

THE BROOKINGS INSTITUTION
FALK AUDITORIUM

POLICY OPPORTUNITIES FOR HANDLING JUVENILE CRIMINAL JUSTICE RECORDS

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PARTICIPANTS:

Welcome:

MORRIS CLARKE
Member
The Brookings Institution Council

Panel:

CAMILLE BUSETTE, Moderator
Senior Fellow and Director, Race, Prosperity and Inclusion Initiative
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SEEMA GAJWANI
Special Counsel for Juvenile Justice Reform
Office of the Attorney General for the District of Columbia

KELLY MURPHY
Deputy Program Area Director, Youth Development
Child Trends

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Prison Reform Advocate

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P R O C E E D I N G S

MS. BUSETTE: Good afternoon, everybody. I'm Camille Busette. I'm the head of Brookings Race, Prosperity, and Inclusion Initiative, and I want to welcome you to this event, all of you in the room as well as our web audience.

Before we get started we are going to have one of our donors give a few introductory remarks. So Morris Clarke is going to join us in just a second. Brookings is always keen to make sure that everyone understands that we maintain our independence regardless of who we have participating in events. So I just wanted to say that we really appreciate the support that Morris provides for Brookings. It helps us do the work that we do and makes that all possible. And, of course, I just wanted to reiterate Brookings' commitment to independence, and I want to underscore that the views expressed today are solely those of the speakers.

So, with that, Morris, I'm going to invite you up to kick us off.

MR. CLARKE: Good afternoon, everyone. (Audience responds) Wonderful. I wanted to provide a very warm thank you and welcome to everyone to Brookings. We are grateful to have an exciting time that we're going to have today.

My name is Morris Clarke; I'm a member of the Brookings Council, and delighted to share a few brief remarks in advance to our discussion on policy opportunities for handling juvenile records. In addition to our guests, who are present here today, I'd like to also extend a special welcome to all of our guests who are joining via our live web casting services.

This afternoon we're going to examine the policy landscape of juvenile criminal records, how the current system of divergent laws govern these records has evolved over time, how they have impacted, affected juveniles and their prospects for economic and social mobility. We dive into the discussion, and I'd like share a few brief presentation points before we head in.

All right. On the national scale, between one to two million are arrested

each year. Of those that are arrested, about 48,000 juveniles were incarcerated in 2015. What's more, there is a clear racial disparity between youth offenders. Research shows that African American juveniles are five times likely to be arrested and detained than their white counterparts. These factors create a steep challenge for children and youth, hindering their employment prospects when attempting to reintegrate into society. So we're going to spend a little more time delving into that through the discussion in the panel.

One more interesting slide here, and all of this material I think is going to be available to everyone, but further these challenges are exacerbated by the uneven system of policies and laws that oversee adolescence records. Illustrated here is the national scorecard ranking states' policies according to their level of protection of juvenile records. So states shaded in the lightest colors, yellow being the lightest, represents the strongest protections for adolescence records. For example, provisions to seal, keep confidential, and expunge the records, while states shaded with the darkest being red, represent states with the weakest protections. What this clearly signifies is a wide divergence in managing the criminal histories of youth across the nation, thus, a wide divergence in incarcerated youth opportunities and future life outcomes.

To that end, our moderator, Camille Busette, Director of the Race, Prosperity, and Inclusion Initiative here at Brookings, will, with our distinguished panel, guide us through an informative discussion with the distinguished panel around disparities around youth criminal records, the structural elements maintained in it, and the remedies to exist and to tackle them. Therefore, we will take some questions toward the end from the audience.

With that said, I'm going to reintroduce Camille back to the podium and the panelists.

Thank you. (Applause)

MS. BUSETTE: If the panelists will come up and join me.

So I just wanted to reiterate that we will be talking for about 50 minutes and

then we're going to take questions from the audience.

I'm thrilled that you all are here and we have a really distinguished panel today whom I'm going to introduce as soon as we are completely mic'd up. I also just wanted to mention that the Race, Prosperity, and Inclusion Initiative here at Brookings is really focused on advancing the economic prospects for poor and low-income Americans and for communities of color. And within that we have a special focus on young men of color and also bringing in marginalized communities into the economic mainstream.

So I'll wait for us to get mic'd up and then we can get started.

Thank you very much. So our panel includes some really well known people in this area, and I wanted to introduce them. So sitting next to me is Seema Gajwani, who is the Special Counsel for Juvenile Justice Reform at the DC Office of the Attorney General, where she oversees juvenile justice reform initiatives focusing on diversion, restorative justice, trauma services for victims of crime, and improved data collection and analysis.

Prior to this position, Seema ran the criminal justice program at the Public Welfare Foundation in Washington, DC, funding efforts to improve criminal and juvenile justice systems across the country with a focus on pretrial detention reform and improved prosecution decision making.

Ms. Gajwani started her career as a trial attorney at the DC public defender's service where she represented juvenile and adult defendants for six years.

Welcome.

MS. GAJWANI: Thank you.

MS. BUSETTE: We now also have Kelly Murphy -- hi, Kelly -- who is a Deputy Director in the youth development program area at Child Trends. Cross-trained in applied developmental psychology and program evaluation, Kelly's work focuses on the role that systems, programs, and policies play in promoting the positive development of youth who have been exposed to multiple risk factors, particularly those who are or have been

child welfare or juvenile justice system involved.

Her research interests include positive youth development, the effects of trauma, the transition to adulthood, implementation science, and evidence-based practice and policy.

Welcome, Kelly.

MS. MURPHY: Thank you.

MS. BUSETTE: Next to Kelly we have Ismael Nazario. He was a formerly incarcerated prison reform, social justice, and human rights advocate. He currently works as a database systems analyst for the Fortune Society where he initially worked within the individualized correction achievement network program, helping those at high risk for recidivism from Rikers in New York reintegrate into society after their release.

Before his work at the Fortune Society, Ismael worked at the Center for Community Alternatives dealing with court involved youth. He became passionate about helping young people and was inspired to stand up for these disenfranchised voices. Ismael has worked with numerous advocacy projects, such as the Raise the Age Campaign, banning solitary confinement, and Rikers reform.

Welcome, Ismael.

MR. NAZARIO: Thank you.

MS. BUSETTE: And next to Ismael is Joy Radice. Joy joined the University of Tennessee College of Law Faculty in August of 2012. Her scholarship focuses on the intersection of criminal law and the administrative state, the gap in access to civil counsel, and juvenile records.

Professor Radice teaches advocacy clinic, criminal law, a seminar on poverty, race, gender, and the law, and a new expungement clinic. In 2012 she was awarded a UT Creative Teaching Grant and she is currently a UT Junior Faculty Fellow.

Welcome.

MS. RADICE: Thank you.

MS. BUSETTE: Welcome, all of you. Thank you very much for being here.

So I'm very excited. So I want to tell you that before we came up here we were all sitting in another room just kind of chatting, and we already have started the discussion. So this is a very passionate panel. But what I'm going to do, because not everybody is an expert in this area, so I'm going to ask our panelists to sort of just give us the bare bones and level set for those of us who are not really steeped in this issue.

So we know that the statutes governing the management of juvenile records is uneven, and we saw that in the slide. And there's a lot of evidence to that effect. I want you all to give us some insight into what types of records we're talking about. So let's start at the very beginning. When we talk about juvenile records, what are we talking about, and then what are some of the options for the disposition of those records?

So why don't we just go down this way and then we'll mix it up as we go through the rest of the questions. So what kinds of records are we talking about?

MS. GAJWANI: Sure. Well, my experience is really in the juvenile justice system, so I can speak a little bit from my experience as a public defender. And then now on the other side I work at the Office of the Attorney General here in DC and we are the exclusive prosecutors of all juvenile crime. And so I've been on both sides. I work directly with prosecutors, but my position is one of juvenile justice reform.

