm heartened that the Governor has talked about the initiatives that the state is taking with regard to drivers licenses, which is, you know, an example in a sort of microcosm of a series of like really silly, a policy that potentially seems really silly, but was clearly implemented with an intention to making it more difficult for people to navigate their lives effectively once they got out.

And, you know, it doesn't make any sense that you wouldn't have access to a car to get to the job that you need in order to provide for yourself to make sure that you don't end up recidivating once again.

And another thing that I thought as really important, so I taught high school English for several years before I started graduate school. And I so I taught, you know, 15 and 16 year-olds and now I work with men who are serving life sentences, and so I kind see both the front and backend of how these systems operate.

And what happens when you spend time in prison? As anyone who has stepped foot in the prison, or has worked with those who are incarcerated, or formerly incarcerated, will tell you is that spending time in a prison, completely disabuses you of any preconceived notions you had of like one, what is a prison is, and then who the people in that prison are.

I think, you know, as Shon will talk about, we have so many caricatures of who we

believe people in prison to be, and implicitly or explicitly, we often do not recognize the ways in which the arbitrary nature of circumstance, and the conditions in which a person is born, inevitably shapes the trajectory that that person ends up on.

So, you know, for me, being inside of a prison was a daily reminder that, but for the arbitrary nature of the zip code I was born into, the family I was born into, the schools I got the opportunity to attend, it could have very easily have been me on the other side of the bar, instead of someone who got to come in and out, leaving on the same afternoon.

And so I think that that's really important, and it's important for any of us who are concerned with these issues to recognize that this is not simply -- we are not doing necessarily, like favors to anyone, it is simply that we have to recognize that we, most of us in this room have been put in positions where the trajectory of our lives put us a very different path, than the sort of like social or economic, and political landscape, to the lives of those who often end up in prison are typically put on.

MR. McKESSON: Thank you, Clint. Shon?

MR. HOPWOOD: Well, again, thanks for having me. And I hope the Brookings Institution starts inviting more felons into its midst. And the reason is, they are not any different that you. That's the big idea. And I was encouraged by two things that the Governor said.

One that criminal justice reform is vital; the system is an absolute mess. You cannot believe that America is the land of liberty and the home of the free on the one hand, and then on the other realize that we incarcerate more of our citizens than almost any other country on the planet.

It's counterproductive as well. The system where we send people to prison as a first response rather than a last resort, and a system that when we send people to prison, the longer they serve, the less likely they are to get out and not commit new crimes, doesn't really benefit anyone, including taxpayers and crime victims.

And that's the big irony. Our prisons are so awful that people have a hard time recovering from prison. Everyone makes change. I was 21 when I committed my crimes, and I made a pretty profound change, and now at the age of 42. If we know people can change, why do we think prisoners can't? And the answer is, because they serving time in prison; that says more about our system than it does them as individuals.

And so there's lots of room for improvement, from sentencing to prison reform to -- you know, it's not real easy for prisoners to be incarcerated for a decade, and then released with very little job training and we expect a miracle to happen. You know, when I got out of prison in 2008-2009, I had never been on the Internet, I had never seen an iPad, I had never seen an iPhone.

And one of the places I applied to, Kalka Legal Briefs, which was my big -- you know, they gave me a job. One of the problems I had with them was I had a reference letter from a really wonderful attorney, one of the best attorneys in the United States. And I thought this reference letter could help me get a job. And they said, please send us a PDF.

I didn't know what a PDF was. And do you know what? No one else in the halfway house did either. That one little hiccup that we all get past every single day, and don't think about, can be life-changing for getting out of prison, and the recidivism rates in some places are as great as a five-year recidivism rate of 75 percent. So three out of four people coming out of prison are going to go back within five years; that system doesn't benefit any of us.

Well, there's definitely the need for reform, but the thing I was encouraged most by what the Governor said, is that this is not just dimply good government, and what system do we want, because it's the most beneficial to the most of us. It's also about justice.

It's justice to give people second chances. It's justice that once they serve their time, we don't continue to punish that person for the rest of their lives, because if you follow the legal system long enough, well over 5,000 Federal criminal rules and statues that contain criminal penalties, there are thousands more in the states. Chances are, all of you have committed a federal felony at some point in your life and you have no idea.

And so to think that we will judge a person for the rest of their life based on a bad day, a bad week or a bad year, as a matter of justice, that's simply wrong. We want to help people when they get out to become productive citizens, but in order to do that we've got to make some serious changes. But I was glad to hear that the Governor thinks that this idea of second chances is not just good government, but it's actually justice.

MR. McKESSON: Thank you, Shon. So, I think about three things. You know, I've been on a lot of panels about criminal justice; this is the only panel I've been on where everybody has been a

teacher at some point. So, you taught elementary, high school, and now you teach at the college, and I taught sixth grade math.

I'm interested in having a conversation about some things that we don't normally talk in the criminal justice space. When I reflect on the Governor's speech, I think about what is a felon, is one that he and I talked before, and it is fascinating that in cities across the country or in states, the bar for what it means to be a felon is actually pretty low; in Chicago it's \$300, and in Illinois it's \$300, in Virginia it's \$200.

That is so fascinating. I just was at the Cook County jail which is the largest single site jail in the country, also is Angola which is the largest land mass prison in the country; it's 28 square miles, 18,000 acres, it used to be four plantation put together, which is wild thing. And I agree with you, Clint, that when you see a prison or jail it, like, completely changes the way that you think about it.

Clint, we'll start with you. I'd love to know how you think about how we got here, and then Shon we'll go to you about the -- what are the parts about the criminal justice reform space -- and then we'll go to you Brittany -- that we don't talk about enough, or that we should be changing the conversation about the public.

I think about the people that are here, probably already agree, like we should do something, they've already heard sort of in the news, at least like, you know, that we should de-carcerate, or like bail reform are like hot topics today. But how do we round those out in the public conversation?

So Clint, we'll start with you about how we got here. And then we'll pivot to Shon and Brittany.

MR. SMITH: Yes. So, as the Governor alluded to this clearly a long history that stems slavery, the civil war, the failure of reconstruction, or the purposeful and proactive killing of reconstruction, and the onslaught of Jim Crow that play a huge role in shaping what our contemporary criminal justice system looks like.

And I think that's important to name, because that's something that we all sort of intuitively understand and carry with us, but a part of what I think we don't do oftentimes, you know, I mentioned the sort of dissonance in the conversation about -- in criminal justice around what is politically

palatable, and what actually is like really going to make a huge difference. And one of those things that we often talk about, the sort of standard discourse around incarceration centers on this idea of non-violent drug offenders.

And so that the discourse that, you know, President Obama would talk about, that the Governor has talked about, and that a lot of progressive politicians who are thinking about this issue often espouse is, you know, we often call these nonviolent drug offenders, who are locked up for, you know, selling marijuana on the street corner, or doing drugs that didn't represent a threat to anybody.

And that is true, but the way we talk about it suggests that if we simply take away all the nonviolent drug offenders out of prison, then mass incarceration will suddenly go away. And that's simply not the case, right. What we know is that only 16 percent of people in state prisons are convicted of nonviolent drug offenses, we can have a different conversation about this sort of very blurry line, between what constitutes as a violent versus a nonviolent crime.

I think we have, we think that that demarcation is something that's very clear, when it's really not. You think of, you know, a lot of the men that I work with, who are serving life sentences are in there for violent offences when they didn't do anything that is extensive, that we would think of essentially violent, whether it be the owning of a -- or when they were arrested they had an illegal gun, or one that they hadn't purchased legally.

And so in many states that in and of itself constitutes as a violent crime regardless of if you are using the gun or not. And so part of the difficult conversation that we have to have, is what beyond nonviolent drug offences led us to this moment. And, you know, we talk about the war on drugs a lot, but we don't talk about prosecutors enough.

And I think we are starting to talk about prosecutors more and more often, but the sort of methodology of the criminal justice system that you see on Law and Order, and all the TV shows that everybody goes to court. And there's a jury, and it's a very dramatic thing, but that's not yow most of these things happen.

