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Murray Excellence in Scholarship Lecture at Duquesne Law School on March 21, 2019

James Forman Jr.

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Murray Excellence in Scholarship Lecture at
Duquesne Law School on March 21, 2019

*James Forman Jr.**

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I. HISTORY

I thought I would start by talking a little bit about what brought me to write *Locking Up Our Own*.¹

Two motivations stand out. The first has to do with African American portrayals in popular media. Whenever I see a film or a television show that is completely void of African American representation in the narrative—or, just as bad—with one character who is made to stand in for the entire black community or represent the entire black perspective, it makes me a little angry. If it’s a television show, I might just turn it off, because I refuse this distortion of the truth. *The truth* is a community that is diverse, complex, and full of individuals who disagree with one another.

Of course, Hollywood isn’t the only place with this narrative problem. It lives in our politics and has mapped itself onto history. I knew that in this book, I wanted to tell the story of the last fifty years through the lens of African American communities, citizens, and leaders in their full depth and complexity. I wanted to show the intellectual, cultural, social, and political history that so often gets written off or written out. In other words, I wanted to tell the truth.

The second motivation came from my work in the criminal legal system. There are a lot of personal stories in this book, but there’s one that really captures why I wanted to write it. It’s a story from the introduction, and I would like to share some of it with you now.

I had been representing a teenage client named Brandon in the Washington, D.C. Superior Court. (That’s not his real name; I

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1. See generally JAMES FORMAN, JR., *LOCKING UP OUR OWN* (2017).

change everybody's names.) Brandon was fifteen years old and had been charged with possessing a gun as well as a small amount of marijuana. He had pled guilty, he was facing sentencing, and I was his public defender.

I had decided to become a public defender because I viewed it as the civil rights work of my generation. My parents met in the Student Nonviolent Coordinating Committee (SNCC), one of the four major civil rights organizations of the 1960s. Their generation changed this nation.

My dad is black; my mom is white. They were an interracial couple at a time when those marriages were illegal in many states in this country. Their generation changed so much of that, bringing us the Civil Rights Act of 1964, the Voting Rights Act of 1965, and Fair Housing Act of 1968.

In school, they'll teach you that all of this legislation was passed by Congress and signed by the President. And it was. But don't forget for a minute the reason why it happened. These laws were passed because people marched, and people demanded, and people organized, and people litigated, and people pressured, and people demanded change. Theirs was a generation that faced down Bull Connor's dogs and marched across the Edmund Pettus Bridge, that went to D.C. 250,000 strong for the March on Washington for Jobs and Freedom.² They made it possible for African Americans of my generation to have opportunities that were unimaginable in our parents' and our grandparents' generation.

And yet and still, even with all that progress, when I was graduating from law school I could see that there was unfinished business in the Civil Rights Movement. And the place where I saw the unfinished business—not the only place, but the place that I saw it most clearly—was in our criminal legal system.

We didn't have the term "mass incarceration" then. But even if we didn't know what to call it, we had the underlying statistics.

We already knew by the mid-1990s that one in three young black men was under criminal justice supervision.³ We already knew that

2. At the time, the New York Times reported that 200,000 individuals participated in the March. See E. W. Kenworthy, *200,000 March for Civil Rights in Orderly Washington Rally; President Sees Gain for Negro*, N.Y. TIMES (Aug. 29, 1963), <https://archive.ny-times.com/www.nytimes.com/interactive/2013/08/24/us/march-on-washington-original-coverage.html?searchResultPosition=4>. Other estimates put the number of participants at 250,000. See *March on Washington for Jobs and Freedom*, NAT'L PARK SERV., <https://www.nps.gov/articles/march-on-washington.htm> (last updated Aug. 10, 2017).

3. MARC MAUER & TRACY HULING, SENTENCING PROJECT, *YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER 1* (1995), <https://www.sentencingpro->

the Sentencing Project reported that black women were the largest growing population in the prison system at the time.⁴ We already had passed Russia and South Africa in the late 1980s to earn the dishonor of being the world's largest jailer.⁵ We already accounted for a quarter of the world's prisoners despite having just five percent of its population.⁶

I had seen some of the transformations in American society that produced those numbers. I had seen them in my own life, growing up as a kid in the late '70s, early '80s. I grew up in Atlanta, in a mostly African American working-class neighborhood, with pockets of borderline middleclass. Two blocks in either direction from my house were two enormous hulking structures. If you went down the street, turned right and went two blocks, you got to the General Motors Plant. If you went down the street, turned left and went two blocks, you got to the Atlanta Federal Penitentiary.

