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WEBINAR

CRIMINAL JUSTICE REFORM IN AMERICA:
POLICING AND PRETRIAL DETENTION

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P R O C E E D I N G S

DR. RAY: Good morning and welcome to our webinar, "Criminal Justice Reform in America, Policing and Pretrial Detention." I'm Dr. Rashawn Ray. I'm a David Rubenstein fellow at the Brookings Institution and I'm joined today by a series of experts focused on police reform and pretrial detention.

What you'll hear are outcomes from two chapters of our joint report with the American Enterprise Institute. This is a bipartisan report that assembled a team of scholars, practitioners, policy experts to come together to talk about ways to reform our criminal justice system.

I'm delighted to be joined today by Brent Orrell who is a resident fellow at the American Enterprise Institute who also is the coeditor along with me of these very, very important project. I just want to say that it's been a pleasure to work with Brent up to this point and we hope that the sort of things that we are able to share today will be quite useful for people.

As I bring on Brent to do the introduction, I want to say that all of the viewers who are joining us can submit questions for the speakers by emailing events@brookings.edu that's events@brookings.edu or via Twitter using the #CJReform. Again, that's #CJReform. We hope that you'll engage with us in addition to the very thoughtful questions that we've already received. So Brent, I turn it over to you.

MR. ORRELL: Thanks, Rashawn. And I want to thank you as well for your thoughtfulness and your engagement with me on this project. It's been a real pleasure to get to know you and to get to know some of the scholars that are affiliated with Brookings who made contributions to this volume.

And I also want to thank -- a big thanks to the Brookings' communicate staff for their work in not just in organizing and executing today's event, but the communicate staff that work in putting the volume together on what was a very compressed timeline. And we're very grateful to have their assistance.

So Rashawn asked me to do a little bit of an introduction to this volume. I'm not going to go in detail into the recommendations and conclusions because that's what the conversation is supposed

to be about today.

I just wanted to set some context around why this volume? And why are we doing it now? Criminal justice reform is one of the unicorns I think of the current federal policy landscape. For the past nearly 20 years, presidents and Congresses of both parties have worked together to build and maintain a bipartisan coalition to pursue the long-term goal of reducing incarceration and improving the life outcomes and prospects for those who have been involved in it.

In 2004, President George W. Bush sought and received appropriations from Congress to create new federal programs targeted at assisting men and women returning from prison and finding job training, supportive services and employment. This (inaudible) to have helped open the way for the 2008 Second Chance Act that has invested hundreds of millions across multiple federal agencies in a wide range of reentry and other criminal justice reform efforts.

President Obama continued and expanded on these efforts to improve employment and educational opportunities with initiatives like Beyond the Box. The presidential commission on 21st Century Policing and Incarceration and a pilot program to restore Pell Grants for prisoner education.

President Trump signed into law the First Step Act focusing on sentencing reform and full reinstatement of Pell Grants for prisoners.

And now, President Biden, one of the key authors of the 1994 Crime Bill has now since report the reforms that would seek to address over policing and over incarceration without leaving communities within inadequate law enforcement protection and service, which they need and deserve.

Despite this record of bipartisanship, we today are at risk of falling into an unhelpful binary particularly with regard to policing. Support the blue or defund the police. Adoption of either of these polls would be a mistake particularly for communities that are already disproportionately affected by over policing, bad policing and crime of all types.

This report is a first effort at creating a policy form that actively supports continued bipartisan dialogue around criminal justice reform. The report is organized into seven chapters that roughly follow the sequence of an individual's journey through the criminal justice system, policing, pretrial and sentencing, prison reform, considerations for juvenile justice, promoting assistance from

criminal behavior, education and training and reentry.

Each chapter begins with a level setting review of what the existing evidence base tells us on the topic. And this is followed by recommendations for short, medium and long-term reforms. Beyond that there are also recommendations for additional research topics and author suggestions for additional reading for interested users of the volume.

Today we're focusing on policing and pretrial and sentencing policy, but I hasten to add that the bulk of the report is devoted to strategies for assisting those already involved in the criminal justice system to chart a different and better course for their lives.

Indeed, if we focus only on the frontend of the system without paying attention to issues of rehabilitation and restoration, we may inadvertently reenforce the idea that policing, prosecution and incarceration are the only tools available to us for creating a more just and more humane criminal justice policy and risk by neglect or by policy errors continuing social and political division. This is a counseled despair that we can't afford to follow.

Brookings and AEI will be scheduling follow on events for the rest of the chapters to broaden the conversation about what true criminal justice reform might look like.

Finally, I would be remiss if I did not say that participation in this project by an author on one topic should not be misconstrued as an endorsement by that author of other chapters or recommendations. These are complex matters that require nuance responses. Our intention is to continue to impress into these topics in the hope of developing a broader consensus on each.

And with that I'll turn the conversation over to Dr. Bell for an exploration on chapter one on policing reform.

DR. RAY: Brent, thank you so much for that great introduction. And as you know, we really aim to align with the first 100 days of the Biden administration. And as you say with that speedy timeline, we were able to do that.

So I want to bring on Dr. Monica Bell who has graciously agreed to be our moderator for the police reform panel. Monica Bell is an associate professor of law at Yale Law School and an associate professor of sociology. Before that she was a fellow and lecturer at Harvard Law School. And

there is so much that I could say about Dr. Bell, but as we talk before, she definitely wants to get right into it.

It is also my pleasure to introduce who is part of this panel as well and who coauthored the police reform chapter with me is Clark Neily, who is the senior vice president of the Cato Institute and has done extensive work in this particular area along policing as well as other lines. So Dr. Bell, I turn it over to you.

DR. BELL: Great. Thank you so much, Dr. Ray, for kind of kicking us off with this summit. I want to really quickly get into questions, but before I do, I just want to remind the audience that you can submit questions for speakers by emailing events@brookings.edu or, of course, via Twitter by using the hashtag #CJReform just as Dr. Ray was saying earlier.

But yeah, so I just want to jump right in. So the report starts with some level setting on the structural problems that give rise to unjustified police violence and killings in an age when rates of violent crimes throughout America are lower overall than they were in the 1980s and the early 1990s.

One piece of this analysis that I really appreciate in your report is that it aims to disrupt the idea that Black communities have higher violent crime rates because of, you know, so-called culture. And it explains that much of the disparity in violent crime rates between predominantly white neighborhoods and predominantly Black neighborhoods can be explained by neighborhood segregation along with access to housing, education and employment opportunities.

So the report shows that disproportionate police violent against Black people is avoidable. Dr. Ray would you mind expanding on this point?

DR. RAY: Sure. We really appreciate this question. So it's complex as Brent was saying, but if we aim to kind of simplify it into a few points. And Clark and I aim to highlight this in our chapter is that part of what happens is that police are often times put into positions to respond to society social problems.

They are at the forefront and often times the backend of what happens in local communities. And of course, it is no denying and everyone knows that often times low income, predominantly Black or Brown communities are often times plagued with more violent crime. And a lot of

that of course stems from as you noted, from a lack of access to resources, equitable resources in education, in work development and infrastructure.

And so, as we think through this one important point to make is that people then make the assumption that if these neighborhoods are more violent than we need more police presence there when often times what we need are more resources. So that often times, police officers aren't the front line of defense or even again the backline of trying to address some of these issues.

And I think a report in Washington, D.C. really highlights what's happening nationally. There was a report just released early this week in D.C. looking at use of force. And what the report found was that 91% of all use of force incidents were on Black residents of Washington, D.C. primarily concentrated in Ward 6 and 7 as people know who are from D.C. or who live in D.C. or have been to D.C. That's predominantly Black and lower income parts of the city. Unlike, say, Northwest, D.C. which is where Brookings and AEI happen to be located.

And so, as we look at that people will make assumptions. Okay, police are there to reduce crime. But then here goes the conundrum. Over 80% of the stops where there was no citation given, and in a lot of these cases force was actually used, those people were also Black suggesting a mismatch between who police are stopping and who they perceive to be engaging in crime versus what might actually be happening in these local communities.

