

Hello and welcome to Episode 42 of the decarceration nation podcast, the podcast about radically reimagining America's criminal justice system. I'm Josh Ho, among other things, I'm formerly incarcerated a freelance writer, criminal justice reform advocate and the author of the book writing your own best story, addiction and living hope. Happy Reverend Dr. Martin Luther King, Jr. Day As some of you may remember, Episode One of the decarceration nation podcast was released on martin luther king day in In other words, we are now one year old couldn't imagine a better day for us to celebrate our birthday

Coming up in a few minutes will be my interview with James foreman, Jr. But before we get to the interview First, the news since last week's episode, we have finally seen some movement on the first step back from the Bureau of Prisons they put out new guidance for compassionate release, and shockingly it appears to have been written in concordance with the first step back mandates. That is pretty amazing news we still don't have a good time fix but hopefully that is coming soon to

We also got a new entry and Steve Bailey's continuing reporting on the ongoing crisis in the South Carolina Department of Corrections not only was 2018 the deadliest year in history in South Carolina prisons, but it was deadly both for homicides and for suicides. He argues that without increased funding, and less nonsense from the SEC sec DC this terrible trend and it is a trend will continue.

Finally, the viewer Institute of Justice and Georgetown University put out a really great paper explaining the many benefits that can be a crude if the US federal government would reinstate its Pell Grant program for people in our prisons. in year one, they estimate 463

thousand people would be made eligible and that this would generate a collective wage in the first year of an additional \$45.3 million. And finally, that this would reduce mass incarceration, recidivism, and the overall cost of incarceration. Senator Brian Schatz of Hawaii is introducing a bill called the real act which would restore Pell Grants. Let's all make sure that our senators and representatives support the real act. Ok. And now my interview with James foreman, Jr.

James foreman, Jr. is a professor of law at Yale Law School. After attending Brown University and Yale Law School. He worked as a law clerk for Judge William Norris of the Ninth Circuit Court of Appeals, and just a Sandra Day O'Connor of the US Supreme Court after clerking he joined the Public Defender Service and Washington DC where for six years you're representing both juveniles and adults charged with crimes and 1997. Along with David Domenici. He started the Maya Angelou, Public Charter School and alternative school for school dropouts and youth who had previously been arrested. A decade later. In 2007, the Maya Angelou school expanded and agreed to run the school inside DC juvenile prison foreman cottage Jordan, Georgetown Law from 2003 to 2011. When you join the faculty at Yale, he teaches constitutional law a seminar called race class and punishment and as seminar called inside out issues and criminal justice and which yield law students study alongside men incarcerated in a Connecticut prison Professor Foreman's first book locking up our own Crime and Punishment and black America was awarded the 2018 Pulitzer Prize for general nonfiction is my very big pleasure to welcome to the decarceration nation podcast. Professor foreman.

Thank you very much for having me I really, really looking forward to this conversation.

Thanks so much for being here.

I always ask the same first question. Can you fill out your bio? A bit? I seem to remember it's a pretty extensive bio by seem to remember reading that you might have come to from Detroit originally. Is that true?

I lived in Detroit as a kid. You know, there's a lot of good things about having parents who are civil rights workers, but stability is not among them. And so as a kid, we lived in a lot of different cities, and then different places within those cities. So I lived I was born in New York, we moved to Detroit, right when I was starting school and kindergarten, went to Detroit Public Schools for a few years. Then we moved back to New York and then we moved to Atlanta for middle school and high school and so I ended up graduating from Atlanta public schools but I was mainly New York Detroit in Atlanta where my where my stops growing up

And how did you get from from Detroit, in Atlanta, New York to the Supreme Court of the United States

in a short form, good teachers, good fortune caring parents. Some luck. I went to college it at Brown in Rhode Island, and then I went to law school at Yale. And I applied to work for Bill Norris of federal judge on the Ninth Circuit in LA. And then my third year of law school, I applied for a clerkship for Justice O'Connor and and much to my shock and surprise, she called me down to DC for an interview and she interviewed me for about an hour in her office. And she offered me the job at the end of the interview, which I was absolutely not expecting. And just to give you a sense of the assignment sign of the

times I had to get back to New Haven and the interview ended I had to run to the train station which is just a few weeks Live from the Supreme Court and back then they used to have phone phones on pay phones on some of the Amtrak trains. And I thought I'd be able to call my mom and my dad from the phone on the train. I didn't have stop time to stop at a phone in this train station. But this train for whatever reason, didn't have its phones working. So I had to sit for six hours from DC back to New Haven bursting with excitement and not having it not being able to tell you to my parents that most of them crazy.

What was it like working with Justice O'Connor, given the differences in your orientation politically?

Well, it was good and it was hard. I mean, it was good because the work was interesting. My fellow law clerks were an amazing group of folks. Justice O'Connor was a very, very attentive boss and she she worked to build a sense of camaraderie in her chambers. And she was very interested in the lives of her clerks and of course it's a job that even as you're doing it you know is going to be setting you up for for lots of jobs in the future in your in a legal career so so you know that you're lucky to be able to have this job at the same time it was very difficult for me because of the fact that particularly on on issues within the criminal justice system you know Justice O'Connor was not was a very mainstream conservative in the 1990s and a mainstream conservative in the 1990s on criminal justice meant you know cutting back on ABS at every turn making it harder for people to bring claims of ineffective assistance or to show newly discovered evidence even that that my tend to their to their innocence, it was harder for people to show know that they didn't have a competent or quality lawyer. It

meant affirming conviction, after affirming conviction, after affirming conviction, and on civil rights issues as well. She was, you know, I guess known as a moderate by history. But in some ways, that's just because of how conservative overall the court has been that she looks that way. And also because her own views somewhat changed over time. But certainly, when I was working for her, which was somewhat earlier in her career, she was, you know, basically mainstream conservative. And so the two categories that I cared most about criminal justice and civil rights I, I pretty much never was able to persuade her so it's hard to do a job where you have to execute the will of your boss and you have to pour your heart and soul into making your boss's views be persuasive but you don't agree with what your boss is saying.

