OPEN SOCIETY FOUNDATIONS

TRANSCRIPT

"TALKING ABOUT RACE—RETHINKING CRIME AND PUNISHMENT IN BLACK AMERICA: A CONVERSATION WITH JAMES FORMAN JR."

A conversation with Andre M. Davis, James Forman Jr., Odeana Neal, and Ron Weich

Introduction: Diana Morris

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ANNOUNCER:

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DIANA MORRIS:

My name is Diana Morris, and I'm the director of the Open Society Institute Baltimore, and I'm very glad to see you all here. Some of you are very familiar with the Open Society, but for those of you who are not-- we are the one field office in the United States of a very large foundation, the Open Society Foundations.

And here in Baltimore after having lots of conversation with many members of the community we're focusing on three areas that we think are really holding people because of past-- racist policies and practices in concentrated poverty. And we're trying our best to kind of remove the barriers that are really holding people in place and not allowing people to realize all their talents and have the kind of social and economic mobility that we would want for everybody in the city.

And so what we're working on is-- first and foremost-- criminal and juvenile justice reform. We also work on drug addiction treatment making sure that it's accessible and high quality for everyone. And as much as possible integrate into all sorts of

other health care. And then we are also focusing on education and not so much on curriculum, which we think many other people are doing a good job focusing on.

But on all the kinds of supports that kids need so that (COUGH) the school feels welcoming, that they're-- it's nurturing, and that if they have some special needs they're addressed so that in fact the school feels safe and calm and they can focus on their status, do well, and graduate, and be prepared as young adults. The last thing we do is we have a community fellowship program. And I'm sure many of you have met community fellows. They're throughout the whole city. They're revitalizing communities. There's 180 of them now.

And-- later this year we'll select another class of 10. And they're very entrepreneurial people. All different ages. All different backgrounds. But really trying to bring new opportunities and new approaches to Baltimore. So that's the kind of work we do, but we also try to have-- a lot of educational opportunities. And in fact-- this talking about race series is now in its eighth year.

And I wanna give a special thanks to Vernon Reed. He has supported this series for a number of years, and we are extremely grateful to him for that. I-- I also wanna just mention some OSI board members who are in attendance. One of them especially is Andre David, Judge Andre Davis who has graciously agreed to be-- part of the program tonight. And our newest member, John Meyerhoff, who is sitting right there. And so I wanna thank them both for being here and for the wonderful guidance that they provide us.

They are just tremendously dedicated to the well-being of Baltimoreans. So we are very pleased that this year, 2017, we are actually cosponsoring this series with the University of Baltimore's College of Public Affairs. This is a really wonderful partnership. And tonight we're actually also cosponsoring this-- the presentation with the University of Baltimore School of Law.

So it's really wonderful to have the active involvement-- dean-- Ronald Weich, and also we'll hear from Professor-- Odean O'Neal (SIC)-- when we have the panel program. Tonight, we're honored to have as our guest James Forman Junior, the author of a powerful and crucial new book called *Locking up Our Own Crime and Punishment in Black America*. James Forman is the son of the Civil Rights leader by the same name. He's also a professor at Yale Law School and spending this year actually at Stanford.

And he's also the cofounder of See Forever Foundation, which supports alternative education for young people who are caught up in the juvenile justice system. He-- has just released a book, as you know. And I think you've probably seen that The Ivy bookstore is selling some of the books outside. And James is very willing to sign a book if you buy one. So I hope you'll take advantage of that really wonderful opportunity.

You'll-- as you'll hear and as you'll read-- his book focuses particularly on his six years as a public defender in-- Washington, D.C. Last week in the *New York Times*-- there was a wonderful review. They called *Locking Up Our Own* superb and shattering. It

describes a central question of quote "how people acting with the finest of intentions and the largest of hearts could create a problem even more grievous than the one they were trying to solve."

The review goes on: "Forman opens with a story from 1995 when as a public defender in Washington he unsuccessfully tried to keep a 15-year-old out of juvenile detention center with a grim reputation. Looking around the courtroom, he realized that everyone associated with the case was African American. The judge, the prosecutor, the bailiff. The arresting officer was black, as was the city's police chief, its mayor, and the majority of the city council that had written the stringent gun and drug law that his client had violated."

"'What was going on?' Forman asks. 'How did a majority black jurisdiction end up incarcerating so many of its own?' So this is the exceptionally delicate question that James Forman tries to answer in his book. With exemplary nuance over the course of his book, his approach is compassionate, as you'll hear. Seldom does he reprimand the actors in this story for the choices they've made." We are really pleased to have James here tonight to discuss his work and its implications with really a stellar panel.

We're gonna to hair (SIC) from-- as I said, Dean Ronald Weich from the University of Maryland Law School, the U.S.-- or former U.S. Court of Appeals Senior Judge-- and also as I said-- OSI Baltimore Advisory Board Member, Judge Andre Davis, and also the University of Baltimore Law School-- Professor Odeana Neal. But before turning the podium over to James I wanna oaf-- offer one program note.

We are gonna have another talking about race event that will be right here on June 8th, and it's actually going to focus on harm reduction in communities of color. And I hope you'll make a note of that and-- and join us, and tell your friends and colleagues who are particularly interested in that field. So now we're gonna hear from James for about 30 minutes. And then-- Dean Weich, Judge Dravis (SIC), and Professor Neal will join him.

And I'm sure we're going to have an incredibly stimulating conversation-- with that panel. And then we're gonna open up the discussion-- for all of you to have-- and if any of you have questions obviously you can come up to the microphone and ask them. And we also have a mic in-- that can come to you if you'd rather do it that way. Right there. So thank you very much for coming. We're really glad to have you here, James. (APPLAUSE)

JAMES FORMAN:

Thank you. Thank you, Diana, for that very kind introduction. I wanna thank-- my hosts here-- University of Baltimore Law School as well as-- OSI. In particular Dean Weich who was so warm and welcoming when I reached out to him to ask if he would be willing to-- to host this conversation. There's-- I have a lot of people that I know-- friends, family members-- former colleagues in the audience. I can't single out everybody by name although I'd like to.

Although I-- I do wanna single out-- the Hankins family-- my god daughter, Maggie Hankins, and her mother, Laura Hankins-- that name Maggie Hankins-- I want you to remember it because she's gonna do amazing things. (LAUGHTER) This is-- this book is-- oh, and I should before-- before-- one more thing. I also-- I-- I wanna thank-- Professor Neal and-- and Judge Davis for being willing to come and-- and participate in this conversation.

And I cannot wait-- to hear what two people whose work I've been such a fan of for so long have to say about-- about this-- this-- my-- my presentation and this book. So this book is-- it's filled with history, it's filled with argument, it's filled with stories. And one of the stories actually Diana-- mentioned at the beginning. I was a public defender in the mid-1990s in Washington, D.C. And I had taken that job because I viewed mass incarceration as a civil rights issue of my generation.

And many of my colleagues at PDS felt the same way. We didn't use the term "mass incarceration." That didn't come about until-- about 10 or 15 years later, but we knew that one in three black men was under criminal justice supervision. We knew that the black male incarceration rate had reached stratophere (SIC)-- stratospheric highs. And we knew that the United States had just passed South Africa and Russia and become the world's largest jail.

So here I am in Washington, D.C. I'm representing a young man by the name of Brandon. He's charged with possession of a gun, possession of marijuana. Small amounts of just enough for personal use. Not for sale. The prosecutor, as far as, is asking that he be locked up. I'm his defense attorney. Brandon himself is African American. And I'm asking the judge to release him. I have letters from his parents. I have letters from his counselors.

I have letters from his social workers saying, "This guy-- this young man is worthy of a second chance." The judge before pos-- imposing sentence looks down at Brandon and he says, "I haven't made up my mind yet, but before I do I wanna tell you something." He said, "Your lawyer, Mr. Forman, has been saying that you've had-- a tough life. Well, let me tell you, son, how tough it was."

And the judge then proceeds to talk about segregation, and Jim Crow, and past generations of African Americans who struggled. The judge said, in a way, that Brandon could not understand. The judge said, "People marched and died. The Civil Rights Movement existed for your freedom. Martin Luther King marched and died so that you would have chances that previous generations of African Americans could not have imagined, son."

