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AI, PREDICTIVE ANALYTICS, AND CRIMINAL JUSTICE

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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 and director of the Center for Technology Innovation at the Brookings Institution. I would like to welcome you to our event on AI, predictive analytics, and criminal justice.

On your seats you should have an audience evaluation form, so at the end of the event if you could fill that out and return it to people at the back of the room; we would like to hear your feedback on this event.

So AI is being deployed in many areas, from healthcare and education to retail and transportation. In a number of sectors it is becoming the transformative technology of our time. But I think one of the more challenging applications is in the area of criminal justice, which is going to be our focus for today. This is an area where life or death decisions are being made, new digital tools are affecting incarceration, parole, and sentencing decisions.

A little more than a year ago the Next Step Act was signed into law and it sought to reform several aspects of our criminal justice system, provided for the release of some low risk prisoners, altered sentencing guidelines, and encouraged confinement closer to people's homes. But it also required the establishment of a system to assess recidivism risk. And this is a predictive analytics algorithm that incorporates several different factors to decide detention status, among other things. So it looks at housing, somebody's job situation, where they live, among a variety of other factors. And then based on those issues it makes a determination of someone's estimated risk and then whether someone should be kept incarcerated.

Currently this tool is being used in pretrial detention and probation decisions, and also in some sentencing decisions. It makes recommendations on who should be confined before their trials and then also what their probation conditions should be.

These types of predictive analytic tools raise a number of questions concerning bias, accuracy, and fairness. Many worry these tools lead to unfair outcomes in pretrial hearings. There are concerns over a lack of transparency and a lack of understanding regarding how the algorithms work. There's also evidence of disparate impact between decisions regarding whites and African Americans.

To help us understand risk assessment in criminal justice, we have three distinguished

experts who have joined us today.

Edwina Dorch is a retired professor who used to teach at Texas A&M University. She is the author of many articles and books, including "Community Risk and Protective Factors for Probation and Parole Risk Assessment Tools."

Sakira Cook is director of the Justice Reform program at the Leadership Conference on Civil & Human Rights.

And Faye Taxman is a director of the Center for Advancing Correctional Excellence at George Mason University.

So I want to start with Edwina. So tell us about these risk assessment instruments and how they are being used in criminal justice, how do they operate, and what factors go into them?

MS. DORCH: So one of the deliverables for the First Step Act was that researchers take a look at the various tools that are out there that have already been developed -- Compas, LSI-R -- take a look at those tools and to decide amongst those tools if one of those tools was better than the other, if they needed to start all over again to develop a tool for federal prisoners.

And so they did take a look at those tools and Compas is a tool, is a risk assessment tool that does better than human beings can do. It is better than human beings at predicting re-arrest. However, it only predicts for black Americans 60 percent of the time. It can only predict if a black American will be re-arrested 63 percent of the time. So there is part of the ability to predict that's not included in, for example, Compas or LSI-R. And we should want to know what factors are being left out, what factors should go in there to make it predict 100 percent of the time rather than 63 percent of the time. And what might those factors be that are left out. And that's sort of what my book tried to determine is the factors that were being left out, the factors that needed to be put in in order to get greater predictability.

So if we take a look at New York and D.C., where we sit, these two cities give us some indication of the types of variables that are being left out of the offender risk assessment instruments. If we take a look at New York first, recently they implemented a bail reform such that people who are poor can now leave the courtroom rather than be arrested and put in jail and await their trial. And so we know from "stop and frisk" data that when they had that court order that ruled that it was illegal and they

stopped "stop and frisk", the number of arrests dropped precipitously. And that's what we expect from the bail reform is that the number of arrests will drop precipitously. And so that's an environmental variable, that's a variable that's separate from the person that's causing arrest, and yet that bail is not a part of Compas or LSI-R or any risk assessment instrument.

So if we look at here in D.C. once we implemented the marijuana reform law, the arrests again dropped precipitously. And yet marijuana reform laws are not included in the risk assessment instrument.

And so I'm simply saying that our risk assessment instruments that have been developed today focus on person variables, what's a person's age, sex, race, ethnicity, priors. And all of those are person variables. To the extent that they do measure environmental variables, they measure what's your family like. But that's still a person variable. What's your peers like -- that's a person variable. So our risk assessment instruments focus on person variables, they don't focus on exterior environmental variable.