Is that part of how you ended up going from that to public defense on

well clerking is part of it in the sense that when I was clerking I was exposed to a lot of the unfairness in the system. And I would read transcripts. See, I had only thought about the issue of within the context of the death penalty. That was my way into thinking about criminal justice issues was the death penalty because, you know, as you probably remember, back in the 1990s, that the notion of the criminal justice system as a civil rights issue wasn't widely known or understood. And so but the death penalty always had been understood as a civil rights and racial justice issue. So I started working at the NAACP legal defense fund my summer after my first year of law school in and was assigned to the death penalty unit. And that's where I got to see how race and poverty and disadvantage in an era of you know, kind of tough on crime could have these devastating effects and lead people to be sentenced to death. Even when when I

think that they shouldn't have been, and but then clerking I got to see how that wasn't. Those unfairnesses weren't limited to the death penalty context, they were more broadly applicable throughout the criminal justice system. And so that's what made me want to be a public defender.

Let's jump forward a little bit. Can you tell us a little bit more? There are a few things that jumped out in the bio to me, can you tell us a little bit more about their creation of the Maya Angelou school in particular about the expansion to the school inside the juvenile justice system?

Absolutely. And it's connected I mean, so I was working as a as a public defender in DC and I was very frustrated by the fact that You know, even if I want a case, my clients ended up back in the same circumstances, the same situation, many of them had been suspended or expelled from school or shunted into to substandard alternative schools. And so they were really set up for failure, even if even if we were able to keep them from being incarcerated. And so I felt like somebody had to do something about the problem of these terrible schools for kids in the juvenile justice system. And my mom was the kind of mom who is when it whenever we would come home and tell her about like, how somebody needed to do something about something and something was wrong. She was like, always, her question was always Okay, well, what are you going to do? When do we start? What's the plan? And so I was just raised up with that kind of orientation. And so I quickly moved from, well, somebody needs to do something to Well, I need to do something about it. So along with a friend named David Domenici, we started this alternative school. For Kids in the juvenile justice system, and we operated in the DC community for about 10 years, and became a charter school, and after

about 10 years, the finisher Raul D. Who was then the head of deasy's Youth rehabilitation services, and he's a reformer. I mean, he's going on to have a important career and in other states, and now he's at the now he's, he's been Harvard. Yeah, but he's he. This was his beginning of his work as a government official. He had been an outsider pounding on the doors and criticizing the city. But then he got to job to run it. And the first thing he did was say, well, we have this juvenile facility and it's terrible and I need to work to fix it. But one thing is that there's a school in the middle of it. And by law, the kids are supposed to be going to school for about half of the time, you know, half of their waking hours and the school is is more terrible than terrible and so He issued an RFP and we applied, we applied. And based on David and I worked for, we both sort of stopped whatever we were doing at the moment, and spent about three weeks full time hold up in the law firm of Wilmer Hale and DC they gave us some volunteer paralegal assistance. And we put together this amazing proposal and I remember years later and we were awarded a contract and I remember years later, I think Vinny and had you know maybe like a beer or two and he finally admitted to me and David that we were the we were the only applicants and we work so hard at this so uh, you know, it wasn't a popular it's not a popular thing to do to say that you're going to try to run a very high quality school for kids who are behind bars, but we for us, it was completely consistent with our mission and So so that's been an operation now for that school has been operation for over a decade now as well that that that particular branch of our of our school and you know we saw very quickly what a did what a difference a group of caring committed high quality teachers and social workers and counselors and academic leaders could make in even some of the most difficult setting. So, you know, my view is that we should have, you know, many fewer and ideally

none, no young people behind bars, and that's the reality that I want to work towards. But in the meantime, as we're working to make that happen, I think that we have a moral obligation to provide those who are incarcerated with the very best possible education and the very best tools so that they have a chance of turning their lives around and going on to being successes. And so that's that's what we do at Maya Angelou.

And you also are doing it some level with people who are adults in the system. Can you tell us a bit more about your inside out class at Yale?