Now, it's the '90s and I'm graduating law school, deciding what I'm going to do. One of those buildings has shut down, padlocked, with the jobs sent overseas. The other building has built an extra wing. And I don't think I need to tell this audience which is which.

I wanted to try to fight that struggle. That's why I was in the Superior Court in Washington, D.C., standing next to Brandon as his public defender. I was asking for a non-custodial sentence of probation. I had a letter from a teacher and a counselor at his school. His mother and grandmother were there in court. They were in the first row, just a few feet from me. They wanted him to come home. They had been at every court hearing asking for him to come home.

The prosecutor in the case was asking for him to go to Oak Hill. Now, Oak Hill is like a lot of juvenile facilities in this country. It combines a very nice-sounding name—what could be better than an oak tree on a hill—with a violent and brutal reality. It was a place where drugs were everywhere, and violence was commonplace. It was a place where young people often left worse off than they were when they entered.

ject.org/wp-content/uploads/2016/01/Young-Black-Americans-and-the-Criminal-Justice-System-Five-Years-Later.pdf (noting that almost one in three black men between the ages of twenty and twenty-nine is under criminal justice supervision).

4. *Id.*

5. See The Associated Press, *U.S. Has Highest Rate of Imprisonment in World*, N.Y. TIMES (Jan. 7, 1991), <https://www.nytimes.com/1991/01/07/us/us-has-highest-rate-of-imprisonment-in-world.html>.

6. VINCENT SCHIRALDI & JASON ZIEDENBERG, *THE PUNISHING DECADE: PRISON AND JAIL ESTIMATES AT THE MILLENNIUM 3* (2000), <http://www.justicepolicy.org/research/2064>.

The judge that had to make the decision in the case, Curtis Walker (again, not his real name), was an African American superior court judge.

He looked out into the courtroom, and he looked at Brandon. What did he see? He saw a young black man facing sentencing, an African American defense lawyer, and a black prosecutor.

The judge looked at Brandon and he said, "Son, Mr. Forman's been telling me that you have had a tough life. That you deserve a second chance. Well, son, let me tell you about tough. Let me tell you about Jim Crow segregation."

See, the judge had been a child during Jim Crow segregation, and he proceeded to lecture Brandon on what it was like.

He said, "So here's the thing: people fought, people marched, people died for your freedom. Dr. King died for you. And I'll tell you this: he didn't die for you to be running and gunning and begging and carrying on, embarrassing your family, embarrassing your community, carrying that gun. So, I hope Mr. Forman is right. I hope one day you turn it around. But today, in this courtroom, actions have consequences. Your consequence is Oak Hill."

I was so mad and frustrated. Think about it: the judge had just taken all of my motivations for becoming a public defender—the same history, the same heroes, the same decades of struggle—and twisted them into a rationale for locking Brandon up.

But over time, as I began to reflect and work through my anger, I started to realize that Judge Walker was not alone in those opinions he expressed. D.C.'s City Council had passed the gun and the drug laws that led to more severe punishments and higher rates of incarceration. The Council was majority-African American. The police chief and mayor were black, and the police force was majority-black.⁷ And even with all that representation in local government, D.C. was doing many of the same things that the rest of the country was doing: passing similar laws, enacting similar policies, policing in similar ways, and producing the same results. One in three young black men were under criminal justice supervision nationally, and in D.C., it was one in two.⁸

And, so, I really began to wrestle with the question of: how did this come to be? What happened in this country over the last fifty years that was so powerful, so all consuming that even in this majority-black jurisdiction, where the black community had some

7. See FORMAN, *supra* note 1, at 78.

8. *Id.* at 6.

measure of control over its local policies, local laws, and local policing practices, that we were doing the same thing as the rest of the country? How did that come to be?

To answer that question, we have to start with the rising levels of crime and violence—and with them, fear and anger—in African American communities over the last fifty years, especially during the heroin epidemic of the ‘60s and the crack epidemic of the ‘80s and ‘90s.