And I think the bottom line here is this. Is that as we try to layout in this chapter and in a report, we need a comprehensive approach to not only addressing over policing in local communities, but also public safety. And public safety isn't something that is solely the responsibility of law enforcement. Often times, it's the responsibility of municipalities and even states and the federal government to provide adequate and equitable resources as we think through this.

But of course, we're here talking about police reform because we think about these racial disparities. But it's really important for people to note that those two things don't often times line up. It's simply because we see over policing in certain communities that doesn't mean that the people who are coming in contact with police are the ones engaging in that violent crime, and that's the conundrum that we really need to solve.

DR. BELL: Yes. So I really appreciate that kind of bifurcation there between higher policing and more public safety that's really helpful.

So another aspect of the report that I found to be quite brilliant is this invitation to think about police reforms that could enjoy broad support across the political spectrum that are not the same interventions that we usually hear from bipartisan coalitions like banning no-knock warrants, creating national databases and requiring body worn cameras which are kind of enjoyed a lot of bipartisan support.

So the short-term reforms include national training and de-escalation standards as well as reform to the court-created doctrine of qualified immunity. So these are fascinating, but thorny reforms. The deeply locally controlled culture and organization of police departments makes some people who really care about things like federalism balk at the idea of enforceable national standards in policing.

So the report says, and I'm quoting here, "Police officers regardless of whether they live in Kentucky or Arizona need to have similar training." You know, but some people might argue that Kentucky and Arizona are actually very different places and, thus, might justifiably have different standards.

So I want to invite Brent into the conversation here. You know, this report aims to coalesce around bipartisan visions of reform. So I'm wondering, how would you make a case to conservatives concerned about federalism, with respect to the short-term reforms in district court and really for national police reform efforts in general? What are the key lessons you've learned for how to sell these types of systemic changes to lawmakers? Especially those who don't want to look like they're weakening the police in order to -- or in service of making communities less safe?

MR. ORRELL: Thanks, Monica. It's obviously the question *au jus*, right? In terms of actually being able to advance legislation on police reform and this topic. It very much hangs on this question of what the federal role actually should be?

You know, I think that most Americans, if we can press the opinion polling into it, that there is a disconnect between the relative immunity of police officers and the fact that they are licensed to

as agents of force in society. And so, you know, I think that at the same time, you know, our perspective on this matter -- and this is the qualified immunity issue -- is really informed by a world in which QRI is a fact.

We don't like some of the outcomes that maybe associated with that fact in terms of excess force, another officer involves killings. But what we don't have is a memory of what it was like before QI or what our world would look like without it. And I think it's in this context -- and this goes to your question of sort of how can the service be brought along in this discussion? Keeping in mind that it's sort of a traditional commitment to federalism.

And it's very important that we allow the federal system to operate as intended with states and localities leading the way on reform as they already are. I mean as we've seen in Maryland, New York City, Colorado, other places. The states and localities are already operating as laboratories of reform around this issue.

And it's important that the federal government engage in this in a supporting role and see how those things work. So what is that supporting role? Obviously, there are ways that the federal government can incentivize and should incentivize reform. There are ways that it can support reform through policy and then there's the role of evaluation.

You know, what's going on in the communities? We're already out ahead of the rest of the country in trying to shift policy on this issue and what lessons can they teach us?

And so, I think that in the context of, you know, the (inaudible) of the possible in terms of getting a reform bill through, Senator Scott, I think, who's the, you know, the linchpin of this and among Republicans in the Senate is already moving toward something that kind of very closely tracks some of the recommendations of the Brennan report in terms of shifting how liability is assigned in instances in which an officer is found to have used excessive force or violence of civil rights from the officer to the police department.

I think that's where Senator Scott is right now. That's not where the House is, but I think that gives you a sense for -- that's kind of the limits of what's possible at the federal level as well as, you know, this issue of respecting the role of federalism and policy development.

DR. BELL: Okay, great. Yeah. So I want to dig a bit deeper into qualified immunity as part of a larger conversation that many people are having. Of course, you know, Derek Chauvin in the George Floyd trial are front of mind there.

But a larger conversation that people are having about police accountability for violent against racially marginalized groups. So with respect to qualified immunity some people reject reforms. But the idea of reforms to qualified immunity because they believe qualified immunity justifiably protects police officers from having to pay settlements for doing very difficult work or very difficult jobs. And the courts are right to have very strong presumptions of deference to police officers' views about how best to conduct their work. Yet according to some research more than 60% of Americans believe that qualified immunity should be repealed.

So I want to invite Clark in here to tell us a little bit more about this issue of police accountability. So can you tell us about some of the competing interest, some of the policy interest I was talking earlier as well as current efforts in Congress and state legislatures to balance those interests and develop the best sorts of policies for accountability? Your muted.

MR. NEILY: Thank you, Dr. Bell. I appreciate that. I'm actually unmuted and I just missed the button.

So thanks so much for this question. Thanks to Brent and to Rashawn for the opportunity of participating in this important discussion.

You know, a lot of this is a balance act, but there still has to be some things that are non-negotiable and accountability is one of those things. There was a Gallup Poll last August that indicated that public confidence in police is the lowest that it has ever been since it has been measured that is unsustainable.

Police are not able to do their jobs when the public doesn't have confidence in them. People will not cooperate with them. People try to stay away from them. So that is unsustainable in the long term and we've got to restore public confidence in the police as an institution. That is simply not possible if there is a wide spread perception that police are insufficiently accountable, and I think it's clear that there is.

The cornerstone of our accountability policy for police is, of course, the federal law that Congress enacted in 1871 in the wake of the Civil War in the midst of widespread civil rights violations by government actors in the South. Today we refer to that law as Section 1983 and it provides people with the ability to sue government officials who violate their rights. The problem is that the Supreme Court invented out of whole cloth this Doctrine of Qualified Immunity that very simply enables a government official who has committed a rights violation, not an alleged rights violation, but who actually has violated somebody's rights to nevertheless get that case thrown out of court simply because there's not a preexisting court case with essentially identical facts. Where the courts have already said, look, you cannot put your knee on a restrained suspect's neck for nine and a half minutes until you kill that person. That's not permitted.

If that case is not already on the books then qualified immunity will be granted and the police officer who committed that act will escape financial liability to the victim. That is untenable.

So the question becomes what should qualified immunity reform look like? And then it becomes a balancing act as Brent suggested a moment ago. Two things I think are true. People need to know that wherever they go in the country they still enjoy the same civil rights as everybody else does. In other words, whether or not a police officer can tase you while you are in handcuffs does not depend on whether you're in New York at the time or whether you're in Texas or some other state.

Or to take an image from a recent disturbing video that was released. Rochester Police were responding to an incident where a 9-year-old girl was having an emotional incident. She was very agitated. They put her in handcuffs and when she would not slide quickly enough into the squad car, they sprayed pepper spray right into her eyeballs. Whether or not there's accountability for that act should not depend on whether it took place in Rochester or New Orleans or Miami. So that's one baseline is that our rights have to be protected no matter where we are in the country.

What we can experiment with, and what Brent suggested a moment ago, is in effect how we implement this accountability. All victims have to have access to a civil process for pursuing a damages remedy. One question that is very much a live question now is if that victim does get a monetary recovery where should it come from?

The law enforcement lobby is proposing a policy that may or may not be embraced by the Republicans. We really still don't know exactly what their, you know, preferred policy is. Whereby the officer who committed the rights violation will be completely let off the hook financially and all of the damages for that misconduct will be laid on the taxpayers through employer liability.

I strongly reject that approach. I think it does not provide for accountability. I think the individual needs to remain accountable and liable. But certainly, an approach that envisions kind of joint and civil liability where the employer and the officer are equally liable is one that I think a lot of people would support across both -- hopefully, on both sides of the aisle.

Final point. What we want to avoid is a kind of one size fits all that requires, for example, every single police department in the country to pick up the tab for even the most egregious misconduct of individual officers. That is the kind of one-size-fits-all policy that is, I think, absolutely inappropriate for this, you know, challenge of accountability.