So here in DC we, actually as recently as last year, were working with the DC superior court on trying to improve our juvenile records protocols and laws. Currently in DC many juvenile records, if not most juvenile records are confidential. However, there are many exceptions to that, and I'm sure Professor can speak to some of these in more broad strokes. But certainly in the District certain offenses, if they're serious enough, for young people are eligible for not having the confidentiality protections the statutes apply to them.

Another major loophole is all cases of sexual harm. So we have various levels of offenses around sexual harm and sexual assault and some of them carry the chance of having to register in a registry for up to 10 years. And what's interesting in our

end is that when we engage in plea negotiations with the defense, there are times where the defense will say well this can affect this young person's ability to get into college, et cetera. And I've had prosecutors say, no, not in DC. But a lot of our folks could be looking to go to college outside of DC. And the laws in Maryland around what they're able to access -- and our juvenile records are different than they are in Virginia, than they are in West Virginia. And so these things follow kids as they leave their hometowns. And that's important to know.

And then the final thing that I'll just mention -- again, I'm sure there will be more comprehensive review of this stuff -- is that in DC, even though a record of a juvenile can be confidential to the public, it certainly is not confidential for law enforcement and prosecution on the adult side too. And so there certainly are times when a youth will be charged as an adult. And the way that they're charged, their eligibility for diversion, their eligibility for certain pleas offers, et cetera, are impacted by their juvenile record, even though the whole reason that we know that juvenile records should be confidential is because we shouldn't be holding young people accountable because of their brain development and those kind of things.

So while DC has relatively strong protections for juveniles, there are so many loopholes that make it so that young people are vulnerable to these things following them for their life.

MS. BUSETTE: Thank you. Kelly?

MS. MURPHY: Thank you. So I think when we typically think of juvenile records, we tend to think of their court records, but as young people are processed through juvenile justice systems a wide variety of records are created and shared and stored. So I'm sure Joy can speak more to this, there are a variety of processes and procedures that young people sometimes have to go through to get their records sealed or expunged, but a lot of those are specifically related to court records while other type of records, like law enforcement records, which could include photographs and DNA and fingerprints and arrest

reports, those aren't always covered in those policies.

And just in relation to the different policies and procedures, that really varies pretty widely from state to state. So there are states that have a more automatic process where if a certain amount of time has passed and a young person has not been adjudicated or convicted of committing another offense, the records will automatically be sealed or expunged, while other states, they really place the onus on the young person and they have to kind of actively work towards having those records sealed or expunged. And then the level and complexity of that process varies quite deeply. So sometimes young people have to formally petition the court to have their records sealed or expunged, sometimes it results in there having to be an actual official hearing, during some of those hearings sometimes prosecutors, victims, or other parties can present evidence to the court. And then there are other things that vary that could be kind of blocks, such as just fees associated with that.

MS. BUSETTE: Great. Thank you very much. Let me ask you a question, and maybe, Ismael, you can answer this. It's related to the types of records. Are school disciplinary records also part of this catchment of records that we're talking about?

MR. NAZARIO: School disciplinary records, in some cases yes. But speaking about schools, some schools actually need to obtain some of those juvenile records and that will determine if the youth can return to that school.

MS. BUSETTE: So we've heard about some of the court records, and then obviously law enforcement records, but potentially there are some school records. Are there others than you can think of? And can you tell us a little bit too about the responsibilities that a young person might have once he or she wants to expunge or seal his or her records?

MR. NAZARIO: Sure. Depending on the type of crime, they can request for the records. But speaking about expungement and having it sealed, the interesting part about that, how it varies state to state, as we saw, they can't do it as a minor. It has to be after the age of 18 and that has to have been 5 years. And as it was mentioned, they either have to put in a petition, a motion, stand before a judge, all over again. And it's not a

seamless process.

And I wanted to not ask a question, but rather make light of the situation a little bit. I really swear that you read my mind because everything you said, you just took it.

(Laughter)

SPEAKER: Sorry.

MR. NAZARIO: No, that's fine. Yeah, so back to the schools. There are certain states schools do request for it, especially when they hear that the child has been arrested. Other states, they don't really emphasize it too much unless there's like a sexual harm, sexual assault, then, you know, they're not going to allow the child to return to the school.

MS. BUSETTE: Great. Thank you very much. And, Joy?

MS. RADICE: So can I take us a step back?

MS. BUSETTE: Sure.

MS. RADICE: I want you to think about that map that you saw a few minutes ago and just start by saying every state does this completely differently. And that's a problem. That to me is an inherent problem.

So to give you a super concrete example, three kids in three different states get arrested. So one of the most common adjudications is for a simple possession charge of marijuana. They have to do probation, maybe sit into a MADD class or do a couple of hours of community service. So in the child's mind they are finished when they are finished with that sentence, so to speak, the probationary period. And they're usually told by the judge, great job, you've done what you had to do. And what they don't realize is what happens on the end.

So that child lives in Rhode Island, where we have some of the robust confidentiality sealing, expungement, and nondisclosure laws, that child will be told these will be sealed and they will eventually be expunged and you won't have to ever reveal this if you are asked a question in an application, have you ever been adjudicated of anything that is

close to or like a misdemeanor or a felony. If you think about how job applications, college applications, they ask very broad-based questions. So juveniles often times feel like I have to answer this honestly. You want them to answer it honestly. Well, that child in Rhode Island is given the legal right to say no to that answer, even though there was a misdemeanor adjudication. That is exactly the same adjudication as a child in Idaho who in Idaho if they are charged with a crime like simple possession, those adjudications actually go on an online database that's searchable. Fascinatingly enough though, Idaho on the back end has some of the strongest expungement and sealing provisions if the child actually applies and get the expungement and the sealing at the back end.

And so you have this really far ranging set of state rules from super, super protective to super exposed on line where you can search it throughout the rest of the child's life -- we all know if something goes on line, that's going to go on line forever -- and a ton in between. So one of the things I've been fascinated to study is how vastly different each state does this and it really takes a lawyer to become an expert in that piece of it. And so a lot of times even public defenders, juvenile defenders who help juveniles, don't totally understand the long-term implication of the record that was created.

And so I basically think about this in three different ways. Confidentiality statutes, and those can range from super protective, almost protecting everything except for very minor, minor exceptions, to public access statutes. So I define them as -- most of the states are in the middle, are hybrid confidentiality states, but there are a few states that are very, very public, and the records are just as public as if you were an adult being charged and convicted, to very, very protective. And that's again another handful of states.

A third of states, in terms of confidentiality, fall within a range of levels of confidentiality. So some states, for example, say if you're X age, if you're 17, no more confidentiality. Some states say if you're charged with a second offense, no more confidentiality. Some say, like Tennessee, only these types of violent and serious sex offenses, no confidentiality. And I haven't even addressed whether media can get access to

those records. The states are all over the map. And once we have a news report about somebody, it's over, right, game over in terms of keeping that record confidential. Those are completely what I consider creating a juvenile record myth, because I think the institution of the juvenile justice system was created -- I mean the notion of expungement, where did it first start -- it started with juvenile records, juvenile courts. The fact that at the end of their time in juvenile court you'd actually have confidential and expunged records, that whole notion that we now hear more often in adult record context, actually originated in juvenile court and we've gotten very far away from that in the juvenile system.

So in addition to confidentiality, then I characterize a whole separate set of statutes, and I call them extinguishing statutes. And those include sealing and expungement. And what's really interesting is some states actually seal them, which means they put them in a file in a drawer and you can't get to them, except for under very limited circumstances, and they call it -- the use the word in their statute, they use the word expungement in their statute. I have some statutes, like my own Tennessee statute that calls it expungement and then when you actually look at what it does it really just seals them and puts them in a file that can't be opened except under certain circumstances. So even the nomenclature that is used is completely all over the map.

