

Hello and welcome to Episode 50 of the decarceration nation podcast, a podcast my radically reimagining America's criminal justice system, I'm Josh Hoe. 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.

As I just mentioned, this is my 50th episode. And my extra special guest this week is someone I've referred to as the spiritual godfather of this podcast. Fordham, university criminal justice professor John Pfaff will get to interview our interview in just a moment, but first the news:

I don't have too much going right now I first want to make sure that anyone who's listening from Michigan knows that starting on the 20th the prison Creative Arts project starts their 24th annual exhibition of art by Michigan prisoners which I've said multiple times is I think one of the most powerful events that happens at our state every year, if you have a chance to get to it as Duderstadt, the Duderstadt gallery on north campus of the University of Michigan I'll put a flyer in the in the show notes, but I think, you know, there's very few events that I make sure I never missed every single year. And this is certainly one of them.

I don't really have that much going on. But I do want to say that people have started to get compassionate release as a result of the first step back, which is great news. And, of course, recently, there was the big news about the governor of California declaring that he will no longer enforce the death penalty as long as he remains in charge of California. A lot of people have said that this wasn't that important because they had not really use the death penalty in years in California. But I do have a slight disagreement with that the death penalty really only functionally still exists in a few places. I don't mean that it is banned, but it is rarely used, except in these few places, at least in one of these places, is still used a lot and yes, I'm talking about you Texas anyway, very few people actually use it. And almost nobody talks about it. It's almost becoming visible and mostly sanitized. The only controversy around it or the only time you see this in the news is because of the bad drug cocktail that they've been using that hasn't been very effective and that they're having a lot of debate over cruel and unusual punishment in terms of which combination of drugs they use. For what I guess it's called lethal injection. I believe that it is important for governor Newsome to make the case. I think it was important for him to make the case for ending the death penalty so eloquently. Basically his arguments were that the penalty is applied in a racially disparate manner which has been proven for decades, and that the death penalty is applied mostly me often to innocent people way too often to innocent people. And that we often find out that the person was innocent after the fact which obviously makes it too late to do anything about it. And finally, he's argued that it is inefficient and more costly than keeping someone in prison for the rest of their lives. It is good for my perspective that Governor Newsome put the arguments out there for people to hear again the reason because if there's no debate about something and it only happens in certain places in those

certain places, it becomes normal it becomes something that's never challenged. So I think it's really good that the arguments are back out there for why we should be concerned about the death penalty and and hopefully people in Texas are listening. Anyway, thanks to Governor Newsome for what he did, let's get to my interview with John Pfaff,

John Pfaff is a professor of law at Fordham where he teaches criminal law, sentencing law and law and economics. Before he went to Fordham. He was the John M. and fellow at the Northwestern University School of Law and clerked for Judge Stephen F. Williams on the US Court of Appeals for the DC circuit. Professor Pfaff's research focuses primarily on empirical matters related to criminal justice, especially sentencing, he has paid particular attention to trying to understand the causes of the unprecedented 40 year boom in the US incarceration rates. His recent work is eliminated the previously under appreciated role that prosecutorial discretion is played in driving up prison populations. He's earned a BA, a JD and a PhD in economics all from I believe the University of Chicago and he is the author of one of my all time favorite books about criminal justice locked in the true causes a mass incarceration and how to achieve real reform. Welcome to the Decarceration Nation podcast.
Dr. Pfaff

Thank you so much.

I always start out by asking like how you got to where you are how you start working in criminal justice. So how did you end up doing the work you're doing now?

Yeah, there's no certain good origin story to it. I was a grad student at Chicago try to find a dissertation topic I'd always been interested in criminal justice not funny definable reason does it serve a naturally interesting topic and I remember I was sitting in the dining hall and day lunch reading Chicago Tribune as well these articles no one's a two pair of articles like page 74 but how there is just is just after the 2000 dot com bubble hip hop and the article is about how Illinois is going to close two or three prisons but he wasn't going to lay off and he guards who just reassign them elsewhere as part of an effort to serve balance Illinois Taurasi terrible budgets and just let me kind of nursing issue like how exactly you were present opening and closing I started started digging into purely just statistical economic serve grandson looking for a topic point of view, but then sort of once you start looking at the issues or the you know, the humanity of the topic, sorry, Emily pulled pulls you in.

And so when we start talking about criminal justice reform, much of the pushback from traditionalist including from our current and former Attorney General's is that high incarceration rates were critical in reducing crime, I'm guessing you don't think that they're right, is is an investment in incarceration and investment and increased public safety?

Well, I mean, it's yes or no, right? One level, you know, the data does indicate that no, by adding a million people to present 1819, 7419, like, you know, by 2000, it did have an impact on crime. But it was an incredibly costly, inefficient way to accomplish it. Right, that, you know, the analogy I like to think of is if you get an infection in your finger, you chop off your arm, you've stopped that infection from spreading, right, chopping up your arm did work if the goal is to stop the spread of the infection, but maybe try to add antibiotic first, right and in prison prison worked in that sense, right, as as an incredibly blunt, heavy handed tool, it did play a significant role in driving down crime. But there's so many other ways you could have done it in such these less financially costly and less costing humanitarian sense way to accomplish this, the same decline in that sense, it was is much more of a failure.

And I think the research has shown that over time that effect comes to lesson is that correct?

Right. So you know, in the 70s and 80s, when crime was fairly high, and prisons were low the returns and sending one more person president were they weren't great, but they're higher than here today. Now the numbers inl prisons are so high that those marginal benefits are much, much smaller know, they're probably not zero, but their cost benefit analysis is definitely a binder water.

So one of the first points you make in the book is that despite the large amount of energy around reform, you were somewhat of a pessimistic about reform, having much success and reducing mass incarceration. Can you tell us more about why you're pessimistic about what you call the standard story when it comes to criminal justice reform?

Yeah, so I guess Personally, I remain optimistic that we'll get someplace better or at least hopeful but that sort of the current narrative is has some of the problems in it and I think what makes you seem so particularly pernicious Lee problematic is that they're not wrong. I did things the points you are real problems, but they're not the did they always had a mask a deeper, more important problem and draws our attention away from it. Right? So we talked a lot about, say, know the war on drugs, right? how all these people in prison for drugs. And it's true that if we were to release everyone in prison for drugs, no, that would be about 250,000 people we'd set free, that's a that's a significant decline, and the humanitarian benefits of that would probably be significant. But over half of all people are prison for violence. And, you know, prison drug offenses make up about 15% of all state prisoners, it won't get as far if we were to release everyone in prison right now for drugs, we still have the world's highest incarceration rate it's not the central thing but we've told ourselves this narrative of the low level nonviolent drug offender filling our prisons that necessarily boxed in a couple years ago about 3000 Americans nationwide a majority of everyone who responded whether they identify as liberal or conservative majority in each

group said that they were opposed to the idea of any lesser time sir for people can make it a violence even if they post little to no risk of offending and and you know, almost everyone serving a long sentences in for a serious crime of violence, the any sort of time reduction has to focus on them. And we convinced ourselves that we can do it all with drugs which which we can't right or similar by focusing on long sentences which are longer than they are elsewhere in the world. You know, we focus on our game legislators to cut said think there'd be a lot perhaps we said for that, but it allowed us for years probably until about five years ago, to start completely ignore the role prosecutors played in driving a prison populations through they chose to admit for relatively short periods of time in prison, or the last one that I saw resist the most we talk so much about the private prisons and the idea that what drives his desire for profit, private prisons only hold about 8% of all prisoners. And the public sector holds about 92% of the \$50 billion we spend on prisons every year, 30 billion of that at least 30% of that is wages and benefits to correctional officers and staff. They are the real, actual impediments are reform far more than, you know, GEO Group or or civic, but by focusing on sort of the private prisons, which I think makes us feel good, right, by focusing on their private prisons, we tell ourselves a story that's not us. Is this shadow a cabal of sort of greedy capitalists and you know, Tennessee in Florida who are driving this Well, no, actually it's it's it's the public sector union, every single state it's us as our government and our boats that that that do a much bigger role of this and you start hide ourselves from that.