So final point, leave states and local governments some room to experiment and develop best practices, but not at the expense of ensuring individuals that their rights are equally protected no matter where they go in the country, no matter what the color of their skin, no matter what neighborhood they happen to be in when they encounter a police officer.

DR. BELL: Thank you for that. That's really helpful. A really helpful way of thinking about the relationship between federalism, I think, and, you know, our rights being protected across the nation in our constitutional purview.

So, you know, there is so much that one could ask about in this report, but I'm going to get into some of the long-term reforms you propose. And so, you know, one of them changing police culture is one of the hardest in my estimation in at least two senses.

So first, it's hard because there aren't really metrics for police culture in the way that there are metrics for a lot of the other outcomes that we tend to focus on in policy spaces and circles. So it's just really hard to know how one would measure or understand whether an effort to change police culture has been successful or not so that's one challenge.

I think probably the bigger one, you know, and maybe the police culture however one

might define it is not actually changeable at a massive scale. So I'm thinking here about the work of former Baltimore Police Chief Anthony Batts who poured significant effort and leadership into trying to change the culture of the Baltimore Police Department from 2012 to 2015 before the death of Freddie Gray and before he left the post.

So Batts spoke out this past October and described the culture of the Baltimore Police Department in his words as "One of the most battered police organizations I've seen in my career and it would take building from the ground up." So he didn't blame the officers. He talked about how some of the officers were great, but he blamed the systems that were surrounding them.

And, you know, this is not a really dissimilar critique from a lot of the criticisms of Black Lives Matter activists in support of defunding or even working towards the abolition of police. So while these ideas might seem unreasonable to some people, the basic claim of those activists is not too different from the critique that Chief Batts was offering which is that individual police officers might be nice people, might have good intentions, but the systems in which they are operating are just too broken to fix.

So, Rashawn, I have just asked Brent and Clark to respond to some of the critiques of some of the proposed reforms in the report from the right. I want to ask you about some critiques from the left that some of these reforms might just not be achievable even if they are long-term proposals. So how would you respond to those criticisms? And really bringing one of the audience member's questions here.

You know, they asked how do we break through entrenched police culture to make the reforms need to save lives from unnecessary police violent? And I'm just kind of tacking on here someone who's empathetic to these types of arguments. How possible is that? And how do we know if we've achieved that goal?

DR. RAY: Well, I think -- I mean, look. You just have the best questions I must say. All of us have been saying that. I think the big thing and former Chief Batts highlighted this.

I want to make a few central points. The first thing is once we get past sound bites, once we get past slogans and you really listen to what people are saying. They're saying similar things like what former Chief Batts said, as you noted, is right in line with what activist and others have been saying.

And once we get past that and we actually read and we actually hear people in depth about what they're saying that's important. And thinking about Baltimore, and I've done a lot of work on policing in Baltimore with our virtual reality training program that we have at the University of Maryland in the lab four, class social science research. And one of the big things that I think about when I hear Chief Batts' comment is something that Dr. Odis Johnson, who's a professor at Johns Hopkins in Baltimore, said on a panel that I was on with him recently.

He said, "I'm unsure if culture is reformable. I'm unsure if culture is reformable." Now, as a sociologist and a structuralist, I think, oh, that's interesting. This is, you know, kind of a theoretical way in which we think about it. About the relationship between structure and culture. But when I think practically, and I've worked with thousands of police officers around the country in dozens of police departments. It speaks to something that I say often. And I'm going to try to succinctly explain it.

One thing that I say often is that bad apples come from rotten trees and policing. You see one of the notions is that these bad apples like Derek Chauvin or the officer that Clark talked about in Rochester or the other ones we can mention. There's some kind of way they are just isolated. And in all the research I've done on policing shows that that's not the case at all.

And part of the embedded assumption about bad apples is that there is some sort of way that the system is alleviated. And also, that good apples can some kind of way take up the slack for all those bad apples and overcome them. And that is not what happens at all.

In fact, what I find like when people make the statement overwhelmingly there are good officers. And for some reason, people always feel the need to say that, to make that statement. Well, yeah, that's a given. Like we shouldn't have to say that. It's not about the good ones, right? That's not what we're talking about. But one thing about the good ones that I found is that good apples often times get pushed down and pushed out. What do I mean by that?

Officers who often times intervene, who feel as if they have a duty to report even if there isn't a law in the books for it, I find that they often times get stigmatized. They're more likely to be demoted. They're less likely to be promoted. I've seen them transferred out to the farthest district away from their house, put on nightshift. Like these are messages. Not only are these messages to that

officer. It's messages to other officers about the blue wall of silence. See the blue wall of silence exists not just because officers want to be loyal, but it also exists because there are dire consequences for officer's livelihoods if they try to crack it.

The other thing I found is that officers are pushed out like the officer in Buffalo, New York who literally essentially jumped on her partner's back to stop him from doing what could have been a George Floyd situation. After 19 years on the force, she got fired and just recently got her pension back.

I could go to Murfreesboro, Tennessee. I could go to St. Lewis, Missouri and talk about all these so-called good apples that have been pushed down and pushed out. And only when you start to look at the system that part of one of the ways that we can actually address this is to do a couple of things you mentioned.

The first big thing is to alter the metrics of success. See in policing, we pretty much have all the data on deficits. But when is the last time anyone has seen a stat about how many conversations a police officer had throughout the day? How many times they helped someone who was lost? How many times they helped someone in need?

We don't have those metrics. Instead, we have all these negative metrics. Use of force. How many times they pull out their gun? How many stops they made? How many tickets they gave? And when you have a deficit model of success then people see that. I've seen it highlighted on dozens of police departments around the country where you go in and it has a bulletin board of how many arrests people have made. How many stops they've made? How many citations they have given out? Those are the metrics of success.

So we have to change that. And one of the ways that we outlined in our chapter that we think we can change it is not only in restructuring qualified immunity but also in having police department insurance policies and police officer malpractice insurance. Now, there's a few examples already.

The big one is in the state of Colorado where what they have is they're moving towards a police department insurance model and then also officers having liability insurance up to a certain amount so that they take some culpability and accountability for the actions they had. That's a share model. I think Minneapolis is going to move towards that model.

Of course, they're having a lot of issues, but they're trying. They talk about that particular plan as well. I think New York will probably explore that in some way. And what this looks like -- I want people to think about this.

If you are a physician, if you're a lawyer, if you are a plumber, if you're an electrician, you have liability insurance. And so, the point is that we don't want to see police officers having to so-call go in their pockets to get that even though some people will see that. Often times, they don't even have the finances to do that.

So that wouldn't be a pathway that would be useful even for victim's families. But if you had an insurance model what would happen is that the police department would take some accountability and the individual officer would take some accountability. And we actually had some examples for this.

Small departments, see that are 1,800 police departments in the country or law enforcement agencies. Let me phrase it that way, in the country. Most of which are small. They're like In the "Heat of the Night."

So if you were like me and you grew up watching that show, most of them are around, you know, 10 officers. They're not Chicago and New York. And so, part of thinking about that is they have to take on risk in some way. And they take that risk on by forming a risk pool with similarly situated municipalities, small places.

And what research tells us is that the ones that have that we've seen officers and departments be held accountable such as in East Tennessee where two officers beat up a motorist who was on a motorcycle. And the insurance company came back and said, your department is costing us too much money. You either have to let these officers go or we're going to or we're going to drop you from the risk pool. Well, it also had implications for other departments because they were part of that risk pool.

On the other end of the spectrum, you have entire departments that have kind of had a series of incidents like a department in the suburbs of Los Angeles and the insurance company said, we can no longer keep you insured. So similar to people thinking about when you turn 16 or 17 or 18 and you got insurance and all of a sudden you had an accident and you got a speeding ticket. Your insurance

increased. Well, that increased your risk. We should have that same approach to law enforcement and this is why.

Because Clark said something that was really important for people to recognize here. When we start talking about civilian settlements for police misconduct. In the past five years, taxpayers in only the major 20 metro areas have spent out over \$2 billion in civil settlements. It doesn't come from the police department budget. It comes from the general funds. Money that could be going towards education and work infrastructure that would actually reduce crime in impoverished communities.