Heroin did to black communities in the 1960s what crack would do two decades later.⁹ The homicide rate in this country doubled in the 1960s, and it tripled in Washington, D.C.¹⁰ In 1964, 3% of the people entering the D.C. jail were found to be heroin addicts.¹¹ By 1969, that 3% had become 45%.¹² That’s an epidemic.

As significant as the epidemic itself was the reaction it generated in the community. To write this book, I had to review archives of City Council members. Many of them retired and turned over all their papers. And I was lucky, as a writer, that in some cases City Council members had kept all the correspondence they had received from constituents. Looking through file after file, for multiple summers, I saw an incredible social history of a city in crisis.

The people writing to their mostly African American elected officials were mostly African American citizens. D.C. was seventy percent African American at the time, which is why it was called “Chocolate City.”¹³ Eleven out of the thirteen members of the first D.C. Council were African American.¹⁴

Those letters that I found in file after file revealed pain and suffering. People would say, “We just fought the Civil Rights Movement. I’m afraid to take my kids outside. I feel like a prisoner in my own home. I feel like a stranger in my own city streets.”

And over and over again, the letters ended with some version of, “Do something. Do something. You’ve got to do something about it.”

In the 1970s and ‘80s, there was an eight-hundred percent increase in black elected officials in this country because of the Voting

9. See generally *id.*

10. See Debbie M. Price, *‘Murder Capital’ Label Has Long Stalked D.C.*, WASH. POST (Apr. 4, 1989), <https://www.washingtonpost.com/archive/politics/1989/04/04/murder-capital-label-has-long-stalked-dc/06a3c715-5888-4c26-b6c7-64ef290b305d/>.

11. Robert L. DuPont & Richard N. Katon, *Development of a Heroin-Addiction Treatment Program: Effect on Urban Crime*, 216 [J]AMA 1320, 1320 (1971).

12. *Id.*

13. See FORMAN, *supra* note 1, at 18.

14. See *id.* at 19.

Rights Act.¹⁵ The people receiving these letters were the first generation of black elected officials to be elected in any number in this country since Reconstruction.¹⁶

Of that first generation of black elected officials, many were from the South, and some had participated in the Civil Rights Movement. All of them remembered the long history of under-enforcement and under-protection of the law that has been part of the black experience in this country since slavery.

My dad used to tell me about it. My dad grew up during the Jim Crow era in Mississippi and then on the South Side of Chicago. He told me, “We didn’t call the police in our neighborhood, the black neighborhood. We didn’t call the police when there was a crime. The police weren’t going to respond to black victims. And if they did, the only thing you could be sure of was that they were going to make matters worse.”

This generation, they remembered southern sheriffs—southern sheriffs in cahoots with the klan (I say southern, but understand that there’s a “southern” mentality in many parts of this country). When asked about a homicide in a black neighborhood, they would say, “That’s not a homicide, that’s another dead black person.” And they didn’t use the words “black person.”

This generation remembered this history. They were shaped by this history. And now, they were in office and they were bound and determined with the limited power that they had to try to make the law enforcement apparatus respond to those black citizens who were asking for protection. Those black citizens wouldn’t have even bothered to write their elected officials during the Jim Crow era because they would have known they weren’t going to get a response. Now, there were finally some black elected officials in office, and they were hoping and demanding to get a response to their concerns.

So, crime is rising, people are scared, people are petitioning government. And there are at least some members of the government that want to respond. So why was the overwhelming response over the last forty or fifty years to turn to police, prisons, and prosecutors?

15. See Office of the Historian, *The Civil Rights Movement and the Second Reconstruction, 1945-1968*, HIST., ART & ARCHIVES: U.S. HOUSE REPRESENTATIVES (2008), <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Keeping-the-Faith/Civil-Rights-Movement/>.

16. See RICHARD M. VALELLY, *THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT 1-4* (2004).

Locking Up Our Own is a book and a story that is rooted in black politics, black communities, and black elected officials. But any story, or any account that is rooted in the black community, also has to be cognizant of the larger structures, the larger society, the larger institutions that shape, limit, and constrain the ability of black elected officials to act.