And 90 percent of criminal cases end in plea bargains, that means most of the discretion lies with prosecutors. Right? So, after mandatory minimums were imposed, you had this discretion that was taken away from judges, and that discretion was moved to prosecutors. And ostensibly and

theoretically that would be a good thing because, you know, prosecutors are democratically elected, and thus one intuitively believes that there's more transparency, and if they were doing something wrong, that somebody can sort of -- you know, just not elect them the next time.

But the reality of the role of the prosecutor means that we simply don't -- the same level of transparency doesn't exist in a prosecutorial capacity, as would exist in a different elected capacity. So we don't know a lot about what prosecutors are doing, in the same way that we often know what other -- like city council members are doing and different things like that, because of the nature of the position, since so many of those things are in the dark.

And so part of what we have to do is recognize that prosecutors have a wide range of discretionary power that is often used to put people away for much longer than they need to be. An important statistic to think about is that by 2030 a third of our prisoners will be over the age of 55 years old.

And so when we talk about the sort of relationship between the economics of this issue, and the sort of morality of this issue, it's not simply that we are putting people in prison long after all social science demonstrates that they will not -- they are less and less likely to commit a crime like all of the -- the data suggest that after a certain age, around 35, the likelihood of you committing crimes, like, goes down, in like a really dramatic manner.

And so when we are not addressing that, you have all the health care costs that are going to be associated with this increasingly aging population, you have all of the cost of staffing and building more prisons. And so all of this is to say the reason we got here is not -- what I want people to take away is not simply because of nonviolent drug offences, it's not simply because of Nixon's or Reagan's the War on Drugs, but it's because we moved from a system in which the discretion stood mostly, or existed mostly in hands of judges and juries, and moved almost singularly to prosecutors in a way that often exists in the dark that we can't see.

MR. McKESSON: Thank you, Clint. Shon?

MR. HOPWOOD: Yes. So there are six big areas that need reform. It starts from the frontend to the backend. So the first would be policing. We have lots of issues with policing, that has kind of come to the forefront in the last couple of years with Ferguson, and Baltimore, and Chicago, and

all these other cities.

So, we've got to reexamine that. We've got to reexamine what Clint just said, which is, we have way too many laws, criminal laws in this country. It used to be that criminal law represented something that all of society can agree is wrong. But when you have 7- or 8,000 things that are considered wrong, and criminalized, what it does when you make everything illegal, you give all of this power to the prosecutor.

And what happens is when legislators, state legislators or Congress pass these laws, they write them very broadly, and it basically gives -- what they write as the law, it's not actually the law, because the law is whatever the Assistant U.S. Attorney, or the State Prosecutor says it is.

There are so many laws that we don't enforce. So there is another area. Then you have the criminal process area, which I would say the biggest need there is representation of the indigent defendants. We have all of these wonderful procedural protections in the Bill of Rights, like Miranda, and illegal searches and seizures, and the right to a jury trial.

If you don't have a lawyer, and you don't have a lawyer that's a good lawyer that can weaponize those rights, and apply those against the criminal justice system, none of those really matter when you have a public defender who has 300 cases per year. No one could do a good job doing that; and so indigent representation is probably our biggest issue there.

Then you move to the next which is sentencing reform. On the whole United States incarcerates people for far greater and far longer than most countries, and that is definitely an issue. I often, when I talk about prison reform, the first thing I tell people is, if you want to reform prisons and outcomes of people coming out of prison, don't give them a long sentence to begin with.

It's very difficult for a prisoner to get up every day, and kind seize the day and become -- improve themselves for release, when you are facing a 20-year sentence. It's even harder if you are 20 years old at the same time. I remember when I was looking at the face of basically going to be incarcerated for 11 years. I thought: oh, when I get out I'm going to be in my 30s, I'm going to be so old.

But that's how a 20-year-old thinks. And so it's very hard to get people in the mindset of rehabilitation and preparing for release, when the light at the end of the tunnel is so far off. We also obviously have to reform our prisons. There are a few prison systems in the world that are worse than

ours, violence.

I saw more drugs in federal prison than I ever saw out. There were eight guards that were indicted at the federal prison I was at. I saw things that don't make any sense as a rational matter. We had a really great welding program for prisoners. When I got there people were getting out and being hired for that, making 20 to \$25 an hour. But for someone coming out of prison, that's like the gold standard.

A new warden came in and decided, well, I can get more money if I change the program. So, he changed the program and took the Welding Program out, and started a Business Management Associate Degree, because everyone knows that people want to hire felons to manage their businesses when they get out.

And so we need to reform prison. And then the last piece is the reentry. There was nothing at the prison I was at prepared me for reentry, despite the fact that I'd done almost 11 years. Simple things, like getting a driver's license. Why aren't we explaining to people coming out of prison how to do that?

When I got to the halfway house I was told I can't leave until I get a job, and I can't get a job till I get bank account. And when I went to get a bank account the credit agencies had listed me as deceased, and so it took me weeks, and I had to hire lawyers because the halfway house wouldn't help to get that fixed so that I could get a bank account, so that I could get a job, so that I could get on with my life.

And we don't think about these little hurdles, but there are all sorts of small hurdles out there, that trip people up. And if you see a door closed every time you open it, eventually people revert back to what they did before. And that's why our recidivism is so high.

Every successful reentry story I have ever seen, almost all of them involve community. People coming out of prison and embrace, whether it's at a church, or a non-profit, something, because when you have community around you, you don't want to commit new crimes because you don't want to let those people down. But our current system takes people out of community, puts them into isolation, and makes it so that it's very hard for them to continue ties with the outside world while they are incarcerated.

That's why the move to put juveniles closer to their parents is so important. It's the same for adults that have kids. Why don't we want the adults to be able to see their kids more often while they are incarcerated? We just don't do a very good job of preparing any of these things, and that's why our outcomes are so bad. As you can see, it's pretty daunting, because we need reform basically from start to finish.

MR. McKESSON: Thank you, Shon.

MS. PACKNETT: I think what was so important about Shon's point is that it's the recognition that there are multiple systems complicit in this outcome. It's not just about prisons, it's not just about police, it's not just about prosecutors and defenders. It's about all of this, and to make it more daunting I would add one to your list, which bring me back to my original point, because I do not just think about the school-to-prison pipeline but really the cradle-to-prison pipeline.

And in my view, I kind of see four steps. So there are a lot of children who are essentially born into this culture. Right, now there are children who are literally born into this, there are 12,000 pregnant women imprisoned every single year in this country, and there are 28 states that have no laws disallowing what's called shackling during birth. So the mothers are actually shackled while they are giving birth, which not only, for any of the women who had given birth, and hear that, you can imagine not being able to move your body to be more comfortable during the most painful experience of your life.

So, it's difficult for the mother, but it's also very difficult for the child, because it makes it much harder for the doctors to deliver a healthy baby. So, you've got children who are literally born into this, but also this broader culture that Clint has already walked us through, that are born into communities that have been completely destroyed by mass incarceration, the war on drugs, et cetera.

And so you are born into this idea that you start internalize that the people who look like you, the people in your zip code, the people in your neighborhood, are somehow inherently more criminal than the folks you might see on TV, the folks across town, et cetera.

So first you are born into this culture. Then you are disciplined into it once you get into school. I remember we were training our teachers in St. Louis, and I went one of the schools where someone else was in charge, but one of my staff members was there to observe a teacher, and she called me and said, I need you to come down here immediately.

And I came down to find a 7-year-old handcuffed to a chair. I don't know what a 7-year-old could possibly have done that bad that he could handcuffed to a chair. And the story that I was told certainly did not meet the bar for that kind of restriction, but we have to recognize that the culture of education in this country is one of compliance and not of empowerment.

So, if it's all about controlling your body, and controlling the way that you move, controlling how much you move, then yeah it would actually, unfortunately, make sense that a 7-year-old is handcuffed to a chair, if people feel like they can't control him. Instead of having a conversation, instead of asking what's wrong, that's the solution.