And then I have a third category of statutes, which I think there's only five states that actually have these, which are nondisclosure statutes. And I want to just raise that and maybe we could talk about it in even more detail a little bit later, because to me they're the most important part because nondisclosure statutes basically say not only can you, as an entity, whether you're the police department, the court, the school, not say anything about these records that you got your hand on, but the juveniles themselves actually have a legal right to deny it. And you see this actually growing in terms of expungement provisions for adults, but in terms of juveniles, most juvenile codes do not permit the juvenile to actually not admit to whatever the contact with the criminal justice system was.

And so, for example, if they have a legitimate question, which many do on a job application, have you ever been arrested, legally they have to answer yes even though the records might have been expunged or sealed. And so unless there's this other provision in our state statutory structures that say you have a legal right to deny the existence of these records, you might as well not have these safety mechanisms of confidentiality and expungement.

MS. BUSETTE: Well, great. Thank you for that little clinic. It was actually extremely helpful.

So my next question is actually one that you sort of hinted at, which is how do statutes governing the disposition of adult records differ from those governing juvenile record? Do you want to speak to that?

MS. GAJWANI: Sure. You know, adult records are in DC public for the most part. And Joy mentioned that you have to take into consideration not only a conviction but also an arrest record. And in the District you also, in order to take advantage of sealing laws that exist for adults, you have to petition. That means you typically need a lawyer. You have to go to court. The court then makes a decision, but before they make a decision they first ask the prosecutor's office what they think, which means now the prosecutor gets to weigh in on something that happened two decades ago that impacts your ability to get a job as a bus driver, for instance, because of an arrest record, when there was not even a trial or a conviction, the prosecutor dismissed the case before it even got to that point.

So adult protections I think are a lot less robust and that's problematic. But I do also think that the conversation about this is more focused on adults. And so that's a space where at least there might be discussion about how to move forward in a positive way.

The other thing I would just mention is that there is this other shadow problem with records for adults, and that is the industry that exists out there that takes records from courts and monetizes those by selling them to employers. So you can get an

official criminal record from the FBI or from other kind of national or local databases, or you could go onto Google and Google the person's name and find a company that will sell you their records. So as an employer, that seems like an easier way to do things. That company is one of many. A lot of them are fly by nights. They have no regulation. The problem there is no incentive for those companies to be careful about the records. So what I've heard that they do is that they send people to courthouses and just pull records of people and just compile them themselves. So what happens if you were charged with a serious offense, you take that case to trial, as you are entitled to, and you're acquitted of the offense or it's dismissed at some point, the company that pulled your record when you were charged with that offense is not going to check to make sure that you were actually convicted, or after your conviction it was appealed and then overturned, or any of those things. So there's enormous, enormous levels of inaccuracy and do not have regulation around those industries. And in some ways on the adult side that's a bigger problem than the records themselves.

MS. BUSETTE: Other thoughts about that? Ismael?

MR. NAZARIO: Yeah, that's an unfortunate thing for adults. I'm glad you brought up the appeal process and a case being overturned because, unfortunately, regardless of what happens -- dismissal, being acquitted, it never really goes away. It's always going to be there. So, again, people going down to a courthouse, pulling records, but I was found innocent of all charge, now it still can be used against me. And even if you go to trial, you're acquitted at the trial, when they run the background check, it still pops up that you were charged with a murder, you were charged with a robbery, a burglary -- it still pops up, it never disappears.

So we see these stories of, you know, guys that did large amounts of time in prison, DNA evidence comes back that they didn't commit the crime, they're acquitted. It's supposed to be expunged, but if somebody was to do a proper thorough background check, oh, they served 25 years for murder. Never goes away.

MS. BUSETTE: Okay. Thank you both for that. So let me sort of shift gears a little bit and talk about some of the newer thinking around juvenile offenders or those who are involved with the criminal justice system. Our approach to juveniles who have been involved with the criminal justice system has changed over time, and particularly as we've learned more about brain development in children and adolescents. Why have those changes occurred? That's my first question. And then what are some of the changes that have gained momentum? And then I have a second set of questions around that.

So maybe, Kelly, we can start with you and you can take us through sort of that sort of thinking about why we think a little bit differently about juveniles that have been involved with the criminal justice system.

MS. MURPHY: Yes, definitely. So research has really undoubtedly impacted the juvenile justice system, particularly across the past couple of decades. And I definitely think brain science research has gotten most of the credit, and it deserves a lot of credit, but when I think about research that has really driven reforms in juvenile systems, I think of really kind of three buckets of research, all of which there's a little bit of overlap.

So the first bucket is this broader youth development research, which also includes this brain development research. So for those of who less familiar, there have been numerous studies, starting with like behavioral studies, expanding into neuro-scientific studies that have really identified some pretty systematic differences between the adolescent brain and the adult brain. And the difference is in the adolescent brain, which really doesn't kind of finish developing into the adult brain until about age 25, kind of relate to different behaviors that we see in young people. So adolescents, they tend to be more impulsive, more susceptible to peer pressure, and more likely to engage in risky behavior. And they're also less likely to be able to plan for their future, go for kind of the short-term rewards and engage in more abstract thinking than adults. And this information has really impacted our juvenile justice system a lot. SO probably most notably are Supreme Court decisions that abolish the juvenile death penalty and ban the use of life without parole for

juveniles. And those decisions directly cited research on adolescent brain development.

But, in addition to this, there has been a lot of research, and what I like to think of as the second bucket, which is effectiveness of different dispositions. So research has pretty much undoubtedly demonstrated that incarceration is not effective at reducing recidivism and it in fact makes things worse. And this is because incarceration has been found to negatively impact youth mental health, it stunts social and emotional development, and it really just disrupts and impedes the development of positive prosocial relationships, which we know really help young people make successful transitions to adulthood. And in contrast, we've seen that community-based interventions that are therapeutic in nature and focus on skill building, actually are not only more effective at reducing recidivism than incarceration, they're actually less expensive.

And so this knowledge and research, a lot of folks decide -- I mean have attributed it, at least in part, to the reductions we've been seeing in juvenile incarceration. So across the past decade juvenile incarceration rates have plummeted by about 50 percent. And kind of a more concrete example of that is some colleagues of mine and myself at Child Trends recently conducted a study where we interviewed judges and attorneys on how they use research in their decision making, and one judge told us that as a result of attending a seminar put on by the Annie E. Casey Foundation's JDEI -- which is Juvenile Detention Alternatives Initiative -- he went from having about 20 kids detained prior to the hearing every single day to about 2. And that was just this aha moment, learning about juvenile incarceration.

And that brings me to kind of my third bucket of research, which is really related to these predictors of recidivism. So mental health, housing stability, substance use, connections to your family and prosocial adults are all related to recidivism. And so I think it is unsurprising that we see when we look at young people who are incarcerated about -- they have extensive needs -- so about half have mental health problems, one in five have attempted suicide, two-thirds have substance abuse problems, about one-fifth were not

enrolled in school and had not graduated at the time they were committed, and about half were below grade level. And these challenges that these young people face persist once they reenter their communities. And so a lot of juvenile justice systems have kind of bought into this idea that there are these risk and protective factors that relate to recidivism and then they have used this to start kind of these more research drive reforms. So a lot of juvenile justice systems have started using risk and need assessments to identify what youth needs are and then use those assessments to match youth to community based programs. Other systems, like the Virginia Department of Juvenile Justice system, have worked on engaging families in the decision-making process and really increasing visitation.

In addition to brain science, there has been a whole host of juvenile reforms drive by research.

MS. BUSETTE: Great. Thank you very much. I know you're going to have a lot to say, Seema, but I'm going to go to Ismael first. Do you want to add anything to that?

MR. NAZARIO: Sure. One way that helped in New York City, New York was one of two states that still arrested and tried juveniles as adults, 16-17 year olds. How the research and studies impacted it actually assisted with our legislation to pass the bill on raising the age of criminal responsibility.