In places like Chicago not only do they appropriate money but they don't even have the money to cover it so they take out bonds. What people actually call police brutality bonds. Like this is the current model. It's very clear it's not working and, look, it's very clear that at the federal level, Senator Tim Scott has said, I think we're going to be able to figure out qualified immunity. I think we're at that point when it's kicked back to states and localities, which of course Republicans will want to allow states to have control and municipalities to have control.

We're going to see a lot of different models. Some won't change, some will. But for the ones that should change because what should happen is they should create a police department issuance policy and have officers take liability insurance like the Colorado model.

DR. BELL: Right. That's really get. I want to bring Brent in here. I think you have a comment?

MR. ORRELL: Yeah, thank you so much. And, Rashawn, thank you for that amazing overview of some of the really key policy questions that we're graveling with and what the data actually is telling us about bad apples and bad trees.

On this issue of culture. I agree completely that a culture trumps almost everything when it comes to all life. You know, these are embedded assumptions. Are ways of looking at the world. I certainly think that's true of policing. And that it's a very difficult thing to change.

In my day job, I focus on workforce development issues. And thinking about the role that work has in providing meaning in people's lives. How it helps to foster a sense of identity? How it anchors us and connects us to other people? And I think we can see all that at work what you and

Monica were both talking about in terms of the way that police forces operate.

There are codes written and unwritten. And I think that one thing that I have observed in kind of my reading on police reform is that officers need support in developing more of sense of vocation for what they do. The vocation should not stop at maintain of order or punishment of wrongdoers, right?

The actual mandate of police forces is to serve and protect. That's what police forces do. That's what they're supposed to do anyway. And developing a greater sense of vocation among officers, I think is vital in the training and development process. This is hard work. It's very difficult work. It's sometimes very dangerous work. And officers need that sense of not just their obligations to their fellow officers, but the obligation that they take on to themselves in serving the communities that they police.

So second thing, I'll stop after this. But in terms of rebuilding from the ground up. We do have one locality that has kind of done this. Camden, New Jersey in terms of really rebuilding the entire force from the ground up with different rules of engagement or use of force policies. You know, different everything. A real shift to community policing.

And so, is it hard? Yes, it's extremely hard. Can it be done? Yes, it can be done, but it requires leadership and it especially requires leadership at the local level.

DR. BELL: Thanks. I think all of these comments about vocation, about what it takes like organizationally to achieve some of these goals really give us some space to think about one of the other long-term proposals discussed in the report.

And that is the restructuring or regulations of contracts with the paternal order of police. So if we think about questions of vocation. And like what policing is to people who work in it. Unions, we see as play a big role there.

So one of our audience members asked relatedly onto this. Whether police officer's bill of right should be removed across the country? As we all know, Maryland which is the first state to incorporate a law enforcement officer's bill of rights into state law just appealed that law over Governor Hogan's veto.

So I want to invite Clark in here to let us know a little bit about how we should think about police officer's bill of rights in as part of this larger ambition. The report offers around regulating FOP

contracts.

MR. NEILY: Yeah. Thanks so much for that. I think this is a really important point. For people who don't know there are these contracts that are referred to colloquially as a law enforcement officer's bill of rights. And the protections that they provide to police are really quite stunning in many cases.

To take just one example of a very common provision. An officer who is involved in a use of force incident cannot be questioned by the Internal Affairs officers in his own department until he has had several days to reflect, and in some cases until they have disclosed to the officer all of the evidence that was gathered from the scene. Whether it's video recordings, witness statements or so forth.

So it's very obvious why this would be a problem. And it's also very obvious why law enforcement would never let a suspect outside of the law enforcement community have access to all of the evidence that has been gathered so that they can craft their story and make it consistent with the documentary evidence. So that's just one example.

Let's talk a little bit about what we know in terms of actual empirical data. There was a study from December of last year that was able to take advantage of a kind of natural experiment in Florida where sheriff officers are permitted to organize, but regular police officers are not. And so, you had the ability to study two similar situated populations, the only major difference being that one was unionized and the other wasn't. And the study concluded that there was a substantial increase in violent misconduct when the sheriff officers were permitted to unionize and this is not surprising.

We know, for example, that it took more than five years to fire Daniel Pantaleo, the officer who killed Eric Garner with an illegal chokehold in New York. And we also still do not know why Derek Chauvin was on the Minneapolis police force after more than 17 use of force complaints against including some involving the forbidden affixation technique that he used to murder George Floyd.

Somebody really needs to answer for that and the best I can tell no one has been required to answer for that. One of the ironies I would say of this issue is that one of the things that is the least controversial in criminal justice circles that in order for punishment to be effective, it must be swift and certain.

And that's a mantra among members of law enforcement with respect to criminals. But what we know is that when police engage in misconduct, particularly when they're protected by a police officer's union, accountability is neither swift nor certain. It takes an incredibly long time to go through the process. We've seen example after example where police officers who have been fired by their own leadership are then rehired after an arbitration. And so, in this context unfortunately as I said accountability is neither swift nor certain and these police officer law enforcement bill of rights and unionizing has a huge role to play in that.

I think the evidence is now quite clear that allowing police to unionize was the wrong policy and it's time to roll it back the way they did in Maryland.

DR. BELL: Right, yeah. So yeah, we have one audience question that I want to bring in before the final question. So a member of the audience asked why there can't be a police national organization setting standards and, you know, compare to like how lawyers have the ADA and doctors have the American Medical Association?

You know, I was thinking, you know, we have things like PERF like the Police Executive Research Forum that do kind of come up with national ideas. But it does seem true like setting this out of their -- maybe arguably there is some sort of national organization setting some sorts of standards. They don't have the same type of hold over the culture of local police departments that, you know, the ADA does with lawyers or the AMA has with doctors.

I'd like whoever wants to talk about that question. I just wanted to throw it open to some audience question.

DR. RAY: Well, I mean I think it's clear that there needs to be some national standards and this is a bipartisan issue. I mean Republicans and Democrats agree on this. Last summer is one of the things that they wanted.

And again, when we look at kind of the Senate package that the Republicans put together whereby Tim Scott and then the House package led by Congresswoman Karen Bass, and I analyze both of the policies. I mean they agree on about ten things. The big thing that's different is the qualified immunity part and I think that they figured out how to address that.

And one of the big things that they agree on are having national standards. And part of the reason why -- and, Monica, this goes back to something you said earlier, you know, thinking about what happens in Kentucky compared to another state. Well look, people are quite migrant people in the United States today. Whereas we go back decades before. Often times because of limited transportation, people didn't go that far from where they live. Now, in the same day, you can hop on a plane go from California to D.C., travel around, and go back and be home for dinner on the West Coast.

So part of thinking about these national standards is really, really important. The other thing that's really important -- and this is one thing that the state of Maryland -- well, I should say that the Democratic Caucus really pushed for that ended up not passing, but is really important is the duty to intervene legislation. And it's because of what I was saying earlier about good and bad apples.

See, what needs to happen is that these good apples who want to report need to be able to report to an independent body which I think will be at the state level. But it's clear that it doesn't need to be at the municipal level because too many people know one another. And when things route through internal affairs that way it can lead to a series of things happening and I've seen it. I've analyzed it. And so, that becomes one of the really important things to do.

The other thing about rebuilding which is how I like how Brent really put that. When we think about the rebuilding process part of thinking about rebuilding is to look at Camden as a model. Not only did they almost, I think basically have zero police killings in 2020, but their homicide clearance rate was over 90%. You know what that tells me? They have community trust. Like not only were homicides down, but they also have community trust.

So we have these models out here, but national standards are really important not only for having federal databases for bad apples so that what Clark was saying, we can't have an officer like Timothy Loehmann jump to his third police department after killing 12-year-old Tamir Rice in Cleveland, we also need these databases for use of force because look. We know how many people get the flu every year. We don't know how many people get killed by the police. Like that's a travesty.

Like the CDC actually collects data on how many people get killed by jelly fish, but we don't know about police. And it's not because police departments don't want to submit this information.