I talked to a friend of mine yesterday whose sister pulled her son out of a school three days into the school year, because she said the kids wear orange uniforms, and her son kept coming home saying, I can't sit they way that want me to sit for 45 minutes, mommy. And so again, this idea that compliance and restriction is better than empowerment, is what we as adults come into education space thinking is right, and yet it is deeply problematic for children.

So, imagine coming from a culture that says, somehow the way that people like me behave is criminal, and then I come into an institution that tells me the same thing, that gives me the same message, I'm continuously internalizing this idea. You know, the Governor talked about a criminal justice revolution. Well, our young people are discouraged from revolution from the very beginning.

So, here's what's really interesting, and Amanda Ripley has done some really important reporting on this. There are 22 states that have laws against what's called disturbance in schools. So this is what I mean when I talk about criminalizing everyday childhood behaviors.

As you said, all of us are teachers, we've all been disturbed, we were all disturbances at some point when we were students, but because I was at a Multiple Intelligences private school my disturbance were seen as creative, or something to talk to my mother about during parent-teacher conferences, it wasn't seen as criminal. Right?

MR. McKESSON: Right.

MS. PACKNETT: For so many of our young people it's seen as criminal. And a lot of these videos that we've seen gone viral, the thing that happens in schools where we see, you know, officers throwing kids, and kids getting shackled, and stuff like that. The thing that happens behind the

scene is that often the young person who put out the video is actually admonished for disturbance. And in 22 states that's a criminal offence.

So, kids are everything from expelled to actually seeing criminal charges brought against them simply for telling the truth. And if you are discouraged from telling the truth as early as elementary school, then you can that that criminal justice revolution that we need, is not going to come.

So, you are born into it, you are disciplined into it, you are discouraged from revolutionizing it, and then lastly, at the federal level, especially now, we are not seeing any protections for it. So, I get deeply worried when I see what's happening at this Department of Education around the Office of Civil Rights. How many complaints have been dismissed outright, just in the last few weeks?

If there is no place to take these things, if there's no one who is actually going to do something about this, then we end up in the exact same system; Shon, that you just described. And so I would add that seventh piece on the very frontend, because we created a culture for too many of our young people that give them the idea that this is normal, and that this is the way that things have to be.

You know, the Governor talked about the danger of convention, and how we can get just caught up in a cycle because we've always done it this way. And for so long, we've always done education this way, and it is extremely dangerous to students and we are not going to get that revolution that we need, until we start protecting them, and actually empowering them.

MR. McKESSON: Thanks Brittany.

MR. HOPWOOD: I actually saw some of that in prison. When I got to the federal prison there was a row of cells. I tell the story a lot because it's just emblematic of the system as a whole. There was a row of cells, African-American men, they call themselves neighbors; neighbors because they were in cells right next to each other, but also neighbors because the Feds had come into their neighborhood in Milwaukee, and basically got them all on this huge crack conspiracy, and gave them 20-year sentences.

And there were about 10 of those guys, and when I got to the prison they were about halfway through their sentence, and when I was getting ready to come home, so were they. And you would have thought it would have been a great day of joy for them.

The problem was the last few years, their sons started coming into prison, because you

take all the dads out of a neighborhood and, you know: what do you expect to happen? And so there's always this cycle of people coming in and out of prison, and we've got to do something to break it, because it just devastates families, devastates communities.

MR. SMITH: And the reality is that, to build on Shon's point, is that Milwaukee is the most segregated city in the United States. Right? So, you cannot disentangle the realities of housing segregation, and housing discrimination, and the decades and decades of public policy and social engineering that made it so that certain communities were prioritized; and other communities were de-prioritized with regard to access, and resources and opportunities, and sort of the social bedrocks upon which intergenerational wealth and health are founded upon, from the trajectory that put someone on a trajectory to end up in prison.

So, it's important that we are thinking about this on the frontend, and while people are imprisoned, and on the backend; and too often, you know, in education this often happens, we talk about these issues in silos. And people will look at a school, and they will say, oh, well, the teachers are not doing this, or the students were, or are not doing this.

And in prison we fall into the same trap oftentimes, we look at -- you know, we say, this is what's happening at this prison, and this is the recidivism rate, but we are not talking about how prison fits into the sort of larger ecosystem of things that are happening before someone even ends up in prison. And it's essential that we are having this conversation; these conversations alongside one another rather than separately.

MR. McKESSON: Yes. So, I'll recap some of the things that really resonated, and then we'll set up for the: how do we get out of this mess? So, we talk about what the problem is, and it's so that, and it's like: what do we actually do? Clint, one of the things that I'm mindful of that you said, it's this idea that it's not just the nonviolent drug offenders, they are like people, so much of the conversation is about the nonviolent population. But we could free all of them done and we'd still have a really big problem in a way that people just don't talk about.

And this question of, like: what is violent? Because in Chicago, and it's like, if you are like accomplices are considered violent in almost every state. So you just being around the crime is like coded as a violent offence, in places. And there is this question, if you ask the public like: what is a

felon? They are like people's go to, it's like: kill 35 people, and like blow up a supermarket, and a building.

It's the most heinous version of whatever crime looks like. But like stealing an iPhone is a crime in a place like Virginia, and places like Chicago. So, how do we help people think about these fundamental sorts of issues differently?

Shon, when I think about you, it struck me how in the media and in public, we've like normalized long sentences. Like a 10-year sentence in Law and Order is just like simple, yeah, like 10 years. Or, like 20 years, of course he got 20 years. And you're like: that's a long time. But that is a long time, especially when you think about the lack of programming or anything substantive that's happening during those years. I'm struck by that.

The second about, you know, people we don't talk about in public, how not every place has a public defender, because on TV everybody gets a public defender. But there are cities across the country, there are states, like, they don't have public defender system, they don't have public defender systems at all, and like we just don't talk about that.

So, like it's these random private attorneys sort of giving people advice but not in a coordinated way, in a way that makes sense to people, and like that is sort of wild. And if there will be this focus on literacy, and you maybe think about it Shon, and Brittany you maybe think about it, and we think about like what are we doing on the frontend with our kids, and the what are not doing once people get into jail.

And you think about cities like Baltimore, where there is a stat like, I'm from Baltimore where 30 percent of adults cannot functionally read, and it's like, what does it mean to create opportunity for people when like they can't read, right? And that you literally have a captive audience. Like, no pun intended, it's like they are not going anywhere.

You could run like the most streamlined literacy program, for every juvenile offender, for every adult offender, like you could do it, but the people that staff most of our prisons and jails, are like social workers. They are not educators normally, they are like mental health professionals, and that's really important, so how do we like actually have a real, robust conversation about literacy work, like the core skill development when we think about prisons and jails.

And just for like a teaching moment, jails are before you've been convicted of anything, and prisons are after you've been convicted of things, if you didn't know.

So, let's start with you, Shon, and work our way down. About, like how do we get out of this? Like, what is the -- Either, like what are the biggest levers? Like where should the energy be now? Like where should we focus on now, knowing there are more than one thing to do? And how would you -- if people ask you like: what can I do? Sort of what's your response to them?

MR. HOPWOOD: I think about that question a lot because time is infinite, and I want to do work where I feel like I can make an impact, and I can't tell you, as I feel like I always make an impact every time I go to Capitol Hill. Like I come back from Capitol Hill usually thinking, was this worth my time? I think the first thing we need to is, we have --

MS. PACKNETT: I think a lot of people feel that way. (Laughter)

MR. HOPWOOD: Yeah. We have had a lot more talk and discussions about criminal justice reform in the last five years than we have, you know, since I've been alive. But we also, I think one thing we forget is that we have not convinced everybody, and there are people that think -- my family was included until I got locked up -- that the people that go to prison are the evil ones, the really bad ones.

And then you get prison, and my family would come visit me, and they would realize on visit, oh, these are just normal people, who, for whatever reasons made bad mistakes. So, I don't think we have convinced people yet, most people in America, that we need to change. And I think that's one area that we need to do, and we need to get more people that have been to prison out, and become leaders in that, and out in the community.