Let's circle back real quick to the first thing you talked about the problem of violence or what I've called the problem of violence almost every day I read someone else calling for reform, but only reform for a low level nonviolent drug offenders, as you just said, but your case isn't just that we can't solve mass incarceration that way. It's also that it's counterproductive to focus on that, is that not correct?

Right? It's Well, I mean, there's lots of problems. It's it's bad policy to exclude violence from the conversation, because the way we use prison is an incredibly ineffective way to address violence. So if you're a purely tough on crime kind of person from a purely consequentialist point of view, or put aside like a sort of moral retributive it's like they deserve to be locked up kind of argument, let's just focus on my goal is to reduce crime as aggressively as possible. Prison is a very inefficient, ineffective way to do that everyone comes home. I know, the medium timed release, even for someone convicted of violence is only four years, especially outside of homicide and prison, actually, the more time you spend in prison, the greater the chance of being requested and re committed Upon release, right. So we're actually so counterproductive in the long run has very little return benefit, no, yes, the capacity dates but sort of the amount of time you spend in there increases as you spend more time the risk of offending goes out a request goes up and kind of offsets hola that, that incapacitation game, right so it's just bad policy. And so you know, I think if your goal is to target reducing violence are much better ways to do it, then present and also that if you actually want to use prison populations, the only way you're going to do that is by cutting

them off time people spend in prison for violence, and even the number of people who sent to prison for violent crimes, which again is is is good policy even for those who commit violence who we send you prison You know, there's, there's a well documented certain age profile to offending you know, people are people are much more like much more everyone is much more violent in their, you know, their teens and 20s and early 30s, they're in their 40s and 50s, we even people who have never committed a violent crime or something more aggressive and and, and no more likely to get no argument of in the fight when they're younger than when they're older. And so locking people up for 3040 years for homicide just provides no real safety, then if it's just not an effective way to address the problem

and I know you've written about so one of the it seems like an opportunity cost to using incarceration is a lot of other alternatives and you've written about other alternatives. Can you talk about some of those to dealing with violence?

I mean, yeah, and many ways the things that do violence I think also times often are also deal with nonviolent crimes as well. Right. The distinction we draw between violent crimes and nonviolent crimes is is as I know, you pointed out before correctly, you know, it's a fairly arbitrary by lots of things that are violence aren't necessarily actually what people can positively charged as violence or will you will think of as being violent crimes, people shift that before if people aren't just like always, violet are always nonviolent in terms of diagnose the misbehavior they engage in I'll be the alternative we have that there's sort of thing to sort of degrees of distance or criminal justice right so if you want to say entirely within like the criminal justice silo then policing is a much better way to deter and prevent violent crime then prison right you know you're much more likely to reduce crime if you actually have more cops and the beat patrolling the street then if you know how you have low numbers of cops and so the chance of arrest is low but the penalty you get afterwards is really really large that's just backwards from how determines where is it turns is much more driven by fear of getting caught then some possible long sentence on the on the off chance someone happens to catch you and like I said we do it backwards so naturally speaking the clearance rate for homicides around 60% so about one third of all murders never resulted in the rest but in get our side Julio be scraped book about as a journalist spending time with a homicide unit in South Central Los Angeles she kept the homicide rate when the Vicki was a black man was the clincher was about 30% it's about two thirds of all murders of black men never produced an arrest and LA County right and so that just guts to turn says as a sort of feasible policy if you're concerned about sir well policing has all there's a cost associated that come up with that absolutely right so so the next Jason thing or non police Bay Street interventions things they say Cure Violence which actually the documentary about it called the interviewers and the idea behind Cure Violence is that they focus on gun violence and their own philosophy is that is that a bullet is kind of like a virus right you watch it spread almost like a disease to a social network that would do it he shoots up be rebellious and she's back at a but had cc retaliates or his friends you tie into back in the

Hindi One study found something 300 suit shootings in Chicago all tie back to an initial shot and these are was retaliation or just diffuse to this the social network so that gave on Cure Violence you say really respected community leaders who as soon as he shoots at be they'll sit down with b2b styling these fans and sort of say okay so what do we have to do so that you don't you back and there's lots of evidence know it's it's somewhat mixed has all these things are but seems particularly in sort of larger, more urban areas be very, very successful if you don't like that then pull back with her for stepping away from things like for violence and move straight into public health. So once they found that states have adopted Medicaid expansion saw the \$13 billion reduction in criminal offending almost entirely do to increase access to drug treatment in general data suggests that dollar spent on drugs human produces four or five or \$6 in reduced social costs. It's it is the whole thing either know, there's better things to think about justice, there are better options are sort of criminal justice to Jason and there's even just more straight up public health know, build a home, provide drug treatment, make sure they go to school have a place to be during the day cover approaches are also quite quite effective.

You hinted earlier about an argument that we've talked about a little bit that people age out of violence, I think you and I also talked recently about a US Sentencing Commission report that suggested that maybe at least at the federal level, people were no longer aging out of violence and crime. Do you have any thoughts about that report?

I remember that report. I remember thinking that it didn't necessarily see that and now I can't remember why I thought that remember. I remember thinking that's interesting result reading more closely thinking there's something not quite, it's not quite as sir damning to the age profiles as initially scenes, but can't remember what the problem is that said, recent studies, the United States have identified that there is a cohort of boom, that's not aging out the way we would have expected them to age out on that much. No, you look at the data on old people in prison. The standard story we tell ourselves is that all these people spending massive amounts of time in prison, nor they go to prison for 20, have been there for 40 years, and most people definitely exist. But I think the last aging report that the Bureau of Justice Statistics produced of those who are 60 or older, over half of them have been admitted to their most recent stint when there are 50 or older, right, so so about half of those who are in their 60s had been admitted in their 50s or 60s. And that reflects sir, again, this this particular we large Boomer cohort, and the boomers are larger than themselves, every cohort within the boomers will be large, but there does seem to be a surprisingly large block that's not aging out and I don't think anyone's really identified why the sort of what the only real fear I see some repose, it certainly seems plausible enough is that is that there's a cohort of boomers that were this thankfully affected by useful drug addiction. And it's kind of alter their entire sort of subsequent sort of career life trajectory, and it resulted sort of a high persistent level of offending well past when we would have expected it to stop.