Absolutely. I so I, a number of years ago I read a RAND Corporation study that found that for \$1, every dollar we invest in prison education as a society, we get four to \$5 in return, we get that return because people get are more likely to get jobs when they get out. And when they're more when they have jobs. They're more likely to pay taxes, they're more likely to be able to support their children and be in their children's lives and they're much much less likely to commit another crime so on and on any measure on any social justice measure that you could care about. It's a magnificent investment. But even but with that knowledge, right, knowing that it's also the case, as you know, and as many of your listeners probably know, in the mid 1990s, Congress eliminated Pell grants for people who are incarcerated. And that meant that the community colleges and state colleges that we're providing education in prisons basically all had to close up shop because they can no longer get any funding for their work. And they had to pay their teachers in the pan the staff to do the teaching. So they left and so prisons which are already places of of in many places in many ways, places of desolation and places of despair and an intellectual deserts became even more so. And in response to that,



you know, two things are happening there's the Restore Pell movement to try to change that. That law back and that will be the most powerful, impactful thing that could be done. And then along the way, especially in recent years, lots of colleges and universities and individual professors have tried to and nonprofits have tried to step up and say, well, let's get our let's get ourselves let's let me go into the local prison and jail and teach a class, let my university go, maybe we can create a consortium like Hudson link in New York where universities band together and people are able to get college degrees, maybe we can do something like a prison University project in San Quentin or Bard prison initiative. If you want to get moat the, you know, the most audacious examples of this work. And in many ways, some of the most inspiring examples of this work and then another program that was started as a program called inside out and what inside out does which is a little bit different and I think complements these other ideas is inside out bring students from your home university to the prison, and so the class that I teach is a crime and, and justice class, it's like a class you might take senior year in college or in law school. It's a kind of a sociology of the criminal justice system. We study, you know, theories of punishment. We studied police, we studied prosecutors, public defenders, parole, prisons, and what role do prison sir report what role should prison serve in our society? We studied these issues but what's different is that I have 10 year law student studying them in the same seminar room with 10 incarcerated students. I teach at a state prison men's prison in the fall and a federal women's prison in the spring. So I do this each semester and you know, it's it's, it's phenomenal for all of the reasons that I cited earlier with, you know, the RAND Corporation and otherwise and also just, I don't need those studies. They're important but I see it you know, in what my students say about The experience you know my

law students talk about it as being some of the most meaningful education in many cases, the most meaningful class that they've taken while they're in law school. It dismantles stereotypes it dismantles bias. It breaks down the walls. That separate people who are incarcerated from the rest of us.

And for me, the most important piece of it is the reaction of the of my students who are incarcerated. One of them wrote the end of the last time I taught the class. He said, I like the law and policy that we learned in this class. But most of all, what I really liked is when I enter the classroom, and I entered the seminar circle, I'm entering a space where I'm being I'm treated like I'm smart, I'm treated like I have ideas I'm treated like I have things to say. And he said on Sundays, I even feel like an intellectual and you know, and I don't and that's not what prison is built to do. And so what you're doing in this class is contrary to everything that's happening otherwise in my prison experience, and I think any of us that has, you know, any we all understand the role that, that being able to think and and being treated like you're smart and have ideas we all we all know the power that can have in our own lives. So for me, it's honestly it's it's my favorite class by far that I teach.

Yeah, I often think that it's so important to provide people if we want people to do something different. We have to provide them with the belief that something different can happen for them. And that sounds like a pretty good example of that.

That's exactly right. That's exactly right.

So you and I had a recent short discussion on Twitter about this case that's happened with this with Jeffrey Epstein. Kind of a shocking under prosecution, you said You had a lot of thoughts about this. It's it seems doubtful that I'll have a better chance to ask you. What were these thoughts that you were having about the Jeffrey Epstein case?

Oh, well, I mean, I was appalled by everything about it struck me as examples of what is wrong in our legal system and wrong in our criminal system. And I don't buy that. I don't mean that I think the case is like representative it that this kind of thing happens every day. I don't think it's like that. I think you and I could both think of cases where we say well, that's routine that's daily that's hourly. That's every minute in some court in the country. We see somebody being railroaded in this way. So I don't mean that but what I mean is what it represents is the way a wealth and power and connections and access all of those things can be used to evade criminal responsibility and invade a process and evade a process. So in this instance, at least, again, based on what was alleged and I'm a big believer in, you know, I need to see, you know, I need to give people an opportunity to defend themselves I need I need to see, you know, I need to see witness statements. I mean, I need the evidence to come out. But what was amazing here was that even when the story was written, showing that basically this individual had, you know, all of these young girls were saying that he had been abused by him and then he was given this incredible deal where they, you know, he got some kind of weekends. They shut down the investigation. They didn't tell any of the victims what they were doing. They tried to move it. The prosecutors actually worked to try to move it to a venue where there would be the least possible publicity. You know, they did me they did all of these things, to protect the reputation and to protect the life of

somebody who it appears, did great harm to individuals. And by the way, when those people that have been were victimized by him, those people who are raped or assaulted or taken advantage of exploited, most of whom are poor and working class and don't have a lot of support mechanisms and certainly don't have access to power if they go and they commit a crime later. If they go and they use drugs later, if they go and they get addicted later, none of that leniency and none of that compassion and none of that, forgiveness that he got is going to extend down to them. And so it felt to me like such a just grotesque example of how even in a society with an incredibly punishing and punitive system, if you have enough money and enough power and enough access and enough resources and the right political connections, you can get away with rape.

Yeah, it's pretty, pretty troubling even from my subject position as an advocate for criminal justice reform, which raises kind of two concerns for me, not because of his case, but just because of the reaction. The first one is it's kind of my opinion that a lot of the worst criminal justice laws we have in this country are based on what I would call single case examples are kind of the worst possible cases and then people Kind of overreact to that extreme example, pass a bunch of laws that then ultimately end up punishing a lot of people. Do you have any thoughts on this?

No, I agree with you that that is a big problem. And I'm pretty sure that I would not, you know, anything that was called the Epstein law in response to this is probably going to be a bad idea. And I probably wouldn't end up supporting it for precisely the reason that you indicate. So so i i do very much worry about that. There's just no question. I guess in this instance, I felt like I'm not talking about that.