Let me talk about some of those constraints. The first one is historical. Black elected officials in this country, especially in the 1970s and 1980s, but still today, were elected to represent communities that, because of a history of racism, could not accumulate meaningful wealth and political power. This started with slavery—and we have had slavery in this country for longer than we have not. I'm not talking about anything metaphorical. I mean actually: 1619 to 1865 is a longer period of time than 1865 to the present.

Slavery was followed with Jim Crow and institutionalized racism in the South and the North. How did that manifest itself in policy?

Well, it meant that if you were a black member of the military, and you went off to fight, when you came back and you were supposed to get the benefits of the GI Bill, they weren't available to you.¹⁷

It meant black homeowners weren't able to get loans from banks to improve their houses, and, therefore, were not able to accumulate wealth over generations to pass down to their children and to their grandchildren.

It manifested itself in public policy decisions like where to build highways. In this country, we built a National Highway System in the 1950s and 1960s. President Eisenhower initiated it, and we take it for granted to this day. But those highways had to be built somewhere. And where were they built? They were built through the neighborhoods with the least political capital.

I'll just give you the example of Atlanta. If you have driven to Atlanta, you have driven on I-75 or I-85.

You don't know it when you're driving there, but when you're driving on I-75 or I-85, you're driving through what was known as the Black Wall Street. Dr. King was raised there, on Auburn Avenue, which was a thriving black middle-class community into the 1950s and early 1960s, until it was demolished, destroyed, and cut in half by the Federal Highway System.¹⁸

17. See IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* 115 (2005).

18. See Kevin M. Kruse, *What Does a Traffic Jam in Atlanta Have to Do with Segregation? Quite a Lot.*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/traffic-atlanta-segregation.html>.

So, this is the history. Because of a history of accumulated decisions in law and policy, African American communities had not been able to develop the wealth or the other resources to protect themselves without reliance on the State. Therefore, black communities were unduly reliant on police and prosecutors for protection. And police and prosecutors are who communities turn to when the other lines of defense have broken down. But they're never the communities' first choice for protection.

The second constraint is political. The people that I write about are local elected officials. Black political power has always been concentrated locally: city council, county council, mayors' offices. And local politics, I argue in the book, have been an important force in understanding how we ended up with mass incarceration, and what we need to do to respond to it.

But there are limits to local politics. Here is an example of one of those limits. The people that I write about, black elected officials, for the last fifty years, have had what I call an all-of-the-above strategy to fighting crime and violence. They say, "We want more police and more prosecutors," and sometimes they've unfortunately said, "We want more prisons."

But they have also said, "We want more money for drug treatment, and we want more money for housing, and we want more money for healthcare, and we want more money for education, and we want more money for jobs. We want national gun control to go alongside these local gun control laws we're passing. We want a Marshall Plan for urban America. We want the United States Government to do for its cities what it did for Europe after World War II, to rebuild, to revitalize, to reinvest."

For fifty years, elected officials have been going to Congress asking for money for all of the above. And for fifty years, they have been coming back from Congress with money for one of the above: law enforcement.

The last constraint that I'll mention is one that we collectively have to work on, to liberate ourselves from, in this moment. That is the constraint of our own imagination.

The generation of policymakers that gave us mass incarceration were constrained by their imaginations in how to respond to what were real and pressing social problems.

There are a lot of examples of this, but I will just give you one. One of the people I write about is a man named David Clarke. David Clarke was one of a handful of white members of that first City

Council.¹⁹ He went to Howard Law School in the 1960s. Then he worked for Martin Luther King when he graduated law school, became a lawyer for poor people and was elected to the City Council.

And for these purposes, just know that David Clarke was not a drug warrior; he was the opposite. The first legislation that he pushed when he got into the City Council in 1975 was for marijuana decriminalization. It almost passed.²⁰

In the early 1980s, he had been elevated to chair of the City Council, and heroin was back in force. He and the other City Council members were being deluged with letters from citizens about heroin addicts. Heroin addicts in public spaces, people gathering on park benches, people sleeping in alleys, people gathering on stoops, and people gathering on corners. Those citizens were saying, “You’ve got to do something about it.”

David Clarke forwards all the letters to the head of the relevant government agency, and he gets a letter back each time: “Council Member Clarke, we’ve received your citizen complaint about heroin addicts. We’re on the case.”

Who did he forward the letters to? Remember, the problem is heroin addicts in public spaces. Did he forward the letters to the Departments of Mental Health, Public Health, Addiction Services, Treatment of Rehabilitation, or Social Work? No.