It's because often times they're small, under resourced, don't have the skill set to do so. So leveraging resources from the federal level, creating federal standards will not only think about training, but also think about how we compile better data to have municipalities working with researchers, local think tanks, and activist organizations that is how community trust is built. That's what Camden did when it rebuilt itself and now look at what it is doing.

In a pandemic where violent crimes skyrocketed, it went down in Camden. We have to ask ourselves why that's the case? And that's because they rebuilt something that included everyone and they did it right.

DR. BELL: Thank you so much for that question. I think it's a really great Segway to my final question. We have, you know, about six minutes left, and I was to ask each one of you this question that is also inspired by one of the pre-submitted audience questions.

So we have a lot of differently positioned people here watching this webinar. Some of whom work in police and policy spaces like all of us, but some of whom were just, you know, regular folks who want to contribute in their communities into this kind of deep and important project of changing our current policing structure.

So to each one of you, and I'll go through -- I'll go Clark, Brent, Rashawn. What can citizens in local communities do to educate themselves about the structural problems with policing and to advocate for the type of change that we've talked about thus far today? So I'll start with Clark.

MR. NEILY: Thanks so much. I think this is where it really has to happen. Obviously, we are a democracy, and in a democracy, the police work for us. And we need to make sure that that is not just understood, not sort of imposed, but that that's part of the ethic that people who work in the law enforcement honor and embrace that principle.

And I think there are two things that are really important here. The first is that no matter how frustrated you might be with policing, with systemic problems that we've been discussing, it is not constructive to simply throw rocks and to say, you know, all police are terrible people or that, you know, we should just fire them all and, you know, not have a police force. I don't think that's really very helpful. It's not very constructive and it certainly doesn't motivate the people on the inside, the people within law

enforcement to want to change their outlook or their behavior.

So I think what's better is if you're somebody who wants to change the culture, figure out a fairly discrete issue. It could be qualified immunity. It could be this problem that Rashawn just told us about with the failure to collect data about use of force and really develop some expertise on that subject so that you can speak credibly about it. And then reach out and engage constructively with your local leaders, with your mayor if you live in a city or with your state representatives and engage with them constructively and try to be a source of positive influence and useful information.

And I think that people who basically position themselves as police haters and don't have anything more to say than that really limit their ability to influence the process and the outcomes.

And I'll say one more thing. We've been talking about Camden a lot. I just want to throw a shoutout to my friend, Scott Thompson, who was the police chief in Camden from 2008 until last year and, you know, really oversaw a lot of this shifting culture there. I think deserves a lot of credit for that and I agree with what everything that Rashawn said. It is really a shining example of what's possible and an inspiration along the lines of what Brent told us. We should not give up on this. This problem is fixable and we can do it.

DR. BELL: Thanks so much. You know, I think it's interesting too to think about like the role of various types of activism and changing, not just the what people do and the whole level inside, but also how people are motivated to even care about these issues and how people kind of change the politics of police reform.

So it's like the police haters may not be influential in terms of the inside and like policies that get done, but they may well have a lot of influence in terms of changing the larger political conversation we're having so I really appreciate what you said. Brent?

MR. ORRELL: I don't think I have tons to add. I mean, I was reflecting on, you know, sort of some of the things that Clark and Rashawn have said on this.

I think there's a fundamental problem with issues of trust. It's not just the police. It's a demic in our society right now and we see it in relation to police. And so, I think, you know, focusing on rebuilding a trust between police departments and communities is probably the single most important

thing that can be done in order to reach the twin goals, right? Safe. Or the goals of a society that's safe and fair and just and promotes wellbeing inside the community. Trust is absolutely essentially.

And so, that kind of -- we can't legislate trust. We can't require it. We can't even buy it. You know, it's got to be generated and developed mainly through leadership. And so, that's what I think, you know, what local communities ought to be focusing on is the question of how to either rebuild or build up trust between our police departments and the communities that are most in need of good policing.

You know, we don't want to expose these communities to more violence, to more crime. And we won't have advanced the prospects of the people who live in those communities if we just trade police violent for criminal violent. Neither of those things are okay. And so, that's what I would really focus on that trust factor.

DR. BELL: Okay. Dr. Ray, you're going to last word for us? Thank you.

DR. RAY: Okay. So I'll be quick as we transition. So I completely agree with what's been said. I think it's five specific things.

First thing is read. A lot of researchers, a lot of practitioners like ourselves have done a lot of work on this. And often times, I hear people making statements and I think it's mostly because I'm academic and I'm like that not only is that not true. Like I've never read anything like that unless you're just reading something randomly that someone says. So read, get up to speed as Clark was saying. If, you know, it's overwhelming take a deep dive on one issue.

The second thing is you want to think about how your tax money is being used. Look at your locality, figure out how the money is being used. If you have a problem with some of the things, we said about how your tax money is being used, and I think people on the right and the left do. Well, then contribute. Go to city council meetings. Go to the state legislature and hear how your money is being used and help think through other ways.

Third thing. Become part of -- actually go through the civilian police academy. I think often times, people don't have a really good understanding of what police officers do and why they do it. I come from a law enforcement family. My great uncle was the first Black chief of police in my home town. I have another uncle that's a cop. I have a cousin that's a cop. I come from a military family. I'm the

different one in my family. I just stayed in school.

And so, thinking through that. If you don't have that experience then you want to level up. You want to know why officers do what they do. This is how we get to policy instead of overly focusing on the people because police officers often times do what they're trained to do and what they have the allowances to do. So if you have a problem with that think about changing the policy.

Final two points relate to embedding yourself in local communities. There are communities that are simultaneously over policed and have high crime. And if you've never been in one of those communities. If you're not from them. If you don't understand them, you need to go there so that you can better understand what's happening. Not only will you see that they're just amazingly good people in those communities, you also see, Monica, as you were saying, that there are activist literally trying to do their work.

They are violence disruptors who are not only thinking about over policing, but they're just thinking about gun violence in their communities. Like one of the biggest fallacies, I hear all the time is some kind of way people don't care about violent crime in their communities. I'm like you can't be from those communities to say that because I'm from those communities and people care about it because it's their family members being hit.

And then a final thing is community oversight boards, which I think should be big. And it's not just about symbolic representation of having the board to exist. It's playing a role in the misconduct board within the police department. That's what Maryland is doing. That's what D.C. doing. That's what some of these other places are doing. Nashville, I think is the model for that led by Jill Fitchard.

And so, when we think about those models that's how you get police officers and community members to the table at the same time.

DR. BELL: Well, thank all three of you for your work on this report. And I'm happy to help us turn to the next panel.

DR. RAY: Awesome. So as we transition, Monica and Clark, thank you all so much for being a part of this. This was great. Clark, it's been great working with you. Monica, thank you for your expertise. It is simply phenomenal. I also want to tell the viewers that they can submit questions for the

speakers by emailing events@brookings.edu or via Twitter at #CJReform.

So I now want to introduce in addition to having Brent on this panel two of our other panelist who help to coauthor the pretrial sentencing chapter which was so important to this volume.

First, Dr. Pamela K. Lattimore who is the senior director of research development for the Division for Applied Justice Research at RTI International. Has extensive experience on Capitol Hill as well.

And Dr. Matthew DeMichele who is the senior research sociologist at RTI International and who has worked on this issue for a myriad of time.

So I want to get straight into this conversation. And the first question I have is you all start off your chapter with a powerful statement. You say, "The roots of mass incarceration in the United States lie in policies and practices that result in jail for millions of individuals charged with crimes, but not convicted of any crime or a lengthy prison sentence for those who actually get convicted."

So I think when people hear that statement, they think, wow. So I maybe -- you know, I think a lot of people make the assumption and most people are in prisons or in jails because they've actually been convicted. Instead of being in jail or in prison because either they can't afford their bail or their hearing has been delayed or something along those lines.

So, Pam, can you unpack that statement for us? And talk to us kind of through that pretrial process?

DR. LATTIMORE: Sure, Rashawn. I'm happy to do that. And first, I'd like to give a shoutout to Cassia Spohn, who was the third coauthor on our chapter. She wasn't able to be with us today, but she's a well-known sentencing expert and we really appreciate her contributions to our chapter.