What I'm talking about is that there needs to be some accountability and this individual case and I'm not even saying to be clear, I'm not even saying that that accountability needs to include more prison or any more any prison? I'm not even saying that. I don't know. But what I know here was that an investigation was shut down and victims were not even allowed to speak. I mean, think about, you know, think about the car

totally agree it's a terrible case. I mean there's it's almost incomprehensible

Yeah. And the person who oversaw it is in the cabinet. I mean, that's the other piece of this that did that. I want to be clear about that. We've talked about half of the story, but the federal prosecutor who made all this happen is in the cabinet right now. So we're not talking about like being over punitive, right? We're talking about not only no accountability, we're talking about one of the highest level positions that you can have in American government is being held by somebody. Who allow this to happen? And this, I think was crucial. And we'll have to see if this changes over time. But when the reporters were researching this story, the thing that I thought was so amazing is that nobody in the prosecutor's office was willing to talk about, let alone defend the case. In every case I've ever seen in every wrongful conviction case that I can think of. I still remember a movie called snitch that came out almost 15 or 20 years ago and it was about the war basically about the war on drugs and please and I remember a and a guy that three life sentences Clarence Aaron got three life sentences and the prosecutor in that case was on video explaining why defending what they did. In my experience, prosecutors always are willing to go out and explain and defend the decisions that they

made. Even if they have to say as part of this, well, there's information that we can't reveal, right? though, you know, they'll say there's information that cast out on the credibility of the complainants were not able to reveal that but we we will I'm telling you that this would have been a harder case to prove a trial than the current media reports are suggesting.

Right.

That's a very common thing that you will hear so that's why we offer this what looks like very, you know, sweetheart deal, they didn't say any of that there was no defense given and multiple opportunities for comment. That to me also suggests that there was something shady here

Yeah, it definitely seems pretty shady. Having seen a little bit of shady in my time I would definitely say that it was there was something crazy going on here.

Another example that we've seen recently of something like this and I told him two things that I was concerned with this What happened with the Persky recall was a real blow to people fighting against ending mandatory minimums or at least of judges, being willing to downwardly depart whenever they have appropriate discretion. And so sometimes I think that these, like I said, extreme cases end up having kind of a boomerang effect on a lot of our efforts and criminal justice reform, because at least in the Persky case, it seems like you know, if I were a judge and I wanted to keep my job I would be pretty reluctant after what happened with the backlash in that case to downwardly depart. Do you have anything thoughts about them?

Yeah, I mean, I don't support judicial recall efforts by and large, I mean, I'm sure I can, you know, we could all come up with a scenario where I'd say, Well, in that case, I think the person should be recalled but but certainly not typically for situations where a judge again on the record and in public explaining why it was that they are going below a recommended range. And I think in that case and I don't have all the details super clear in my head, but there was sort of a cascade of things. I mean, the the range that was even the range that was recommended was, I think, for people from for some, you know, for advocates for some advocates of, you know, survivors of sexual assault that that even the probation department's recommendation was was was thought to be quite low. So yeah, I share I do share that concern. Um, I think we have to be able to create space to do two things at one time to be able to say that our criminal justice system right now is overly punitive. is overly harsh that sentences are way too long by any international standard, or by you, US historical standards that prison conditions are, are are are often, you know, a harsh and and and abusive and need to be restorative and we need to say all of those things. And we can also recognize that in particular cases whether it's because of a history of racism or a history of sexism or just access to power, there are going to continue to be within that monster that we just talked about. There are going to be cases where people are under punished. I do believe that and again, I'm not saying that the greater punishment should necessarily include more prison, but there are going to be individual cases and I don't think it's wrong to call those out. I do think it's a mistake to end broad sweeping policy reforms based on those individual individual miscarriage miscarriages of justice, that's why I say I want an accountability for Is it a costume? Is that the name of the cross? I want accountability for Mr. cost. Who, who? Who's now in the cabinet? I want accountability for Mr. I've seen

right? I want them I want a conversation about those harms. I want those victims to get a chance to talk I want all those things but I'm not saying that we should then have a law that says For example that you know, I don't know what it would be that prosecutors may never offer you know, may never cut deals may never offer plea agreements below the guideline range with anybody who's alleged to have committed more than 10 or 20 assaults right you could imagine that be the kind of thing that somebody would take that case and try to say, Well, how can I spin that out into a piece of legislation and that I wouldn't support. But that's the distinction for me. I don't know. I don't know if that distinction holds up for you. But it's, it's my impulse it how to wrestle with what I think you're raising, which is in which isn't very fair concern, and one that I deeply share or think

This might get to something that does you do talk about in your book, which is the difference between accountability and punishment? Do you want to talk about that a little bit

Do you want to ask you said in Crete recently that the broader question of how to take him seriously hold people accountable, restore victims and communities but up and above all, create a safer world all while acknowledging interrogating my that's you own impulses to banish and exclude Hs long consumed me and there's certainly a lot of parts in the book where you talk about accountability. And I think what we tend to do is forget that, you know, that the system as it exists now, some in some ways, tries to dis incentivizes accountability in favor. punishment. Yeah. You have any thoughts about that?



Yeah, I mean, let me um, oh, maybe I can share. So I'm going to share I'm maybe I'm going to share a story that I heard from, from Bruce Western at Harvard, who came and spoke a couple days ago

he's been on your podcast,

Did he tell you this too?