I often tell people, I committed a violent crime, but I'm not a violent person. It turns out most of the social science which you've talked a lot about, that's the big area, for reform to me. We know so much more about how humans behave, and behavioral science has made huge gains. But you don't see any of that filter into our criminal justice practices.

You know, we know that people will age out of crime in their 30s and 40s; yet, we tend to lock up people for 20, 30 years at a pop, even when they aren't actually a danger -- no longer a danger to society. And so I think we need to educate average Americans about what the criminal justice system is

like, and as far as places to do that, there are laws of nonprofits and advocacy groups, I'm involved with Families against Mandatory Minimums.

I've also done work with everyone from ACLU National Prison Project on litigation, to Prison Fellowship, which is the largest prison ministry in the world. And so there are lots of places to fit in, but we've got to convince Americans first of the problem. And then what we need is one state. One state to jump in and say: we are going to redo everything. We are not going to lock up --

MR. McKESSON: Like a (crosstalk)?

MR. HOPWOOD: Yes. We are not going to lock up everyone, we are going to use prison as the last resort, and we are going to change how we treat prisoners. And I think if we have one state that does that and has success that will be the big difference maker. But we've got to get one jurisdiction to make pretty huge changes, because right now we are just making progress at the margins, and with the population of 2.2 million people, we need big changes.

We need big changes. And so we've got to convince one jurisdiction to make the chance, and I think if one does, the outcomes will be so much better, that other states will be forced to, if for nothing else, they'll see the money; the money that we expend, and that could be spent better places than locking people up for decades.

MR. McKESSON: Before you go Clint. We will be taking questions from the crowd. So think about your questions, because we'd love for you to push them as well. And a reminder, too, that, you know, sometimes locking people up is like an easy solution for policymakers in the absence of thinking about anything creatively. Or, like how do we actually deal with this from the end, like this becomes an easy solution, even though it doesn't to a decrease in crime.

MR. HOPWOOD: I feel that way when I have my kids at home. Like, it's easy when they mess up to just go put them in a room, and say you are grounded, or you are in trouble. Much more difficult to actually sit down with them and address the root problems of the misbehavior. That's exactly what we do with the criminal justice system, and that's exactly why it doesn't work.

MR. McKESSON: Clint?

MR. SMITH: You know, I'm thinking about a couple things, so one, just really one, like, harking back on part of what we have to do is like really push ourselves away from the idea that

nonviolent drug offenders, and releasing nonviolent drug offenders will, like, stop mass incarceration.

The statistics we often hear, which is important because it's true, is that we have 5 percent of the world's population, and 25 percent of the world's prison population. If we release every nonviolent drug offender from every prison, there would still be 1.7 million people in our jails and prisons.

And so there's still; we've moved from a fourth of the world's prison population to a fifth of the world's prison population. And that's not so to say that, you know, I want to be clear, that those people should not be in prison. I'm not saying that we shouldn't focus on that, but oftentimes we are, sort of like myopically focusing on that at the expense of a larger conversation.

And the real conversation that has to happen, that is difficult to happen and, you know, I give the Governor a lot of credit, but it's also important to know that he didn't name folks in the speech who were violent offenders, right? And that's because it's a lot more politically difficult to navigate that terrain, because of the sort of connotations associated with the idea of how, as you mentioned, kind of like what people think of when they think of felons.

They are like, oh, this is a: everybody is a murderer or rapist and, et cetera, and the difficult thing to do is like what -- we have to really consider what does it mean -- So, maybe someone, for example, one of the men that I worked with, he robbed a bank, or he robbed a McDonald's when he was 17, shot the cashier, and now he is currently 62 years old.

And so the question is, should this person who did took someone's life when he was 17 years old, clearly that is not okay, clearly should be some sort of justice for that. The question is: should that person spend the rest of their life in prison with no opportunity to get out; which is the context that he finds himself in, right; serving life without the possibility of parole.

And these are difficult questions to grapple with. I remember when I was first teaching in prisons, I didn't ask any questions about why the men I was working with were in there. Because I was scared that if I found out why they were in there, then it would change the way that I thought about them.

My second year, when I was teaching in prison I knew what everybody in the room had done. And it's not to say that, you know, I'm spending time reading Derek Walcott poems with men who are murderers, we have to -- But when I was working with them I didn't see murderers, right. It's kind of to Shon's point, that they are not singularly defined, as Brian Stephenson always talks about, people

cannot singularly be defined by the worst thing that they've ever done, especially, when they did that thing as a child, right.

And so should someone be punished for the rest of their lives for something they did as a child. I think that's a really important thing to address. And one other point that I'd just want to make, because a lot of people in this room are watching online, or on C-SPAN, or business owners, or work with organizations, or know people who are business owners, and work with organizations, and oftentimes, you know, people do like: well, what can I do?

It's really important to account for the ways that like small, otherwise not malevolent decisions, continue to shape and perpetuate the difficulties that formerly incarcerated folks have of getting jobs.

So, even if you are someone who is, like the owner of a toy store, and somebody comes in for an interview, or turns in their application; and you see that they were convicted of felony, you have been trained and inundated with messages throughout your entire life, to suggest that that is something you should swipe aside. And for you, it might simply be that's just good business, I'm just protecting my business, or my family, or my coworkers.

I think those are the moments where it's really important to say, to kind of step back and sort of check yourself and ask: is this decision that I'm making, am I making a holistic decision based on everything that I know about this person and what they offer, the possibilities they offer as a future employee of my business? Or, am I making this decision in a way that is predicated upon this person being formerly incarcerated, and allowing biases that are like deeply embedded within all of us, right, to shape the sort of business decisions that I'm making.

I think that these are like small, small decisions that many people make that end up contributing to recidivism rates, and that end up making it more difficult for formerly incarcerated folks to have jobs.

MS. PACKNETT: So, three things. You know, I like numbers. When you teach you learn how to package these things. The first is to properly treat/ So, as the resident woman on not just this, but a lot of criminal justice panels -- it is really important to talk about women who are incarcerated, because it often goes undiscussed; 71 percent of women who are incarcerated have experienced a

traumatic event. What is a traumatic event? It means that they were either victims of, or exposed to domestic violence. It means that they've suffered from substance abuse, and/or they have experienced or suffer from some kind of mental illness that usually has been untreated or under-treated.

This is what I mean when I'm talking about all of these systems being complicit, right, because now we can have a conversation about health care. But when we don't properly treat women, they end up in these circumstances, and what we also know to be true, and this isn't from some kind of spun study, this is directly from Department of Justice statistics.

What we know is that White women are much more likely to receive treatment when they are discovered to have these things, and women of color are much more likely to be criminalized. Purely end of story. I mean, for us that's kind of a: well, yeah, of course. But I think a lot of people are surprised by just the sheer volume of incarcerated women, who, this probably was preventable had things been treated correctly on the frontend. And so I think that that's one of the really big things.

The second is to properly train folks. You know, when I was on President Obama's Policing Taskforce -- I have to be clear about which President -- President Obama's Policing Taskforce, we talked a lot about training. If we are going to live in a world with our police, and I think we need to be having a broader conversation about whether or not policing as it is now, is what we need to continue doing. But if we are going to live in a world with this system, then our folks have to be trained properly.

But myself, and Bryan Stevenson was also one of that Taskforce, other folks, we made sure that when we were talking about training, we weren't just talking about the cops and officers we were also talking about teachers, administrators, school district officials, school resource officers, and quite frankly parents who don't really understand what discipline looks like in a school and need to understand what is right, what should be happening for my child, and what is actually improper, but I'm just so used to it, that I don't question it.

And if the kind of training that those folks are receiving is not culturally responsive or relevant, is not based on affirmation, but is instead based on deficits which is what we are dealing with now, then we are going to continue to see these problems. Especially when we think about how much kids of color, and girls of color in particular, are adultified very early.