I was actually impacted to see that happen, although the bill is kind of a little watered down and filtered out. But, you know, they just threw us a bone for now. The work still is going to be done. I was just really happy to see the research and everything that came out of it that they really took the time out to differentiate the neurobiological differences in adolescent brain compared to the human brain. And another thing that they also started to look at is how placing a juvenile in a correctional setting at let's say the age of 16, and let's say they're there until adulthood, for some it actually stunts their brain growth. So they actually remain in that 16 year old place. You have a 25-year-old man now that mentally still operates as a 16 year old because he didn't have the proper interaction to grow and develop mentally how they normally would as an adolescent.

So that's really all -- I just wanted to piggy back off of that. Took my answers again.

MS. BUSETTE: Yeah, well, thank you. It's very important.

So, Seema, I know you have a lot to say about this because you guys are doing some interesting things in DC.

MS. GAJWANI: Yeah. I just want to kind of echo, and then also move forward in this conversation by saying that ideally what you do is you keep the kid from getting involved in the system before they even get arrested. And that's because Kelly talked about all of the impacts of the juvenile justice system, Ismael about incarceration, but even the arrest of a child has an impact of criminalizing that young person. And most instances where young people are arrested in DC -- not most, but a large portion, are at school. And so when a young person is arrested in front of their peers, in front of the administration of their school, they're sitting on the curb outside the school handcuffed while the police do paperwork, they're sitting in the car, and then they're taken for booking and all of those things, these things all impact the child's brain. And not only their brain, but like how they see themselves. So there's certainly stigma. Right now the youth comes back to the school and they're the kid that was arrested, they're the kid that was criminalized. In their homes, in their families, they're the kids that was put through the justice system or locked up or arrested. But even in their own minds there is an impact to being the young person who was arrested and handcuffed and booked and all of those things.

And also, you know, even if the charge is later dismissed, the kid is diverted or something like that, now they've been through the system and it doesn't seem so scary anymore. So like one of the reasons people don't do things is the fear of what would happen if they get caught. And if you are caught, you are arrested, you are booked, and all of those things. And then you go back, then it doesn't seem so scary anymore, and you lose one of the tools that keeps kids from making mistakes and crossing certain lines. And the rate at which young people in certain schools, certainly in DC, and probably across the

country, are arrested for the lowest level things that you can imagine, is really high.

So at our office, when the attorney general, Karl Racine, took office in 2015 it was really important for him, since he campaigned on stopping the school to prison pipeline and juvenile justice reform, to get a sense of how many young people were arrested in schools, what the role of a special resource officer, a school resource officer was in DC, et cetera. And we found that there were a handful of large schools in poor areas in DC that were the ones that made the most arrests for young people. And so we did an analysis over three to five years of what schools sent what kids to us for prosecution. So a young person is arrested, police get their evidence and they bring it to the prosecutor and the prosecutor has to make a decision about whether they're going to prosecute the case or not. And over those three years, you know, hundreds of kids were arrested on school grounds and the case was brought to the prosecutor, and 47 percent of the time the prosecutor said we're not going to prosecute this. You know, and partly it might be because there's not legal sufficiency, but a lot of times it was because the offense was so low level.

And who what's happening is you're having all of the stigmatization and trauma of a kid being arrested on school grounds and then they're coming to the office and nothing is happening for half of them almost. So in their minds, it's perfectly rational to think that nothing is going to happen in the system if they get arrested. So you're getting bad outcomes on both sides.

So our office developed -- you know, we increased our diversion programs and keep as many kids out of the prosecution system as possible. We've built a restorative justice program in our office to have an alternative view of what justice looks like for the victim of the crime and the person who is charged and their families. So we've done a bunch of things, but the goal really is to try and stop kids from coming into the system knowing all the collateral consequences of what that means, both in the research, but even kind of like emotionally for a young person.

MS. BUSETTE: you know, I'm very glad you raised that because even if we

were in a perfect world and all records went away and juveniles are people who had offended previously as juveniles could just say, you know, no I was not involved, that would be great, but the trauma and the psychological impact of that, both for themselves and their communities, I think is really tremendous. So I'm really glad you brought that up.

I wanted to ask you a couple of questions about the -- so now we think about juveniles differently when they are in the criminal justice system or have an interaction with the criminal justice system. And you've detailed a lot of the changes there, but I'm wondering if the kind of ideas behind those changes have also been linked to changes in juvenile justice records management.

So there's one thing to be, you know, the -- how we think about juveniles in general, how we think about their interaction with the criminal justice system, and now I'm asking has that same thinking about child development, et cetera, has that really penetrated the way we think about the management of records?

Joy, I'm going to ask you to take us away on that.

MS. RADICE: I think that it's one area that we're starting to have a conversation, but I've see it in only very few states. And yet at least starting the conversation is positive. It's change we want to see.

One of the things that happened, I think, as you look over time at what happened to the juvenile justice system, and juvenile court in particular, is it just became -- it mapped onto the punitive, tough on crime '80s and '90s that we had impacting adult court. Basically a lot of that tough on crime sentiment. And that's why you have in New York such young people in the past being charged as adults. So you have the lines being blurred. And so now we have a pushback, a serious pushback on the lines in terms of when we even think -- 25, should the line for juvenile court actually not be 18 if we have research that shows that up until 25 your brain is still developing, or at least in terms of the impact of their records. But what you actually saw during the '80s as a consequence of this pressure on tough on crime is the school to prison pipeline starting to emerge where schools became out

of nowhere -- I mean if we did similar things these kids are doing today in schools we would have gotten detention, we would have been suspended, we wouldn't have ended up in a juvenile detention center. But that's where our kids, especially in certain populations and in certain parts of the city, are ending up.

And so one of the things that we haven't done a good job of is pushback on the dissemination of those records in both directions. You asked a really great question earlier about school records. So the school records end up in the juvenile court file because they're the impetus of so many charges and so many arrests, and those records, in theory, are supposed to be protected, but once they're in the juvenile court file they are as exposed to the public as that juvenile court record is, and vice versa. You have the juvenile court in many states one of the exceptions that we referred to for confidentiality, is allowing the schools to know about dispositions in juvenile court, allowing probation officers to go into schools to do drug testing, to make sure that the kids are -- so furthering this very stigmatizing effect of the court system.

And so you have all of these records, records going to schools, records going to housing developments. Public housing feels like they should have a right to know if kids are in the system and on probation, because the notion of public safety has become such an impetus for what is the generating force of the juvenile system that you're pulling back on the rehabilitation motive of the system. And so I think that one of the things that we're looking at, if we're looking at really thinking about how -- I love the buckets -- the three buckets affect how we think about helping juveniles keep these records contained. We've got to pull these records back in all sorts of context, not just in the juvenile system.

And so, for example, some states actually say that when the records expunge, that court file should have a record of everywhere that record went, and so that court clerk is responsible for sending an order to each of those systems, whether it's the school system, the public housing, to then destroy those records as well. But we are not there yet in terms of most states actually doing that. But I think that there is potential for

making sure that this brain science translates into records.

MS. BUSETTE: Others? Anything to add?

MS. MURPHY: Yeah, I thought it was interesting kind of going back to these interviews we did with judges and prosecutors and juvenile defenders about how they're using research in their decision making. We really asked judges at attorneys to walk us through every juncture of juvenile dependency proceedings. And they all talked a lot about how research has informed their thoughts towards diversion, about not detaining youth pretrial, about not incarcerating youth, about the need for different services, and how they don't want to remove youth and re-traumatize them. And all of that was kind of clearly articulated, but none of them ever kind of mentioned the idea about what happens after youth leave and how the records follow them.

So I think that's really interesting.

MS. BUSETTE: That is very interesting. Seema or Ismael, do you want to say anything? No? Okay.

So one of the facts that Morris brought up in his introductory remarks is that there are clearly differences in criminal justice involvement by race. And we all know about the school to prison pipeline, but there are certainly -- that's not the end all of the sort of racial divide in involvement with the criminal justice system.

What are some of the promising approaches to confronting this discrepancy?