And to help you to understand how important it is to focus on external variables, I used to be a health disparities researcher and I certainly wouldn't just focus upon the person, but rather I would want to know -- it's a disparity if black Americans are living on landfills, if their water -- so you would never back out environmental variables. But in the realm of criminal justice, we focus on person variables and we back out environmental variables.

That's part of what I want to say about the risk assessment instruments and the ones that they looked at in order to make a judgment as to which ones of those they should pick from amongst to implement one in federal prison.

The other thing I want to say is that risk assessment is not just a risk assessment instrument, it's a risk and needs assessment instrument. And so it assesses the risks that the person has, but it also assesses the needs that they have. And when it assesses the needs that they have, it also produces a plan, a case plan that will address those needs. And this case plan, the person will sign off on a contract saying yes, I will comply with that case plan. And once the person does not comply, then they're at risk for technical violation. What's the implication of that? Here in this city, if you were one of the 900 people in 2017 who was in need of housing -- well, all of us live here, so we know there is no

housing -- but 42,000 people were on the public housing waiting list. So those 900 people had to get in back of the 42,000 people who are on the public housing waiting list in order to get the housing, in order to comply with the case plan that had been generated by the risk assessment instrument. If you live here you know that there are 52,000 people in the District that don't have a GED or equivalent, and those 52,000 people, there's only like 15,000 slots per year for GEDs. Now, even if only a fourth of them wanted to pursue a GED there would not be enough slots here in the District to accommodate them.

So we don't have -- in terms of behavioral health -- the director of behavioral health was held in contempt by the courts because she didn't have enough staff here, enough mental health staff in order to bring them into court in order to make a judgment about their mental health. So she was held in contempt. So staffing was a problem. So you couldn't get that either.

So what am I saying to you? I'm saying that the risk assessment instrument, it generates a case plan, you have to comply with that case plan, but you can't comply with the case plan, so it comes kind of circular. You get picked up for an Eric Garner, I can't breathe, loosie technical violation, you get picked up for a Michael Brown hands up, don't shoot, I'm walking down the street technical violation, and you go back to jail. And so, you know, 40 percent of the people returned -- recidivate within the first year. But part of that is being caused by the fact that we don't have the correct variables in the risk assessment instrument and the other part of that is being caused by the fact that we don't have the services that you need in order to get you to reduce your risk.

MR. WEST: Okay. Thank you. It's very helpful to have that background.

So, Sakira, you devote a lot of time to justice reform. What are your concerns about the use of risk and needs assessment tools?

MS. COOK: Hi, everyone. Thanks to Brookings for hosting this important discussion and all of you for being here.

So I work at the Leadership Conference on Civil & Human Rights; we're a coalition of about 200 national organizations, civil rights organizations, and we work on a variety of issues. My portfolio touches on transforming the criminal legal system from the very front end of the system, dealing with issues related to policing and pretrial, bail decisions, sentencing, prison conditions, and then reintegration back into community.

What we know about the criminal legal system is that it is inherently biased and there are grave disparities in how African Americans and Latinos and other people of color experience the criminal legal system and then how white people experience it. And those disparities are borne out in the data that we see with respect to "crime data", but that's not actually crime data, that's arrest data, right. It actually just tells us what police are doing in various communities. And that's what these tools are based on. They are largely foundationally based on arrest data, right. Designers are using historical data sets to make predictions about what people will do in the future. And think about that -- all of us have made some mistake in the past, have all maybe done something we're not proud of. And if that is going to be the cornerstone of what determines our liberty, right, your liberty in the pretrial context of whether or not you can go home pretrial and help your lawyer defend you in court, whether you can be released early post conviction, or whether you'll get a certain type of sentence in the middle of a trial, right -- what type of sentence, how long you'll be incarcerated. Should we be using historical data to determine those things? Should that be the fundamental basis upon which we make those types of decisions? And we believe no.

And we believe that primarily because we know that many of these tools, because of the historical data and the inherent bias that exists in that data set because of how police police in this country primarily, and because of the biased decisions that are made in conviction rates, right, and the bias decisions that are made throughout the system, that that data is flawed. And because that data is flawed -- garbage in, for lack of a better word, is going to yield garbage out. And that's our fundamental problem with this.