So one thing you said in the book about the war on drugs, when in relationship to the standard story was that you weren't sure that we could legislate ourselves out of mass incarceration. And that made me think that in at least a lot of states, we have had legislation and incarceration has declined. So why do you suspect reform legislation either isn't or couldn't be the trigger,

I guess, I wouldn't say a can't do anything, I think it's going to disappoint us and how much you can accomplish. Right. So, you know, we have seen, I think oftentimes what you see with these legislative changes is that you pass this new law and there's like a one year decline in prison populations as you sort of knock off that low level that you were dealing with, and then it sort of stabilizes until the next reform comes along. So you know, I think the challenge really faced with a legislator point of view is that you know, there's some willingness to embrace it, you sort of decriminalizing marijuana or legalizing marijuana and that's about where and maybe moving some property crimes from felony or misdemeanor or raising the line between felony or misdemeanor theft or you want to think about our thoughts that lines of alignment you have a misdemeanor that sends you to county jail at most and a felony that sends you to see prison is a lot of those cut off points like how much you have to steal they are drawing like the 70s and they are never tied to inflation. Right So \$500 was a decent sized stepped in 1975 right nowadays you still someone's phone and his immune system iPhone so instantly felony that because the phone is \$800, right, so that there's a lot that that's all well and good and we ought to do that. But the catch is that next thing to let most of the things people are in prison for are not things we necessarily want to decriminalize. You don't want to be paralyzed, Assault, Aggravated Assault, rape, homicide, like these are not things you want decriminalize, these are things that we either want to either reduce the max and reduce the amount of time people spend in prison. But even that's tricky, because what the legislature sets usually, especially outside of guidelines states, they just set the statutory maximum. And most people aren't serving the statue, a maximum, right, so the maximum of four degrees Celsius a 15 years and most people convicted of aggravated assaults or six years, right, even less hair cuts the sentence length from 15 to 10, 33% drop in the sentence like, right, if everyone's they dropped from 15 to 10. And most people serve seven they might not really do anything at all right, because because these are these are not Crohn's, we can be able to bring the statutory maximum for accurate salt down to five years is going to be those cases where politically we need to leave open the ability to send someone to prison for a long time to manage our sort of period of politics that we have here. And so I think lots what has to be done as much more the influencing county level officials to not choose to do this and get prosecutors to just not demand these higher senses. But I think there's a limit to what the legislators can actually politically feasibly cut

before we I'm almost to prosecutors, which is a good good thing since you just gave me a lead in there. But another interesting point you make is that recidivism statistics can often

be a more than a little misleading because a small number of folks seem to reset of eight, much more than the rest of the population that's being counted. What are some of the implications we can draw from this conclusion?

Yeah, I mean, even before getting to that I think is important to understand the sense with recidivism doesn't measure recidivism, right. That, you know, we talk about recidivism, they think we're talking about this person reoffending but we can't observe reoffending. And what recidivism measures is some sort of subsequent criminal justice contact we arrest reconviction readmission to prison which might be correlated with underlying offending behavior but maybe not are not as strong as you would think right because you know in some nice gentrified part in New York City it'd be very hard to be arrested for getting in a fight on the streets the cops just aren't there right when some heavily police neighborhood the slightest trends displays violation might have two or three cops popping up nowhere to snag you right and so know certain groups by seem to have lower Rhea Rhea rescinded official recidivism rates because it's gonna be harder for the police to protect their subject in violations versus other people who are more heavily please communities. On top of that, when we talk about recidivism, we use a very binary approach, right? Either you have no violation at all, or you fail in your city, which means it fails to account for the idea of distance. Right. What happens if someone used to commit 30 assaults a month now they commit five assaults a month. Right, somebody point, 13 get rearrested for assault. And under our definition of recidivism, that person is now recidivist and viewed as equally, a failure is the guy who goes and committing 30 cents a month, the 40 assaults a month right there in the stats, those kinds of identical, they both get we arrested for assault, and so they both failed as recidivists, right? But one guy got worse, and one guy got substantially better. That guy got better. Like, that's a good thing, right? It's not great that he kept committing the salt please, cleaning 25 fewer ones per month. That's, that's a huge win, right? or What did you go from aggravated assault, assault, or salt more likely to death, right, you have no measure of sort of easing out or are transitioning away from something more serious, either you are perfect, and never get refreshed again, or you fail. And so just that number alone is one of the most difficult, most easily abused statistics, just because it's not what we think it's going to be. So. So there's that whole problem with any discussion over symbolism start with is that is not actually measuring recidivism. If you just accept that number as the number, right, then you get to the other point, which is also completely true, which is that once we start looking at least the prison data, looking at who re enters based on individual people, which is we don't have a lot of data. But there's some notes and see that what we see is that the number usually here that's like you about 50% of all people who are released returned to prison isn't exactly true, it's true that in any given cohort that gets released half of that cohort on the back with some of those people come back multiple times, and some don't. And so we see is that about two thirds of all people go to prison never seem to show up in prison again, and then there's a chunk of people have two visits. And then a much smaller number of fractionally will have three or more stints in prison. What that means that

the normative implications of that number actually kind of cut in two different directions, right? On the one hand, it means that, you know, at some level, I wouldn't go so far as a prison works. But it's not this sort of constant like cycling through and so people don't constantly exposed to prison. On the other hand, what that means that if you look at how many people will be admitted to prison every year, know about, what, 700,000, 650,000, 70,000 people a year by 30 years. So that's 20 million people, right? In some ways, we better if it was just the same 600,000 are in prison every year for one year. And cycling through seven 600,000 people have been sort of touched by prison, but actually means the fraction those that that 1520 million who are unique individuals is a much larger number. And so the total reach a prison prison, this our society as a whole is is actually much bigger,

So you brought it up a second ago. So I feel like I have to follow up a little bit. You talked about assistance and the literature on distance, there's a subgroup called redemption. And I think one of the arguments that seems to be made by that it's it's not so much the crime, you commit as much as it to the time the time you stay crime free to you. Do you have any thoughts about this redemption literature?

Yeah, I mean, so it kind of ties into this whole age profile also are the as you get older, the risk goes down and what that redemption literature suggests. And, you know, all this is with a lot of variation, noise and some, you know, obvious methodological challenges is that people who tend to avoid rearrest a reconnection for about eight years, the probability of a subsequent arrest for them is about the same as someone who's never been arrested before at all right, so people who people who stay clean for about 17, eight to 10 years and on it as a general matter, it seems like they're roughly sort of the equivalent of sort of the average person on the street would suggest that serve our view of crime as serve our conviction. This or this. This permanent unwatchable stigma that can never go away grossly overstated the extent to which you know, people don't change and evolve and grow and your state's understands these things was he changed and evolve and grow.

So as we will start talking about prosecutors in the book, you make a point about kind of a moral hazard that's created, right. And I think you even referred to this little earlier that's created by prosecutors being at the county level, while most of the incarceration happens at the state level. I see this playing out all the time, most recently in the debate over raise the age in legislation here in Michigan, are there ways that we can avoid or disentangle this kind of hazard,

So So the moral hazard problem is this idea that prosecutors for in most places are our county elected officials with counties established budgets and prisons are state institution paper by the state. So the DA convicted of a felony and they send a prison it doesn't come out the budget or the county's budget or anyone who votes for his budget, it comes out with different constituencies budget, so it's basically free and in fact magnifying that effect is that

jail and probation that are the lesser punishments for a misdemeanor, those are paid for by the coffee. And so there's the DA my face a little bit more pushback of these less severe because it's actually costly or for the county to fund. So can we solve it, there are ways to do it. In fact, you know, we've taught me people talk a lot about how, you know, we've seen like the decline in the US prison population since 2010. But that's not really true, you'll only half the states have seen the drop in prison populations and half the states as senior propositions go up since 2010. And actually even more about half of that total national decline is just the state of California and so the rest of the country is kind of tagging along behind it and Kalin importantly for our discussion here, California actually is one of the few states that has actually directly targeted this moral hazard problem. So California was forced to make some massive changes to his prison system, because it was at about 200% of its capacity to the point of the Ninth Circuit basically took over control of California is prison system, Prince California was so bad their system was so overwhelmed that they admitted in court that inadequate physical and mental health care resulted in about 60 preventable deaths every year in the California system at this at a time when the United States as a whole with executing about 35 people nationwide. So California sort of overcrowding was actually effectively executing twice as many people every year as the entirety of the nation's death chambers in the much more subtle, invisible, unnoticed by the media kind of way. And so California is required to cut back from 200%, 235% are under a court order. And they had the thing was in radical to do they adopted this idea that was called realignment, which is this incredibly complicated, sprawling piece of legislation. But at the heart of realignment was idea that for defendants were called triple nones, we should for non violent in in California violence is a fine art non sexual meaning not on the sex offender registry and non serious there, there are a handful of very serious property crimes that could also fall as being serious of your non non violent, non sexual non serious, the county had to lock you up for whatever felony conviction that can add a post on you. So effectively, they pushed the cost of these incarcerations back onto the county an effort to serve denied the state the ability to do free ride off off the county the ability to free right off the state budget, it's gotten trickier Since then, the counties perhaps understandably said that they lacked the budget and the infrastructure to handle this inflow of of formerly state incarcerated detainees. And so the state offered a whole bunch of subsidies either build out gel capacity or to expand programming for more less can find solutions. But unfortunately, the the county's lobbying got those subsidies made permanent, which undercuts a lot of the effort to make the county's actually paid for what they're doing. Now, the state subsidizes them to be held in county facilities. But I think one reason why California saw this huge decline was this idea of realignment of St. Counties, if you want to lock up sir, cases aren't too serious, you're free to do it. But you have to pay for it. And all of a sudden county started not wanting to pay for