I think the first thing that I'd like to say is to -- you know, a lot of people don't really think about how people end up in jails and prisons. And, you know, it seems like it's just a natural sort of thing that, well, there are laws. And these laws result in people in certain actions happening.

But actually, deliberate policy and practice choices lie at the root of how people are punished. And one way to look at that is to say, well, what's the incarceration rate in the United States compared to our peer nations? And the incarceration rate in the United States is much, much higher than

it is in, you know, the United Kingdom and Germany and Australia and Canada.

And that's a result of specific policy choices that have been made and the enactment of laws and then how those laws are put into place. And a lot of this is in response -- I really appreciated your comments, Rashawn, about obviously people in these neighborhoods care about violent, right? The violent that's being commuted in their communities.

And if we look back about 50 or 60 years ago to the emergence of sort of the War on Drugs and the War on Crime and, you know, the Crime Act, the 1994 Crime Act, was in response to concerns about the level of violence in these communities that was brought forward not just by people in the outside, but also obviously very much by the people who were inside those communities and dealing with excessive violence in their streets.

And so, a series of laws were put into place to try to address that. To try to address violent crimes. To try to address drug crime and social work. A lot of those laws were associated with pretty draconian sentences by what you would attach to the rest of the world, right?

You know, 20 years for the possession of a small amount of drugs, for example. I mean in Germany, a 20-year sentence is almost unheard of for any kind of crime. And so, you know, the result of this was in the mid-1970s there was about 200,000 people in prison in the United States. In 2019, there were 1.4 million.

And I'm always quick to point out because a lot of my research is focused on community corrections that this five-, six-, seven-fold increase in correctional populations just didn't happen because we moved people from probation to prison. Actually, there was a five-, six-, seven-fold increase in the number of people who were being supervised in the communities.

And as a result, you know, we ended up, you know, in terms of post-sentencing people spending very, very long times in prison after they were sentenced. But on the front end of the system, what we ended up with was basically a preference for holding people in jail until they could go to trial.

And so, somewhere between two-thirds and three-quarters of the people sitting in most jails in the United States -- and there's over close to 750,000 of them today -- about two-thirds and three-quarters of those individuals have not been convicted at this point of anything. They are sitting there

awaiting trial.

And they're sitting there waiting trial because they can't afford to pay a bondsman. Most of the time to pay a bondsman to allow them to be released pretrial. And so, again these are deliberate choices. You know, a \$20,000, you know, bond placed on someone with a line of charge, they have to come up with \$2,000 to get out of jail pretrial. They're never getting that \$2,000 back. And so, you know, there's a gross -- they're never getting it back even if the charges are dropped, right?

I mean, people don't realize that. You know, they pay \$2,000 to get out of jail. So, you know, there's, you know, those issues. And all of these things are a direct result of policy choices that are made by lawmakers in terms of how we're going to handle this? And local practices in terms of who we are going to keep in jail?

DR. RAY: Yeah, thank you for that. Bill Galston and I, who is a senior fellow at Brookings. We wrote about the 1994 crime bill and we highlight that. Look, there were people in local communities often times and Democratic senators, Black politicians, Black people in local communities who wanted to see something done with crime. And then, of course, the outcome was just a dire stat that particular in the '90s, one out of three Black males could be expected to be incarceration, on parole or have a previous criminal record.

And I think for most people's social networks, it played out that way including for mine. And we can think about the differences between the way that drugs are handled today compared to how they were handled then.

And so, Matthew, I want to ask you. We heard in the first panel about policing and particularly, of course, we didn't talk a lot about police stops per se, but of course that typically starts the process. But we talked about the ways that policing could be reformed and improved. Can you kind of walk us through what happens?

So after this police contact what happens after someone is arrested? And kind of highlight some key statistics about the gravity of pretrial detention and incarceration.

DR. DEMICHELE: Yeah, most definitely. And before I start, I want to thank Brookings and AEI for pulling together this, you know, really tremendous report and for including us in the report.

And also, pulling together this webinar today. It's a great opportunity to get to talk with everybody online today.

And I'm going to start, Rashawn, by answering your question by kind of starting with the punchline of what I'd like to get to from my presentation today just in general, this conversation. And that's really to reframe pretrial detention and to really recognize it as there's a very little positive side to pretrial detention.

There are very few social benefits to incarcerating people prior to a conviction, prior to their adjudication, but yet we do it overwhelmingly. And why do I say that there's a very little positive side? Because pretrial release decisions are often referred to as the most consequential decisions in the criminalizing process.

And why do we say they're the most consequential? We say that because individuals that are detained pretrial are more likely to be charged with serious crimes. Individuals detained pretrial once charged are more likely to be convicted. Once convicted, they're more likely to be incarcerated, to be given a sentence of incarceration as opposed to a community sentence and more likely to recidivate once released.

So not only are there a few positives sides to pretrial detention. There are a host of negative consequences for individuals, families, and communities in society at large. And they go along with some of the information that Pam was just telling you. In that what we know is that there are about 11 million bookings every year so about 9 million people probably are brought through jails each year.

Law enforcement officers arrest them on the street and bring them to the many jails that are operated in our cities and counties across the country. And like you just heard there's about 750,000 people that are locked up in jails right now. And about two-thirds of them are being held pretrial.

So right now as all of us are sitting on this webinar, there are about a half a million adults in the United States that are sitting jails across the country mostly because they couldn't afford bail. And so, when we talk about the process that people face when they're going forward to be released, sort of to be granted pretrial release, what we know is about four% of individuals are actually denied release.

So 96% of the individuals are not denied release. And those 4% typically are really

serious crimes, mostly capital offenses. But we do know people that are charged with manslaughter and homicides, you know, can be released as well. We saw Derek Chauvin in Minnesota had been released on bail and several others have as well if they can come up with the amount of money.

But one of the keys to be released pretrial is a tool known as a bail schedule. And bail schedules are essentially a piece of paper or kind of, you know, heavy stock cardboard, if you will, that has a couple of columns on it that has information. And on one side is a statute or charge and on the other side is a dollar value that goes with that. So it can be, you know, a \$500 for a certain level of misdemeanors, \$1,000, \$5,000, whatever it might be.

And so, what we know is that about 70% of the people that come through the court system or through the pretrial system are offered bail. But what we know is that about 65% of people are being detained with the bulk of them being pretrial detainees. So we know that about 90% of the individuals that are being held in jails right now are being held there because they can't afford bail.

And very often these bails are relatively small amounts of money because I think when we're talking about pretrial form, we're talking about the pretrial process. We need to think about the nature of the folks that are coming through our system.

We know that pretrial detention is not distributed evenly across society. We know that the folks that are being detained are the most vulnerable. They tend to be from communities of color. They tend to be people that are suffering homelessness and other kind of cooccurring issues.

So what I'd like to talk about today is how we can work towards facilitating pretrial release for more people. So thinking about how pretrial decisions are made to broaden that net to actually allowing more individuals to be released.

DR. RAY: Yeah, Matthew, thanks for that. I mean that was some great detail. And it also speaks to a question that we got that I quickly want to ask Brent about because I think it's relevant now.

So Luz Rooney from the United Nations Association of the U.S.A. wants to know kind of the status of COVID in prison. So, Brent, I know we wrote about this last year with some people actually from the working group, Johnny (inaudible) Henderson.

Have things changed with COVID in prisons? I mean we know that COVID is reducing overall in the United States while it's increasing in other places. But are our prisons and prison (inaudible) still being hit hard by COVID? Was that actually ever addressed?

MR. ORRELL: You know, it's a big country. So yes, in some places it was addressed. Some jurisdictions have been very active in trying to get vaccines into prisons, others less so, frankly.

And the way that in our piece that we wrote and other pieces that I've written. We've tried to talk about this. Is we need to not think about them as prisoners but as members of the community that are simply isolated in a different target setting, right? It's no different really than nursing homes or any other setting where you have a lot of people in crowded conditions some of whom are very vulnerable to COVID.