Another fundamental problem is that these tools are not transparent. In many places the designers of the tools will enter into agreements with the governments who are buying them, which say you can't even interrogate the data. You won't even know what the data set is. You don't know how far back it goes, right. Is the data from 10 years ago, is the data from 2 years ago? We won't know that. You won't be able to independently validate that because, you know, outside scientists or researchers won't have access to the data without signing a NDA, without saying well, they won't release certain information in their analysis, which, again, is limited. And so how would a person's lawyer be able to then interrogate whether or not this prediction is accurate as it relates to their defendant, right -- excuse me, not defendant -- as it relates to their client, as it related to the person upon which they are trying to help.

So for us, you know, those are two primary issues with respect to how these tools operate. And because they aren't transparent, validation is limited, right. A lot of them are not independently validated. They will validate the tools, but they might not be by independent experts, they might well be by someone who is working for the government or working for the company that is selling the tool.

So the Leadership Conference, in learning about the proliferation of these tools -- and these have been around for a while. I mean I don't want to suggest that this is like a new thing, this has been around for a very long time across the country and been used in a variety of different ways. But as they became more sort of prevalent and more apparent in their use in the pretrial context and in conversations we were having around sentencing reform and at the federal level, we started to look at this and started to look more deeply at how these were impacting the communities that we cared about and how they were interplaying with the criminal legal system and our advocacy around certain issues, like sentencing and bail reform, et cetera.

And we released a set of principles back in 2017 I believe it is that sort of said, look, we recognize that these things are in existence, but we don't believe they need to be used. We can safely reduce pretrial incarceration without the use of a tool, we can safely make determinations and give people the supports that they need while they're incarcerated in order to help try to reduce the likelihood that they'll return to prison, and also make structural changes on the outside so that we can make the pathway to reintegration a lot easier. You know, there are barriers to employment, there are barriers to housing, there are barriers to healthcare, there are barriers to family reunification, there are barriers to education. All of these factors play a part in whether or not someone is going to be successful when they come out of prison. They all are inherently, you know, important to everyone's everyday life, whether or not you've been incarcerated or not, right. As a regular person, if I don't have a job, if I can't find housing, if I don't see a pathway for my life, my options become very limited. And people make choices that they wouldn't normally make because they're put in survival mode, for lack of a better word.

And so there are structural things that we have to fix, right, that are irrespective -- that play part in whether or not someone is going to return to prison. And these don't account for that, and I think that's what Edwina was sort of talking about with respect to the environmental factors that aren't

considered, that we only focus on the person and only judge them against other people, right, in the future. And recidivism in this country is poorly defined. I mean she alluded to that in the discussion about technical violations with someone who is on probation or parole. That's not necessarily a new arrest, but that could be counted in the data set. And so then that sort of over inflates, right, the "risk" of a person.

So all of these things, for the Leadership Conference and our coalitions partners, raise huge flags with respect to their use in determining liberty. Now, whether or not they can be useful in determining support for a person, right, the needs that a person has in order to be rehabilitated while incarcerated, is a question that I think people should ask, and it is a question that research should look into. Are they successful in helping to provide educational supports, housing supports, or social-emotional supports, and identifying those risk factors and needs associated with them, irrespective of a determination about liberty? And that is what I think the linchpin in this whole conversation is about, right. There can be research data, AI could be used for good, but only if the goals are, you know, aligned with what we're trying to ultimately have happen, only if the tool is designed in such a way to meet that goal. And if it isn't, you're going to have an outcome that is disparate, you're going to have an outcome that might favor one group over another. And research has shown this. It's very difficult to create a tool that's fair along racial lines. And that is a huge problem for us.

MR. WEST: Okay. Thank you very much.

So, Faye, you work on corrections and sentencing issues. What is your view of these risk assessment tools?

MS. TAXMAN: Well, thank you again for having me and also to the audience for coming today.

So I want to start with a little historical perspective. Why do we have these tools? What was their design purpose for the system? So if you go back to 1920, you know, we had a prison psychologist trying to make decisions about who should be released from prison and how well that person has benefitted from the period of time that they've been incarcerated. And during the 1920s there was a lot of concern raised about the fact that, you know, you have different counselors, you have different perspectives. Everybody brought to the table -- individuals brought to their own perspective whether or not a person was ready to be released on parole. That's human decision making, right.

So the issue that comes up is do the tools perform better or do they offer an advantage to the criminal justice system that is better than the individuals that we're asking to make these decisions.