"And let me tell you the one thing Dr. King did not march, he did not advocate, he did not die for you to be out here runnin', and thuggin', and gunnin', and embarrassin' your community, and embarrassing your family." And then he locked him up. And ever since that day I have been reflecting on this question of how it came to be that a majority black city would end up locking up so many of its own.

I felt like there was a story to tell about the last 40 or 50 years starting in the 1970s when that first generation of post-Jim Crow black political leaders, police officers,

police chiefs, prosecutors, in some cases judges, court officers, probation officers, parole officers, came into existence. What were they thinking as crime was rising; as mass incarceration was becoming a thing? That's the story that I wanted to explore in the book.

Now, I don't know if there's any-- graduate students or-- or college students-- in the audience, but I should say one thing, which is, okay, I had an idea of what I wanted to write about. But how do you get the material to tell the story? I knew I couldn't just rely on interviewed and newspaper articles. So I noticed a thing on the website of the D.C. Council which said-- it was just one page that said, "We have some transcripts and tapes of past proceedings going back to 1975."

"If you're interested, please contact," and had a name and a phone number. And I was very interested. When I got there though let's just say that the frontline staff of the D.C. Council Legislative Services Office did not think that my writing my book was their number one priority. (LAUGHTER) And it took weeks. And it took months. It actually took over a year before one of my research assistants called me and she said, "Professor Forman, I'm in the room. (LAUGHTER) And they have transcripts."

"What should I do?" And I said, "Press print. Pres print." So she starts pressing print on the microfilm machine. She prints every page she can, breaks the microfilm machine, which delays the book another year 'cause it took them a year to replace it, but (LAUGHTER) she comes back with 800 pages of an original transcript in 1975-- which I'm gonna talk about in a minute-- when this majority black city council comes into office with members like Marion Barry on the council and debates whether or not to decriminalize marijuana.

So when I got that material I knew that I had the sources to write a book. So I told y'all the question, right, the question that this book poses. But what about the answer? Now, part of me wants to say, well, buy the book. It's in the book. And I hope that you do. And as Diana said, I'll be out there to sign it, but let me give you a taste of-- some of the kind of arguments and the stories, the explanations that I provide for why this came to be.

The first thing that we have to understand-- and let's go back to early 1970s, late 1960s. This initial African American political class came into office, came into power at a time when heroine was devastating black communities nationwide and D.C.-- when I talk to my students now about drug epidemics they maybe know from, like, the media they know about crack in the 1980s.

Maybe. But they don't know about heroine in the 1960s. Well, in D.C. in 1967 they were testing everyone who came into D.C. jail to see if they tested positive for heroine. In 1967 it was 3% of people entering the jail tested positive. In 1968, a year later, it was 45%. That's an epidemic. Homicide increased 300% in Washington, D.C., in the late 1960s. It doubled in Baltimore. It doubled in Cleveland. It more than doubled in New York and Philadelphia.

But it's not just the numbers. Right? It's also the pain and the anguish. One of the things-- after I found these transcripts I knew I could write a book. I started going

over to George Washington Library in D.C. They have-- papers of people who have been on the D.C. Council now retired and given over-- over their files and these archives. And I would go-- and they're not very well organized.

So it takes a lot of time. But I would go through them. And when I come across letters from community groups and from individuals from the mid-1970s through the 1990s, people writing saying, "We-- our neighborhood has changed in a way that we can't recognize. We feel like prisoners in our homes. We feel like strangers on our streets. You have got to come and help us now. I-- my parents and my grandparents lived in this city."

"It was never this bad." I as somebody who-- if I wrote a letter to the city council I would be writing a letter about mass incarceration being a problem and police brutality being a problem. So I kind of thought that my letters would be, like, roughly equally represented in the files to these letters that I'm just describing. It's, like, 100 to one. There's an occasional letter from, you know, the-- the 1970s version of me.

But there are many, many, many hundreds more letters of people making this request for more police, more prosecution, more tough sentences. Now, who's receiving these letters? This is the other thing we have to understand to-- to get this story. This group of elected officials, this first group of African American elected officials-- they're not just any group. This is a group that comes out of the Civil Rights Movement.

Many of them come out of the South. Even ones that end up living in Baltimore, or end up living in D.C., end up living in New York they have histories in the South. They remember very vividly how black lives did not matter. They remembered how when you called the police in black communities they didn't come. A homicide was-- was-- was just one more dead black person. And they didn't use the term "black person."

They come into power, they come into office bound and determined to make black lives matter. They don't use that term, but chapter two in my book is called "Black Lives Matter" 'cause they say over and over again, "We are gonna take seriously crime in black communities that has been ignored for centuries." And many of them come to see it as a Civil Rights issue. Remember that judge that was-- was-- was reading my client the Riot Act? Right?

The remarkable thing about him is that he thought he was the Martin Luther King figure in the same story that I thought I was the Martin Luther King figure. (LAUGHTER) And we were on opposite sides. Well, there's a lot of people like him. Eric Holder in 1995 said at a s-- in a speech in-- in-- in the Sheraton Hotel right side of-- outside of D.C. before he announced a program which would launch pretext policing or investigatory stops where police would pull a car over on the basis of any legitimate suspicion.

Broken taillight, tinted win-- windows too tinted, et cetera. Not because they were trying other do traffic enforcement. 'Cause they wanted to get guns. And the first thing you've gotta do is make the stop, 'cause then you can have the conversation.

You can ask for consent to search. You can get the gun. In that speech Eric Holder says-- in 1995 he says, "The people of Washington, D.C., are no more free than the people of Selma, Alabama, were in 1955."

"But what's keeping D.C., and Baltimore, and Cleveland, and New York unfree is not Jim Crow. It's crime." So this group of elected officials sees themselves as Civil Rights warriors. Now, this brings me to the third thing that we have to keep in mind. They didn't only want more police and more prosecutors. Almost every character, mayor, police chief, Ike Fulwood, the police chief in Washington, D.C., in the 1980s.

Eric Holder, the chief prosecutor in the '90s. John Ray, who pushed for mandatory minimums in 1980 and 1981. They all also said, "We want to address root causes. We want to invest in housing. We want to invest in schools. We wanna create new jobs." But-- and this gets to a question of power-- African American elected officials didn't have the power we-- didn't control Congress. Right? Didn't control the national government. They asked for a martial plan for urban America.

They wanted a massive infrastructure investment. Didn't get that. So the way that I think about it is the African American actors that I'm writing about had this all of the above strategy to fighting crime. Right? We wanted it all. Yes, more police. Yes, more prosecutors. Yes, more prisons. But also more jobs, more schools, better housing, less racism, early childcare for our children. We wanted all of the above.

And we got one of the above: Law enforcement. Now, this gets me to my fourth reason that I think we need to be clear about. And this question comes up a lot when I was thinking about this project and when I talk about it. Which is, "But didn't they see it coming? Didn't they see that making these choices was gonna have this impact?" And in my cases I say, tragically-- and that's why my book ultimately is a tragedy-- in many cases the answer is no. I'll give you-- one example.

So I mentioned this transcript that I got about the marijuana decriminalization in 1975. Right? So 1975. Washington, D.C. First majority black city council takes of-- takes power. 11 African American members. Two whites. One of the white guys was a Civil Rights-- himself a Civil Rights activist, a guy named Dave Clark. He pro-- he says, "Let's decriminalize marijuana." Now, think about this. We know today where we sit. Right? How damaging marijuana criminalization in particular has been in black communities.

So you would think here back in '75 with an opportunity to do something to remedy that that this majority black council would seize it. But they didn't. Why not? The major opposition to de-- decriminalization came from-- ministers, a powerful group of-- ministers, and a black nationalist pastor on the city council, former Civil Rights worker by the name of Doug Moore. Here's how the debate unfolds. The people that are supporting marijuana decriminalization they say, "Listen, it's gonna have this damaging effect on black youth."

The people that are opposed it, the ministers and Doug Moore, say, "Listen, our children cannot afford to be using drugs, getting high. Even marijuana. Our kids have no margin for error. Black kids living in the city under racist conditions. We don't get

any second chances. Our-- our parents don't have money for drug treatment programs if the kid descends into that."