So you've been writing for a really long time even before the book about the problem of prosecutor. So rather than just start asking you a billion questions about it, could you kind of just present what you think the the overall problems are?

Yeah, I mean, so what am I work started was I was simply trying to figure out where prison growth had taken place justice in the system now was it being during my crime by arrests by prosecutions by admissions by time length of time to serve in prison, I can what was changing, it causes massive increase in prison. And every 30 I'd seen before, it always kind of glossed over the prosecutorial part then it changes in crime, changes in arrest and changes in prison. Admissions progress sort of jumps completely over the whole court part of it. And that was driven mostly by a data issue that we have, we have our data is all this is there, every at every stage, our data is a mess. But conditional on how generally messy our data is right? We have decent, decent enough crime, arrest and prison data, we don't really have any national data on prosecutors. And so I found this data set on prosecutors answer felony filings in state court so still wasn't from the DA switch from the court system, but told me when a felony case hit hit the hit the court system and using that as able to find that the single biggest factor that drove prison growth at least over the 90s and 2000s as crime is going down was an increasing felony filings and state court that crime is going down, total rest are going down. In fact, arrests for non drug offenses, not marijuana documents is went down sharply. And so the amount of sort of people entering the system dropped precipitously medical being sent to prison kept going up and what was driving. That was the fact that even as a number of arrests, Feldon, or felony cases actually rose. So these are human increasingly aggressive. And so that so that that's sort of what the data tells us. That's all the data we have, that we have can tell us the question that of course, is well, why they like what happened over the 90s and 2000s and there are a lot of different possibilities it could be sort of relative underfunding of indigent defense and 80% of all people facing prison time qualify for state lawyer could be there but people weren't spending more than all that much more time in prison outside of homicide perhaps the logger senses gave the DEA is more leverage a plea bargaining but to me the most sort of I think the most significant factor is also the most boring and that's usually how things work and things that matter the most are the most boring that's why they persist for so long and the factor I found that matter the most seems to matter the most in a rough kind of way is we just hired a lot more da da is probably like line prosecutors right. And so it was really interesting is that there's not a lot of data Nash and how many system system prosecutors and prosecutors we have, but there's sort of a data point for server the mid 1970s from 1990 and from like, 2007, and so from 1972, 1990 as crime is going up. We don't hire that many more at as he goes from like 17,000 to 20,000 or 3000, more humans, crime is going up and the rest are going up. And prisons are going up from 1992, 2007 or so as crime goes down. As arrests go down. As a total number of people flowing in the criminal justice system goes down, we go from 20,000 or 30,000, 30,008 days were 10,000 more be extended by 10,000 over that 17 year period. And so we don't have good data on sir da productivity. But every sort of proxy I can

think of all told the same story, which is the individual ABA, sitting at his desk in 2007 is no more harsh or aggressive. And that same ada 1990, there is just 10,000 more of them. And you know, we arrest 10 million people per year, we impose about 1 million felony convictions a year, we've met about 600,000 people to prison every year, if you're an ADA sitting at your desk, and you need to find a case to charge as a felony, because that's what you need to do to keep your job there are 10 million arrests and pull from there. They're not all felony arrest. But you can find another felony in that pool of 10 billion to charge and they did,

So earlier you said that one of the answers to the violence problem was to have more police on the streets. It seems like in this case, having more prosecutors on the beat hasn't done a great thing for us. Do you have any thoughts about why that might be different between police and prosecutors?

Sure, I think it's because policing actually deters and punishment the tours much less right so the way an officer on the on the on the corner is effective is less because of his his actual arrest. But it's more that threat of arrest right it prevents the crime from happening in the first place, the prosecutor only comes in afterwards simple as a punishment on those small fraction cases they get arrested there deterred impact isn't nearly so strong. And so they serve a slightly more reactive role. They they can only handle the cases that the police have arrested and what what really prevents crime is not punishment. But but that risk of detection and is I assume there's also still a problem of the code, which is we pass so many laws so that we can multiply charge people so that plea bargaining becomes easier. Is that still a problem? I think I think that's almost certainly a problem. The catches the fact that there's not no states our state's office very this, there's Oh, as far as I can tell us what we really one period that's looked at it, they could only look at a few states, but as a fair amount of very states in terms of sir How, how broad or how deep their codes are, right, you know, how many different degrees of our center theft or salt you have, or which is definitely go first, second, third, fourth, fifth, sixth, seventh degree, which gives do a lot of ability to stack across degrees, or how broad they are, like, you know, maybe you punch someone that can be assault, that can be reckless endangerment, that we also other kinds of sort of a broad array of different offenses and all that matters for plea bargaining. And we don't really have any good data and how that varies as a general matter, we have basically no data on how plea bargaining operates, what drives it, what what causes rates to go up or go down, it is even within sort of the black box, and prosecutorial behavior. plea bargaining is, Sir, sir, that the black box nested inside that black box.

Oh, my. Okay. We declined to plead marketing is it's really frustrating.

So that's I mean, I, you've talked about I think this is one of the big problems, why is this like the only wire prosecutors I know, they're not incentivized to change, but why hasn't society

done anything to require prosecutors to do for instance, better reporting or to report on plea bargaining?

Even the courts, right? I mean, it's a tricky question. I mean, on one hand, I can, I can understand why we have less data than we have of prison data, because there are 50 states and there are about 2200 district offices, right. And the states that are, you know, relatively well developed state level, bureaucratic institutions that are district offices, you know, about 60% of all felony cases take place, and about 10% of the offices these officers tend to be, are your big urban suburban offices, but about in a majority of actually, a majority of district offices have, on average, somewhere between two to three lawyers in the office and maybe two to three support staff, or you have the elected district attorney, and maybe one, maybe two assistants in one or two administrative assistants, right, these offices are not gonna be able to gather a significant amount of data, right, my guess, given given things I've seen about how things operate on urban district offices, my guess is in a lot of these smaller offices is to literally also being done on paper or that or there's no electronic files to actually gather data from. And so I think that's part of it. And I think, I think it's, it's, it's telling that we have really, really good prison data, we have terrible jail data also in jails, like district or county institutions, and we're just not good at gathering that kind of county data effective kind of way. I mean, obviously, the counter argument to that is odd, but we do it for policing, right? We have we have, we have 2200 district offices, we have 19,000 police departments, we seem to serve our Uniform Crime reports from them, maybe, right, first of all, I think in general, police departments tend to be bigger than district offices. Also, you know, we started the Uniform Crime reports in the 1930s, right, we've just been doing it for a lot longer and policing is always grad and crime that that grabs our attention. We want to know what's going on there wants to know what's happening to crime, we want those having the rest prosecution, that's totally different. I think the political demands to gather that kind of data are weaker, I think we're starting to realize that's been a mistake, but it's gonna take a while to build up a capability, that the political capital to push for greater regular regular regularize data gathering, much less actually building out the infrastructure to do that across, you know, 2200 independent district offices. Another problem you've highlighted is that when we have for instance, tough on crime, prosecutors, generally nobody ever runs against them. Do you want to talk a little bit more about how they kind of become permanent prosecutors? Yeah, so historically speaking, prosecutors almost never faced opposition. When they did this opposition. They would generally when, you know, in 2007 was when 7009 when Brooklyn had had an incumbent who lost and when when Joe Hines lost to Ken Thompson, it was the first time in over 100 years that is that a sitting Brooklyn district attorney ran for reelection in last I took a century for that to happen. that's starting to shift. It's starting to shift at least in urban counties where you are starting to see people run on much smarter on crime approaches. And, and when, right, so take note Kim Fox in Chicago who ran us Anita Alvarez who is Milburn particularly harsh, you know, obviously you have you know Larry Krasner in Philadelphia, you have Rachel Rollins in in Boston, there are a handful of the