And so scientists have been working since the 1920s on different generations of tools. We all them the human -- subjective decision making that's made by human beings, that's called the first generation. Then the second generation tools we refer to as those tools that Sakira and Edwina talked about that predict recidivism. They're based on historical factors, they're basically based on how many bites of the apple has the person had in the criminal justice system, what does their trajectory look like. That's called a second generation. Now we have a third generation tool that combines static risk factors with a person's needs. And the notion is those needs are factors that drive their involvement in the criminal justice system, like substance use behaviors, like association with negative peers, like criminal value systems -- if you want to define that.

And now we're in an area that Edwina referred to, which is called the fourth generation tools, which is actually designed to tie that information to case plans. And there's a little bit in the fifth generation tool that has to do with this notion about predictability of this information.

So I raise this to you because the question is do we need instruments at all. And, you know, as a scientist, I would say we need instruments. We need better instruments than we currently have. I can talk about the methodology, but we need instruments. Because if you think about who works in our criminal justice system, right -- so we have a lot of people who work in prisons, they do not necessarily have to have a bachelor's degree, we have a lot of people who work in probation and parole systems. Typically they have a bachelor's degree and some have a master's degree, typically not in social work or human services areas. We have a lot of people who are lawyers, trained as lawyers and, you know, law school doesn't train people to think about predicting recidivism or what does it take to help someone reduce their criminal behavior.

So, you know, part of the dilemma here is that the criminal justice system was not designed to really think about rehabilitation. We've been struggling with this for a long time. And so we make decisions based upon the potential risk that a person has to be re-involved in the justice system.

I want to clarify that though, because that risk here does not have to do with dangerousness to society at all. And there's often a misinterpretation. So when you hear someone say

that person's risky, all that means is they've been arrested a lot, typically, or they've been convicted a lot. And they could be arrested for, you know, loitering, they could be arrested for shoplifting \$20 worth of goods at CVS. I mean it doesn't even have to be for felony, you know, prison-type crimes.

So this dilemma that we have, I think is really a dilemma now about how do we create instruments that are fair, transparent, and actually work to help people address the factors that helped -- why they're involved in criminal behavior. Right now we have a system that basically anyone can design an instrument, you can put your label on it, and you can say it's a good instrument. We have no checks and balances in our process. We have no national standards for how these tools should be developed. And I think that's actually an area we should move towards -- is having a commission where every one of the instruments has to go through a methodological check to see are there biases in the items that are used, is the data that was used good. I would say in my experience as a scientist, you would be surprised how often the underlying data is not that trustworthy. And so, you know, it has to do with how are people going to claim that data and, you know -- so we need a commission, I believe, that basically looks at the existing tools.

In my work with the field, I think that, you know, people who work in the probation system, prisons, parole, pretrial, they would likely to have an outside body who could certify that this tool is useful. They would like to have someone to say the methods that were done are valid. So, you know, I think one of our big issues is there's no one owning this problem and we have a lot of propriety interest here and we need to move away from that because, you know, we are making decisions that affect people's liberties, affects their lives, and affects their children and support system.

Another thing I want to mention very quickly, is the third generation tools -- and some of the moderators that Edwina referred to -- rely upon variables. And the way that we currently think about these variables are something -- you know, we call them lifetime. Has this every occurred, you know, have you ever lived -- you know, not had a place to live. Well, you know, we all have pasts, we all have good days and bad days. And so the issue, I think, is that we really need to think about what is the currency of that information as it relates to a particular person.

So we measure needs at a very generic -- if you're 30 years old and you smoked marijuana when you were in high school, you may be considered to have a drug problem, even if you've

never smoked marijuana in the last 10 years because of the way the questions are asked on some of these tools. So this is -- you know, as a methodologist, this is a methodological issue, but it relates to how we classify people, it relates to how we identify people as being in whatever risk category we want to do.

So, you know, the other issue that really needs to be brought up here about these particular tools is this issue about being sensitive to different populations. So we know, for example, that drug use is common amongst our community. You know, 88 percent of the American population will have reported some drug use in their life. But how those decisions and the way those variables are captured, affect different populations, whether it be by race, by gender, by culture, by age category. All of those things we need to do what are called sensitivity analysis, to make sure that the instrument is not unfairly targeting different types of populations.