So we start to see them as more responsible as ages as young as 5, and so suddenly the

things that they do that are childlike for everyone else, are somehow much more punishable for those kids.

The last thing we have to do, and I want to bring it back to Shon's point is to properly humanize folks. It was easy to lock people away in a room for 10, 20, 30 years, their entire life, if you don't really see them as human. And we've talked about this on the podcast before, that's the thing that I think we really have to grapple with, that your family didn't discover until they came to visit you, right?

I've have family members that are incarcerated, and it puts a very different spin on things, when you have to recognize, I still love you, I still see you as human, I still see you as valuable, irrespective of this thing that you did. And I also am fighting a lot of folks who don't see it that way. And if we don't start looking at folks who are in these circumstances as fully human and fully capable, then we are actually not going to get anywhere.

MR. HOPWOOD: And just to piggy-back quickly on that point. I think that one of the things that contributes to humanization is proximity. And I think the extent to which people can come and exist in proximity to those who are incarcerated, or formerly incarcerated, like really does a lot to recalibrate the way that you understand these institutions, and the people who are a part of these institutions.

And there are a myriad of organizations all you have to do is hop on Google; that do the work around reentry here in D.C. and around the country, around reentry, around work with formerly incarcerated folks. But, you know, a lot of these prisons and jails also have like -- or attempting to build, some more than others, robust volunteer programs, and you'll be surprised and really shocked how if you just simply send an email, or show up to prison, and say: I am a yoga instructor, or I teach poetry, or I'm a cook and want to teach a culinary class.

They are desperate to give, so many would, especially the ones who are becoming more and more thoughtful about these issues, are desperate to provide any sort of programming that they can, especially free programming, to the people in their prisons. And so, if you have some time, and you are thinking about: what can I do? How can I contribute? Even if you can only go once a year, it really makes a difference for you, and then your ability to advocate on behalf of the incarcerated community if you are in proximity to those who we are often talking about.

MS. PACKNETT: And proximity in the respectful way, right?

MR. HOPWOOD: Right.

MS. PACKNETT: Where you are actually offering a service, and not just being a cultural tourist, observing people in their worst moments.

MR. McKESSON: And Chon, you were going to say something?

MR. HOPWOOD: Well, I go to a lot of prisons, and I take a lot of people into prisons, and what they always say is; this has profoundly changed, not the prisoners, but them, when they've come into prison. And for prisoners, having volunteers come in, kind of keeps you tethered to the real world, and not prison, which is very important for rehabilitation purposes.

The people that do best are the ones that are thinking about the day I'm coming home. Not, what's going on here today in the prison. I mean, he's right, that you can all go volunteer at any prison, and I would tell you that once you do, you'll probably want to go back more and more and you'll probably want to then invite other people. And that's what we really need. We need like armies of volunteers to go in, and if the government is not going to provide job training on how to get a driver's licenses, then we should.

I think most of the solutions are going to come from, not necessarily from government, but from businesses, and just individuals who, you know -- My wife sitting up here, she drove me around to like 30 job interviews. This was 2008, it was the height of the recession, no one was finding work, let alone a guy that just got out of federal prison.

And, you know, she was a resource to me, that other people did not have and, you know, everybody thinks that I'm a pick-yourself-up-by-the-bootstraps story, but I'm the opposite of that. I had resources and people that poured grace into my life, and that's the difference between me and the person that went back to prison. I'd like to tell you it's different, but it's not. It's really that simple.

MR. McKESSON: You know, one of the things that we don't talk about a lot, and Shon, I think you talked about it, it's like the power that wardens have, like you'd be shocked from prison to prison or jail to jail, like the people that run the prisons, have like a lot of (inaudible) -- it's not like a law, it wasn't like the governors decreed it and said it, it was like literally the warden -- I was at one place and like the warden was just really religious, so he did all this stuff, because God said he should do it.

And you are like, that's interesting. And it worked in the prisoner's favor in most cases, because he was so religious. But some things shouldn't just be at the discretion of like the random sort of warden who is there.

So let's be able to take some questions, I think there's a microphone, or somebody has a microphone, they told me. Right here, so we go to him.

MR. HURWITZ: My name is Elliot Hurwitz. And I want to thank the panel for a very good conversation. I have two questions. First, I'd like to ask if anyone saw the piece on 60 Minutes last night, on the reforms in the Cook County Prison in Illinois. And second I'd like to ask about the statement that was on the panel that Milwaukee is the most segregated community in the United States. I was married in Milwaukee in 1972, that was some time ago, but I'd like to hear if there's any more evidence on that point.

MR. SMITH: Yes, so there's a great book by Sociologist, Matthew Desmond that just won the Pulitzer; Evicted. That's sort of in part of that -- part of his research outlines the ways in which community segregation and neighborhood segregation contributes to really high homelessness rates and eviction rates that disproportionately affect people of color, and specifically disproportionately affect women of color.

And he often talks about how mass incarceration is the system that deeply impacts Black men, and eviction is this phenomenon that deeply impacts Black women in a similarly disproportionate way. But, yes, I mean the research is pretty clear. I think if you Google it, and it came to the fore after the police violence that was Milwaukee, I think two years or so ago. And there were a lot of articles in the Times, and different things about it.

So, you know, part of the -- and this is not a panel on housing but we could -- it's essential to understand the ways in which the history of red-lining and housing segregation and zoning policies both in historical and in a contemporary sense, shape the dynamics of what different communities look like, and Milwaukee is sort of a case study in the way that our community has been constructed through systems of red-lining, through systems of certain people being afforded loans to buy houses in certain communities.

Or certain real estate companies refusing to sell houses to immigrants, or Black people or

Brown people in certain communities and those, inevitably, the more segregated the community, the more stratified and isolated resources because, and the more stratified and isolated resources become the more desperate the circumstances of the people within those communities, and thus, you know, the ostensibly rational decisions that people make, are in response to, like deeply irrationally, and sort of insidious circumstances.

MR. McKESSON: So we are going to back here. I saw him back here. I'm going to the Cook County Jail actually tomorrow to meet with Sheriff Tom Dart, who is the Sheriff for the Cook Country Jail. I know that they just had the 60 Minutes session, but they are doing a lot of interesting things in Cook County, and in September there's a Judge's order that he -- the Chief Judge down there, the Judge's order more effectively end money bail in most situations, or it should, as people has hoped.

So that will be interesting. Cook County Jail, has experienced a big decrease in the number of arrestees in Cook County, and where it went from 18,000 to 10,000 now, mostly because of after Laquan McDonald got killed, the arrest rate in Chicago has dropped precipitously, which is good for the people not being arrested right now. So, Cook County is a place to look out for a model in some ways.

Did I see a hand back there? That's was you, right? Yes. Oh, no, your hand wasn't up. Okay, sorry. We'll go to you right there. Yes, right here, in the back.

MS. PACKNETT: In the back.

MR. McKESSON: All the way in the back.

SPEAKER: Thank you. Thank you for this awesome event. I think that one of the things we have to look at is, the mindset that prevails, we are guilty until we are proven innocent, not the other way around. And I think share the frustration of going to Capitol Hill far too many times, and coming back with nothing. And the specific case I want to talk about is Kalief Browder, and I don't know how you all think we can avoid having ever another Kalief Browder situation.

But his only crime was he just happened to be a poor, Black teenager who couldn't raise bail. And in the end he had done nothing wrong. So, if you could speak to that for a minute that would be appreciated.

MR. McKESSON: Brittany?

MS. PACKNETT: I had literally just written that -- I literally just wrote down Kalief's name, because I didn't want it to go unspoken in this space. I had that really unique opportunity to posthumously honor him, so if you are not familiar with Kalief Browder story, Spike TV did a three- or four-part documentary on him which is quite frankly, required viewing if you are interested in this topic.

He was a young man who was falsely accused of stealing a backpack, was jailed at Rikers Island for a very long time, awaiting trial, right. So, not even having been convicted of anything, suffered an immense amount of abuses in Rikers Island, had a very difficult time with reentry, and ultimately took his life.