"We don't have the resources to go lobby the school and convince the principal not to kick the kid out if they get busted for weed. We-- we cannot afford it." And then they also said in response to this argument that this was gonna deva-- that criminalization was gonna devastate black America. They said, "An arrest for marijuana-- you don't go to prison for that." Which was true at the time. Most cases were diverted.

And they said, "You know what? Even if you get your second conviction you might get probation, but you're not gonna serve time." Which was true at the time. But then what happens in years later is the penalties get tougher but also not just the penalties. What people call "collateral consequences"-- or I think we should think of as lifetime punishments. (MIC NOISE) You can't get a student loan because of that-- of marijuana arrest in 1976.

You can't get housing. You can't get into a job training program. All of these things come up on a records check. Well, those laws were passed in the '80s. So this city council in 1975 when they decided not to decriminalize marijuana they didn't know that 10 years later Congress was gonna pass a law that was then gonna mean that that marijuana conviction meant that you couldn't get a student loan. So this is-- this tra-- story of tragic and unintended consequences.

I'm gonna wrap up with this one final word: Most of my book is about how we got here. There's also a chapter at the end about responses and how-- what to do about it, how we get-- how we get out of the mess that we're in. And the one thing that I wanna say-- and we can talk more about that on the panel-- hopefully we will. But the one thing that I wanna-- one thought that I wanna leave you with now is that exactly the way the system was built is the way that it's gonna have to be taken down.

So that is to say this system was built by thousands of tiny decisions, by people all across America. Small decisions. There was no up or down-- there was no moment when people said, "Let's have mass"-- for or against mass incarceration. No one voted for. That's now how it happened. People did small things. They decided not to decriminalize marijuana. Then a few years later they said you couldn't get a student loan.

Then a few years later they added on this. And a few years later privilege employers got in the mix and said, "Well, we're gonna do these aggressive records checks. And if something comes up we're gonna deny you a job." They're not bound to do that by law. That's a choice that they're making. So what happens is thousands and thousands of people and decision makers across every city, county, and state in the country all decide to become 10%, 15%, 20% more punitive.

If everyone gets somewhat harsher and everyone does it at the same time then the result is this mammoth, harsh, in many ways brutal criminal justice system that we've created. And we're gonna have to undo it like that. So small steps. So the next time somebody tells you that something is not a good idea in response to mass incarceration because it's a small step tell them, "No. No. No. No. No. We need 1,000

more small steps. But we have to start with this one." Thank you. (APPLAUSE)

RON WEICH:

Well, good evening. My name is Ron Weich, and I'm the dean here at the University of Baltimore School of Law. I wanna thank James Forman for that excellent talk and for writing this excellent book. I found it spellbinding. A real page-turned, which is not everything-- not something you often say about-- this kind of-- social science and history.

But it is really a compelling read. And-- we're so proud to host James for this book talk. I thank the Open Society Institute-- Diana Morris-- Evan Serpick who-- helped us organize this. And a shout out to my-- fellow University of Baltimore dean, Roger Hartley from the College of Public Affairs here at UB who has-- cosponsored with the Open Society Institute this entire series talking about race.

I am now going to lead a discussion with James, and-- two other colleagues-- to James's immediate right, Professor Odeana Neal. And to Odeana's right, Judge Andre Davis. Let me provide brief introductions for them, and then we'll get right to it. Judge Davis, as you heard, is a member of the board of this Open Society Institute. He was born and raised here in Baltimore. And so I'm gonna ask him a little bit about Baltimore history.

He graduated from the University of Maryland School of Law. And everyone knows there's University of Maryland and University of Baltimore. Diana said I was dean of the University of Maryland. That's not true. I'm dean of the University of Baltimore. Judge Davis went to the University of Maryland School of Law down the street. And that's fine. (LAUGHTER) He's-- he's done all right, effectively. He-- after graduating he worked in the-- Justice Department Civil Rights division.

The U.S. Attorney's Office here in-- the District of Maryland. And then private practice. He became a judge-- was the state court judge in 1987. In the district court and then the circuit court here in Baltimore city. Was appointed by President Clinton to the federal court-- in 1995. And elevated to the Court of Appeals for the fourth circuit by President Obama in 2009. He's currently a senior judge on that court.

Professor Odeana Neal-- has her undergraduate and law degrees from Harvard University. She joined our faculty here at UB in 1989 after working at the Harvard Legal Aide Bureau and then as a supervising attorney at D.C. Law Students in Court. Here at UB she teaches juvenile justice, human rights, and property. And her scholarly interests include-- race in the law, sexual orientation in the law, and clinical legal education.

So these two individuals are very-- well-equipped to join James and myself in a discussion about this very, very interesting book. And I'd like to start by asking first Judge Davis and then Professor Neal to just offer their reactions. They've had a chance to read the book. If they would each take-- a couple of minutes to-- to tell us how they found it and-- what their-- feelings are about the-- James's thesis. Judge

Davis?

ANDRE DAVIS:

Thank you, Dean. Thank you all for being here tonight. And-- and thank you, James for just a remarkable, remarkable achievement. Ethically, I can't urge you to buy the book. (LAUGHTER) But I can absolutely insist that you read the book however you come into possession of it. (LAUGHTER) It is truly a remarkable achievement. I am not one known for-- excessive praise of anyone or anything, but-- this-- this book is one that so desperately needed to be written.

And James has-- has gifted us with his scholarship, his insight, his compassion, his empathy, his experience, and his incredible insight based on his research into how we got to where we are today. I-- I read the book, and honestly it was like a biography of my entire legal professional career. From my early clerkships with judges here in Baltimore to my time as a prosecutor-- federal prosecutor here in Baltimore.

To my time as-- as-- as a law professor; my time as-- a misdemeanor court judge here in Baltimore, a felony court judge here in Baltimore, and certainly my 22 years as a federal judge. This book seems like every page I encountered either someone I knew or some argument I had heard, some case I had read, some experience that I-- I've had. I've lived this book, James. And I know that so many others have. It's not easy to provide a critique of your community while not criticizing your community.

To undertake such a mission is (SIGH) I'm sure in the minds of many would be-- you've-- you've gotta be out of your mind. You're never gonna pull this off. He calls out Jesse Jackson. He calls out Marion Barry. He calls out activists. Eric Holder. He calls out Barack Obama. But he does it in a way that is respectful, that honors their service, and as you heard him say there at the end, not with the-- harshness of 20/20 hindsight.

Right? Hindsight's always 20/20. We always know the adverse consequences of our decisions 20, 30, 40 years later. But he manages to put in context how-- and I'm gonna say it-- he doesn't say it, but I'm gonna say it-- the black community failed the black community. Not because we didn't care, not because we were trying our best to do anything but fail, and not because we were stupid, or shortsighted, or any other human quality that was missing.

It was simply the human condition that caused the black community to fail the black community. And so I'm looking forward to the conversation we're gonna have. Those folks back in '75 who opposed the decriminalization of marijuana had no way to see what was to come. No way. And so James-- James's fundamental thesis is absolutely-- absolutely spot on.

Each one of us whether you're a judge, a community activist, a schoolteacher, a therapist, a retired person concerned about your community, each and every one of us has a role to play. Because to fix this is gonna take-- as he said-- thousands and thousands of little steps, little decisions by judges, by prosecutors white and black

and of every other hue to bring the larger community as well as the communities of color back into an environment where we're supporting each other.

Where we recognize a disease that is a disease, and we treat it as we treat diseases. Not to throw warrior police officers at it but to take the kinds of approaches that we know are the correct ones. But we have to do step by small step. One final word and then I'll stop. The one thing James doesn't address-- and properly so because he didn't wanna write a 900 page book. (LAUGHTER)

He doesn't really address the role of courts. He talks about the individual trial judges in the District of Colombia and elsewhere who make those micro-decisions case by case. But in so many ways the larger part of the problem are the decisions made by the Supreme Court of the United States, the Federal Courts of Appeal, where I have the privilege to serve, and the State Appellate Courts which gave green lights to lawmakers and most particularly police officers and those who train police officers to always go beyond what the law as it's written would seem to allow.

And so what we see out on the street being done by law enforcement officers, who we honor-- we honor the good law enforcement officers. Absolutely. They put their lives on the-- day-- on the line day in and day out. And of course the black community wanted-- wanted the kinds of protection the any community is entitled to. But appellate courts played a very important role in drawing lines.