service so called progressive prosecutors who are starting to change things or go potential to go in different direction. I think what's important realize is that it is a decision the urban phenomenon, and even as, as, as know, we see the sort of push towards decarceration that remains a distinctly urban phenomenon. And specially rural small rural counties are increasingly punitive and harsh and seem to be embracing prosecutors who are punitive and harsh. And, you know, we don't have a national approach at this, our handle is increasing severity in rural America.

So let's move on a little bit. I've said for years, you'd have to be willfully blind to walk into a jail or prison in the United States and not see the structural racism. Is this also a prosecutor problem? What are your thoughts on addressing the racial disparities in our system?

Sure, I mean, obviously, you know, and that evidence is clear that that it plays out every single step that each step of the process race plays a role. And so even if the individual steps aren't very big, by time you get to the prison stage, the cumulative impact of every steps. So racial bias can be enormous. This when it comes to to prosecutors, and race, you know, there's a really prominent study couple years ago showing this something like 95% of all prosecutors, the United States the the elected da at the top, but 95% of them were white men, which is troubling, but I think it's also worth realizing that there are a lot of put it put aside the male female partner man moving part of it, just focusing on the race part. There are a lot of really, really, really, really white counties out there in America, right? No, not all counties are equal. Like I said, about 60% of all criminal convictions take place, and just 10% of all da offices and those tend to be those dense coastal urban counties and me the few in the Midwest. As you move into those more urban counties. The days are still disproportionately white men, but you start seeing a greater fraction of people of color and women and women of color as the prosecutors in the urban county it's still too few but it's better to me though especially in these urban counties what I really think we have to focus on is not the race and sex of the DA is the race and sex the ADA because the fact of the matter is you know Kim Fox Larry Krasner richer Rollins they're never going to see the inside of a quarter we don't want them to see the inside the courtroom Larry Krasner and Kim Fox should not be getting their hands dirty prosecute a specific case on a specific day in court. And so we don't have any start. Yep No, no go ahead and read so we have almost no data on what the actual line prosecutors look like you own this that I've seen was a study in California, the Stanford in a couple years ago. And what they found is that the racial composition of the aid of the assistant prosecutors in California as a whole look exactly like the demographics of California the state as a whole assuming it was still 1975 right that while the state is now like 30% white the abs are about 75% one and two that's the much bigger problem because at the end of the day a defense case turns on this Ada sitting down across the table from him in some the jail cell or some dingy lit room in a county court and counting days office and deciding what am I going to do with this guy right Am I going to demand a felony Am I going to complete out to a misdemeanor I'm going to just drop the

charges I think he's a kid who just screwed up and the more that da that Ada understands the life and circumstance of the person he's talking to the better able he is to sort of do justice and so I think we need to focus much more on who are at as are in their backgrounds and their ability to understand the complete and total story of the person that they are talking to is a far bigger issue issue then then they who the person at the top is that matters but it's not as important as that the 25 year old Bosco graduate is actually handling the case on a on a day to day basis.

So I was wondering about your thoughts on the recently passed First Step Act and totally feel free to ignore the fact that I worked on it for about a year

I feel okay saying I think because you probably know exactly what I'm going to say already right which is you know, the provisions in the act are there's nothing in the act that's bad right everything is trying to do with something worth doing right some things they shouldn't have to do but we do like banning chaining pregnant women to a bad weather give birth like we shouldn't take any pleasure and in fact we have to do that but if we have to thank God we did right or especially in the federal contracts they trying to at least make it slightly more likely that that people are not ship 500 miles or thousand miles away from home tracking a little bit closer to their home improving the chance to get out of prison early and fixing like good time credits, like all this is is is laudable stuff to have accomplished my big issue is that, you know, the federal system is a is a fairly is overall small total player, right? It holds about 200,000, just under 200,000 people. And this is more of 1.5 million, right? If we were to if you're released every federal prisoner, we still have the world's highest incarceration rate, right, it doesn't, it's not the driver, these policies only apply to the feds. And so as one person put it, when you think about how many people leave federal prison every day know what the first step Act does is basically add two days to the year and it's kind of the total increase in outflow. So its impact is going to be slight. But it's what it's doing is is worthwhile. What really bothered me about it was less the act and more the coverage of the act right every single day. It couldn't, you know, one could even like, add a comment to the first step back without the New York Times The Washington Post scrambling and talk about what does it mean that Grassley added a comment here, and she took a period out there and like every, every time someone blink just loses motorcycle the first step back, right. I mean, I'm glad 90 centers had new children. So I swear for them like cuticle for his first step yesterday, the headlines about what does this mean about the first step back, I think it's fine. It was a fine piece of legislation, but it didn't deserve the national level of attention to got California is realignment has done far more to change the national trajectory than the first step act ever will. But no one outside of you know, the la times in the papers in Sacramento talked about realignment. But every paper cover every aspect of the first step. That to me, that was why I found frustrating about it is that once again, reinforce this idea that federal laws going to get us out of this. And and I just don't think it is and I know that some states claim that is encouraged conservative state legislators to think what we're for

more, and if that ends up being true, that will be a good thing to happen. But that's got to be worse. Got it matter. It has been started that the symbolic messaging component to it far more than the actual act itself.

I think, you know, for most of us who worked on it, I think that a lot of it was inspired by previous state action in states that have already done reform. And since its past, there have been, as you just mentioned, a number of states were trying to pass similar reforms. So I also think there's a large symbolic effect, for instance, to the president inviting Alice Gary Johnson and Matthew Charles, to the State of the Union. I'm not sure that would have happened in a world in which there hadn't been a First Step Act, you know, a few weeks ago, I had Vincent Schiraldi on and he shared his feeling that the significance of things like that and Meek Mill, being greeted as a hero, after he was released means that the criminal justice system is not seen as legitimate by a large percentage of the population. I've been quoting from the stat from this research done by forward that one out of every two Americans has had a family member incarcerated. So I guess this is leading me to ask you, do you feel like even if it didn't have maybe an immediate effect or as impactful an effect as you perhaps wanted? Do you think there's a symbolic effect and you think it has any relationship to kind 20 or 30 years of Willie Horton politics?