And so we find Kalief -- I find Kalief Browder story to be not just a particularly example, but for me he's like one of the greatest heroes of this movement, because without his willingness to tell a story when he was alive, it just would have gone undiscussed. So, I want to thank you for bringing him up.

You know, there are some quick solutions, like closing places like Rikers, that are necessary, and recognizing the Rikers that are in every single state in this country, and closing those. But I think you speak to something much more insidious which is why we spend a lot of time, those of us who work on policing, on racial bias issues, on properly disciplining police on the ways in which police unions actually protect people from being disciplined, and keep folks on the force that shouldn't be on the force, and allow for many Kalief Browders to exist around this country.

It's got to be a multilayer approach in that way, that takes on policing, the actual criminal justice system, so defense and prosecutors, and then takes on the nature of jails, especially juvenile detention facilities, because as you are still developing as a young person, as Kalief Browder was, the kind of futile mentality that exists in a lot of juvenile detention centers, for a means of survival, often against corrupt guards, which was true in his case, can completely destroy the rest of your life.

And so we find that his case was so tragic, but unfortunately, like I said, there are lots of Kalief Browders in the country, but I believe the answer to your question is that we've got to come from every angle at that thing.

MR. SMITH: And I think what Kalief's story, just to mention quickly, also demonstrated is that, there's far too low a bar, and maybe Shon can speak to this a little bit, but it seems to me to be far

too low a bar for people who are becoming correctional officers. And there's a great piece that Mother Jones last year, by Shane Bauer, in which he went undercover, as a correctional officer, and he talks about how easy it was.

I mean, he is like -- Before he went undercover he was like a very well-known reporter, and he went undercover, and he talked about how easy it was for other that he worked with who probably shouldn't have been in the positions of power and authority that they were, that's inherent to being in incarcerated space. Who, simply slid under the radar, or the ways in which once they were in there, there was like very accountability in terms of the way that they operated, and the way that they bestowed their authority, and enacted that upon the prison population.

And so I think that that's also something to consider, is that there is an inherent power bestowed upon those who are correctional officers in prisons and jails throughout the country, and we don't often talk about what it takes, or what it doesn't take necessarily to like get into that position, and if these people are qualified to be in positions where, you know, if you look at the Spike TV documentary and you see the footage of how these officers were treating Kalief.

And Kalief is like, again, as we mentioned is a microcosm of something that happens and does or doesn't get caught on camera all the time across this country. And I think that that's something we also need to be considering too is: who are we allowing into these prisons, and how much power and accountability is being afforded to those individuals.

MS. PACKNETT: And to be clear, and just put this together for folks who don't know his story well. The correctional officers in Rikers, essentially started this thing called The Program, which was like the gang system in the jail, such that they could smuggle in the things that they wanted to, make the money. But it wasn't the kids that set this up, it was correctional officers.

And so who got jumped when they got jumped? If the kids didn't get with The Program, here was your punishment. The correctional officers came up with that.

MR. McKESSON: And the other thing is that we can end money bail, so D.C. doesn't have money bail, Kentucky and New Jersey, like people talk about bail reform, and it becomes like this theoretical thing that we can never do, and it's like places have already done it. Do you know what I mean? It is a real thing, it can happen. And like, we can close Rikers, you know, the interesting thing

about Rikers it's essentially the only jail in New York City, right, which is why everybody goes there right now.

And closing it, I was just with de Blasio not too long ago, and the people leading the Close Rikers Campaign. Closing it will essentially require the creation of a jail in every borough, and it's been interesting because one of the hard things about this work is that sometimes we find ourselves with unlikely foes. So, you think about the correction officers, is that in a lot of cities, the correctional officers are people of color. They are women, they are like low-wage workers, they are people who are actually fighting against closing the prison, because if they close the prison, they are all of a sudden out of a job.

Where, the people who want Rikers to close, but don't want a jail anywhere near them. And it's like, well, we've got to figure out like: How do we actually make this work? I think there's time for one last question.

SPEAKER: Thank you. I'm a 35-year veteran of the criminal justice system; a Criminal Defense Lawyer, 20 years as a Trial Judge. In Arizona of all places, and not just Arizona, but Maricopa County, Sheriff Joe's county; I had the pleasure of riding on the elevator one day with, going to lunch, and he was in the back of the elevator. I got on, and he said, there's one of those liberal judges that just got on.

And I said, if there are any more fascists on board, please push the lobby button for me, we'll go to lunch, let's talk about it. The problem is so daunting, and the task set for reformers is so vast and difficult, but maybe a simpler solution would be to declare the system bankrupt, put into a bankruptcy type proceeding, Chapter 11, maybe, reorganization, and charge our policymakers with the task of, on a slate -- on a clean board, whiteboard, blackboard, whatever, come up with a new system. What would it look like? Where would it start? Where would it end, and everything in between?

But the problem is, in my view, state lawmakers and most federal lawmakers are not going to make those changes and decisions, follow the money. Until we take big money out of state and federal elections, and publicly finance those elections, I think that will give you a different kind -- not necessarily a better legislator, but a different kind of legislator more interested in pursuing the public interest.

D.C. has a chance to adopt fair election law, includes public funding, and I would hope

that you contact your council person to express your -- and the Mayor's office, she's on the fence about this. And try it. It's a voluntary system, it has to be now, but give it a try, and you'll be surprised how many different kinds of lawmakers you get, and to making policy. So, bankruptcy may be a solution, Chapter 11 Reorganization might be a model to take.

MR. McKESSON: We'll get them to respond to that. And I have to time myself, so we'll get your question too. Okay, bankruptcy, are we imagining big enough in terms of how we dismantle the system?

MS. PACKNETT: I mean, I was thinking about that, right, I mean, because the thing that we haven't actually said is, what is the role without jails? What does it look like if you make a mistake if there's a different pathway toward the future? So, I don't necessarily -- there were lots of ideas there that we should examine.

MR. SMITH: Yes. I just want to say, part of what you were alluding to, purposefully or not purposefully, is a certain conception of like, prison abolition.. And that is a conversation that is not often necessarily at the center of this discourse. And I think it's important, so as I understand it, generally, too, like ways to understand prison abolition one is like: there should be no prisons or jails at all. These institutions should not exist.

And one, is more sort of conceptual recalibration of like what prisons and jails are, and that prisons and jails as they currently exist, as they operate in the capacity that they do, should not exist, which is kind of similar to what I heard you saying, and one thing I just, we don't have enough time to sort of like, litigate whether prison abolition is a helpful or legitimate means of pursuing criminal justice revolution.

But I think it should be at some point, but I do want to say that, you know, back in 1850, you know, if you were a slave abolitionist people would look at you like you were crazy. And Frederick Douglas is sort of universally celebrated now, and people are like: man, he was prophetic, and that he knew exactly what he was doing. You know, he was doing such good work --

MS. PACKNETT: He's doing such good work, that he's giving more recognition.

MR. SMITH: -- recognized more and more. You know, he's out here somewhere in (inaudible), just like hanging out. But if you go back and read the literature at that time, a lot of people

thought that abolitionists were like these crazy, untethered individuals who didn't -- they were like this is ridiculous. How could you say we just need to let all the slaves go? That's irresponsible, that's not politically probable.

And it's worth considering, and I'm not making -- I don't want to be -- I want to be clear, I'm not making Antebellum slavery and mass incarceration analogous, but it is worth considering the ways in which, like how we look back at individuals who are advocating for what we -- what at that time was seen as like, radically irresponsible public policy initiatives. And then we sort of look back and we say, man, those folks were really ahead of their time.

And I think, you know, sometimes people who are stanch prison abolitionists are left out, they are not even like invited to this room, or they are not even part of this conversation, because look at them and say, they are not serious about this. Or this is a ridiculous thing to even bring up.

And I think it's just worth considering and sort of understanding the historical context and precedence that exists around questions of abolition, and questions of sort of creating a blank slate, because these thing had been done before, and I want to make sure that certain people are not left out of this conversation, simply because we think that their ideas are not politically feasible.