Many rooted in the constitution and many rooted in interpretations of statute. And we all know-- everybody in here as far as I can see is an adult. And we all know that when you give a person an inch they're gonna take a mile. That's a part of the human condition as well. And so to the extent that courts have contributed to the problems we face today, frankly, judges have to stand up, and confess that, and make it right. And, fortunately, some are.

I'm gonna mention Judge-- Jed Rakoff, federal trial judge in New York, John Gleeson, who just retired from the federal bench, and so many others I could name who are taking steps, speaking up, talking about crack and cocai-- and powdered cocaine disparities, talking about mandatory minimums, which is a subject that James talks a lot about in the book. Judges have a role to play as well. And so I appreciate the opportunity to be here tonight and share this-- this bench with this (LAUGHTER) distinguished panel-- and add my two cents to James's eloquent words.

(OVERTALK)

RON WEICH:

Professor Neal.

ODEANA NEAL:

Thank you, Ron. I, like Judge Davis, felt like I was-- reliving my childhood while I was

reading this book. One thing that I was thinking about, for example, when I was in elementary school the thing that we were told over, and over, and over again that was, "Heroine is a terrible drug. And you should never, ever use heroine." And as I watched my-- one of my nephews being told the same thing about crack when he was elementary school I started think, "Well, his generation won't use crack."

"They'll use something else just like mine wasn't gonna use heroine. But we'll find something else. We found crack. They found heroine." And they use it. But Judge Davis can't tell you to buy the book. I will tell you. Buy this book. (LAUGHTER) It really is extraordinary. And-- and I say that as somebody who tends not to read a lot of nonfiction all the way through, but I was actually riveted by-- by this book.

So the-- you were a great storyteller-- on top of everything else. A couple of things though-- that I took away and I really appreciated that you did this in the book. When all of these African American leaders were making policy decisions we have to remember that they were doing it within a certain context. One part of that context is it is-- it's very clear to me that every move that was made was being made out of a love for black people.

It was not being made out of a hate for black people. But it was also made out of a belief that the legal system and the law could be trusted. And that so long as-- we trusted those systems they would not find a way to transmogrify into something that would harm black people, which I am increasingly convinced the law will do no matter what. So-- I wanna talk about the things that really underlying I think all of your book, and that is the issue of power. And we have to remember a couple of things. First of all, the power that these African American leaders had, like all power, is constrained by certain things. It's constrained by imagination.

It's constrained by material, and it is also constrained by culture. And very often we forget that African Americans are Americans. And there are significant ways in which American culture constrains the way that we think about-- problems within our communities and how to solve them. So I wrote down in my notes, "The criminal justice system equals race, racism, violence, and money." And if you think about the criminal justice system in that way you can see the way that the system replicates itself even if the steps that are taken are done out of love and with hope.

For example, the harm that comes to black people through the criminal justice system is not colorblind. Right? It-- we-- I think that we think that it's-- there's something sort of almost natural or normal about a certain number of black people being involved in the criminal justice system given that since Reconstruction that's the way that it-- that-- that it's been. We also live in a culture of violence.

And I don't mean that in terms of drug trade or anything like that. America is a violent country. It was born out of violence. And very often our reaction to how do you fix something is through violence. It is the reason, for example, that America thinks that it's still okay to spank kids. How do you make things right? Hit somebody. How do you fix something? Start a war. Now, of course you can see how that gets conjoined with the issue of racism when you look at the difference in-- approach to

the heroin problem versus the opioid problem.

So that we know that it doesn't have to be that way, but it is that way. And with regard to money there's a lot of money to be made in the criminal justice system. There's money to be made not only from-- people having jobs in prisons but getting those prisons built, making sure the police off-- we're paying police officers. Moving up a notch even-- and I don't know your background-- but ev-- there's even a reason I think that more prosecutors become judges than public defenders do.

ANDRE DAVIS:

Absolutely.

ODEANA NEAL:

There really is this-- this system that's-- that-- this-- there's money to be made from the system. And, as Professor Forman said, there's also ways in which money is not spent. So that if we begin to wonder, "Well, why is all this money being spent," as you said, "on this one prong and all these other prongs were left to the side?"

We have to think that that was a deliberate choice. That wasn't just made up. There-- there was money for prisons. There's always monies for prisons and police. There's never enough money for schools. And that, again, is a choice. I was thinking as-- as you were talking, for example, about-- Rayful Edmonds, who manages not to make an appearance in your book.

JAMES FORMAN:

I know.

ODEANA NEAL:

I--

JAMES FORMAN:

It's one of those things where you have to go deep in or you have to-- (LAUGHTER) I couldn't touch on it.

ODEANA NEAL:

Rayful Edmonds, for those of you who don't know, was a notorious drug lord in

Washington, D.C. There-- there's a lot of bodies on his hands. However, Rayful Edmonds was also responsible for making sure that some old ladies in his neighborhood had enough food in their refrigerators. And he was also responsible for making sure that there were midnight basketball-- games for kids that would otherwise be on the street.

And so you have to wonder why did Rayful Edmonds have to be the source of that kind of assistance as opposed to all of those-- people that were calling for more criminal justice response? The thing that I have been railing about for-- well, ever since last year's election I think-- is this business about dignity and how it strikes me that-- that many of our systemic flaws come from a belief that it's okay to treat some people with less than dignity. And once we go down that path there will always be some group-- usually people that are poor, usually people who are-- of color who are not going to be treated with dignity.

And I fear that some of the black leaders did that as well by saying that there are black people that are not worthy to be a member of our community. Well, no. We're all members of this community. And all of us are supposed to be treated with dignity. And it also had-- because of this misunderstanding of what human dignity is. It isn't only for people who deserve it. It's for everybody. Everybody's supposed to be treated with dignity. Then the way that power gets utilized ends up getting warped. So I wanna end-- I see Prof-- or Dean Weich over there look like, "When is she gonna shut up?" (LAUGHTER)

But I wanted to end-- because I-- I always-- there's always people more eloquent than I. And I wanna end with a poem by Audre Lord who talks about power. And it makes you wonder how different our country would be-- how different our world would be if we decided to use our power to treat people with dignity instead of treating them with less than dignity. So the poem goes like this: "The difference between poetry and rhetoric is being ready to kill yourself instead of your children."

"I am trapped on a desert of raw gunshot wounds, and a dead child dragging his shattered black face off the edge of my sleep. Blood from his punctured cheeks and shoulders is the only liquid for miles. And my stomach churns at the imagined taste while my mouth splits into dry lips without loyalty or reason, thirsting for the wetness of his blood as it sinks into the whiteness of the desert where I am lost without imagery or magic trying to make power out of hatred and destruction, trying to heal my dying son with kisses only the sun will reach his bones quicker."

"A policemen who shot down a 10-year-old in Queens stood over the boy with his cop shoes in childish blood, and a voice said, 'Die, you little motherfucker.' And there are tapes to prove it. At his trial this policemen said in his own defense, 'I didn't notice the size nor nothing else, only the color.' And there are tapes to prove that, too."

"Today that 37-year-old white man with 13 years of police forcing was set free by 11 white men who said they were satisfied justice had been done. And one black woman who said, 'They convinced me,' meaning they had dragged her 4'10" black woman's frame over the hot coals of four centuries of white male approval until she let go the

first real power she ever had and lined her own womb with cement to make a graveyard for our children."

"I have not been able to touch the destruction within me, but unless I learn to use the difference between poetry and rhetoric my power too will run corrupt as poi-- poisonous mold or lie limp and useless as an unconnected wire. And one day I will take my teenaged plug and connect it to the nearest socket, raping an 85-year-old white woman who is somebody's mother. And as I beat her senseless and set a torch to her bed a Greek chorus will be singing in three quarter time, 'Poor thing. She never hurt a soul. What beasts they are.'" That's it. Thank you. (APPLAUSE)

RON WEICH:

Well, I think both Judge Davis and Professor Neal for those very thoughtful and-- and-- moving comments. I wanna start the discussion. We'll for-- maybe 15 minutes and then open it up to the audience. I wanna-- pick up on something that Professor Neal said. And she said that she thinks that-- some of the people, the policy makers, the African American policy makers who-- proposed pretextual stops and-- and-- mandatory minimum sentences were motivated by love for black people.