Okay. Well, then, did he tell this story

Okay, of the guy who was being sentenced in, in in Ethiopia. Did he tell that story?

Okay. So I'm going to tell this story just because even though it seems a little bit it might seem extreme in some ways for people I just want to tell it because I think that that telling it that sort of shift the conversation and then we can begin to think about okay well how could we do something that would then fit within our justice system in some way um but it it expanded my imagination let me put it like that so he talked about an anthropologist I want to say a guy from Germany and he was doing some research in in in Ethiopia and a rural part of the country and he he tragically arm and you know the way Bruce tells it sort of I think it was kind of accidentally he's driving to a town and a girl runs out in the street and he runs over and he kills and he stops his car and he pulls over and he you know, villagers rush over and he's like, Oh my gosh, what should we do? Let's call the police. I want the police to come and they say we know we don't. We don't there, please don't come here. They're not calling the police. That's not how we resolve things. Um, and he said, okay, and he didn't know how to process this. And they said, Go continue your

research. And you will get word from us in a few days. We, they got his contact information. So he goes in, he finished his research, he goes back to the capital. And when he's back in the capital, he's meeting with another Ethiopian researcher, and he's telling her to story and he's talking about how distraught he is, and he feels like, you know, he's just killed this girl and nothing has happened in what is she says, Don't worry, don't worry, you're going to hear hear from them. And the next day he gets a message and the message is you have to come back to the village you have to come back tomorrow you have to come back alone. So it goes back and the you know, I'll just kind of shorten the story but in essence there's a ceremony that is conducted where the father of the girl the deceased girl is part of the ceremony and this researchers part of the ceremony and there's a Sacra, there's a sacrifice of an animal. And at the end of the ceremony the researcher and the father did see squirrel have their, their arms, their wrists tied together with with the entrails of this animal and the pronouncement from the village elder is that you are now family that they say to the German researcher, you're a part of this family and you're part of this family for the rest of your life. And he has to pay a certain amount of hundred dollars. He has to give a couple of goat I think, which was what was sacrificed. And then he goes back to the capital and he's still distraught as he's talking to his friend and the capital because he says, You know, I just feel like I gave them a goat. I gave them \$100, you know, I had this ceremony but but this this wasn't enough and she said, No, no, no, you don't understand this isn't this is the beginning she said, You are now part of this family and that means that imposes obligations on you your going to have to go visit once or twice a year. If there if people need things just like part of the family, if you can help if you can provide, if you have resources, you're going to be your this is this is for the rest of your life. And the

the story as he tells it is as as longer and has more than that. But the point that he's making is that this man was his business been held accountable, really that that is a form a deep form of accountability. It's so completely different so far off of anything, right, that we think of as part of our justice system. But But what we would do is we put him in prison for five years or 10 years or 20 years or maybe he'd get maybe he'd get one of these sweetheart deals and get you know, get probation knows that but that would be the range of options. Yeah, there will be a lot about becoming a member of the family Probably in the US. So I guess when I look at some of the restorative justice movements that are taking place around this country, when I look at I mean Danielle Sered. I'm not sure you pronounce your last name. You'll have to, you'll have to read you'll probably have her on the podcast. When her book comes out this spring, she'll be able to talk more about this, but and, you know, common justice is one of the most well known but there are lots of others there and they're underfunded, their inadequately resource, lots of them are very community based. But I think right now, what we're seeing and I don't actually think we grasp sort of because it's low level and it's community based. I don't think we fully grasp the potential of this but I think that in pockets and nooks and crannies around the around the country, people are trying to begin to think about how to create systems that do hold people accountable.

That do require apology that do actually attempt to make victims and survivors whole but that don't do it with the with prison as the centerpiece because prison has the prison is harsh and in all the ways that we've been talking about but it also has the ability to crowd out you know crowd out anything else it's so because it's so defining and because it's so all encompassing and and because it's so brutal it's it's

not just the beginning of the conversation but it's the end of the conversation and I guess what I'm what I'm drawn to more and more and I think you know, I suspect you are as well certainly I know that more and more people around the country are working in the space are are trying to say okay, what are we going to do instead? Because for me in in some cases nothing is the right answer right. In some cases we should just stop doing Doing right? We should just stop pretext stops, we should stop, stop and frisk, we have to replace that with anything. We just stop doing that. But there's a lot of instances where we can't do nothing. I'm not a libertarian, and communities that have been historically harmed, need protection, they need redress. And so thinking about what that is, in a world with fewer prisons or world with no prisons, that's the, in my mind that excite I think that's the exciting work of the next 20 years.

So there's a good transition into stuff in the book a little bit more. The book is really amazing. I hope everyone gets a chance to read it. But it's full of stories from marijuana to guns, of examples of kind of what I would consider to be well intentioned ideas that really weren't thought through well enough and not just because the outcomes ended up being unfortunate. But also because they started from an assumption conscious or unconscious that people of color were, if not more responsible, more inherently suspicious or legally culpable for crimes.

Operation ceasefire stories and a pretext stops that in a way what you were saying it seemed to me was that it wasn't just that that was a bad idea because it was probably going to be counterproductive but also because it was in a sense even though the people involved were often of color premised on the idea that that says being suspicious of race was the answer is that fair

you're saying the the answers that people came up with included or premise on on the idea that race and suspicion should be linked?

Yes. years and yeah.