He was not a dug warrior, but he was an American. And like so many of us, he was constrained by his imagination. The idea that the problem of a heroin addict in a public space is properly solved by someone with handcuffs and a gun, who can only take someone in need of treatment to one place (the local jail), proceeds from deeply ingrained cultural and political assumptions—assumptions that rise to the surface more easily in hindsight. David Clarke forwarded those constituent letters to the police chief because he genuinely believed law enforcement would help solve this problem.

One of my main arguments in the book is that, to try to understand how we got to this system of mass incarceration, it’s tempting to look at speeches of presidents or acts of Congress, which are undoubtedly important. But it’s crucial that we take notice of the small, incremental decisions that gave life to this regime. Decisions made across the three thousand counties and fifty states that make up America, over nearly a fifty-year period. Many, though not all, of those decisions were made by well-intentioned people. Decisions

19. See FORMAN, *supra* note 1 at 18; see also Jonetta Rose Barras, *The Strange World of David Clarke*, WASH. CITY PAPER (Sept. 29, 1995, 12:00 AM), <https://www.washingtoncitypaper.com/news/article/13006558/the-strange-world-of-david-clarke>.

20. See FORMAN, *supra* note 1, at 19-23.

like: which government agency should I reach out to for support when I'm in receipt of letters about heroin addicts in my community?

My argument is that those small decisions are the individual bricks that collectively built the prison nation that America has become.

II. THE PRESENT AND THE FUTURE

When I was a student, I would go to various social justice lectures. It seemed like the person would talk about the problem that they were working on, their life's work, their passion. Some of them were interesting and compelling, some of them were less so. But every time when the person finished talking about the problem, they would conclude in a way that appeared to say, "Okay, my work is done." They would leave the whole audience entirely depressed as they walked offstage.

I don't want to do that. This is a university and a law school that harbors a social justice mission among its core values, and I want to at least spend a couple of minutes thinking about how we respond to this problem that I've just described.

The first is connected to what I just said about how this system was built. Because it was built in a series of small steps made across so many domains and decisionmakers—many of them even hidden from public view—it's going to have to be dismantled and rebuilt in the same way. There's not going to be a silver bullet. There's not going to be a one-and-done act of federal legislation. Most of what needs to be done isn't federal at all. This is a problem that was overwhelmingly a state, county, and local problem. Eighty-eight percent of people incarcerated in this country are in state, county, and local prisons and jails, not federal ones.²¹ Eighty-five percent of law enforcement is state, county, and local.²²

This system was built with federal support at the state, county, and local level. That's where it's going to have to be taken down and demolished.

The local nature of this problem presents an opportunity because it puts us all closer to sources of solutions. It's hard to figure out exactly what to do in Washington, D.C., especially at this political moment. It can be productive to think about, "Well, what can I do

21. See JENNIFER BRONSON & E. ANN CARSON, U.S. DEP'T OF JUSTICE, NCJ 252156, PRISONERS IN 2017, at 3 (2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

22. See generally DUREN BANKS ET AL., U.S. DEP'T OF JUSTICE, NCJ 249681, NATIONAL SOURCES OF LAW ENFORCEMENT EMPLOYMENT DATA (2016), <https://www.bjs.gov/content/pub/pdf/nsleed.pdf>.

in my neighborhood, in my community, in my city, in my county, in my state?”

So, let me just put a couple of ideas out on the table that should inform our thinking about solutions. The first is that the system, as it is currently constructed, is doing great harm—we have to start with the proposition that we need to “do less,” to shrink the footprint of our criminal legal system.

Doing less has lots of specific manifestations. Here is an example: juvenile incarceration. When I was public defender in the 1990s, D.C. was sending hundreds of kids per year to out-of-state placements, to residential treatment facilities. There was a wide range of placements, but there was one school in particular that (once a judge had decided that he was going to send a juvenile to residential treatment, usually with the intention of helping the child), we would aggressively lobby for. This facility had a really great reputation. It was in Pennsylvania, as it happens, and it was called Glen Mills. But as many of you may have become aware, and if not, I hope you will become aware, Glen Mills has been ruined by scandal. Accounts of abuse and mistreatment have caused cities like Pittsburgh and Philadelphia to pull their kids out, enrollment that was once more than one thousand has declined to fewer than two hundred.²³

It can be tempting to read the story of Glen Mills as an isolated failure. But it reflects an underlying structural problem, which is the mindset that incarceration is appropriate for young people in the first place.