I mean, so maybe, but it's to me still in the complicated kind of way so take like the Matthew Charles case, right. So you know, the underlying story method Charles was was awful, right? He gets this huge mastery long drug sentence, he gets released early, start by accident, and then the federal policy for no justifiable reason throws the demands he goes back to sort of time and he gets out really for the first step back but what was Matthew Charles in prison for right he was in prison for drugs and in some ways are holding Charles up as an example, continue to reinforce this idea of Look, here's a person who's to got like a 50 or 40 or sentence for drugs, he gets up early, it's it's it's great. And I agree with it the legitimacy issue but I also feel once again, we're reinforcing this this non violent I mean, nasty Charles is actual pass at a fair amount of violence in it, which I think is actually thought there's substantial parts of his story that was important is that he actually did have I went to this past it is jacket, right. And I think that's incredibly important. But I think that's oftentimes been lost in the retelling which is a look at this guy who spent all this time in prison for drugs. And now we're sort of saying this is wrong, and it is, but it continues to reinforce this not started the non violent offense people are entitled to relieve. But no one else is, I think some of his sort of prior violence kind of got lost in the discussion, I think that should have was very much more central to the, to the, to the date there. And so yeah, I know the symbolism of what the first act did it, there's there's some potential pitfalls in there, because everything you do is high profile. And anything that even came close to violence is completely off the table. And to some extent, that might reinforce this willie horton idea that you can take risks with the drug cases, but you still can't take risks with the violence cases.

And at some point, we have to figure out how to let that go of that weariness and comes to the violence cases as well. And that,

You know, I think yesterday you had a long thread on Twitter about what we should put in the second step act. So maybe you could talk about your ideas in addition to that of how you might have, we might go farther in our next iteration of this?

Right. So again, like like, so we're saying, if there's anything to the second to the first, the first act is going to have any sort of really big impact is going to be through how it shapes what state and county officials do. And so I think whatever a second step Act does, it either has to be designed to like explicitly try to shape but they do use very strategic federal grants to target states and counties to adopt certain practices or if it's going to do something at the federal level do it in a way that forces us to have really hard discussions we keep desperately trying not to have right so you know, one thought it has what what would happen maybe wouldn't even survive passage but maybe just just putting in there and forcing the date could be useful right? What if What if the second set back said that the feds provide an increase in in funding to hire more police will give cities and counties and states more money to hire police provided they increase the parole eligibility options for people can make to the serious violent crimes right not just including serious violence we have to explicitly make people can make you have serious problems even up to and including homicide more eligible for meaningful shots at parole and in exchange for doing that will give you more funding for something else that we think is good at preventing crime better than prisons then serve know manage people's fears right and just I think just having the Congress put that out there and sort of force that debate will be really important to I criticize them towards the end of his term or threatened Twitter right spend far too much time criticizing Obama is clemency choices because over the courses entire clemency period as far as I could tell, he only committed one sentence for someone can become a violent crime and it was armed robbery and it was a woman which I think is important convicted of armed robbery in armed robbery with the gun was never actually used. She had a gun on her so account is armed robbery, therefore technically a violent crime but no one's ever thread with a gun. That was the closest he got to commuting someone for community violence sense like what imagine what would have happened if Obama community the sense of someone who'd been in federal prison for 45 years on a murder charge. I say this guy poses no more risk to society. And this these kinds of long sentences make no sense at all right community, one federal merciless, we had zero impact on the actual prison population. But the symbolic impact, like what would that do to our national debate about mass incarceration? What drives it? That would be a huge thing for him to do, as you know, towards the end of his term, go out the door. They forced this debate on a country that really left right and center desperately doesn't want habit.

Yeah, I think he famously was quoted as saying something like that he didn't have a lot of feeling for people who committed violent crimes like I seem to remember that maybe that was in James Foreman's book. So that leads me to another question that you've talked before about how I know a lot of people's kind of gut reaction is 94 crime bill was that it was one of the worst things that ever happened. I seem to remember you were saying maybe not so much.

I spent all 2016 v litigating they the early 1990s Yeah, so the 94 crime Mac had it had a fairly minor impact, right. So first of all, the closest revisions were focused at the federal government, the feds don't really have that bigger role. And the main as though it had some things that likely made lives worse for a lot of people, right? Like go cutting Pell grants that definitely made prisoner more miserable experience for thousands of millions of people. Although what was the overall impact on total prison populations is a different question. But the main aspect and it's also important realized it by 910, you for prisons have already been growing steadily for 20 some 20 years at that point, right. So it wasn't like it wasn't like we had a flat incarceration than 94 X is going up going up steadily for two decades. And in fact, starting with any for the rate of growth starts to decline, right, it rises every year from 94 until 2010. But the speed at which arises actually starts to decline before 94 and continues to decline after 94. And the main aspect of the 94 active aimed at the states was called the boy test grants and violent offender incarceration slash truth in sentencing grants, which are basically these these millions of dollars, billions of dollars in aid that the feds offered states if they build up prison capacity to incarcerate people convicted of violence longer or to at least insist a survey longer fraction of their sentence before being pro eligible. Usually 85% it was really interesting is that they offered about \$10 billion and in the end, the state's claimed only about like 4 billion of it actually less six billion dollars sitting on the table they just never bothered to get because each we're already spending so much money on prisons at that point that what the feds offered was kind of a small fraction of that and it wasn't like, no, would you necessarily massively increase how much you buy apples if it says offered you a 2% discount on Apple's like know, right, like a 2% off coupon is not going to make you buy a lot more stuff. And this is about a two to 3% coupon that the feds are offering that would only last for about six or seven years, even though the prison growth policies would result in sort of permanent increase in lots of state said it's just not worth it to us to do this, and in fact, can be and only four states said that had a significant impact on their decision to adopt these laws and two of them so prison populations are dropping right afterwards. So no, it's no I don't want to their ways in which you might matter in much more subtle way so so one state that did adopt a harsher sentencing law and respond to this was New York in New York, that immediately sauce prison population start to drop. But the number of New York state prisons for violence has not gone down over the past 1520 years, even though our crime rates going down sharply. Right, that could be somewhat tied that law. So you know, it's hard to see the impact now, but maybe five years from now, we'll have to really wrestle with what this law we adopted back in 94 minutes. But overall, is its

impact was fairly slight, just because, you know, again, this has been a lot of this is driven the county level and the counties weren't really paying attention to what the states were doing. They don't really care, they're just going to keep sending people to prison, because it doesn't affect them at all. And they don't really worry about what's going on at the at the state level.

So just two quick final questions. The first one is, and of all the millions of tweets that you've probably written. How do you feel about your tweet about finding an old Apple Computer being the one that was probably the most viral

Like that the last time I checked it like 170,000 likes to like 40,000 retweets and I've been it's been discussed everywhere. For like CNN, to us Univision Halligan minute long show about it, that yesterday is kind of hilarious that that, you know, that that's what went viral. I guess it's kind of To me it's actually kind of nice, right? Because you know, part of the jokes I wish I would have said in that first tweet, not like you know, this computer is 30 years old I guess running justice movie like now is then just like mass incarceration runs this movie now, is that right? Keep on brand, even there. But I have to say like, you know, there's literally been, I mean, it's got about this about 3000 comments on this tweet, not an exaggeration. And I say a good like, thousand of them are real people along the lines of like, this thread, like, brought me so much joy, right? People my age, like looking back to their first computer. And the while I remember that I never ever get a response of like, this thread brought me joy into my Twitter feed ever. One guy who was that he follows me because every day I convinced him that like the humanities, actually worse. He thought it was a day before, right, a couple of days, right people I know this actually made me feel happy. I remember this is things like fond memories of my father. Like I'll take it right like my for once my turn to make people happy, rather than the reminded that how awful the world can be sometimes. So you know, in the end, I think I was pretty happy happy with that.

Oh, I have to ask one other side question. I saw some games on there. What game was the best one you found?

So unfortunately, the discs like I find parents the ratio of my games like my dad's financial records are way out of whack. So so all my favorite games or not, they're like Oregon Trail or Ultima four. So so far, I think the best way I've had is is the Neuromancer one so yeah, that's right in fact, I got out what's his name actually responded to the team was actually pretty awesome to who wrote know what, who responded, carried by him. His name William gets in the way of give some did. Well, when he gets it, he he catches for he he be treated that screenshot with the music just wrote, Lordy,

oh, that's almost worth the whole thing by itself.