So, you know, I think it's hard for us to go back to an area where I would suggest that you would just want every human being who works in the justice system to have to make a decision that's not informed by a core set of principles. And that's the subjective decision making process that, you know, exists.

The larger issue is how do we design instruments in today's world that work for the client? And I would suggest that we really should be looking at some of these web based instruments where individuals can administer themselves, that integrate ways in which we can help people improve their own decision making. Give people choices, right, give people choices about why kind of treatment programs, if they want to go into treatment programs or if they want to go on a track of education. Or we also need to integrate these motivational components that help people understand that decisions and the discrepancies between one story they're telling about themselves and another story they're telling about themselves.

So I'll leave it at that because of time consideration. To me it's an issue we don't have well designed instruments and we as a public should demand better.

MR. WEST: Okay. Edwina, so Faye has talked about the need to build better checks and balances in there, suggested web based interventions might be a way to go.

What's your view? How can we improve these tools? What should the next generation

of these tools look like?

MS. DORCH: So when I think about what they've done at the federal level in federal prison and -- you know, one of the deliverables for the First Step Act was to build services for the inmate population. What they could have done is so far off from what they have done, will do. Right now you need Medicare, Medicaid if you are diabetic, if you have AIDS. So pre-release they ought to enroll you in Medicaid -- pre-release, before you ever step out on the street. You shouldn't have to find once you're out on the street. That's one of the things that they could have done, but they didn't do. And that would have addressed the case plan better. It would have put you closer to meeting your needs.

It's federal-to-federal, so Bureau of Prisons could have attached themselves to the federal apprenticeship program, but they didn't. Why not enroll them in a pre-apprenticeship program before they're ever out on the street? And this is all part of the case plan and the case plan comes from the needs assessment, right? They could have -- workforce opportunity tax credits are given to employers to hire. Those workforce opportunity tax credits could have been given to employers while you're in prison rather than when you get out on the street. Public housing, which I just mentioned to you, that's federal-to-federal. Public housing is run by HUD, it's federal-to-federal. Why can't we get these people enrolled in public housing before they ever leave? Why can't we get them food stamps before they ever leave? Why can't we get them TANF before they ever leave? This is federal-federal, this is technology speaking to each other.

There were a lot of things that they could have done pre-release. They could have set that -- and there's this term -- how many of you know disintermediation? Disintermediation is where you back out the middleman, just federal-to-federal, they could get this work done. They don't need all of these other caseworkers. Why have I got to go out on the street, pick up a probation caseworker, that probation caseworker tell me to go down to public housing. What's your function when you tell me to go down to public housing? Back that person out. Federal-to-federal technologies, hook me up with Medicaid, hook me up with pre-apprenticeship programs. Pre-apprenticeship programs are federal programs. Why have I got to go through this other intermediary to get to that kind of programming?

So I just see it with the case plan. The case plans could have been hooked into federal-to-federal communication.

MR. WEST: Sakira, what do you think needs to be done to improve the transparency and fairness of these tools?

MS. COOK: So I mean Faye brings up some interesting points about their use, but I think for us what ultimately ends up being the case is that even if that is true, that we could have or design better tools that have more transparency, that have more -- I don't know -- we can design a tool that has more fairness if you don't fix the front end part of the system with respect to how arrests happen in this country and how sentencing happens in this country. And that requires structural legal changes, right, changes to our laws and practices. But even if we could account for everything that is a concern to us, still tying that to a person's liberty I think is a fundamental question that isn't being answered by the changing and the fixes to the technical "fixes" to these tools.

Is there utility based on -- because that's not what I heard Faye describe. I heard her say utility is about supports and rehabilitation with respect to an individual. And how we are helping, how we need to change our thinking about the criminal legal system fundamentally, right. We don't have a system that is founded upon the idea of rehabilitation. It's a retribution system, it's a punishment system. And that is fundamentally the problem with it ultimately.

And so if the tool's purpose is to help us think through and better assist people with rehabilitation, because the core of removal from society, supposedly, is that someone needs time away to address some of the issues that they may have had. Now, whether or not that means incarceration, we could debate that, because I don't know that that's true in every case. But that there should be supports in place to address that person's needs, and we don't have that.