Does anybody want to answer that? (Laughter)

MS. MURPHY: Well, I think in like terms of schools, for the school to prison pipeline, so I mean I think there's lots of research that shows not just students being referred to the juvenile justice system from school, but just students who are suspended or expelled are at higher risk for involvement in both the juvenile justice system as well as the criminal justice system.

So like in 2011, CSG found that students who were suspended or expelled

were three times as likely to have juvenile justice contact. In 2018 there was a newer study that Janet Rosenbaum -- where she compared match sets of students who exactly the same, except some got suspended and expelled and some didn't, and they were 40 percent more likely to have been arrested overall as either a youth or an adult, 94 percent more likely to be arrested as a minor, and 3.8 percent as likely to have been adjudicated or convicted as a minor. So just thinking that it's not just referring to juvenile justice or arresting from schools, but how we're suspending and expelling students.

And although out of school suspensions and expulsions have been declining over the time, they still -- like the gaps by race and ethnicity have still persisted. And so when you look at the gaps, they tend to be for non-violent offenses, particularly those that are more subjective, like insubordination or willful defiance. So some states have been trying to reduce the use of suspension and expulsion for these more subjective offenses and other states, like Texas and Maryland, have been banning suspension and expulsion for early grade levels, like preschool through second grade, and then there have also been restrictions placed on the amount of time that a young person can be suspended, as well as limitations for the first offense. And so I think it starts there and then, of course, there are the issues with the disparities at every single point in the juvenile justice system.

MS. BUSETTE: Good point. Seema?

MS. GAJWANI: I'll just add to that, that it goes well beyond the juvenile justice system too because these patterns -- and I can just speak entry into the juvenile justice system that the young person who penetrates into the justice system compared to a similarly situated young person who has committed the same offense, who has the same criminal contacts as the first one, the one who enters into the justice system is not only more likely to recidivate and be involved in the adult justice system, but also less likely to graduate from high school, more likely to engage in risky sexual behavior, less likely to have gainful employment in their future, less likely to get married, and then more likely to have other health outcomes. So these things have trajectories that have negative outcomes from that

individual, but also all of society. And I just really appreciate your point, Kelly, about the fact that the offenses for which kids are getting arrested are, for the most part, very minor offenses. And if you are in a zip code in DC where you're going to be arrested for pouring juice on another's kid head in the cafeteria -- which we get that kind of stuff all the time at our prosecutor's office -- whereas if you're in a different zip code in DC where that would never result in -- I mean police aren't even on site. Nobody would think to call law enforcement for something like that. And those are outcomes when you touch the juvenile justice system. It's not surprising that we have the level of disparity that we do for black and brown children and also for poor people in this country.

MS. RADICE: So on the records end, I think because -- we're trying on the front end, but because there is such a disparity it gives us a really strong argument for why these records should go away. So in terms of using something really negative to have a positive policy outcome, I think the fact that we don't know how to get it right, apparently, we haven't gotten it right in terms of figuring out how to make the system less disproportionate for students of color, for kids of color, then that makes it even more of a reason to me to say these records can't keep -- have the weight that they do for the rest of a person's life.

MS. BUSETTE: Ismael, do you want to say anything?

MR. NAZARIO: Oh, yeah. (Laughter)

MS. BUSETTE: Okay.

MR. NAZARIO: So in New York City the City spends over \$450 million on school safety in our schools. I think I'm a little bit off. I really believe the last time I checked it was close to \$800 million, but don't quote me on that. And what it looks like is we have NYPD, which is our police department, in our schools. They have undercover police officers in our schools that look like high school students, middle school students -- they are officers -- to see who is doing what in the school so they can fill their quota for these arrests in the schools in black and brown communities.

I'm not sure if that's done nationally. Maybe. If we really look into it,

potentially. But the school to prison pipeline isn't only just that factor. I mean it's a whole lot more things that weigh into it. A lot of schools, especially high schools, just how the set-up is alone, you know, there's a white line in the hallway and if you're on this side of it, you have to walk this, if you're on this side, you have to walk this way, there's no you can walk any kind of way you want to walk. It's one or the other. When you're in prison, that's how it's set up. There are metal detectors, you get searched if you can't clear the metal detector. They make you take off your sneakers. For young women, it's extremely uncomfortable because the wiring in some young women's bras --they have a female officer come and either pat them down or make them take the wire out of their bra. So just imagine what that is contributing to the child's mental health when they have to come into school and basically go through a criminalizing process. But I'm just here to get my education.

But preschool to second grade suspension, I can't -- I'm baffled. I'm baffled.

(Laughter)

SPEAKER: I know.

MS. BUSETTE: I think we all are opposed to that. So I think we've had a pretty good discussion about -- an excellent discussion about all the various little parts to this records issue. Based on your expertise -- and I'd like all of you to weigh in on this -- what do you think are some of the policy opportunities to address the wide array of the management of juvenile records? And what have you seen work, what would you promote going forward, and what do you think are some of the ways in which policy still needs to weigh in and make sure that we are doing right by these young people?

So I'm going to ask you to start, Seema.

MS. GAJWANI: Well, I actually am waiting to hear from Joy because I'm sure (laughter) -- I'm excited to hear what the best practice is and what you would envision for our country consistent across the country on how we deal with these things.

But my feeling though is that to have that conversation, to take the conversation that we are having in juvenile justice, around adolescent brain development

and youth development, and to extent it through the lives of these children even after involvement in and of itself is such an important conversation to have because our system, even our policy discussions, dehumanizes all the people in it. And so it's not about a child, it's about an offender or a criminal. And so if you really are talking about a child and you think that maybe this could be my child, then it does follow logically that I care about what happens to that child at all of these points, school, justice system, et cetera, but also what their future looks like.

MR. NAZARIO: Could you say that one more time? Child?

MS. GAJWANI: Child.

MR. NAZARIO: Emphasize the child.

MS. GAJWANI: My child.

MR. NAZARIO: Child.

MS. GAJWANI: Right.

MR. NAZARIO: Let's not forget, child.

MS. GAJWANI: Because if it were my child, then I would want to know what the implications of involvement in the justice system, even arrest, would be for their college prospects and their employment prospects, and their housing prospects. But I think because we don't see these children as children, it's easy then to focus on like your little niche of the world and what you do and what your process is and how this is going to fit into your process.

MS. BUSETTE: Thank you. Kelly?

MS. MURPHY: I will also defer the specific policy recommendations to Joy. But two things kind of stand out to me as exciting things. So the Juvenile Justice and Delinquency Prevention Act was just reauthorized in December. And there are a lot of exciting changes. And it may not specifically deal with juvenile records, per se, but one of the changes is around state plans. So there is actual language in the legislation that says that states need to make publicly available plans and in these plans they need to clearly

articulate how their implementation of their juvenile justice systems are going to be supported and account for research on adolescent development, which I think is exciting. So I'm hoping that as policy makers start thinking about that, they can extend that to what happens to that young person, that child, after they leave.

And then a second thing just kind of arises when I think of judges and the conversations that we've had with the judges. So a lot of judges, when they access research on youth development, they -- this is very sad to many researchers -- but they don't read empirical journal articles. (Laughter) They attend seminars and conferences put on by professional development organizations. The states also provide lots of PD. And a lot of these judges make decisions around whether or not to seal or expunge records. So taking all of the great work that advocates and researchers and technical assistant specialists have done and really translating and communicating that research on adolescent development and why we shouldn't incarcerate children and why they need these different services, and to really kind of extend that to how we handle juvenile records, I think that could be a really exciting opportunity.

MS. BUSETTE: Great. Thank you very much. Ismael?

MR. NAZARIO: I think I'm with you three. We definitely want to hear what Joy has to say in the room. (Laughter) But what I will add to that is -- I mean it's impractical of how our Nation operates at times, because we need to find a balance across the board when it comes to the policy. In that regard, I don't think that it should vary state to state, that this state after five years it's expunged on its own, this state you have to jump through hoops, this state you have to do this, this state you have to -- you know, come out of pocket for an attorney. I think that -- I mean in the perfect world there should be a common ground when it comes to the policy, but that's probably a conversation that just needs to continue to take place over and over and over and just on broader and broader platforms until enough noise is made and things start to change.