So, when I say, “do less,” in this instance, I mean provide for young people *in the community*, rather than sending them out to a facility. It might have a nice name, Glen Mills, or Oak Hill, but it’s still fundamentally a prison, and it’s necessarily going to be doing more damage than good over time. We have to free ourselves from the mindset that by being harsher and incarcerating more we’re going to get better outcomes. We have to expand our imagination.

We are going to have to change our attitudes and practices in many more areas. Consider bail. We have more people today, right now, locked up in cages who have not been convicted of a crime—people who are waiting for trial, innocent under law—than we had

23. See Lisa Gartner, *More Than 80 Boys to Leave Glen Mills Schools After Inquirer Investigation of Abuse*, PHILA. INQUIRER (Feb. 27, 2019), <https://www.inquirer.com/news/glen-mills-schools-pa-abuse-philadelphia-michigan-texas-california-remove-students-investigation-20190227.html>.

in our entire prison system in the early 1970s.²⁴ Most of those people are there because judges have imposed bail requirements that they can't meet because of poverty. The judge says, "\$1,000, \$10,000, \$50,000," whatever it is, "Go and get ten percent, if you can get ten percent." For those who can come up with the money, this amounts to a tax on poor people, because you don't get most of that back when you post bond. But to a lot of people, ten percent might as well be one million dollars. As a result, we have wealthy people charged with very serious crimes getting released, while poor people charged with minor offenses get held in jail. And we just do it because we've been doing it. Fixing that system is going to require a culture change.

Over time, in New York City, for example, they've worked hard to produce some of this culture change, but they haven't gone nearly far enough. Over the last couple of decades, they have reduced the number of people that are held from 48% to 23%. From nearly half to nearly a quarter. That's a massive reduction, and significant, but not far enough. And during that time period, the return-to-court rate hasn't gone down. In fact, it's higher than the national average.²⁵

This is going to require people in the system and those of us that are voting for people in the system—because remember, we vote for local prosecutors, and in many places, local judges too—to start demanding that our elected officials adopt a new set of policies, policies that push towards decarceration.

Let me mention one other area that's a passion of mine. Even though I've been focused on shrinking this system, getting people out of prisons, getting people out of jails, and returning folks to communities, it remains a fact that we're going to continue to have people locked up for the foreseeable future. This reality generates its own important questions: what are we doing with and for them? What opportunities are we providing, which, in turn, are opportunities for all of us in our communities? Because most people who are locked up do come home.

And we have a choice about the people that come home. Many of these people have been abused, neglected, degraded, dehumanized, and deprived of the opportunity to learn. If we continue with our

24. See BERNADETTE RAPUY & DANIEL KOPF, *DETAINING THE POOR: HOW MONEY BAIL PERPETUATES AN ENDLESS CYCLE OF POVERTY AND JAIL TIME 1* (2016), <https://www.prison-policy.org/reports/DetainingThePoor.pdf>.

25. See Eli Hager, *New York City's Bail Success Story*, MARSHALL PROJECT (Mar. 14, 2019, 7:00 AM), <https://www.themarshallproject.org/2019/03/14/new-york-city-s-bail-success-story>.

current system, we will only accelerate the cycle of recidivism, poverty, and disenfranchisement.

My particular focus is on education. You heard earlier on that I participate in a program, created at Temple University, called Inside-Out Prison Exchange.²⁶ It is a program that exists on this campus. It's in forty-six states.²⁷ I teach a class on the criminal justice system. I've been teaching it for years. And a few years ago, I said, "You know what? I want to do more. I want to challenge myself to do more." So now, I teach the same class that I used to teach inside a law school, but I teach it inside prison walls. In the fall, at a men's prison; in the spring, at a women's prison. And the class is made up of ten people who are incarcerated and ten people from my home university. Twenty students sitting in a seminar as equals. This is not law students going to the prison to teach, which is, in itself, a useful and important thing. But this isn't that. This is twenty people sitting in a circle debating theories of punishment and talking about probation, parole, judges, defense lawyers, and the role of prosecutors. It's an academic environment.