So we've seen some improvement, but it's been slow. I guess now we've got enough vaccines that really anybody who wants one ought to be able to have it in fairly short order. But I do think that early on in the crisis, you know, the prison population is always relatively invisible to us. We don't think about them and that was certainly true in this crisis.

Some jurisdictions tried to move people out, reduce populations. And we probably need to look at how well that worked. But overall, I would say that it's been a very slow process of kind of bringing the risk that prisoners face from COVID into the public mind and into the minds of our elected officials who are receiving these vaccination programs.

DR. RAY: Yeah. I mean as you know, I mean people think about these prisons as isolated places. And often times, we don't really think of incarcerated people as "fully human" often times. But it spills over into local communities because you often times have prisons that are in particular areas and towns where a lot of people work in the prison or are affiliated with it and being exposed to it.

We just got another really, I think, poignant question that asks about the public defense system and public defenders. Noting that public defenders are vastly underfunded and mostly represent Black people and other marginalized groups who often times can't afford legal counsel. So this is kind of speaking to what Matthew was saying about who can afford certain things when it comes to the criminal justice system.

So the impact that public defense can have on lowering the incarceration rate is largely often overlooked. How can the public defender system play a role in shifting the conversation? And play a role in criminal justice reform? And I'll open that up to whomever wants to start. Matthew? Pam? Brent?

DR. LATTIMORE: You know, I can. I'll start and then maybe I'll turn it over to Matthew.

It's an interesting question for Matthew and maybe because we live in North Carolina which doesn't have a state (inaudible) public defender system. And so, there's a public defender office in our (inaudible) and some counties. And basically, you know, almost a pro bono, you know, private attorney system in other countries.

And, you know, there's a lot of question about when people have access to public defense and that has a huge impact also in terms of pretrial detention. If you don't see a lawyer until, you know, your first trial date, you know, you're not getting counsel that could help you negotiate, you know, terms of release early on, that arraignment or during your first hearing. And so, public defenders are historically underfunded, but like I say, in North Carolina not everybody even has access to a public defender.

So you know, there's a lot of work to be done there to assure that there's equity in the system. And, Matthew, I don't know if you'd like to comment further?

DR. DEMICHELE: Yeah. I don't really have much more to say other than, you know, people have the right to have counsel, you know, present for them. And they should have, you know, counsel present from the earliest moment of when they're brought in the pretrial system. And there is research that shows that individuals have better outcomes the sooner defense attorneys are put in place.

And I think that -- and this is what I'd like to talk about in my time today is that I think that we're at a place now where people, you know, are speaking about bipartisan solutions to the unintended negative consequences for mass incarceration. And I think a big problem is very often people say there's not enough funding or we can't afford this thing. Well, this thing is public defense and you can't -- the system doesn't operate if you can't have it.

You know, I don't get to drive my car when it runs out of gas just because I want to get

down the street. And the same here that public defenders are an essentially part of the criminal justice system and individuals have a right to have counsel. And we need to move away from arguments that say we can't afford a thing to saying we're going to ensure that we afford this very important element of the criminal legal system that we know that again the people -- Rashawn, the question is so important because the very people that need those services are the most vulnerable in society.

And there are people whose lives are hinging on \$100, \$50. You know, \$100. On what to probably to most of us on this webinar today are relatively small amounts of money. And I think that we as people and us as experts coming up with solutions have the ability to propose reforms that move away from allowing policymakers to kind of scapegoat the issue of just to say that there's not enough funding.

I mean we spend \$90 billion building prisons and jails and stuff so we need to put our priorities where they should be.

DR. RAY: Great point. You know, and on that point, I want to ask you all about some of your short-term reforms because I found them to be, I mean, just critically important and very well thought through.

One is the cost benefit analysis of pretrial and sentencing practices, which I think you all are speaking to. To set fines and fees for the ability to pay. So instead of using potentially one scale, it's actually what can people afford. And then another one is holding prosecutors accountable for filing and plea-bargaining decisions which we know is often times laced with inequality. And then just to literally reconsider probation and parole practices that contribute to mass incarcerations.

So would you all mind just each taking one or two of those in terms of how you think through these short-term reforms? Why they're so important? And what is things that we should see happen nationwide?

DR. LATTIMORE: I'll start with a cost benefit analysis. I think I may be the only economist on the panel, but anyway I'll start with that and just build off what Matthew was saying because as he was talking about, you know, access to a public defender. You know, I was reminded again that, you know, the fines and fees which is the second point here, right?

The fines and fees are paid by the defendant. And so, the people who are being asked to pay court cost and other fines of supervision. You know, places charge people for jail, right? So if you're jailed, you have to pay for your night in jail, which it seems really bizarre.

And, you know, I think a lot of this hinges on this notion of what's equitable and it goes down to the sentencing one as well. But what makes sense? We had a colleague on one of our projects who was observing a local hearing. And a guy got 30 days in jail. He was sentenced to 30 days in jail for biting into a chicken sandwich at a 7-11 -- well, at a, you know, 7-11 type place.

And you think about it. So he destroyed maybe a \$5 sandwich and he got a prison sentence or jail sentence at minimum in his pretrial detention. That probably cost the local taxpayer, you know, \$50 a night, \$1,500. I mean where's the logic in that? I mean where is the reasonableness in that?

And so, one reason these happen goes back to something that was discussed in the policing panel, which is who pays and who benefits? And the way that our justice system is set up, you know, the cost of what you're doing, the cost of a prison sentence isn't apparent to a judge who imposes it. So, you know, as far as a judge is concerned prison is free.

You know, sometimes it is either being paid for by a different level of government, right? And so, you send somebody to prison for 10 years and you don't have to think about what that's costing the taxpayers of your state. And whether or not the offense is really worthy of that?

And then if we had time to talk about this. And this addresses others of the chapters in here. This notion of rehabilitation and whether sending someone in jail or prison or sending someone in prison for 10 or 20 years is going to accomplish a goal of rehabilitation, right? And whether they're going to come back and be good.

So thinking about whether the punishment and the cost of that punishment is appropriate for the severity of the offense. I think there needs to be more consideration of that. And then the same thing with fines and fees.

There was an effort brought in, I think, in the United Kingdom noted in 20 years ago that basically said fines and fees will be based on income and which led to some pretty draconian, you know,

traffic fines for a multimillionaire who got a \$100,000 speeding ticket.

But, you know, on the side that we're talking about here, you know, saying that, you know, maybe you tie the fines and fees to the ability of paying it is something that only makes sense because the other thing that we don't realize is the inability to pay fines and fees results in people getting arrested and placed in jail where they're held until that can be adjudicated. And then, you know, you end up in this cycle where, you know, people just find it almost impossible to dig their way out.

And so, you know, thinking about the economics of our system and who pays and how benefits and whether or not the punishment fits the crime is something that we really need to pay more attention to. And something that actually it would be fairly easy to do in the short run, in terms of setting, you know, making explicit what the costs are.

DR. RAY: Yeah. Matthew, what are your thoughts on you all short-term reforms?

DR. DEMICHELE: Yeah. Thanks, Rashawn. Yeah, I'll be quick here. I know we're short on time, but I think, you know, with prosecutors it's really moving towards increased transparency and data tracking of the decisions that they make across the system. Really recording their plea-bargaining decisions and negotiating, putting those in writing, documenting those, and putting those on the record.

And just, you know, there's a lot of great prosecutors across the country. And, you know, we know they're doing a really difficult job, but really kind of getting rid of how opaque a lot of their decisions are, I think could be really helpful to kind of put it simply.

And then moving towards probation and parole. I think a lot of this comes back to my first point of that we know that there are little benefits to pretrial detention really. I would argue detention overall.

So what we should try to do with probation and parole is move towards having, you know, valid conditions, valid conditions of probation and parole that meet the needs for those individuals. I'm not sure if people on the webinar are aware, but most of your conditions for probation and parole are set by statute. So you're convicted of X so you get this basket of probation and parole goodies. You're convicted of something else you get a different basket.