MS. BUSETTE: All right. Thank you. Okay, Joy.

MS. RADICE: I'm going to posit something and then we can discuss what you think. I mean if we can pick and choose from every state in terms of the way different states do different things related to juvenile -- we could come up with a pretty good statute. And the American Bar Association actually in 2015 -- the American Bar Association since 2010 has been really kind of worried about records, juvenile records in particular. And in 2015 they came up with a model act, which there are several states attempting to try to push this act through. And many of the issues that we have identified on this panel are addressed in that act. It's not perfect, because they pulled together a group of people who really showed both sides of the spectrum. So there were judges on that committee and then there were public defenders and children's advocates. So when you put all of those people in the same space, the model act is going to have some tensions in it, but I think that they're smart tensions.

So, for example, in terms of confidentiality, we can keep the records completely confidential unless somebody shows -- and has to file a document with a court to show a particularized need for it. And a judge can have discretion in some circumstances when there's very, very serious charges where somebody might have access to the records. But you start at the default position that the record is confidential unless somebody, who as the power to actually file and request and actually make an argument for why they should be released, that that is the position we should start in. And so all records are confidential unless and particularized need is shown. And I don't know if the model act is not as strong as that, but that would be the Radice model act I guess. (Laughter)

So then, after you get to the fact that then they're confidential during the proceedings -- and so that includes schools, that includes public housing. I personally don't think any of those folks need it unless they really can have some showing of some dramatic reason for why it's needed.

Then we'll talk about kind of at the end once the case is over, what do you do. Well, there are several states that just automatically seal it. So as soon as you get a

closed case it's sealed. So it's not destroyed yet, because their might be further -- the judges' argument for why they don't want expungement to happen right when a case is closed for a juvenile is they want to have access to some of the information in that file that might help them in further dispositions. And that sometimes comes from a good-hearted place. Often juveniles when they enter the system, they have to go through several evaluations, they do psychological testing, they -- all of that information if a record is actually truly expunged and destroyed could theoretically go away. And so there is a good reason to just seal it and hold the record. You don't want the child -- I think the fact that you've identified that we use the word juvenile is super important and has to be named -- we use the word juvenile because it seems like a more adult-ish person. If you start saying child, all of this becomes even more absurd. And so in terms of the child's record, it's sealed. And then at 18, at 21, expunge it, destroy it. But again, the process is important. So it has to be automatic. Many states, as we've pointed out earlier, cause the -- require the juvenile to actually go to court and file some documentation. The juvenile is somehow -- and there's no right to counsel for these hearings -- somehow be a part of a hearing where they're defending themselves and asking for the expungement of the record against the prosecutor, and a prosecutor who is representing victims. And that to me is very absurd. And then that actually gives the judges discretion.

So one child in Idaho with the same set of charges requesting a judge to expunge them may have a different judge's response, or even in different counties in Idaho may have a different judge's response to the same set of charges. And so to me, automation is a hugely important part of whatever the model is that we think about for juvenile records. So not only is the onus not on the child to make the request, or to even remember that they have to do it. All that brain science that we talk about that is the reason we shouldn't hold these records against the kids for the rest of their lives also applies to the fact that they don't totally understand. When I'm sitting across from them and I'm saying you have to file this motion in a year from now, I mean there's no way that they are going to even

remember that year from now. And so automation and taking away discretion from prosecutors and judges to stop the records from being expunged to me is an important part of it.

So we have really super strong confidentiality, the way the system was created originally, sealing immediately when the case is closed, and then expungement, destruction of the files at some time after. It could be done temporally, five years after, or it could be done at a certain age. And then really robust nondisclosure statute that basically says once this is over, no one, no one has a right to know about it. And you can legally deny that this arrest and that this adjudication ever happened. And that to me would be kind of a complete picture of how you keep these records from following a child.

MS. BUSETTE: How would you deal with these sort of private databases and the fact that stuff just can live on line? How would you address that in the public policy space?

MS. RADICE: So for juveniles, because it's confidential, in most states where they really are pretty confidential, you are not seeing this happen. But in places like Idaho, where it is on line initially even though it's expunged eventually, I -- there is one state for adult records that recently just passed a law that said if we expunge it you actually -- if you're going to buy these records from us, you have the onus of actually removing them. So you have to come back and there are penalties and enforcement penalties that the state can use to make these on line databases.

So I guess on the front end, you don't ever share it. You keep these records really confidential. But should a state actually share it at some point, then you could easily pass a statute that says you have the onus now to make sure these records are up to date and accurate because you're providing this public information that requires you to actually make sure it's accurate public information.

MS. BUSETTE: Great. That's great. Yes, Ismael?

MR. NAZARIO: Yeah, I just wanted to add something really briefly. To

piggyback off of what you said, in several states, believe it or not, they -- you know when you just spoke about a judge leaving a child's record open for a period of time because they want to review the case, so on and so forth, legal purposes, in some states if a child is rearrested, when the time comes for it to be expunged, it can't. So, again --

SPEAKER: That's right, that's right.

MR. NAZARIO: -- there needs to be -- the stipulations need to match across the board. I just wanted to add to that. In some states, during that time period, if a child is rearrested, they lose the right to expunge their juvenile record.

MS. BUSETTE: Interesting. Well, this has been a fantastic discussion. We're going to throw it open to the audience and take questions from the audience.

So normally the way I do this is I will collect a couple of questions and then the panelists can answer them as they choose. So why don't we start taking a couple. We're going to use a microphone. This is webcast and it's important for us to use the microphone.

MR. LAUB: Should I introduce myself as well?

MS. BUSETTE: Please do.

MR. LAUB: Okay. I'm John Laub, Professor of Criminology and Criminal Justice at the University of Maryland College Park. I want to introduce a topic that perhaps may introduce some tension to what is a fascinating discussion, and that is research, and particularly longitudinal research, and particularly the idea of linking records across different databases. So we wouldn't know what we know about school to prison pipeline if we couldn't link records from the schools to the justice system. We wouldn't know what we know about what happens to juvenile offenders as they grow up into adulthood without longitudinal research.

So I don't know if the ABA addresses this, but my policy hat says expungement, I'm with you. My research cap says please don't destroy any records.

MS. BUSETTE: Okay. And then we have a young lady over here. Put your

hand up.

MS. MUNROE: Thank you. Hello, everybody. My name is Monekka Munroe. I'm also a criminal justice professor. I moved to Virginia from Florida. And as many of you know, Florida is a very interesting state. As a matter of fact, Florida incarcerates more juveniles in adult prisons than any other state in the Nation. And I've been working a lot with the legislators trying to reform that particular act. But I think the reason it's so difficult is for two reasons. Number one, incarceration brings a lot of money to a lot of entities. And America loves money. I call it -- this is the paper nation. You either have to have money or a degree or your credit score needs to be a certain amount. It's about paper, and if your paper isn't green, you might be in trouble. I think that's definitely one of the issues.

And then I think the other issue -- and the young lady sitting beside you, you kind of hit on it. It's a human factor. Most people of color, if you're poor and you're uneducated, we're not even viewed as human beings. So it's easy to mistreat a population of people, overcharge a population of people, and incarcerate them in mass amounts if you don't see them as human beings.