Does that mean-- and James, I'll direct this to you-- is your book and the thesis of your book a rebuttal to the narrative that the criminal justice system is the new Jim Crow and, like Jim Crow, is motivated by racism, is intended to oppress black people-- or is more complex than that? Should we regard your book as a counterpoint to Michelle Alexander's book-- *The New Jim Crow*-- or-- some of what Bryan Stevenson has said about the-- evolution of-- oppressing policies from Jim Crow to criminal justice?

JAMES FORMAN:

No. It's-- I don't re-- I don't intend it or see it as a counterpoint or a rebuttal. I see it as a supplement. I don't think-- I think that those stories-- I mean, Bryan Stevenson, Michelle Alexander, Ta-Nehisi Coates-- there's a whole-- and many others that are less, you know, well-known in the public sphere but have prooo been producing excellent academic literature and scholarship.

Sociologists, criminologists, law professors, historians, Khalil Gibran Muhammad. I mean, there's-- a really now I think kind of powerful set of arguments that has shown-- has traced out often very carefully-- and shown the impact that racism, that white supremacy has had on our criminal justice system and our society in general. I think this book is about the fact that that important story isn't the whole story.

RON WEICH:

Judge Davis?

ANDRE DAVIS:

I couldn't agree more. James's book takes its rightful place in this canon. It should be on your shelf alongside-- the Alexander book-- along Ta-Had-Hisi's (SIC) book. All of these are chapters in the story of our lives. For example, James does not shy away from confronting the issue of color difference within the black community.

That is such a critical part of our history. And it's often difficult to talk about. And he manages to talk about it and put it in the context. People need this knowledge. Your children are gonna need this knowledge. We all need this knowledge. So I don't see any conflict whatsoever. And as I say, it really is-- I-- I absolutely agree. It's a supplement to our growing knowledge of how on earth we got to where we are. And how do we get out of this fix (?)?

RON WEICH:

So I think there is-- a narrative that is very much-- enforced today that says that the criminal justice system is racist-- that-- there's no doubt. I don't think anybody here-- probably nobody in the entire new courtroom-- would disagree that is has-- that is has a racially disparate effect. That's well documented. And-- but the word "racist" I think suggests that there were intent-- that-- that it was intended and certain policies were intended to have this racial effect.

For example-- the crack powder disparity that's been discussed 100 times and it's-- it's been modified since. There are still disparities. Not as much. But 100 times more powder cocaine is required to trigger a mandatory minimum sentence in federal law than a like amount of-- of-- crack cocaine. Is that a racist policy? Many of us say that easily because of the tremendous-- disparate effect.

And yet, as James's book points out-- many members of the Congressional Black Caucus voted for that-- law in 1986 and voted for other mandatory minimum sentences that have had this effect. Should we grapple with the question of whether those laws and policies are racist? And if they were-- in part supported by African Americans does that confuse us?

JAMES FORMAN:

Well, I don't-- I-- I do-- you're right that I mentioned that. Although that's not-- that-- I-- I focus much more-- we can talk a little bit about this-- but I'm much more focused on local legislation than I am federal-- because I actually think-- so just-- just so folks know 88% of prisoners in this country are in state, county, and local prisoners. And 85% of law enforcement in this country is state, county, and local law enforcement.

So although the federal government gets so much attention in the scholarship in part-- remember back with my original story about the archives-- in part because the

federal gov-- federal government it's easy for reacher-- researchers to access that material. It's very hard to research what happens in cities, and county, and even at the state level. But also because, right, Jeff Sessions, and Donald Trump-- but before him Barack Obama and Eric Holder. They have a big, big microphone.

So people-- we can be misled. And that can-- we can be misled in both direction. Right? In the Obama years people could be misled to think that more progress was being made than was because they saw a President and an Attorney General speaking about criminal justice reform, but it's also true now that we shouldn't-- we shouldn't conv-- we shouldn't think that we can't make progress on this issue today just because Donald Trump and Jeff Sessions would wanna take us back to, you know, the worst times of the 1980s on criminal justice stuff.

We can at the state, city, county, local level-- which is, again, where-- that's actually the-- the-- where most prisoners and most law enforcement is. So I'm mainly not talking about the federal government. But to address your point I also mention-- I think-- I intended to anyway-- that there are-- that's so-- the Congressional Black Caucus shifted views.

But the early 1990s it was almost unanimously opposed to the crack cocaine distinction. Right? So part of the story is, yeah, people make mistakes, but then there's a question of have you learned from that mistake? But the final thing that I wanna say about racism-- and why I feel like-- I-- why I feel like this is not at all a rebuttal to that story is different people can have different motives for the same thing.

And so the fact that there are people that have motives that came out of love or the fact that there are some people who didn't understand the consequences of what they were doing doesn't mean that there isn't somebody else who wants that same thing for terrible reasons.

ODEANA NEAL:

And I'd-- I'd actually even go a little bit further and say it comes down to that "and." For instance, I would imagine-- though you don't talk about this in your book-- but when you talk about incarcerating people, for example, I don't think that the people that were suggesting there needed to be longer prison terms understood or would have in any way condoned what prison meant.

00:58:20;05~00582016oo Right? That it meant a place where you could go hungry, where you could get raped, where you could get killed, where horrible things could happen to you. It should mean a place where you can truly get rehabilitated. So I do-- even though there may have been-- as you said, Ron-- these-- sort of racist consequences.

For me, racist doesn't necessarily mean intentionality. It-- it-- for me I'm a much-- very much an effects person. And I think that it's-- it marks the difference between the willingness to learn and saying, "We made a mistake there. We need to change

course." And saying, "Oh, no. We think it's perfectly fine that so many black people are locked up."

RON WEICH:

You know, I think one of the strengths of James's book is that it's very specific. So-- these policy makers are-- are imagining-- things in the abstract, you know, sort of looking at statistics, and-- and-- and the dry words of the law on the page. James weaves into the book stories of his experience as a public defender and specific clients. And-- it's-- very powerful stories that show how the laws effected real people. I think that's a great strength of the book.

So here we are in Baltimore. And I'd like to ask especially Judge Davis, who grew up here and was a judge here-- in-- different courts over the years-- how does the story that James tells about Washington, D.C., criminal justice policy-- how does that compare to what happened in Baltimore? And I wanna mention a name here, which we're happy to mention here at the University of Baltimore, our President, Kurt Schmoke, was the mayor of Baltimore in some of these key years. And unlike some of these-- politicians in D.C., President Schmoke, then Mayor Schmoke, was advocating for drug legalization. And yet did the policies come out differently?

ANDRE DAVIS:

The-- the parallels are remarkable. There are of course significant differences. Unlike D.C.-- Baltimore didn't have a majority African American city council until much later. We did have of course elected chief prosecutors. Milton Allen-- many of you are too young to-- to know or to recall-- was-- elected the state's attorney for Baltimore city way back when during the period covered by James's book.

Kurt Schmoke before he became mayor-- was of course for two and a half terms I think-- succeeded Milton Allen as the chief prosecutor. So, like D.C., we had African American leadership in very, very high places-- in policy making positions to-- effect change if change could be effected. Like D.C., we had certain judges-- and not gonna call a name-- but there's one I recall very, very distinctly-- now retired-- who-- was Baltimore's Judge Walker.

James-- who was a stalwart in an earlier time in his career in the Civil Rights Movement. Was in Birmingham and throughout the South who became a judge here in Baltimore and who was-- I have to say this-- he was a colleague of mine when I was on the state bench-- one of the worst things that ever happened to the black community in Baltimore. Because his approach, like the Judge Walker that-- that-- that James refers to as "the judge who always made the Martin Luther King speech."

That was sort of his approach. And the difference was for virtually every African American felony defendant who appeared before him he put on probation. Almost automatic. All the defense lawyers in town knew exactly what was gonna happen. So

quick guilty plea. Talk about-- (SNAPPING) assembly line justice. That was it. You come in, you plead guilty, you were back on the street.