Exactly.

I always ask the same final question. What did I miss? What questions should I have asked, but didn't,

You know, I feel like we covered the sort of the things I think are really most centrally important. I mean, there's, there's no sort of big thought of having this is something that that we're missing. You know, I think, I think there's a genuine desire to amongst a lot of people to change the way the system operates. I think, I think there's even a chance that people might, you know, might really be able to embrace difficult issues. In fact, you know, sort of the the thing, ironically, the thing is, I give you the most hope. Now, in some ways, it's really bleak. But so he's kind of optimistic, I say. So we talked a lot about the Willie Horton. In fact, I talked a lot about it, right. And then for those who don't know, the willie horton effect, refers to this political problem that do I have, no matter how good the program is, it fails once that one failure will do MIT. And the willie horton case involves a furlough program that Massachusetts and 40 some other states had that allowed inmates even those like Portland who are serving a life sentence for murder and allow them to go home for the weekend with passes to see their family to reconnect to their family for those who are going to get outside look for jobs in the program Massachusetts had a 99% success rate but Horton didn't come back he he ran off the Maryland commander brutal home invasion he beat up the mantle of their woman stabbed the man and the woman who lived there. It became sort of that this incredibly racist though not racist by 2018 Sanders add in the 1988 presidential campaign between george HW Bush masters governor to caucus and as a result of the Horde NAD every state abolished is for the program. Right. So so there's one failure in one state gutted this whole policy that was interesting that that several years before that. Another state with a furlough program had the exact same thing happened. One guy absconds, he commits a murder all the law enforcement agents have a lot of force inefficient in the state demand that this fellow program gets shut down and the governor stood up and said no I'm not shutting this down this is an incredibly important part of our state's rehabilitation plan no mistakes happen we have to learn to move past these one error you know he fired the guy in charge he reorganized a couple things but he insisted the program be allowed to run and that was governor California ronald reagan right by no means that progressive hung criminal justice issues at all right or or another even more striking example is in the 1930s a governor and I believe either alabama mississippi mississippi he um. He furloughed one third of the state's prison population for Christmas so it's about 500 people he said home about 15 didn't come back and immediate response from was that's fine but one journalist actually said you know that rate of return is probably better than what you know like the the average population would have done right like this is an incredibly important program we can't let these failures getting away right so on the one hand like our current politics are worse than Reagan in the 70s and Jim Crow Mississippi right so that's profoundly depressing but on the other hand, it means the fact that like this incredibly unforgiving zero tolerance period of politics like you don't have to fundamentally change American culture to

get away from that right Reagan wasn't like that in the 70s governors of Jim Crow Alabama or Mississippi we're not like that in the 30s but you don't have this completely up and all of American culture we are in a particularly bleak dark place with criminal justice now we're we're starting maybe to crawl out whatever this incredibly unforgiving nasty whole we climbed down into, but we can get out of that without necessarily into completely up end everything thing I saw, ironically, Reagan in California and Jim Crow Mississippi, give me hope about what we can at least know be better than that. And we can get someplace better without some sort of complete revamping of the no American moral culture.

Thanks so much for doing this. I really appreciate you being on Yes, absolutely.

Now, my take thanks to John for being my 50th guest. But I'm going to go a little bit off off the subject. Now going a little bit of ramp that has very little to do with my interview. Earlier this weekend, I put out a thread on Twitter about successful reentry when I thought would make for a successful re entry system. And it kind of caught fire it that could have got over 100,000 impressions. And so I'm going to talk a little bit about that now. So this is my plan, or at least elements for success, successful prison reentry. And one thing you should know is that there are a lot of states in the country where they're still kind of a tough on crime mindset, where the idea of reentry is really not very well developed, and where it recidivism is very high. As a result, the idea is that, you know, it started in the 70s and kind of went through that the best way to deal with prison was just to warehouse people, that nothing you did in prison to make much of a difference. Well, you know, through my own personal experiences, through interacting with people who run successful reentry programs throughout the country. And doing a lot of research, I found out that that's not true that there are a lot of things you can do that make a huge difference in terms of the amount of recidivism when people come back out, and a huge number of things you can do to try to help people reintegrate into society successfully in ways that benefit the entire community. So these are my elements of a successful prison reentry system. First, planning for re entry should start after sentencing immediately after sentencing. Prison should be like hospitals, we should start playing for people to return the over 95% of people who will return from day one second, meaningful evidence based Addiction and Mental Health programming should be provided for every single person who has need there is almost nothing that you can do that would have more immediate and lasting impact for people in prison, in terms of their ability to come back whole, then making sure that we have meaningful evidence based Addiction and Mental Health programming provided for every single person who has need third, evidence based soft skills training needs to be provided for every single person who will be returning. And we need to make sure that we're providing other evidence based programs that have been shown to work as often as possible soft skills training is that just the idea of helping people with interview skills, the ability to know how to present themselves simple questions that people don't always have access to, and don't know always have it practice at knowing how to put in how to use. So it's very important that

everybody at least gets access to soft skills training for it, we need to make sure that everyone leaves prison with at least a GED. And with basic literacy skills, we need to fully restore Pell grant funding, these things would have been shown time and time and again, after in study after study after study to really have a major effect on recidivism. The Vera Institute did a recent study, which I'll put in the show notes that, you know, suggests that it would have an incredible amount of effective, we restored Pell grant funding at the federal level. So let's make sure that everyone leaves prison with the least GED and basic literacy skills and give people an opportunity to move toward higher education by fully restoring Pell grant funding. Fifth, every private company who profits from prison contracts must be involved with training people while in prison and hiring people as they go it out. They have to hire them for real jobs upon return. Anything else is a waste of public money. In my public opinion, my humble opinion, why in the world would we invest in a company give them profits, where they're able to actually charge people who you and their families who have very little, very little money if they are not invested in those people coming back in a better place. I know there's a lot of discussion about private prisons versus privatization, all that stuff. About 5% of people in American prisons, American citizens and American prisons are in private prisons. It's a very small percentage but but 100% of people who are in prisons and jails in the United States have contact with prison privatization which means companies that serve public functions in public these companies serve public functions in public prisons, which we they're providing food on the commissary they're providing email access, they're providing video visitation access, they're providing tablets in prisons, they're providing all kinds of services in prison sometimes they're providing the health care in prisons My point is that these companies if they're going to profit from people in prisons have to provide an additional public benefit which means they should have to hire people and train people so that when they come out of prisons they have a pathway to success to successful return otherwise as I said I think we're wasting our money next I think departments of corrections must be invested in training folks for meaningful next economy jobs not just janitorial and low level food service jobs food service training for instance should be high level training like what Brandon Chris Nowinski does in Ohio and if you saw the if you listen to our knife skills episode, you heard a lot about that. And other training should be meaningful, like what the last mile does in California, where they train people, both in entrepreneurship. And they train people in programming. These are next economy skills where people could come out, and they can use those skills to create their own business or to become part of someone else's business. Next, every state should be investing in training people in prisons and environmental remediation and hiring them as part of a cadre of adaptation to climate change, weather related or other environmental remediation. everyone listening, we can all totally disagree about what the cause of this stuff is. But there's definitely been an awful lot of severe weather events across our country over the last several years. Just think about the floods, just think about the wildfires, just think about the polar vortex. And one thing we could be doing is training people while they're in prison to be good at environmental remediation. And then states hiring them when