And those baskets may not be related to the individual's needs at all. And they can be very large baskets that require a lot of different things that are very difficult for people to meet, you know, such as, you know, something that we've argued and researched and previously is this idea of drug testing.

We know that a lot of times drug testing is just a blanket condition, but is that really a problem that somebody is having? Is that a need that needs to be addressed? Or should there not be drug testing? Is that something to really waste a probation officer's time with?

So then this ducktails into the use of graduated sanctions. Looking again for nonincarcerated sanctions. There's been a move towards short-term use of jail. We need to remember that jail is very consequential. Spending, you know, I don't know. For me an hour, a minute, any amount of time in jail is a long amount of time. And in all seriousness, for these individuals 24-hours in jail, 48-hours in jail that's a very serious thing.

And so, we should try to use those things as last resorts, which ducktails into our last recommendation for this one, which is really controlling the use of revocation. And only using revocation for the most egregious of actions, repeated serious technical violations and new crimes.

You know, something to consider is about 25% to about 30% or so of new prison admissions are due to a probation parole revocation. So about a quarter to a third of new prison admissions are due to somebody having their probation or parole revoked.

So we just want to move to where we can, you know, as part of this reform movement, we come to this idea that we recognize that incarceration and detention are consequential and should be used as sparingly as possible.

DR. RAY: Yeah. And, Brent, I want to ask you. Because look, Matthew and Pam not only talked about the short-term reforms but also touched on the long-term reforms particularly thinking about revising sentencing statutes.

What I want to ask you as a person who spent a lot of time in the federal government working across agencies, leading various things, can you talk about the importance of interagency collaboration, which was one of the midterm reforms for this particular chapter?

MR. ORRELL: Yeah. Thanks, Rashawn. It's really important. I think we've got at the federal level in terms of responses to the universe, the broad universe of problems associated with criminal justice, incarceration, reentry. We've got a problem that's analogous to what happens at the local level.

At the local level as we talked about this morning. I mean we've got sort of one response to problems of public order. You know, as you were saying, Rashawn, we over rely on the police. We ask them to do things that they fundamentally aren't prepared to do. It shouldn't be in their remit to be dealing with homelessness and alcohol abuse and drug abuse and, you know, all of the many kinds of day-to-day incidents that police get called to do.

And we need a broader portfolio of responses. Well, part of that is really getting federal agencies talking to one another as well. You know, it's easy to get into this keyhole where you're just looking at this as a law enforcement issue and looking through the justice department lens on criminal justice. It's a labor department issue. It's an education department issue. It's a health and human services department issue. And particularly with things like substance abuse and mental health. SAMHSA should be at the table, you know, to help inform practice and policy and guidance to (inaudible) the police department.

So it's absolutely vital. I know that during the Obama administration, I was an interagency counsel. I think that those kinds of things are helpful. I think it would be even more helpful to be focusing on -- or to provide some additional focus on what are we actually trying to do here?

What we're actually trying to do is diversify the tool kit for working on public safety, public order questions and that kind of approach I think is both necessary and lacking.

DR. RAY: Yeah. I want to ask Pam and Matthew a final question. And then, Brent, I'm going ask you a question as we conclude and you give your concluding remarks.

So Matthew and Pam, Kenneth Goldsmith from the American Bar Association asks an important question that we've kind of been -- the whole point of this working group, in fact, is what are the key lessons learned for how to sell systemic change to lawmakers who want to look like reforms are per se weakening the system? So in other words, they don't want to think about these reforms because they

don't want to perceive to be weakening the criminal justice system or policing as an institution. What are the key lessons learned for how to sell systemic change to those policymakers?

DR. LATTIMORE: I think that I would ask a question back which is what of these individuals which is, you know, what is the most important goal for you? And is it retribution? Is it incapacitation? Is it deterrence? Is it rehabilitation? And which of these? So I guess this is two questions. Which of these do you think will make communities safer?

And once I think you decide on what you -- you know, retribution you can just lock people up forever and you don't have to worry about the rest of it. But, you know, if your goal is really to make communities safer than I think there needs to be a serious discussion in this country about how much attention needs to be paid to each of those purposes of our criminal justice system and which of those in what proportionality do we think we can best achieve safety in our communities? And so that would be my response back.

DR. RAY: That was good. Matthew?

DR. DEMICHELE: Yeah, it's a hard one to follow, huh, Rashawn? Yeah. I agree with Pam. I mean I think definitely the first principles is essential.

And what I would argue is, I guess, I would say the system is already weak. I would say that the lesson that we've learned is the system is weak. If it's a system, it's broken and it needs to be fixed. It's not addressing the needs of individuals and communities.

And I would also remind any policymakers of the 1970s. And the 1970s were a time when we had increasing crime rates. There were high levels of drug overdose deaths and there was a bipartisan movement to reform the criminal justice system and what came out of that was mass incarceration.

And where we are sitting today is somewhere relatively similar. And we have the opportunity today to recognize those problems that we created. The unanticipated negative consequences of those reforms have been like you started with, Rashawn.

One is, you know, 33% of young Black males are ending up in jail and prison. We know that we have, you know, thousands of people sitting on death row today. Of thousands of people sitting

in prison for life without parole. We know that we have incarceration rates that are far out of whack with our Western counterparts. And we know that right now as we're all speaking, we have a half a million of individuals that are sitting in jail pretrial mostly because they can't afford bail to be released.

And financial conditions of bail is not a new problem. This is a problem that has been around for hundreds of years in that the 8th Amendment, you know, had been talked about in the 17th century and, you know, was penned along with the Bill of Rights. So I mean these are not new problems.

And so, I think if we want to say that reform would weaken the system, we need to look at where the system is at now and it's probably as weak as it can be and so, you know, we need to, you know, make some changes.

DR. RAY: You two are great. I think that is a great way to end this panel. And I think that everyone is seeing the caliber of experts that we have for the working group.

So, Brent, I want to ask you as we close and we get your closing remarks. How can the United States transition from the current state that we've been describing? And a weakened system as Matthew said. I think that's important to note that people think that it's not weak. It already is and it must be leveled up. So how can the United States transition from the current state to the desirable future state while minimizing negative effects and possible reactionary policies?

MR. ORRELL: Yeah. Well, thanks for leaving me with that simple question to try to wrap up on, Rashawn, that's very kind of you.

You know, the whole purpose of this working group is to try to not to address just the pressing matters that we have on us right now in the, you know, the wake of George Floyd's killing and the protests and the movement for reform, all of which are extremely important. But we want to try to foster a broader discussion of how interlinked all of these different elements are in criminal justice reform.

You can't take them one at a time. Now, having said that we also can't solve them all at once. You know, there is going to be a period of innovation, of testing, of evaluation, of trying to shift the way that the system as a whole operates to something that's really just, I think, more consistent with who we are as Americans, which is a criminal justice system that is concerned with preventing and punishing wrongdoing when it occurs, but it's also committed to rehabilitation and the notion that once you pass

through the criminal justice system that ought not be the end of your story.

Unfortunately, I think that too often the presence of a criminal record is often the end of the story, and it shouldn't be the end of the story for any individual necessarily. We need to focus on aspects of this problem that are really built around helping people to recover from the experience of having commit a crime, having been in prison and now hopefully transitioning to a better life.

And so, as I said kind of early on in this discussion, I think we would do ourselves a disservice by focusing exclusively on these frontend issues. We've got a big human capital problem sitting in the middle of the criminal justice system and those are the issues that we want to explore in future conversations.

What are we going to do to help people get out of the criminal justice system and stay out?

DR. RAY: Yeah. I think that's great and of course people should read the report because some of the latter chapters focus on that. I mean as we conclude I think we keep trying to put band aids on open wounds and it's time to perform surgery on our criminal justice system. Everyone wants it.

So look, we're out of time. We just want to thank everyone for participating. We want to thank the team at Brookings, the comms team, the events team, the tech team, development, and in particular last but definitely not least. Was saved for last purposefully, is Samantha Elizando, who all of us have interacted with, who is my research assistant. We cannot have done all of this without her amazing work that she does. So thank you all for time and thanks for attending.

DR. BELL: Thank you.

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