But then your second arrest 10 years. 15 years. Now, perhaps I shouldn't be overly critical-- because I had and have no doubt about this judge's love for the black community. He thought he had stumbled on an answer-- he had-- or at least is was an answer for-- from him perspective. So there are lots of similarities. Today, of course-- we have black leadership throughout the city. We have black policy makers. We have black-- thought leaders.

And what's important in my mind, frankly, in Baltimore in many ways more important than the black leadership is the coalitions that we have in Baltimore. I don't care how black a city is. It takes all of the residents of that city to address these problems. And I think we-- these have been some tough lessons that we've learned over the years. And so I'm hopeful about Baltimore that we do have these coalitions.

We have the law schools. Forgive me, we have OSI. We have other foundations. We have a number of organizations that have grown up after the unrest around Freddie Gray's death. So Baltimore I believe-- not to sound Pollyannaish about it-- has seen its worst days and its best days are ahead. And that will be true if all the stakeholders come together as-- as they have-- as we have to-- lift the city out of the doldrums of the, yes, racist criminal justice system that has existed in this city.

I'm like Odeana. I'm an effects guy. (LAUGH) You know? I-- racist is-- is a tough word. It's a very tough word that shouldn't be used cavalierly, but if the racial effects are demonstrated, predictable, and undeniable then it's a racist policy that needs to be examined carefully and revised.

RON WEICH:

Right. So let me-- I'd like the audience to-- to join us (APPLAUSE) to feel free to raise your hand if you have a question. There's a microphone behind. Here we go. And-- and while-- sure. Come on up here. Could you-- I'm not sure the microphone is on.

ODEANA NEAL:

Is the microphone on? (BACKGROUND VOICE)

AUDIENCE QUESTION:

Whoops. Sorry. Let's see if it's on. (BACKGROUND VOICE)

(OFF-MIC CONVERSATION)

AUDIENCE QUESTION:

Hello? Hello?

ODEANA NEAL:

There you go.

(OFF-MIC CONVERSATION)

AUDIENCE QUESTION:

I'll try to be brief about me, but I'm from Ireland originally. I'm an urban designer and an architect. I was the campus architect at the University of Maryland the Baltimore. I've worked there-- so I've worked in the city for 30 years, and I have a very strong opinion about the money that did not go into housing in Baltimore that I thought as strange.

So I don't want to talk about me, but I wanted to ask a question that I think Professor Neal-- I just watched the documentary movie *13th* about the 13-- and my question is-- 'cause I haven't read your book. So I can't address it. But it's in my heart and it breaks my heart. I've watched Baltimore for 30 years-- I've worked there-- never getting federal or any-- I could do the designs. I've sat on committees that would develop housing.

So being from Ireland, I compare it to, like, Dickensian London, which was a class system writhe with crime. I've been here and I've tried to understand-- and I-- I think I'm entirely off my question-- this is hard-- is that to me in the present day having watched the *13th* and learning painfully the connection of money, power, the industrialization of the prison system-- I've always believed that-- and punitive action to a criminal or a child never works.

That's like whipping a slave doesn't work. And when I watched the *13th* it just blew my mind that-- and it's a rhetorical-- I'm going to sound very naive-- how in this day we know that it's a business, that it's been privatized, that it's outrageous. And I could still get up and speak anywhere and say, "Will you put a few million into the city? Will you do a small project out there?" And the answer categorically would be, "No." And yet we all know that the prison system-- I don't know how to end my question-- (LAUGH) but we know--

RON WEICH:

So we just give our chance to react to it.

AUDIENCE QUESTION:

Right. It-- it-- it-- it is-- it is so obviously not productive. I was thinking of-- a punitive. It's-- it's this idea-- and I know the world-- there is a violence here and there's a belief deeply-- and I don't know whether it's just in the black or white-- we talk punishment, and vengeance, and pain.

And it's quite obvious throughout the world that putting young people who have just committed a very small crime into a jail system or prison system just keeps it going. And the thing that broke my heart-- whether it's racist or not-- was in the the 13th Amendment, that little line that said, "If they commit a crime you can take them back in as slaves." And then to finish I think it's two and a half million people that are in this incarceration business, which is privately owned.

So I'm probably addressing everybody by saying how then do we get into that and try to voice ourselves to stop it? Because it's obviously deliberate. Well, it's easy for them to put endless amounts of black people into prison. I don't hear enough voices.

RON WEICH:

So-- so-- so let-- let the panelists react. Thank you.

AUDIENCE QUESTION:

Sorry. And I just would hope that, you know, somebody has (UNINTEL). 'Cause I have joined a committee-- sorry. (LAUGHTER)

RON WEICH:

Professor Neal?

ODEANA NEAL:

Yes. (LAUGHTER) No. I-- I-- I think that you're about the-- I-- the only-- the thing that I was thinking about while you were talking-- because I'm always very-- puzzled by-- this-- this punitiveness that underlies so much of American culture. And I think it-- it probably comes from some Puritan or Calvinist tradition that the only way to expiate sin somehow is through some kind of suffering. And I know that even-- as I'm teaching-- 'cause I teach juvenile justice-- students will say, "Well, you have to do something."

And I say, "Why? What do you think will happen if we don't do anything? What-- what do you think will happen if people don't have a response?" But they know that something must be done and it's gotta hurt. Whatever the thing is it's gotta hurt. And

I think that that permeates a lot of our thinking about-- the American criminal justice system as well as all other kinds of systems where we think, you know-- what do they say? "No pain. No gain." There's always gotta be pain though.

ANDRE DAVIS:

One of my-- one of my favorite lines in the book which James repeats two, or three, or four times is in his conversation with prosecutors as he does his human best to convince a prosecutor to permit a juvenile offender to go into a program-- the prosecutor says, "Well, no. He's-- he's-- he's been in a program once or twice and he's failed. And we need to save the limited spaces for people who have never been there." And James's response, spot on, is, "Why is it that when prisons fail nobody cares?" (LAUGHTER) We keep treat-- we keep using prisons, but when people fail in their treatment efforts to achieve sustained sobriety then we give up on them.

ODEANA NEAL:

Right.

(OVERTALK)

JAMES FORMAN:

No waiting list for prison.

ANDRE DAVIS:

Yeah. Yeah. I learned the word-- I love to sh-- to-- to-- to offer people something before you leave. Here's a new word for some of you-- maybe not for all of you surely: Criminogenic. Criminogenic. I-- I just learned that word a couple years ago. And the mean-- it means "that which is aimed at reducing criminal activity which has the opposite effect, which actually increases criminal activity." And you know what the biggest criminogenic feature of America is?

Prisons. Prisons. And a final word on prison since you brought it up: Probably the worst idea in the last 50 years at least-- and it goes back earlier than that-- are for profit prisons. And if you just think about that for a second (APPLAUSE) what could be worse for a community than to permit people invest in a company whose profit-- whose business model is to lock up as many people as possible? It's a terrible idea, and-- you ask the question, "What can we do?" Don't vote for people who believe in for profit prisons. (LAUGH) I'll put it that way. (APPLAUSE)

RON WEICH:

So we have a question from Professor Jane Murphy.

JANE MURPHY:

Yes. Hi. I teach here at the law school. My area is primarily family law, but I think that's also an area where there have been a series of decisions-- unintended consequences that have contributed to this problem. And I haven't read your book yet; I plan to. But my questions really for Judge Davis, because I have appeared before you many years ago in district court and in circuit court and have often had-- represented, you know, African American mother seeking child support enforcement, maybe a civil protection order.

And I often wondered how you-- dealt with those sort of competing interests. So I'm-- you know, a victory was to have the sheriff come in and put that, you know, father who hadn't paid child support in handcuffs, and cart him off, and to impose one remedy after another to try to get child support enforced.

And I see that now as sort of not the best way to-- to handle the issue. And-- and that there were a lot of unintended consequences from that regime. But you were also complicit and, you know, you sent it to the court of appeals once, but usually you were-- willing to enforce those remedies.

ODEANA NEAL:

Ab-- absolutely. And it-- it-- it's-- Joe-- Joe Jones who runs Center-- Center for Families-- Urban Families here in Baltimore-- has been at the forefront of an effort-- this is in partial response to your-- your question, Professor-- to have the prison system and the criminal justice system make adjustments for people, men-- primarily men-- who get incarcerated and whose child support obligations continue to accrue.