And so I think that's right. I mean pretty much everywhere that this issue has been studied. And I've been thinking about I was thinking about it because I was looking at some numbers from San Francisco. I'm going out to San Francisco tomorrow for a talk. Um, so San Francisco numbers come to mind. But there what I'm about to say is true in city after city, state after state after state. Black and Hispanic drivers or pedestrians in New York or in cities with a lot of walkers are much more likely to be in San Francisco five times more likely to be stopped and searched after a stop and they are less likely to have contraband so they're more likely to be singled out. But when they are singled out, they're less likely to have the thing that was supposedly the basis for singling them out in to begin with. And so I think the empirical evidence is now quite overwhelming you and consistent with what a lot of people honestly know, particularly when we're having a conversation about drugs or having a conversation about guns, which is that these are widely distributed across the population. And so so I think, yes, the historic suspicion and the late and and those historic links have were the basis for lots of decisions, including decisions that were made in some instances by African American decision makers, in part because people you know, we're when we talk about African American, I think our initial instinct is to think about difference, right? And the sort of African half of African American but the second half of African American is American and we're American and we are consuming the same media. And we grew up in the same institutions and some of the same logics and some of the same stereotypes, not

to the same degree, but to a significant degree. Some of those same things get embedded in, in everybody. And so yeah, African American decision makers, in some cases, acted upon some of the same racial biases that we see in the larger culture.

And I think one of the solutions that you suggest is what I think you called a Marshall Plan for the cities. I actually think you were alluding to some of this earlier in the interview to do you feel like paying more attention to resources for kids, for schools, for safe communities for development can make a real difference in any of this

Absolutely. And you know, one of the points that I make in the book is that um, you know that that African American officials, by and large, have had what I call this all of the above strategy to fighting crime and violence. And, and in the list of things that they were asking for were things like a Marshall Plan for urban America, this idea that that as a society, we would invest in black communities, the way we invested in, in Europe after World War Two, we would rebuild we revived revitalize, we would renew and we haven't gotten any of that Marshall Plan. And those leaders didn't get any of the money for some of those social services and other things that they were looking for. Instead, they got the the tough on crime legislation. And so so that is sort of one of the points of the book. But I think that the need for those things is as true today as it is as it was 20 years ago, 30 years ago, 50 years ago. I mean, African American communities we should never have Forget this had been have had the opposite of a Marshall Plan. They've had the bombing that pre created the need for the Marshall Plan since slavery, right? We had slavery in this country for more years than we haven't we had it for 1619 to 1865. And that follow was followed by a period of an entrant of entrenched racial discrimination

in law in government and in policy, which meant that African American communities and African American individuals have lived under a form of racial subjugation for about 85% of American history. And that's explicit I'm not talking about metaphorical right Jim Crow. I'm not talking about the fact I'm talking about explicit straight up written into law. You can't have access to home loans, you can't get GI bills. We're going to when we build the federal highways, we're going to build them to the middle of your neighborhoods, not ours. And that has have created and accumulate a disadvantage that people are still suffering from today. So the Marshall Plan is as needed today as it was 50 years ago, because the damage has been done in the damages sustained and the damage hasn't been remedied. And so, yes, absolutely. And I think if we look at individual areas of research, right, we can see what a difference it makes when you provide early childhood education. When you provide housing assistance and access to housing integrated neighborhoods mean you can look at policy level after policy level, and you can point to studies that show the positive impact of these intervention. So it isn't a question of does this stuff work? Do we need proof that it works is their historical mandate for it, all of those things are there. It's a question of marshaling the political will

and that's a pretty good kind of stuff. A couple more questions but a pretty good place to to, I need it. Seems like we're facing I mean the racism and especially the structural racism is racism has always been there but it seems like a lot of the in your face racism has kind of come out of the closet in a lot of ways over the last couple of years in some pretty terrible unbelievable ways and then you know we also have you know we're having a hard time even passing you know modest criminal justice reform we're having a hard time even legalizing

marijuana much less rolling back the war on drugs do you see and I don't mean to put this all on you but you see kind of pathways are reasons for hope?

Oh, I do. I do and I think that you know, my reasons for hope come from a lot of the social movements and a lot of grassroots movements that I see a lot of the activism the fact that you know if you look at pulling on this across generations that you know younger people are much more imaginative in their set of policy responses they basically can't believe that the war on drugs is even a thing you you when I tell people things like you know there's a you know white paper and issued by the federal government called the case for more prisons I mean they don't they think you're joking and so I think that we have seen a generational shift in attitudes now it's going to take a while because the people that are still in charge in many cases you have you know somebody like a Jeff Sessions kind of figure who came up in the 80s and early 90s in the middle of the kind of crack wars and his and his an unmodified unreconstructed you know drug warrior and a lot of even people that aren't retrograde is him there's just a lot of people in positions of power and authority who have had practices who just, you know, they just ask for, you know, they just impose a \$500 bill because they always have, and there's a kind of autopilot to the system that doesn't require people to, it doesn't require mass incarceration to be a political project anymore. It just becomes a it becomes built in and baked into a set of decisions. And so that's the challenge. But I do think, for example, if we look at this movement to elect more progressive district attorneys, and I think in these 2020, 2020 races, we're going to start to see some very exciting people, you know, coming forward with, you know, interesting BIOS and really powerful policy platforms I'm running and saying I want to challenge



all these built in assumptions that I just discussed. I want to challenge every aspect of how the system has been operating. And the fact that people like Rachel Rollins in Boston, I mean, when I saw her policy platform, and I thought about Boston and that city's history of electing black officials, which is, you know, close to zero, I thought, well, there's no you know, I'm supporting her, but Is she really going to win and then she went overwhelmingly. And so I think that that that movement shows that there is an appetite right because that's where people can have more most immediate and direct result of the ballot box is is going in voting for for example, local local district attorney and I think that success of people in those fears is not just a question of right there which is often debated is Oh, how much difference can you make as a prosecutor or not what I'm the reason I'm raising that up is on on raising of what it shows us about the evolving attitudes of the public that you can run on those platforms. And when I think that significant and I think we're going to start to see the same thing with judicial races, you know, that's the next frontier here is trying to dislodge people that have sentencing practices that are as horrific or as questionable as as many judges do. I'm starting to hold people account there as well.