And so if the tool is just doing that, possibly okay, right, but if it is about to make a decision about someone's liberty, I think there has to be other considerations, and we just haven't seen that tool. It doesn't exist. And so until it exists, we can't even really have this debate. It shouldn't be used, period. We shouldn't be using any of these tools. There should be a moratorium on tools until and unless we have determined that they meet all of the criteria that I think Faye laid out eloquently, right, that they are transparent, that they are fair along racial lines, that they are, you know, able to be independently validated, that they are adequately assessing a person's needs and then providing the connection to the supports that those needs identify.

All of these things must be true in order for us to even get to the question about now can we use it to determine whether someone should have certain conditions related to pretrial and release, if they should be detained pretrial, if they should be sentenced to a certain thing, if they should be released post-conviction, if they should get out early post-conviction. All of those things have to be true first before we can even ask the second question, and we don't have that system today.

So until and unless that happens, they shouldn't be used altogether. We should be critical of them and demand better from our government. And the principles that we put out are mitigation principles, right, to address the concerns that I think Faye and Edwina eloquently laid out. And I'm a lawyer, so I'm not the scientist, right. So Faye makes a point I don't. That's not my skill. But what I can see very clearly is that how these tools are applied, they are not yielding the outcomes that they are professing to yield.

MR. WEST: Faye, your response?

MS. TAXMAN: So I think what you're asking for in terms of increasing fairness and suggesting is that, you know, we need fundamental change in our policies about how we do business in the criminal justice system. We're talking about a tool right now that is supposed to help on decision making, but the underlying policy in many cases is unfair, unjust. I mean, you know, it doesn't treat everyone who comes into the system equally. I mean we can just look at yesterday, right, with the pardon decisions that were made. Not everybody got an equal opportunity for those decisions. (Laughter) Sorry. But I mean this is the issue.

So on pretrial, you know, you have to ask the question, why would we detain anyone pretrial who actually you know, shoplifts \$20 worth of goods? Why would we do that? Why would we basically technically violate people from probation because they have a positive urine, because they have a history that maybe goes back many years in terms of drug use and they haven't had access to treatment? So, you know, we're talking about these tools and it's legitimate to talk about the tools, but the tools really are just an instrument in our whole flawed justice system. And I think we as a society should basically be asking better of our state and federal and local governments in terms of better policies for how we deal fairly with these sort of issues.

You know, a lot of jurisdictions have moved away from arrest on certain types of

offenses. They now do, you know, citation offenses, right. So if you're in Montgomery County, Maryland and you get stopped for -- and you're found to have marijuana, personal possession of marijuana, you don't get arrested for marijuana. Here in the State of Virginia, you would get arrested for marijuana. In Montgomery County you get a citation offense that you have to pay a fee of \$25.00. You know, that's other ways in which we found to be able to handle some of these issues.

Our biggest problem is in the -- and because of the era of mass incarceration, we have basically criminalized a lot of behaviors, and those behaviors -- and we tend to look for those behaviors in minority communities and people of minorities tend to get caught up on those small issues more so. And so it's our underlying policy that's flawed.

I would go back to, though, the decisions that get made in the justice system, in order for them to be fair and just, the people who are making them need to be held accountable. And that's to some degree with the instruments allow us to do. They're a checks and a balance. The problem is we need to refine the quality of those instruments.

MS. COOK: And I would add that --

MR. WEST: Okay, and then we're going to open the floor to questions.

MS. COOK: Yeah. I would just say that, you know, I think you're absolutely right. We obviously agree that the fundamental problem is the laws that we have in this country, that we just have to change everything about the current legal system, soup to nuts, and we put out a platform that talks about the way to do that. So everyone should go to our website and look at the vision for justice that talks about how we can radically transform the criminal legal system and move away from criminalization and incarceration as the primary mechanism for public safety because we know it doesn't work. You've been there, done that, let's try something different.

But ultimately, with respect to a tool and decision making, it's still a policy choice, right. Many cases, you know, the data is the data, but someone is deciding what the data means. Someone is saying and making a choice about six means X on this scale -- I'm just making a number up -- six means you're risky, right. Six out of ten means you're risky, and that's a policy choice, that's a decision that someone else is making. So that also has to be governed accordingly as well.

MS. TAXMAN: That's why we need a national commission.

MS. COOK: But anyway --

MS. TAXMAN: And that should have been in your platform, which I love by the way.

MS. COOK: Thank you, thank you. Thank you. We can talk about it.

MR. WEST: Let's open the floor to any questions or comments from the audience.

There's a gentleman right here. There's a microphone coming up behind and if you can give us your name and organization.