Again, if you think about it nobody sat down and said, "Even with a guy with two or three kids gets locked up and clearly not working, right, we're gonna continue to add on his child support obligation while he's incarcerated so that when he comes home"-- and let's face it, you know-- more than 90% of people who are sent away come home typically back to the same community-- can you imagine the impact on such an individual determined to start his life over?

He's paid his debt to society by serving time. He comes home, and now he's owes the government. 'Cause he doesn't really owe it-- as you well know, Professor Murphy-- doesn't owe it to mom because many of the moms are receiving some form of governmental assistance. And who brings those cases by large are the Departments of Social Services and the departments that provide support to these children. So-- so it's-- it's-- it's another aspect of the broken criminal justice system.

I was complicit in a lot of stuff. A lot of stuff. The stuff I was complicit in when it

came to child support is the least stuff (LAUGHTER) I was complicit in. Even me. (LAUGHTER) Now, I wrote an article-- I don't wanna go on too long-- but I wrote an article for the *ABA*-- magazine some years ago when the-- when the sentencing guidelines-- this is federal, not what James was talking about-- were mandatory.

And when min-- mandatory minimum sentences of course were and still are mandatory. A judge can't do anything about that. So I wrote an article, and the title of the article was, "In Praise of Nose-Holding Judges." And my theme was we hate these guidelines. We federal judges think they're unjust, they're racist, they ineffective, but the law requires us to adhere to them. Well, as it turns out the Supreme Court in 2005 finally let us off the hook and made the guidelines non-- nonbinding.

And you couldn't hear it, but there was a silent cheer that went up from federal judges all over the country. And so that's the regime. So what judges do, whether it's family law, or criminal justice, or binding guidelines, or mandatory minimums, judges of good faith-- in-- and insightfulness-- and judges-- every judge in America needs to read James's book, by the way. Judges in those little micro ways that James talks about case by case, litigant by litigant can help to change the system.

In the same way that James did in the story he tells that ends his book. He didn't get a chance to actually mention it, and I'm not gonna give away the ending, but James (LAUGHTER) stepped out in a way that more judges need to step out and more lawyers need to step out. James did something that he acknowledges in the book could've actually gotten him in serious trouble on behalf of a client. What did he do? He actually went to visit the victim in the case.

His client had victimized someone, and James, being the great lawyer that he was, recognized-- even then early in his career recognized that his best shot for his client was to somehow get his client's victim at a minimum not to opposed what James was asking for. To get him to support it would've been beyond the realm of anything James could rationally hope for. But if he just wouldn't oppose it then his client might have a good outcome. So I-- I'm giving you that as another reason you must read this book. (LAUGHTER) You must read this book.

RON WEICH:

Okay.

ANDRE DAVIS:

But I-- I hope that my long-winded answer has in some way-- fessed up-- 'cause that's what you wanted me to do. Right? You wanted me to fess up. (LAUGHTER) I'm complicity. I'm every bit as complicit--

(RON WEICH: UNINTEL)

ANDRE DAVIS:

--as the people that James talks about in his book.

RON WEICH:

A question right in front. Yes, ma'am.

AUDIENCE QUESTION:

Hi there. I'm very appreciative of what you had to say, Judge Davis. But I think I'm going to say I need another book. And I want you to take this very, very seriously. You're all such puppies that you might not remember Judge George B. Rasin. Does anybody remember Judge Rasin?

ODEANA NEAL:

I do.

AUDIENCE QUESTION:

Oh, okay. Well, do you remember when four judges went to court as criminals? They weren't. It was my idea I felt that we should get to know what's happening inside that prison and get to see whether it's helping. When I hear criminal justice there isn't much justice. When I hear the system it's not very systemic. It's-- unexpectedly spontaneously brutal, and it teaches people how to be criminals.

And I found that out because I was at one point in my life-- I was commissioner of civil rights, and I felt that one needed to see what was happening in incarcerated s-- circumstances. So I decided that I want as going to go in as a criminal. And I managed to do that. And I saw what was going on inside the prison system or the prison wildness.

And most of it was teaching people how to be worse criminals. And a lot of that, by the way, from the custodial force. They were horrific and very inhumane. So I went to judges who were friends of mine-- and I'm sure you know most of them-- and I asked them would they go in and be classified in as criminals. And four of them agreed to do it. And the incarcerating force didn't know they were judges. So they treated them as they treat most people incarcerated, namely as lower animals. And I realized that this system is a part of the problem. And I wish you'd consider that as your next book. (LAUGH)

(RON WEICH: UNINTEL)

JAMES FORMAN:

Thank you. (APPLAUSE)

RON WEICH:

We have a question from Laura Hankins.

(OFF-MIC CONVERSATION)

AUDIENCE QUESTION:

I just-- definitely happy to be here. I-- I was a student here at U-- UB probably-- probably, like-- two weeks ago, three weeks ago. And then I decided to quit. I had-- I have a psychology degree at undergrad. But-- back in 2009-- 'cause I watched the *13th* movie. And the 22 year-old- boy I guess who committed suicide, you know, was falsely accused and it-- it traumatized him for so long. You know, I was him, too. Well, I did-- one stint put me in jail. They sentenced me to five years.

All I have is my mom and everything. So-- city jail was not-- not a livable circumstances. My first stint in prison I spent 23 hours a day in a cell, probably 15 minutes in the shower. That's if, you know, gang members didn't take it over. And probably-- basketball court the size of a parking lot. You know, and I didn't know nobody. So-- but I managed to survive. I came home with-- a felony and really nowhere to go.

My mom took me in. I decided to go back to college. I went for a while; didn't know what to do. So I said, "Go back to school." I got a degree in psychology, but I constantly asked professionals, "Where am I gonna go with this? Nobody's gonna hire me anyway." 'Cause-- they have all these jobs that say-- 'cause I do Center for Urban Families, too. I got a good relationship with them. I guess I held onto to hope for so long. 'Cause I went, like, six years-- six, seven years before somebody really blinked a eye. No matter how I presented. So--

RON WEICH:

Let-- let me ask if you can pose a question just 'cause we're running out of time.

AUDIENCE QUESTION:

Yeah. Yeah. I'm about to-- I'm getting to that right now. So I dropped out of school because no matter what paper they give me the paper that told me I was a criminal was gonna always outweigh that. So my question is there's a lot of kids out there that just don't have that hope so they give up. So the prison system does that.

It teaches them how to be criminals, so that's the life they know. So what can be put in place to allow more opportunities to those who have records me who are-- pretty smart but it's still that piece of paper that tells us, you know, we can't-- we can't get this places? And it's-- it's-- it's disheartening. (APPLAUSE)

DOUG COLBERT:

Hi-- my name's Doug Colbert. I teach at Maryland Law School. And I, too, James wanna thank you for writing a book that most of us here haven't had the chance yet to read. And I certainly appreciate why storytelling and narratives are so important, particularly to tell stories that most people are unaware of what takes place in the-- in the court.

My question really has to do with-- asking where are the truthtellers? Where-- where are the lawyers who are in court every day who know the judges who are not being fair and just to people on a regular basis, who are aware that we have a system that's infected rather than just individual instances-- why are the lawyers so reluctant to join forces and to make sure that the judges are honoring people's rights and dignity day after day?

And then the question I also have is there are many people who are judges-- and I know-- Judge Davis-- certainly has said a lot tonight that shows his-- commitment to justice, his-- and this evolution as well in terms of being frank and admitting complicity at different levels. But what happens when people become a judge? Where are the judges who understand that our system has systemic wrongs?

There used to be some very brave judges on the local and state level who you could count on to make that argument. I'm not so sure that we have the judges or the lawyers today-- and I'm not sure if it's the culture, or if it's self-interest, or if people just feel-- they don't have the power to make statements that are very important for the public to hear.

RON WEICH:

So let's see reaction from the panel to either or both of those comments.

JAMES FORMAN:

Well, in-- in-- in terms of-- of the gentleman-- the first gentleman's comment this isn't necessarily an answer to, like, exactly what to do, but at a bigger level I think in a way it is, which is that one of the things that I think leads to change is that voices like years need to be front and center in the movement for a new criminal justice system.

So one of the things when-- that I write a little bit about in the book is the stigma that is attached to-- so when you tell somebody that just because-- as you said just

because of a conviction, just because of that one piece of paper no matter how many other pieces of paper you gather we're not even gonna consider you for a job.