MR. McKESSON: Shon?

MR. HOPWOOD: Well, I think the big opportunity for reform behavioral science and technology, there are so many ways to handle criminal justice rather than jails and prisons, and there are so many cheaper ways, and so many more effective ways, and so many more effective ways that we really need to reevaluate everything, because the prison systems we have now, we know the outcomes are horrible. I mean, anywhere from 66 to 75 percent within five years are going to go back, and there's a reason for that.

You treat someone like an animal and tell them they are worthless, and tell them that they are going to reoffend from the time they are arrested through their incarceration, and then their probation officer will even, oftentimes, act as if it's only a matter of time before you are going back. You get that long enough, you start to believe it. And so we need to reevaluate kind of from the beginning to the very end, because what we are currently doing is just not working.

MR. McKESSON: Any other questions?

SPEAKER: Thank you. It's a short comment, actually. Thank you very much, everybody. And Shon, you stole my point. I'm an Urban Planner, but also a Technologist 20-some years in this country, and I think that technology can play a huge role to support, not only behavioral science, but also neural science, and all these studies, and if you can write a couple of algorithms for Watson, to look into the -- discover things in the incarcerated population, one, but also in the incarcerators; because there's a dynamic relationship between the two of them.

And third, into trying to find the hidden resources of this population, so you'll probably discover that 1.7 million would be a lot less after looking into, you know, using technology to get insights into this, but you could also discover, you know, my wife watches on TV, religiously, the America Got Talent, why not Incarcerated America Has Talent, I bet there would be huge resources there that could be put to work. Thank you.

MR. McKESSON: Yes. And there are interesting, like Piper who wrote Orange is the New Black, which is -- probably you know Piper. She helps make sure that TED Talks in prisons, right, which is like programming that you don't often see, but it is happening across the country. Did you want to say something?

MR. HOPWOOD: Yes, now, to your point about the talent, I was amazed at the waste of talent in prison. There were some people that, you know, had circumstances been different, or had they got mental health treatment, or drug and alcohol treatment, they wouldn't be sitting in prison today. They would be artists, lawyer, doctor, these are people that are no different than you, they just got caught making mistakes and many of them when they were young.

And I get that a lot. I've had federal judges, federal prosecutors, police, FBI agents, they always come up to me, because they always want to say: do you know what Shon, if I got caught for some of the things I did when I was in my 20s, I wouldn't be here either.

So, we, as a society seem to be awfully judgmental, and we should be upset about crime, but it doesn't do us any good to just be upset and angry and punish people, and be mad at people, and throw them away for decades at a time, when most of us have done things we regret, from our 20s.

MR. SMITH: Quickly, I want to say something about Shon's point. I think he's absolutely right. The time I spent working in prison you encounter so many people who are incredibly talented,

incredibly smart, you know, you work with folks who can -- know the entire Canon of Western Philosophy, and sort of Jacques Rousseau and the de Tocqueville quotes. You know, like when you are, you know, I was talking about ice cream, and you brought up this Jean-Jacques Rousseau.

And it is important for us to be careful not to make that the Litmus Test for whether or not someone deserves to be in prison or not. So, there are brilliant, brilliant and talented people in prison, and there are people who struggle with literacy, and people who have mental, you know, learning disabilities, and people who are not quoting, you know, Western Canon.

And I think it is, while we can -- we have to hold both of those things at once, and recognize both that they are brilliant people whose talent is being wasted, and also people who would not contribute in that sort of way to the community, but we have to recognize --

MS. PACKNETT: The value.

MR. SMITH: Right, that there's still value in that, and that one's value is not predicated or dependent upon, you know, whether or not they were the next Picasso, or whether or not they would have been a great Wall Street banker. And so I think, I just wanted to name it's important to hold both of those at once.

MS. DANIELS: Hi. I'm Sameera Daniels. I've been interested in decision theory, and I see a lot of what you're saying has a lot of implications for a very broad discussion. But specifically to your comment about behavior sciences and technology as a means of addressing some of the -- you know, the issues you've raised. I've been attending a series on some of the drawbacks of the uses of technology in identifying, you know, culpability and so forth, as well as following the replication crisis of those 100 studies that, you know, were used for replication purposes.

And I'm wondering whether you wouldn't have some caution about the uses of findings and behavioral sciences, because there's a broader problem of the statistics that are used, the measurements used towards these findings, and I think that I just -- I'm a little bit worried because in even the neurosciences the finding is that, you know, they are very sketchy and many findings are false, actually. So I just wanted to know what exactly you were driving there.

MR. HOPWOOD: Well, yes. So, you are talking more about predicting behavior of individual defendants, using technology. That's not something I actually have thought about a great deal,

and it troubles me that judges and prosecutors are using that. The behavioral science I'm talking about is even more basic than that. We know young men, 18-25, are the primary causes of violent crimes. We know they age out. We have the statistics, the statistics are undeniable that by the time they hit 35, 45, 55, the chance of them committing new crimes is not very great.

We also know that behavioral science to deter someone. We all hear a lot about, especially from Jeff Sessions, the Attorney General, we need long sentences to deter people. I'm going to sentence you to a long sentence because then it's going to deter everyone else.

Deterrence only works if you know about it. And let's think about the types of people that commit crimes: drug addiction, alcohol addiction, mental health illness, impulse control issues, and young and immature, or all five of those in one case. These are not the people that weigh out the consequences of a long sentence. But even if they were, let me just assume that the person that has serious mental illness and is selling drugs on the corner is going to think about that day, what the punishment would be before they commit the crime.

They would have to find 1 of 5000 Federal Statutes to find the mandatory minimum and maximum punishment. Then they would have to go to a 500-page guideline manual, by the way, judges and lawyers misapply every day in Federal Court, to think that that actually happens is ludicrous.

And so we know what deters people, the thought of getting caught. And you would think that everyone could get on board with: we want more policemen catching people doing crimes because that deters people, and we want less incarceration because long sentences, people don't know the punishment that they are going to face. And in 11 years, I never met one person, not one person who knew the amount of punishment they were going to face for committing a federal felony.

And so that's the behavioral science I'm talking about, where we know how human beings behave and react, and yet our criminal justice policies are in opposition to that, and then we wonder why they don't work so well.

MR. McKESSON: And it is important to remember to call out the way the science is being used to pathologize people of color, minorities, for centuries, right. Like Black people were born to be criminals just 100 years ago, and like now we move past that in the science. So, that is real. There is predictive data that is a real problem, and so you think about like risk assessments.

Like Kalief Browder is an interesting example because if New York City had done what D.C. has done, by getting rid of bail, they would have essentially replaced it with risk assessment and Kalief would have still been in jail.

MR. SMITH: Yes.

MR. McKESSON: You know, that is not helpful; and you see some risk assessments ask questions like: has anybody in your family ever been incarcerated? You know, like that is, you know. Okay.

Or like, do you live in a high-crime neighborhood? You are like, well, that's a lot of people. So things are like real problems, and we need to make sure that we are mindful of that. I will say from visiting jails and prisons, is that they do collect a ton of data that we are not actually using for anything.

Like I think about just the amount of data that prisons and jails collect at the intake process like the day you get booked. The reality is that whatever is happening with you today, like whatever attributes you have, like you probably had them the day before you got booked. Right?

MS. PACKNETT: Mm-hmm.

MR. McKESSON: And we should be able to figure out like how to intervene in some of these cases a little bit earlier in ways, like, I'm not sure the system is like set up to do right now. And there's also like shockingly little data about bail. So, like it's hard across the country to backtrack, they are like -- we can't look at like how a judge makes decisions around bail. It's just like really hard to find the data. Of like, what did the defense attorney ask for, what did the prosecutor ask for, and whether the judge said, like the data is not easily defined. So, there are ways that we can like use technology and data to be more creative and thoughtful and precise with our solutions.

Really, this time, the last question is back there. (Laughter) I messed up on the time earlier, but this is the real last question.