they get out of prison to help do environmental remediation for the needs of Beach State, these cod race could be put to work doing things like infrastructure, pair remediation, all kinds of things that states need, and we have a huge need. And this is a population of people who could get gainful employment with health insurance and benefits through something like this card Ray, there's really no reason not to do this, as every state has these needs. So we should probably start doing it. Next states and State Department of Corrections should be working to end licensing and employment discrimination, everything from banning the box at the state level and ending state licensing discrimination whenever possible. Now, obviously, there are certain instances where people may be should not have licenses in particular things. You know, if someone robbed the bank, they probably shouldn't get financial service licensing. But at the same time, it has been found time and time again, that every that most of the licensing restrictions have nothing to do with public safety, or very loosely related to public safety. And that we could get rid of a lot of the restrictions and still allow people to move into gainful employment and fields that could matter. This would help people coming back in a large way. net. Next, we need to make sure that every state should be invested in ending housing discrimination against formerly incarcerated folks, this can be done either through localities insisting on it, as part of as part of their contract with companies are giving people the ability to buy property that can be done by declaring formerly incarcerated folks a protected class, you don't kind of a civil rights thing, or it could start in vet incentivizing people to provide housing to formerly incarcerated people. Now, for things like section eight, this is determined by hard and at the federal level, I understand that and we should probably working on trying to change that too. But I think at least in my area, the vast number of people, the vast majority of people have a hard time qualifying for section eight for a number of reasons. For instance, there carved out by federal legislation that allows discrimination against, for instance, people who had drug charges or sex offenses or anything like that. And these people's, you know, if you don't have stable housing, it's very hard for you to get your life together and start moving forward. And if you can't ever attain stable housing, how are you supposed to be stable, we need to start working on every level, not just the federal level to try to push to make it possible for people to have a place to live when they return. Next, people say, oh, but the cost couple things here first, you know, obviously, we need to incarcerate less people, every single person that we keep in prison for a year is about \$35,000 on average, per person per year. That's a lot of money to have incarceration. And we found in study after study after study after study after study after study, that they're almost always alternatives. For the vast majority of people who are prison we tend in prison and jail, we tend to think of every single person in prison and jail as you know, our nightmare scenario of what the worst person is. Now, I personally believe that there is room for forgiveness and for everybody to come home. I don't believe in long sciences. I don't believe in punitive justice. But no matter what system you believe in, it still makes a lot of sense to not treat every person as if they're Ted Bundy and start realizing that we have an awful large, an unbelievably large mass incarceration problem that's mostly fueled by people who really don't need to be in prison at massive cost

to society. The second thing I'll say here is that program and planning for outcomes reduces costs dramatically over time, investments now will pay off in a huge way down the line in budget costs and in tax revenues are big problem right now is that we focus way too much on single year budgets, not on for instance, to tell a five or 10 year window. Here's an example if someone is in a group program in prison, that program pays for itself if it results in parole. Non successful or delayed programming costs \$35,000 per year per person in prison. As I just mentioned, it cost much more money to have a backlog in programming than it does to have the programs funded fully. You know, when I was in a therapy in therapy program in prison, we had about 15 people in the group. And it turns out that approximately 11 of those 15 people paroled out on their first opportunity. You know, anecdotally, you know, I was denied programming twice been denied parole twice, because I had not completed programming. The minute I finished programming, I got parole. So those two years cost the state of Michigan \$70,000 where the cost of a therapist for a few hours for six months, you know, a few hours a couple times a week for six months cannot just on me be \$70,000, you're not going to pay a therapist for one therapy group \$70,000 in prison. But if you'd had a few of us just my \$70,000, you probably could have had seven groups and save yourself hundreds and hundreds and millions of dollars. If you think about how this goes on. You know, for every 15 person group you delay to save the cost of one therapist for a couple hours a few times a week, you cost yourself the price of 11 to 13 people in prison per year. You know, you're basically saving yourself a few thousand dollars in the cost of like \$385,000 per year per group that you delay. It makes no sense or obsession with counting. Only one budget cycle costs us just, you know, millions and millions of dollars and corrections. Also, every person coming out of incarceration should have a fully recognized state ID. They should have a driver's license if applicable or possible, and they should be signed up for all assistance they may qualify for, in addition to any addiction and continuing any addiction or mental health programs that they require. We need to stop saddling people. Another thing for sure, we need to stop saddling people who leave prison and have nothing we need to stop settling them with massive criminal justice debt. You've got to remember that these folks face employment and housing discrimination already, they have no money for the most part, you know, the state takes whatever money they had, they come out with nothing, they have no chance of employment, they have no chance at safe housing. But we put on you know, I personally have like \$10,000 in criminal justice debt, and I didn't have a victim so I didn't have to pay restitution, you know, some people coming out with like, \$20,000 in criminal justice debt, it's just crazy to assume that someone who's in that situation could ever pay that back. And to put them in a debt situation puts an incredible amount of pressure on them to do something drastic to survive. It just makes no it's just so counterintuitive, it's just it boggles the mind that we do this. But it's very important. You know, I have friends who still are struggling with getting a state ID, the state seem to have no problem knowing who they were, when they were in prison. But the minute they get out, the state doesn't want to, you know, help them get a you know, legal identification, all of this stuff is just crazy. You know, we need to make sure and we

providing the best pathway, not the worst pathway for people to return. Also, nothing could save more money over time than investing in healthcare and better and healthier food for people in prisons. A couple of anecdotal examples, you know, at my prison, the prison where I was at, or really any of the prisons I was at, I guess was it three or four that that you know, we didn't have good sunscreen on commissary, you know, in a in an era where the vast majority of time because there's more people than jobs in prison, the vast majority of a person whose time is spent on the yard where they're, you know, you're out in the sun, if there's no sunscreen, you're ultimately going to cause yourself a lot of health care costs down the road in skin cancer. But instead of thinking about that, they put a cheap you know, not protective sunscreen on the commissary that makes no sense. But that's just one example. You know, just think about the health care costs from low nutrition food is again, this makes no sense. And if we just took some time and really thought through the long term consequences of a lot of the choices we make on commissary, and in terms of how we feed prisoners, we can make a huge amount of difference in overall cost over time. You know, overall, what I'm trying to say is that the best way to ensure safety is to invest in people returning with hope for a better future in a path to actualize in that hope. The current system mostly fails in every possible way, we need to stop, you know, basically paying off a system a billion dollars a year in most states to fail. That's what's happening now you're paying for failure. So when we talk about budgeting, we talked about how much it costs. What we shouldn't be saying is, let's make sure we're getting the most benefit from what we're investing. This is an investment the opportunity cost of a poor investment is increased recidivism, less social safety and less tax base because more people don't get reintegrated and start contributing in a larger way to society is in all of our interests, that people come back hole that people get situated in a way that can make them stable. We need to insist that our system provides good outcomes until we get to that point, we're going to continue to pay billions for failure every single year. Okay, you can bet dollars to doughnuts on a 10 year analysis of my plan will generate massive savings across the board. But yes, if you look at only the first year, it would cost more. But for great reason you have to add in the costs of recidivism, you have to add in the cost of you know, failed reintegration, you have to add in the cost, the medical costs of addiction and mental health care. All of these things should factor into how we judge how budgeting is done. We have to change the way we look at this if we want to start making a change.

As always, you can find the show notes and leave us come in at [decarceration Nation. com](http://decarcerationnation.com) and make sure to check out our new t shirts, sweatshirts and hats. I still think that's kind of crazy, but it's real. If you want to support the podcast directly, you can do so from [patreon.com slash on pirate satellite](https://www.patreon.com/pirate_satellite), and thanks to several of you who contributed last week. That's very appreciated. 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 to Robert Alvarez, who's been helping with the website. Thanks so much for listening to the decarceration nation podcast. See you next time.