So I guess those to me those races matter both for their policy outcomes and for what they say about public opinion and they give me a lot of hope you end your book, kind of returning to the story of one of your clients. I think his name was Dante and moment of kind of Judge showing some leniency. Is that correct? Can you tell a little bit about that?

Sure. Dante was a teenage client of mine and he committed a raw an armed robbery at a bus stop, and he went up to a guy had a knife in his pocket and he asked him for money. And the guy the victim gave him what he had which is just 12 bucks to it down on the ground and Dante scooped it up and ran with Dante didn't know is that this was being watched by somebody across the street and they summon the security guard and the security guard tracking down and he was arrested a few blocks from the scene and he was positively ID by the guy and he confessed to the detectives and he said he was sorry said it. He's he apologized in his confession that very night and he was in front of a tough sentencing judge. He was a judge that appears earlier in the book as well. I'm in the introduction and and based on what I knew of this judge in his style. I knew that you know, a prison sentence in the sentence of incarceration was was very, very likely and there wasn't much I could do you know, to attack the evidence in the case it was it was it was powerful Dante Dante done it. Um, and I use that story I could for a couple of reasons. One, I I think it's important to have stories in these books, these reform books that that have people who are guilty, who have people committed crimes. Um, I think it's important to have people committed heartland crimes and what I call heartland crimes, or like the, you know, kind of the armed robbery robbery is the most common crime, you know, that anybody in prison has committed. And so it's, it's, it's typical in that way. And I feel like sometimes there can be, you know, people can choose kind of the a typical kinds of cases to make the point. So I wanted to to take something that I thought was representative of a lot of people that go to go to prison, and then the rest of the story is I began investigating the case and I learned a lot about Dante his background, and I learned that of course, as I knew he's more than the charge But I learned that in great detail in his case, and I learned that he had been

abandoned by his mother who herself was addicted to drugs and wasn't able to get treatment in a city that didn't have enough money for treatment programs. And she basically left tend to be raised by the streets and and he had been a human being humiliated by a local gang. And then he had been offered away into the gang in this robbery was part of his initiation process. And he also had incredible skills. I found that he had this beautiful ability to work with his hands and wood carving and his mom who would come out of her who is now in recovery. She actually found this kind of upstart little program for him and the reason that was so important it was it was a counseling and and and, and kind of job training program run by a pastor out of the back of his church, storefront church, and that was so important because all the official programs had turned me down because I would call them and I would tell them Dante sort of story and then they'd hear me out and then they say, Well, what was the crime? And I would say armed robbery and they say, well, we don't take cases that involve people commit, you know, violence we do non violent we do drug offenders will do some property crimes. But But we not do. We don't do armed robbery. We don't do aggravated assault and we don't to rape. We don't do murder. We don't do anything like that. And what I knew as a public defender was that that is the heartland of the system. Most cases not fall in the category of what gets labeled as you know, a violent offense again, robbery being the most common so that's it was incredibly frustrating to me at the time and is one of the reasons why ever since those days as a public defender I've tried to raise up in the reform conversation the importance of not just talking about nonviolent drug offenses and I'm thrilled that that point has now is getting a lot more traction on that then it once did, but I still got Dante on my hands and I'm trying to get him into this program and I go speak with the man that he rocked Mr.

Thomas and it was a last ditch scenario, it can backfire to do that as a public defender but but I didn't have any other options here and and Mr. Thomas heard me out he heard Dante his whole story. And then when we were done, I asked Mr. Thomas if he would support this program, and he said he had to think about it, and we get to court and on the morning of the hearing, I see Mr. Thomas there in court, and I go up to him in the hallway and I started talking to him before I can even get him he reaches out and he hands me two pieces of paper and they I knew these pieces because I had given them to him. One was done his confession where he had apologized and the other was a much longer apology that Dante had written, you know, in consultation and in collaboration with me, and Mr. Thomas said, you know, you asked me to forgive your client when you came to visit. Me and I can't do that. And my heart sank. He's thrusting these papers towards me and saying that he can't forgive my client. And I just feel like this is not going to go well. And then he said, but I can try. I can try. And I'll support that program. And we go into court and the judge this tough sentence, or is shocked to hear that Mr. Thomas's wants to endorse this defense proposal. And the prosecutor is annoyed, but the judge does it, he does it, I give him credit for that I really do. And he put down town probation, and he put him in this program, and then I totally lost track of them totally, because that's what happens. One of this dysfunctions in the system is that the people in the system, the players, the judges, the prosecutors, even the defense attorneys tend to see the people who fail the people come back on revocation hearings, the people get rearrested and it creates a kind of cynicism because when somebody goes out and doesn't get rearrested and does violate probation, they just are gone to you, you know, as a system actor. And so years later, almost a decade later, I was in DC. I was walking down the street, I walk by a construction site, and I look