QUESTIONER: Absolutely. So I'm Alex Rushe from Chapel Hill. I'm a health informatics Ph.D. student. I have a healthy terror of this phrase "data science" because I feel like it gives an artificial halo with both the words, data and science. And so it can become a vehicle to abdicate our responsibility for moral judgment.

So the question that I have for you is, is it ever ethical to include elements of a person that they do not choose about themselves in a predictive model for recidivism or anything else? Can we ethically include demographics that people don't get to choose about themselves and not pay a moral cost?

MS. TAXMAN: So most of the risk assessment tools and needs assessment tools do not include race, gender, or age directly. There's indirect ways that they get included. (Laughter) And so, you know, 30 years ago when I was trained as a methodologist and I was trained on how to develop instruments, we were basically -- you know, had discussions about the ethical principles of including demographics. And so what you'll see is you won't see those typically on most tools. Unfortunately, though, you know, from how the criminal justice system behaves, other variables, like number of prior arrests, those are highly correlated to environment and location issues, police behaviors. So it's not as clear as in some of the health instruments where you might have some more direct measures. We sort of shied away from that, but you can't shy away from the fact that, you know, the variables themselves, the way they're constructed sort of can reflect on some of the dynamics.

MR. WEST: Right here, there's a gentleman with a question. There's a microphone coming up from behind you.

QUESTIONER: Hi, my name is (inaudible) and I'm an intern at New America Foundation. I like the bold idea that our AI textbook was wrong, like there's structure problems and some missed

cases that -- compares on other things and learn there are some problems. But who can say that, okay, hey, there are some structural problems and it was not fair and it was not transparent? And who can take the responsibility of that, grab a mic and get into the live show and say, hey, we were wrong, I feel sorry about that and we should stop? Who can say that to the public?

MS. COOK: Well, we've been saying it. (Laughing) Do you mean which -- you know, are you asking which of the producers of tools will say that? Is that what you're saying? Is that what you're asking?

QUESTIONER: Who will take responsibility?

MS. COOK: Who will take responsibility for -- I mean I think the responsibility I think likes in a lot of different places. I mean there are designers of tools, you know, there are researchers and designers of tools, there are governments who are buying the tools, there are manufacturers. I mean there are companies, there are a lot of companies who are engaged in development of AI in a lot of different ways. And it's not just risk assessment instruments. I mean there's facial recognition, there's all types of things that they are coming up with to make the criminal legal system more efficient and effective. And I think it is incumbent upon everyone to sort of hold everyone who is involved in this, you know, development and implementation and production accountable for the concerns that we have raised today. And we should all be saying it, you know. We should all be talking about this with everyone who will listen and with those who make -- ultimately policy makers who make these decisions in many respects, right. I mean there's some corporate responsibility for manufacturers and companies that work in this field. And I think civil rights organizations like us, we often work with them and talk to them in detail about that responsibility and about what the civil rights implications are for this type of technology. That's why we put out the principles we put out, that's why we've been in this space talking about AI broadly and the use of technology and civil rights broadly. Because it's not just the criminal legal system. I mean there's health decision making that's happening, there's employment decisions that are happening and using tools to make those types of decisions, and we should be concerned and aware of all of those things.

MR. WEST: Other questions? Right here, there's a woman with her hand up. There's a microphone coming up from behind you.

QUESTIONER: Hi, Chandee Jung, former legislative fellow at Congressman (inaudible) office. I'm also a UC alumn.

So my question is, could you talk a little bit about the funding opportunities and the current state of developing this new instrument in terms of like just R&D stuff, federal, private, individual? So what is the current barrier, if there are any, to developing this new instrument and new system?

Thank you.

MS. TAXMAN: So I would say that how these instruments get funded is actually one of the factors that leads to this poor design issue. There's no major federal funding stream from any research organizations, National Institute of Justice, National Institute on Health, that is devoted to developing these types of instruments. And so you have essentially entrepreneurial companies or individuals who seek funding. There's jurisdictions that are interested in -- you know, because the big push in the reform movement has been using instruments, I mean that's been sort of the first step that people have talked about, you know, for about the last 15 years. But because there's no direct line for the quality issues, that's a major issue.