SPEAKER: My name is Jo Hong. I write for higher-ed magazine called Diverse, covering race and equity. And I was just wondering if you could speak to the relationship between higher-ed and criminal justice reform, and some of the concrete steps that colleges and universities can take to contribute to reform.

MR. HOPWOOD: Yes. I deal with that issue a lot, because everyone asks, well, Shon, what was the big thing when you got out that made a difference? And post-secondary education is a great equalizer. The more a prisoner gets out the more education he receives, you know, the better off he's going to be, just like everyone else. But it's even more important for prisoners, because going into universities is a really good community for them, to get back on their feet, it's very supportive.

And so I encourage a lot of universities to think more about their admissions process. And, you know, I'm advising a whole lot of people with felony convictions that are on their way to currently, and have recently graduated law school, because we need more of that perspective in the legal profession. And so it's hugely important. I worked with this place in Seattle called the Post-Prison Education Project, and Seattle's recidivism rate was about 55 percent.

But for the people that went through this program, and this program basically just got donations and distributed that to people coming out of prison. Everything from a bus ticket to college tuition, they had people that they were funding in law school, they had someone in culinary arts, and they had someone in a welding school. That program, the recidivism rate, 2 percent; 2 percent.

So post-secondary education is a great equalizer for prisoners to come out; it gives them legitimacy in the eyes of the public; it's a great community for them to be involved with. You know, you have teachers that really go to bat for you, the last thing you want to do is commit a new crime and let them down.

That is the way forward for a lot of people. The problem is we need the resources and we need the universities to step up to the plate and admit more people. And there are places that are doing that. The University of Washington where I went to law school now is much like Ban the Box, they don't ask the question about your criminal history; and that, again, that's the way forward for a lot of people.

MS. PACKNETT: I would add in a practical sense partnerships especially with alternative K-through essentially 12 programs. So, a friend of mine ran a set of schools for -- a set of alternative schools for young women, and she had come from a more traditional K-through 12 background like I did. And what she said was, she wasn't prepared for how many young women have the will stay, but engaging in traditional education was not an option for them, because it meant that they couldn't go earn

money.

And so if I can't go earn money in these traditional ways, and the temptation is to go back and earn money in ways that, like I know aren't good for me. Or hook back up with people who can earn money in those kinds of ways. So what she started to do, essentially, was she recognized that she needed to give those young women the opportunity to be able to work and go to school in a way that happened much more rapidly than their counterparts.

And, you know, she tried to discourage them from for-profit universities and other folks that end preying on those kinds of students for obvious reasons. But it was hard for her to find institutions of higher education that were willing to put in the resources, the time and talent to actually actualize that kind of partnership. But that's exactly what her young folks needed.

They needed to be able to get those college credits, to get that advanced training, to be able to turn -- to be able to do that simultaneous with working a job, but also be able to turn that into further job and career opportunities for their families. And so I think that those kind of really practical partnerships are things that we need to see much more of.

MR. SMITH: Yes. And I'll just say that, so when I was in Massachusetts I was working with the Boston University Prison Project, and so that is one of the few remaining universities that, certainly in Massachusetts, but really across the country, that offer BAs and associate degrees to those who are incarcerated. There were a lot more programs that were doing that before the 1994 Crime Bill which would have decimated the educational infrastructure within prisons.

And the idea was that, you know, what was propagated is: why should these felons and these convicts have access to college, we shouldn't be paying for them to go to school. And despite, again, all of the evidence that demonstrated that education was one of the most effective means. The RAND Corporation did this huge study in 2013 that showed that you are 43 percent less likely to end up back in prison if you've participated in educational opportunities while incarcerated.

You have 13 percent more likely to get a job after. And that number is kind of skewed because it would be a lot higher, if there weren't such profound job discrimination in the workforce as we kind of talked about and that Devah Pager talks about in her work, *The Mark of a Criminal Record*. But it's difficult to overstate the extent to which the '94 Crime Bill like really just decimated the entire

landscape of education, and so many of the universities that were putting professors in a lot of these institutions simply didn't -- or they claimed they didn't have the resources anymore.

There wasn't the same sort of federal or state-level incentives for them to operate in these prisons, and so there are far less opportunities for prisoners to have access to college classes, Master's classes, PhD classes, in a way that had existed before then. So, part of what has to happen, you know, the Obama administration, toward the end of his second term, had started a pilot program around Pell Grants in prisons, that we were unlikely to see continued under our current administration.

And you know, these are things that, when people are considering like voting and elections, like these are so much of what we talked about, are like small examples of what the consequences are of certain people being in office, and I think sometimes people don't consider the totality of the landscape of executive power that exists.

And when we are like thinking about who to vote for, who not to vote for, what's the same or what's different and, you know, I can just say, in prisons that is something that is felt very deeply. You know, especially people who have been in there for a while they can tell you what prisons felt like before Pell Grants were stripped away and how it feels like a very different atmosphere in many of these prisons after.

MR. McKESSON: And before we go, Clint. A lot of people talked about Ban the Box, and Ban the Box being a really progressive, and a really a very important thing. The research actually, the latest research complicates that a little bit, so I want people to hear that before we end.

MR. SMITH: And I want to be fair and, you know, this is the research that's come out over the last few years, is not specific to school. Like I think it's different for college admittance or universities than it is for jobs but what -- some of the research that come out --

MR. McKESSON: Hang on one second, so Ban the Box was about not letting employers ask about your criminal record?

MR. SMITH: Right. So, there's a proverbial box upon which you are -- it is suggested, not suggested, but in which many of these states make you check whether or not you've been convicted of a felony before.

MR. HOPWOOD: I've had to do that a few times.

MR. SMITH: Right. And so it is sort of understood, it's this bad thing, like this is not helpful to those who were formerly incarcerated if you have to constantly remind people that you were once in prison, and the state is continuing to punish you after you've been let out, which is not fair. And I think that is true and generally understood as something that we should try to move away from.

What complicates it a bit is that some of the research that's been done as if late has suggested that in places where the box is removed employers will simply assume that the Black men -- this was a specific study on Black men -- that the black men coming into, since they can't tell whether or somebody is a formerly incarcerated person or not, since they didn't know, they would just begin to assume that more of the Black men who were coming in applying for jobs were formerly incarcerated since they couldn't -- because they had to make, in their mind, a judgment call.

Well since I don't know, I have to try and figure out if you, you know, are a former felon or if you are not. And more often than not, they would make a higher -- they would make that decision at a higher rate than they were previously. And so what would happen is that the study said that the likelihood of people who were formerly incarcerated getting a job, once the box was removed, had gone up a bit, which is the ostensible goal.

But the opportunities for Black men who weren't incarcerated or hadn't been incarcerated before went down, in a way that didn't -- that made it so that Black men, generally, were less likely to get jobs than they were before the box was banned. So I think that is important for us -- there are not a lot of, like, neat, easy solutions to this work, and I think it's important for us to reject or question things that look as if they are easy, or look as if it's sort of like, universal solution.

And that's not -- I want to be clear, I'm not saying that we should completely forget about Ban the Box, I think there's more social science and research that needs to be done across different context, but I think that this is an important study that helps us sort of complicate what this means. And it goes back to what I was saying before, that the state has a lot of responsibility, but a lot of this is going to be happening in like the private, individual decisions that people make every day with their small businesses, with their organizations, with their corporations, and the box will only go so far to remove biases from people.

MR. HOPWOOD: Yes. I don't think the box would have helped me. Well, just think

about it, I don't check the box, but then when it comes to résumé time, there's a 10-year résumé gap on mine, that I would not have been able to explain, other than to tell them what happened. And so, yeah, I think Ban the Box is important but we sometimes pat ourselves on the back too quickly when we pass a bill. When instead, maybe what we should be doing is just convincing businesses that, listen, we want you to affirmatively hire people with felony convictions, and get them to agree to do that, and we would probably have better and more successful outcomes if we could.

MR. McKESSON: Shon, Clint, Brittany, thank you so much for being on the panel. Give them a round of applause. (Applause) Thank you for being here today; and I will see you at the Brookings again soon.

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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