That sends a message to somebody. And you're very brave for standing up and speaking out, but that sends a message to somebody that, "We don't even wanna hear your voice. We're not even gonna hire you for any job. Why would we let-- why are we gonna have you come down and testify at the city council? Why are you gonna have-- why are we gonna have you lead the criminal justice reform organization?"

So for a long time we didn't have those voices. I mean, I used to talk in the '90s and even later I would talk to people that were challenging mandatory minimums, that were challenging police brutality, and I would ask them, "Why aren't there more-- why aren't these group-- groups led by people who have been in the system, people who have convictions, people who are returning citizens?"

And I would always get the answer, "Well, that community is so stigmatized that if we put them front and center we're gonna lose all of our credibility." And my response to that was, "But until you put them front and center the stigma is gonna continue." So we're in this permanent cycle, right, where we don't give voice to people, we don't lift up, raise up those perspectives of what you're saying.

That is finally, in my view, starting to change. When I-- I interviewed a bunch of advocates around the country a couple of weeks ago for a story that I wrote. And a number of them talked about how in the last three to five years they were taking people in their organizations-- and in many cases in leadership positions sometimes running the organization-- who had a felony conviction, who was-- who were returning citizens, and that they were the most powerful voices for change and for reform that the organization had ever seen.

So that-- to me that's what we have to do is make your voice central to the conversation. In terms-- (APPLAUSE) in terms-- of-- Professor Colbert-- your question I think-- I'll speak to the lawyer's piece. The lawyer-- legal-- lawyers are infected in some ways by a lot of the same culture that the rest of the legal system is infected by. So, you know, Judge Davis was very kind and say that-- and said, you know, how I kind of, you know, call people to account but at the same pro-- time is respectful.

There is one-- I will confess, there is one group of actors in the system, criminal justice system, that gets a pass in my book. And that's public defenders. That is to say as-- (LAUGHTER) in-- in-- in this book we are all the-- the defenders are all valiant, aggressive fights for justice led by me. (LAUGHTER) Right? So-- but-- and that is-- that is true to a significant extent at the office that I work at, that Laura Hankins-- who I think is next on the queue (UNINTEL)-- but it-- it works out.

But it's not true of most public defender's offices in this country. And until we change that culture so that we're training up lawyers that see their obligations as putting clients at the center but also fighting aggressively against this broken system both inside the system and also politically outside of it it's not gonna change.

ODEANA NEAL:

Let me-- let me add something though to that, Doug. And that's since the election in order to get out of my bubble I've been consuming a fair amount of conservative media-- so that I can wrap my brain around some things. And two things have struck me. First of all, the amount of money that conservatives will spend in pushing a political agenda.

And second of all, how they work for the long term. Right? It's never the short term. And I think that your question is a good question, but the-- I think that until more progressive people are willing to engage in fights for causes that they're never gonna see the end of-- (PHONE) oh, my clock is telling us-- tellin me what time it is-- but until that time I think we're gonna be in trouble. Because my sense is that progressives very often look for the short fix, and conservatives are playing the long game.

And-- and I don't know that progressives have learned how to play the long game. So that when, you know, why not ask the question the next time that a person is put up for a judgeship-- when's the last time we had a public defender put up for a judgeship? Why isn't that happening? And grooming people to take over positions of responsibility-- not just because they're somebody's cousin, son, or brother but because they show promise.

And getting them ready when they're 15 or 20 years old to get the reins of power later on. I don't think that until progressive lawyers, mayors, council people, teachers, whatever, learn how to play the long game that the-- there's not gonna be any movement.

RON WEICH:

We have time for one more question. It goes to Laura Hankins.

ANDRE DAVIS:

If I could just add very quickly. I-- I couldn't agree more with James's-- compliments to you for standing up and-- and-- and letting us hear your voice. I'm proud that Open Society Institute, one of our fundamental-- really institutional beliefs is that for our grantees who are working in the area of reentry-- and related fields-- and we-- we grant-- we do a number of grants in that area-- we actually look for organizations-- and deeply support organizations that have-- persons who have come home from incarceration who may have a record in leadership-- and support roles. And so James is right.

It's-- it's tough. I mean, just sit here and think for a second about honestly the millions of African American men between 16 and 44 over the next 20 years who are gonna be confronting the issue that you talk about. And so they need to be

confronted f-- head on. There are efforts all over the place to deal with that.

The so-called "ban the box" notion. The idea that-- and it's-- it's-- it's actually quite ironic that what we discovered at OSI, for example, is that Baltimore-- believe it or not-- the Baltimore community at large actually has a number of employers who not only will hire people with a felony record or a record but are proud of it. But they don't want the word to get out. (LAUGHTER)

Think about that for a mi-- they-- they don't want sort of the broader community to know that-- that they are open to considering for hiring people who have a record. So there's a lot of work we gotta do that-- that we need those who have been incarcerated to work with us to change attitudes and to educate people.

RON WEICH:

Okay. Very last question from Laura Hankins.

LAURA HANKINS:

Okay. Hi. Thank you so much. Thanks for-- this. So I am a public defender in D.C. D.C. is where I live now. Baltimore City is my hometown where I was born, and a proud Western grad. So this is-- (LAUGH)

ODEANA NEAL:

We love you doubly.

LAURA HANKINS:

--perfect. Yes. This is just (LAUGHTER) perfect coming together. But you sort of took the easy way out in talking about decriminalizing marijuana-- as a fight and talking about lessons learned. So for the past 17 years I've worked-- with the council on policy issues, and I'm not sure they've learned their lessons.

So there was a conversation with Councilmember Barry at one point where I was trying to talk about mandatory minimums. And he says, "Definitely not for drugs. But for guns yes." And that's what we still have in D.C.. and I-- and-- and the conversation is rarely about racial justice.

We've had one hearing that I can-- one bill where it was explicitly about racial justice and the disparate impact of-- of criminal justice policy. And it was marijuana. And everything else is still plenty of law and order-- black councilmembers-- and a lot of this about dignity and who deserves it and who does it. So guns and violence and lessons not learned. That's my big one for (UNINTEL).

JAMES FORMAN:

So I'm gonna keep it super short, because I'm committed as soon as we finish this to running outside and signing any books that y'all want me to. I will say I agree that-- and in fact the last chapter of the book uses marijuana decriminalization as the example of-- of where lesson was learned but says everything else we still draw the line. So in other words exactly your point that when-- that we have carved out a group of people.

We call them "violent offenders," which in many cases includes people that are-- have a possession of a gun conviction. And we say, "Those people now"-- we're not talking about them when we talk about criminal justice reform. And the story that Judge Davis alluded to at the end of the book where I talk about this case where I go to visit the victim I tell that story as a way of challenging this dichotomy. Because this is a young man who's convicted of a violent offense.

He comm-- he's not innocent. He committed the offense. It was an armed robbery. He did it. He was arrested on the scene. He says he did it, he confesses that night, and he apologizes. Now-- but there's more to his story because his mother was addicted to drugs and she could not take care of him and his little brother. She left him outside to really fend for himself. He grows up in a neighborhood. He has no-- he really feels like he has no family.

He turns to this group of guys-- in D.C. we call 'em "crews"-- neighborhood crew. You could-- in some other places they might call it a gang. And he turns to them as his family. This robbery is an initiation. This is the story that I'm going to tell the victim, and he's willing to give me a listen because he's willing to hear that individual's story. And the point that I wanna make, the reason why I reject categories and labels like "violent offender" or "gun offender" is that everybody has a story.

Everybody case involves a story. There's a real life-- a human life beh-- behind that with challenges, with unfairness, and with injustice, and with parents that weren't able to provide, and with a school system that failed that child, and a child welfare system that often failed that child, and then a whole society that mobilizes only at the moment where we're gonna offer prison and say, "Oh, now we're here for you. And now we have unlimited resources." Thank you.

RON WEICH:

So thank you. (APPLAUSE) Please-- please join me in thanking Judge Andre Davis, Professor Odeana Neal, and especially our guest speaker, Professor James Forman. (APPLAUSE) Buy the book. Thank you all for being here.

* * *END OF TRANSCRIPT* * *