So I see the funding problem as contributing to the poor design of these tools and, you know, until we're serious about how we can think about measuring, I think, you know, some of the key variables -- I think both Edwina and Sakira talked recidivism. I mean we have the worst measure of recidivism possible. It can be anything, right.

In the health system, if you have a disease, if you have asthma and then you get diabetes, you're not considered a recidivist (laughter) because your asthma now turned into diabetes. But in the criminal justice system, if you get arrested one time for drinking while intoxicated and the next time you get arrested for sleeping on the street, you're considered a recidivist. So we have just really poorly designed measures, and that affects this whole quality and there's no really funding stream to actually deal with that.

MS. DORCH: There's actually a funding stream that supports the status quo, because Second Chance grants -- in order to get a Second Chance grant -- and I was attached to a Second Chance grant here in D.C. -- you have to use a valid risk assessment instrument. You cannot get the money unless you are using a tool. And Second Chance grants, just to show you how odd this whole

area is -- so in 2009 we began giving Second Chance grants, and Second Chance grants are a good thing and tax payers want to support Second Chance grants, but to get that Second Chance grant you have got to agree to use a risk assessment instrument. So in 2009 we give \$25 million to Second Chance grants. Each year we increase the amount that we give to Second Chance grants, where you have to use an already validated risk assessment instrument. This year we will give \$90 million towards using a validated risk assessment tool. They didn't say that you could go out and make your own or ask a consultant to make it, you have to use one that's already validated.

And so they've recently done two studies in which they've looked at the people who have been attached to Second Chance grants -- treatment group, control group, no difference between them. They both go back to -- are rearrested at the same rate. But in the meantime we've spent over time nearly \$800 million in Second Chance grants with no difference between the treatment group and the control group.

MS. TAXMAN: You can't really say that though, because that was one study of one Second Chance --

MS. DORCH: Two, two.

MS. TAXMAN: Two studies of two Second Chance grants and there are, you know -- I think there's over 300 or grants given a year. Not all of them have studies to them. And this is, you know -- it's also the fact that, you know, the period of time that people have to implement the Second Chance grants, or most grant programs from the Federal Government, is way too short in order to actually help change an organization in a way that you can demonstrate results. I mean we give people three years to do all the work that has to be done in a lot of these grants, and that's just insufficient given the fact that it takes almost a year and a half for a lot of these state and local county governments to basically get the funding in place, hire the staff they need to do, train the staff, put in place whatever -- all those things.

So I don't think you can generalize from two studies. And the other piece is that the money is so little that -- you know, RTI, Research Triangle Institute, when they did an analysis of some of the federal funding found that for the average client they got around an extra \$600 per person. So that goes to your earlier point that that \$600 is insufficient to really help someone deal with housing issues, employment issues, you know, re-entry into the community in different ways. So, you know, we're giving

so little money and expecting so much in these evaluations.

MS. DORCH: And one of the things that we learned from Second Chance grant is that neither group, not the treatment group nor the control group, get the services, which was my earlier point, which is that neither of them can get the services.

MR. WEST: Okay, we have time for one more quick question. In the very back there's a gentleman with his hand up.

QUESTIONER: Hi, Aaron Mattis. I do AI policy stuff at DHS. I want to get this stuff right, but alas my influence is slender. (Laughter)

Couple of points and a cynical question -- no, devious, not cynical. First, Professor Dorch, you talked about federal-to-federal, and you're completely right. It's also impossible. Like I can say at DHS, we see a problem where we shouldn't be out front on this, this should be HHS. We should be collaborating with them and finding the belly button. Making it work is just unbelievably hard. I wish it were easier.

All right. As a society we prefer technical fixes to institutional change and what we end up with is a technology that just continues whatever the institutions were doing. What if, right here in this room when this is done, we slap together an AI risk assessment tool -- it doesn't have to be any good because they're all snake oil anyway -- that does the kinds of things we're describing, find a friendly prosecutor that is interested in the kinds of reforms that we're discussing -- they exist, we know that -- and she then can use this tool to not incarcerate people, saying, hey, look, I have the halo of technological sophistication around the decision, and then we can extend it out that way. So let's use the flaws of our system to reform the system.

Anyway, great panel. Thanks.

MR. WEST: Okay. Now, we appreciate that suggestion.

We are out of time, but I want to thank all of you for coming. Please fill out your evaluation forms. And I want to thank Edwina, Sakira, and Faith for sharing your views with us.

Thank you very much. (Applause)

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