up and I hear a voice, Mr. foreman, I look up and it's done. I can. It took me a while to recognize him, because it's been a while. And he had kind of booked up and you know, going from being a 1617 year old kid to a 27 year old man and he came down he had a hard hat on and of course, I wanted to have a nice long conversation because it was so great for me to see somebody doing so well but I was interrupting his work and so it was a short conversation but he did basically give me the outlines and tell me that that program and had been hard he had almost been kicked out a bunch of times by the pastor, but he had hung in there with them and he had gotten his certificate and eventually he had gotten on a on a on a on a team and now he was working full time he was working construction, he had a son of his own. And he he had never, he had never been rearrested. And he was raising his son in a kind of caring, and compassionate and concerned way that his mom hadn't been able to do because of because of her addiction. And, you know, I just walked away that day, and I just thought to myself, how that there are so many Dante's out there, if we would give more of them chances, like the chance that Mr. Thomas gave him, and the judge gave him that day.

Normally, this is where I asked the world where did I mess up question what questions should I have asked, but I think I know the answer and you kind of just hit on it. Given both of us talk about this a lot. Would you like to say anything else although that was a pretty powerful story about the distinction between you know, mercy for people with who have committed or have been sentenced for violent crimes and now violent crimes, which I think is a really good part of your book as well.

I don't think so. Um, I don't think so.

Thanks so much for doing this was a great pleasure to have you on the podcast.

It was a great place to end. Thanks.

Thank you so much.

And now, my take. We covered a lot of ground in that interview. But I especially want to focus on what we talked about at the end. Look, I voted for President Obama twice. And if I had the option, I would probably vote for President Obama. Again, I'm generally a fan. But one of the approaches to criminal justice reform that became popular under President Obama's leadership was this notion that criminal justice reform was important, but only when extended to non violent people in prison. President Obama himself once said that he didn't have a lot of empathy for people who had been sentenced for violent crimes. Unfortunately, there are a lot of problems with this. Violence, non violence distinction. First, I do have empathy for folks who have been convicted of violent crime. You can look back through all the episodes of decarceration nation. And it's easy to see why I talked with birth Western about how most people convicted of violent crimes or this at the same time witnesses to victims of and perpetrators of violence. I've discussed the distinction in depth with Joel and Episode Two. And I've talked about the massive problems with, for instance, juvenile life without parole sentences. But there are a lot of reasons we need to quit extending reform only two people who were sentenced to non violent crimes first, because the number of people in prison for violent crimes is over 50%, and that those people have the longest sentences you can't solve mass incarceration focusing only on nonviolent crime. Second, violence is a moment in time it rarely

speaks to the inherent qualities of a human being. I personally have met many people who are just as surprised to find out that they were capable of violence as anyone else was often it is contextual and violent crimes generally and thankfully have very low recidivism rates. In addition, I know so many people who are convicted violent crimes who are now out and doing incredible work in the community. It is not being sentence for violent crime does not mean you're forever violent. It just isn't true. We also know that therapy and programming can be very successful in helping people who have committed violent crimes overcome these problems forth. We know that people age out of violence, violence is generally a young person's problem. And the older people get, the less likely they are to engage in violent behaviors. Perhaps equally important, but I wants us to find by statute not by action. In other words, many crimes coded is violent in law or not what you and I would consider to be violent crimes. In other words, they don't involve inflicting physical harm. another human being many, for instance, online crimes are coded as violent. And there are a lot of things like this and statute. Six plea bargains often make mockery of how violent charges are applied for some who committed violent crimes. Because of expedience, those charges are not pursued, while for others who committed the exact same crimes, violet charges are applied vigorously. Seventh, it's very likely that the outgrowth of codifying the distinction between violent and nonviolent crimes in law is that prosecutors will insist on more violent crimes being part of plea bargains and legislators will simply code more crimes as violent. We also know that prison is terrible compared to the alternatives at solving violence. We know that long sentences don't deter or transform people, and we know that there are better answers. Let's start embracing real change. Ultimately, the violence nonviolent distinction is really about politics it allows politicians to appear as if they're

actually for reform without having to bear any of the risks of having actually supported reform. Look, we're at an inflection point in this country. One in two people in America has a family member who has become has been incarcerated before or is currently incarcerated. We need to be coming together and building a new politics around reforming our criminal justice system politics based in better outcomes, not just easy sound bites and politics as usual. If we want different answers, we need fundamental reform. As I said last week, as we move forward and the evidence from the States and the first step back piles up we should be able to start rolling back all the carve outs that prevent people in prison sentence to violent crimes from getting relief, but this will require political will as our political power grows. As we come together. We need to only support politicians who understand the reasons why we read reforms for all prisoners and not Not just for the most politically palatable available folks. Thanks again to James foreman Jr. for taking the time out to talk with me. It's something I was looking forward to for a very long time. As always, you can find the show notes or leave us comments on decarceration Nation. com. If you want to support the cause of the podcast directly. You can do so from patreon.com slash on pirate satellite. You can also support us by leaving a five star review from iTunes or like us on Stitcher. Spotify Special thanks to Andrew Stein who does the editing and post production for me and Robert Alvarez, who's been helping with the website. Thanks so much for listening to the decarceration nation podcast. See you next time.