So even if you are looking at a child, in a court system -- and I'll keep remembering a kid I worked with who was 11 1/2 when he was sentenced to prison in Florida -- 11 1/2. And when I got to him he was 18 years old. And when he was 18 years old, that's when they let him out. But six months after they released him he was rearrested for a violent crime. And the sentence he received at that time was life in prison. And he kept telling me, he said, well, no, Dr. Munroe, when I get out I'm going to go to college. I heard that you help people get into college if they're getting out of prison. And I just didn't have the heart to tell him, you're not coming home. They're never going to let you out. So he saw on the outside of bars for 10 years, that's it. He was 10 when he shot his mom's boyfriend in the head 3 times. And it was because that man was sexually molesting him. And when he went to court his mother testified against her son, and he went to prison at 11

1/2, released him when he was 18. Six months after he was released he was involved in a violent home invasion robbery and they eventually sentenced him to life. But, again, he was never looked at as a human being who was being raped by an adult man. He was just looked at as a thug, as a criminal, as you come from a welfare home. Going to prison -- yeah, that's what you're supposed to do. He was never looked at as not only a child but this is a human being that was hurt. But his incarceration brought a lot of money to some organization.

So if we can stop looking at how much money incarceration brings and start just facing the facts that black and brown people in the United States especially, we're just not viewed as human beings the way that we're supposed to be. If we're not honest and have honest dialogues about that, we can have these types of conferences all day long. Policy just isn't going to change. Not for us.

MS. BUSETTE: Well, thank you for adding that perspective. So we're going to take one more question over there and then we'll answer. In the back.

SPEAKER: Hi, my name is Bria. I'm a public policy master's candidate at George Washington University. And my question is, what is your vision for restorative justice and what models have you seen work and what models have you seen that were absolutely terrible and only reproduced the harm that we're trying to reduce?

MS. BUSETTE: Okay. Thank you. So the questions are about data and the use of data for research, a bit about the trauma of being in the system and having a traumatic experience prior to entering the system, and, of course, the racial disparities associated with that. And then, finally, this question about restorative justice.

MS. RADICE: Can I start with research? I want to see what Seema says on these things too.

So I don't think it creates a tension for us. And the reason I don't think it creates a tension for us is because you can collect a ton of data from the records that are not individualized based on that child's record. And so you can still collect the data and

destroy that record without having to make that choice. Does that make sense to you? So I mean what information do you want from that record? You want characteristics that a researcher can then use to study, you want things like type of crime, you want things like outcomes, you want things in terms of what exactly -- characteristics of the cases that could help you determine whether something expunged actually made a difference. So I feel like there's a ton of data collection that can happen anonymously, without identifying the actual individual or keeping the individual's records that could be really rich.

The interesting part about your question to me is that one of the things that I have found in terms of trying to find data, especially on juvenile recidivism is that there isn't a ton, and states aren't doing it, cities, local government aren't doing it. We're not actually looking at the outcomes over -- we haven't historically. And so I feel like there's a moment right now where we're beginning to ask these database questions that haven't been asked in a really, really long time.

MS. GAJWANI: I just wanted to follow up. I think Professor Laub might have been talking about tracking and individual young person throughout the system, so not the de-identified information. Kelly mentioned the CSG study from 2011, where they were able to show the school to prison pipeline having an impact on juvenile justice involvement, and maybe even criminal justice involvement. And I recall when I was at a foundation when they were doing that study, they could only do it in Texas because Texas kept records, state centralized, on the individual youth and also on the youth in the school system. And I remember when they were able to match the names at like 80 percent or something. That was like this victorious thing.

SPEAKER: Huge. Interesting.

MS. GAJWANI: So I wonder what you think about that, actually keeping the names? Is that, Professor Laub, what you were suggesting?

MR. LAUB: Absolutely. Or a case ID.

MS. GAJWANI: I mean I think in terms of research versus the human

impact on somebody for the rest -- I'm going to go for the not letting the records follow. But I don't think we necessarily have to always make that choice. For, example, not all of the records get expunged. Records that are in the court file might get expunged, but, for example, I would have my records as the defense attorney on that individual. And so I think that if researchers are creative we may be able to connect the dots. But if I had to choose between being able to do that research and expunging somebody's record so that it doesn't follow them for the rest for their life, I'm going to pick the latter.

MS. BUSETTE: Okay. Other thoughts on some of the other topics?

MS. MURPHY: I think in terms of money, I think that's a very important thing. But I think we also need to realize, and more and more research is showing this, that incarceration is really, really, really expensive, and then you don't get good outcomes out of it. So there are states like Virginia, they have gone through this large transformation effort and they started with I think six juvenile correctional centers throughout the state and they have closed correction center by correction center and they are now down to one. And then they, I think in 2017, ended up getting authorization from the governor and the state assembly to reinvest the savings from closing down juvenile correction centers into the development of this continuum of evidence-based alternatives to incarceration and other services.

So I think it's not -- I mean obviously there are complications with like the prison industrial complex, but there's a good argument to make that it's ineffective, it's a waste of taxpayer dollars, in addition to obviously the human kind of point.

MS. BUSETTE: Any thoughts about restorative justice? I know you guys work on that.

MS. GAJWANI: Sure, yes. To answer Bria's question, but I also think this gets to Professor Munroe's question too, I think one of the most important values of restorative justice as an alternative mechanism around crime and conflict is the fact that the core component -- one of the core components of it is that it humanizes everyone involved.

And so our office started a restorative justice program in 2016 and we only take relatively serious crimes from prosecutors. They're referred by prosecutors. And what's so interesting to me is that if you were to sit in on a restorative justice conference -- so we have five full-time restorative justice facilitators at our office. When they get a case they speak to the defense attorney to get permission to speak to the young person. They speak to the parents of the young person who's charged with the crime and then they spend a lot of time with that young person. And then they also speak to the victim of the crime and their supporters and the family, and the family on both sides.

And then, essentially what happens is they facilitate a dialogue that typically takes a couple of hours, where they talk about what happened, what the impact was on all of the participants, and what needs to happen in order to make the situation right so that it doesn't happen again. And they have to find consensus among the people in the room, the whole community who was affected by the crime on both sides. And then our office monitors compliance with that.

And so what you see if you sit in on these conferences is that there is palpable humanization. The young person who did this to the person, who harmed somebody else, has to face the person that they hurt and explain what they did and why, and answer questions about the thing that they did. Then they have to hear from every single person who was impacted, not only the person who was hurt, but that person's family member that got the phone call that they were hurt and had to rush to the hospital, and from their mom, who found out that her kid was locked up from their coach, or their teacher, or their mentor, all of these things who are so disappointed in them.

So the young person is humanizing all of these people, building empathy and consequential thinking and all of the brain development things that we want them to build. And then the victim of the crime also has this opportunity to humanize the person who did this to them. And that's been fascinating to watch for me too because in some cases the victim and the young person who committed the crime come from very different worlds, and

so there are a lot of assumptions, a lot of biases and inequality and power in the room. And so there's work done before you start that conversation about that. But they get to hear from this young person, from their family members, from their supporters, talk to them, ask them questions.

And what you find in the justice system is that victims are treated pretty poorly in the justice system when they're a victim of crime on several levels. But when victims are asked in like these big national surveys about victimization what they want, the things that they want, they want control over what happens, they want to know it's not going to happen again, they want a sincere apology, they want to be able to ask questions about what happens. These things are the same things that the researchers on trauma say that victims need in order to heal from the trauma.

They need to be able to see that it was a human being that hurt them and that not all people who look like that will necessarily do that to them. They need to have a narrative about why it happened, they have to be able to ask like did you target me because of how I look or where I sat or are you going to do it again. They need to understand or believe that the person won't do it again. So all the things that they need, that a victim needs in order to heal they're not getting from the justice system and they can get from restorative justice. And that's part of the humanization.

And then third thing about humanization, which I think is fascinating, is that in our restorative justice program, which is the only program currently that sits within a prosecutor's office, we invite individual prosecutors to sit in and participate in the restorative justice conference itself, as long as they are not involved in the case and they're firewalled from that case. Because what we find is that the prosecutor who sits in on a case, the way that they deal with crime after they've sat in on a restorative justice case changes. So the prosecutors are learning to humanize the people that they're prosecuting. And after a prosecutor sits in on a case -- which, frankly, when we started this program I was like no way I'm letting a prosecutor sit in on a case. I was so nervous. And it took about a year before I

was willing to take that risk and say, okay, fine, we'll let them sit in. But once we have the prosecutors sit in, we find that they send us more cases, and more serious cases.