The research shows that, for every dollar that we invest in education for people who are incarcerated, as a society, we get five dollars in return.²⁸ That is because recidivism goes down and employment increases when people have had a chance to get an education.²⁹

I see the great value of the class when I read the evaluations from my students. For the law students, as you could imagine, so much of law school is about teaching legal concepts, and in some places, it can be dry and removed from reality. You feel like you're reading all these appellate opinions, but it has nothing do with the real world. This class puts you in the place where punishment is being enacted, and it puts you in conversation with people upon whom punishment is being enacted.

And then for the students who are incarcerated, it's absolutely liberating. One of them wrote at the end of last semester, after the class in the men's prison, "I like the law and the policy that we learned in this class. But really, most of all, what I liked is that every week, when I came to class and I entered into the seminar

26. INSIDE-OUT PRISON EXCH. PROGRAM, CHANGING THE WORLD FROM THE INSIDE-OUT (2019), https://www.insideoutcenter.org/PDFs_new/InfoGraphic_Sept2019_new.pdf.

27. *Id.*

28. *See generally* LOIS M. DAVIS ET AL., EVALUATING THE EFFECTIVENESS OF CORRECTIONAL EDUCATION: A META-ANALYSIS OF PROGRAMS THAT PROVIDE EDUCATION TO INCARCERATED ADULTS (2013), https://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR266/RAND_RR266.sum.pdf.

29. *See generally id.*

circle, I was entering a space where I was treated like I had ideas, where I was treated like I had something to say, where I was treated like, and on some days I even felt like, an intellectual. And I never feel that way in prison.”

Let me end with not a particular policy subscription; it's not education, it's not ending juvenile incarceration, and it's not ending unaffordable cash bail. It's just a way of thinking about and responding to social problems. And it comes from a conversation I had with my dad.

It was a couple years before he passed away, and we had watched a movie about the Civil Rights Movement. The movie ended, and I turned to my dad. I said, “You were there. What did you think?” He said he liked the movie. He said he liked it especially because people watch movies more than they read books, which is probably something that I should have thought about before I chose my line of work.

But he said, “Here's what I didn't like. I didn't like that they made it seem like everybody in the '60s was in the Civil Rights Movement.” And he said, “It wasn't like that. Our work was lonely. We were unpopular. I used to go recruit on campuses to try to get kids to join the movement, and administrators would run me off campus. Even Martin Luther King was unpopular when he died. They don't teach you this, but two months before his death, two-thirds of Americans had an unfavorable view of Martin Luther King, and one-third favorable.”

My dad said, “Look, I'm not telling you this because I want credit for being there first, for seeing an issue before other people saw it.” He said, “I'm telling you this because the way they present that history is demoralizing to your generation, because you work on an issue that you care about, mass incarceration, police shooting of unarmed black men, and you feel like when not that many people come to your meeting, that there must be something wrong with you or your issue because, look, everybody was in the Movement. But they weren't.”

It's my dad's point. He said, “Look, 250,000 people came to the March on Washington, and that's a big number. But a decade later, ten million people were saying they were there. Right? What's that about?”

He kept saying, “When you are facing an injustice and it feels insurmountable, people will tell you change is impossible. But if you ignore that and you keep fighting against the system, keep fighting to change it with all the tools that you have, legal, political, and otherwise, when you take down that system, those same people

who told you it was impossible, they're not going to say they were wrong. They're going to turn around and say, 'oh, well, that was inevitable. I knew that was going to happen.' And then they're going to make a movie about it."

I don't know what the idea is that will come out of this room that will be bigger and bolder and better than any idea that I put forward. I don't know the group of people in this room that will come together.

I don't know what the ideas or who the people are; but I know the ideas are in the room, and I know that the people are in the room. And I know that when some of you, two, three, four, or five of you, ignore those who say that change is impossible, ignore those who say that the system is just going to go on and there's nothing you can do about it, that when y'all ignore those people and you come together to fight and resist and to overcome mass incarceration, one day, you will succeed. You will replace the system that we have now with a system that actually protects communities without all of these toxic consequences, which restores and heals and humanizes, and which provides genuine safety and justice.

And when you do that, they're going to make a movie about you, too. And I'll be in the front row, popcorn in hand, cheering you on. Thank you.