And so for me, restorative justice at our office has been a really critical tool for culture change of prosecution. And so there is a way that humanizing individuals in the world can help heal that.

And then, Bria, I just wanted to quickly answer your question. There's lots of room for bad restorative justice. We have actually like a long history in the United States of people saying they're doing restorative justice and putting that sticker on their door and doing the same thing that they used to do and then getting bad outcomes. And then the researchers say it doesn't work. So we have to be very vigilant about how we maintain fidelity to what we know to be the best practices we keep from net widening and all of these other things. But there's real risk there.

MS. BUSETTE: Great. Thank you. I think we have time for one or two more questions. Okay. So we have four people. All right. Let's see if we can take all four quickly and, you know. Here, there, and there are two more over here I believe.

MS. MOONEY: Hi, my name is Emily Mooney and I work on the criminal justice team at the R Street Institute.

So one of the things that all of the panelists addressed was the school to prison pipeline. And I just wanted to know, Seema, what you guys have done in working with schools to reform disciplinary policies so the cases don't get referred to in the first place, particularly when they're inconsequential typical adolescent behavior.

MS. BUSETTE: Great, thank you.

SPEAKER: Hi, so I'm a research intern here at Metro, but I go to school in Ohio and I have experience in the juvenile justice system working in Ohio. And so something that I'm really aware of when we talk about juvenile justice is that at least in our state there's a lot of difference between what happens at the prison level and the jail level, and so we'll talk about oh, like we're decarcerating, like we're decreasing the numbers. And

then what's actually happening is just those kids are getting pushed down and not entering prison, but there's still a churn between their communities and jails.

And so I'm wondering in the context of what we're talking about, in terms of records, like are there any differences that maybe we didn't elucidate in the conversation between jail and prison records and that kind of thing.

MS. BUSETTE: Thank you. Is there one more over here? Yeah, one over here and then this gentleman over here. So get those.

MR. MURPHY: Peter Murphy from the Norwidic Group. Thanks for the panel's discussion. It's been really illuminating.

In the specific issue of records, the only way you'll get change is legislative change. And in a global environment, where tough on crime is a really easy solve for politicians to get elected, what's the appetite here in the U.S. to make those sorts of changes? Is the business case that you can put forward strong enough so that you can get that change?

MS. BUSETTE: Okay.

SPEAKER: Thank you. Hi, I'm Marissa Montabani and I'm a research intern at Governance Studies.

And my question relates to police bias in schools. So as you guys have touched upon, it's not just juvenile records that matter, it's also the school records that can also follow a person. So my curiosity is has there been a lot of research done on the role that bias training with officers in that school can play? And what impact do you think it would have to train officers in the schools themselves on bias?

MS. BUSETTE: Great. Thank you. Great questions there. So on specifically for you and then there's a question of are the records different if you are held in jail versus held in prison, the politics of reform on juvenile justice records, and then police bias training for police who are in the schools as you have said, like NYPD, you know, sort of in the hallway.

So any and all of those?

MS. GAJWANI: I'll quickly answer Emily's question about school discipline. I think that I remember it. But I can tell you that in Washington, DC we were really intent on going into the schools and helping them build their own disciplinary structures so that they didn't have to send cases, they didn't have to call for law enforcement. And we hit a really strong wall because schools in DC -- and I don't know if this is how they are elsewhere -- are very decentralized. It's school by school. They are very difficult to penetrate. And the role that law enforcement plays in the school varies by school. We have situations where teachers pick up their cell phone in school and call 911 and ask for police to come to the school -- from a classroom. They're not even going to the behavior techs and the security and the SROs in the school. So it's kind of like really hard to manage.

And I'll just -- I guess this is to say that I've found that it's very hard to penetrate schools and to work on schools not wanting to use police. And it might be that they're overwhelmed and these are tough populations and there's tons of trauma and it's really hard for a school teacher to teach when they have to deal with the fact that these young people are coming from environments that have all sorts of other pressures. But we in Washington, DC, two years ago a city council member, who is the chair of the education committee, tried to pass a law to prevent suspensions and expulsions from preschool. And he got tons of pushback from the schools, from the teachers, who said you can't take this tool away from us. And it eventually passed and how his goal is to get now into elementary school. And there is tons of pushback.

So you would think that schools would want to be allies in this effort, and maybe they do, but I think it's harder and more complicated than we think.

MS. BUSETTE: Great. Thank you. Well, we're sort of short on time and so you definitely can talk to the panelists afterwards. On the other issues, is there anything you wanted to address, Ismael?

MR. NAZARIO: Yeah, I just wanted to touch on the jail versus prison

records question. Unfortunately, if you're asking in regards to after a person has been expunged, does it correlate to that? My question to you?

SPEAKER: Oh, I just mean like in general.

MR. NAZARIO: Well, those records stay. And if after your expungement, or not, and you need to simply go back to the jail or the prison to try to get your records, it's virtually impossible, virtually impossible. Like you'll probably have to go there with a subpoena. That's how serious it is. And they stay forever. I know of individuals that served time in prison and once upon a time when they were sitting on Rikers Island waiting for trial - - basically when they lost trial they lost their mind and wound up receiving a very long time in solitary confinement. He went to trial, lost, went upstate, the case got overturned. He won. His appeal was granted. I think it was like 15 years later his appeal was granted. He got rearrested coming out of his house, walking to the store to go buy milk. Wrongful arrest. When he went back to Rikers Island he still owed solitary confinement time. As soon as he went through intake they put him back in. So that goes to show you about the record.

MS. RADICE: In terms of legislative change, it's a really interesting question. I would posit that the juvenile record myth is so strong that when I've talked to legislators and judges, like most people think they are already protected, and so they're not even realizing that this is a conversation that really needs to be had, because a lot of the less stringent confidentiality changes happened in the late '70s early '80s, and those are different folks now.

So I think we have potential to have a conversation, especially in light of the research that we've talked about to say that we've got to fix these statutes. And we're fixing them on the adult side. So I think that we can see a little bit of hypocrisy if we don't change them because we're actually moving in a direction for adult records to make them expunged or sealed or protected after a certain amount of time. And part of that push has been effective because I think you see interests aligning that don't normally align on the criminal justice agenda. You have conservative folks saying, okay, I recognize how these records

are keeping people from getting jobs and we want people to be working. And you have folks at the other extreme saying this is just wrong for somebody's record to follow them for more than two, three, five years. It just seems like it's unjust.

So I think that there is potential, but the myth that there's no problem I think has to be penetrated first.

MS. BUSETTE: Great. Any thoughts on the police bias training, anti-bias training? It's an interesting question, isn't it?

SPEAKER: So interesting.

MS. BUSETTE: We could probably have a whole session on that.

(Laughter)

SPEAKER: Yes.

MS. BUSETTE: Ismael, I want you to close us out and tell us something that you think we all need to keep in our heads as we're thinking about this today?

MR. NAZARIO: I guess it kind of coincides with the restorative justice piece that was touched on, and it was something that we had actually mentioned on the call that we had. One of the biggest things I feel that should be pushed is preventative care. There's not enough being done around preventative care, before -- you know, there should be some things in place for our children, that they don't even make it to the point of receiving a record that can potentially be damaging to their livelihood and the rest of their life.

So that's just something for folks to think about and, you know, maybe some conversations can start taking place about preventative care.

MS. BUSETTE: Thank you so much. I want to thank this wonderful panel. Please join me. They've been excellent. (Applause)

I also wanted to say that no event at Brookings goes so flawlessly without the help of a lot of people. So we have our terrific events staff, our terrific facilities staff, my senior research analyst here -- who is the person who told me that this was a topic that we should take up. So, Kwadwo, please stand up. (Applause) And, of course, all of our

security people who also make it safe for us to be here.

So thank you all very much. It's been a pleasure. Thanks again.

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