

53 Sonja Starr 2

Hello and welcome to Episode 53 of the Decarceration Nation Podcast, a podcast about radically reimagining America's criminal justice system.

I'm Josh Hoe. Among other things, I'm formerly incarcerated freelance writer, a criminal justice reform advocate, and the author of the book *Writing Our Own Best Story: Addiction and Living Hope*. We'll get to the second part of my interview with Sonia Starr in just a second. But first, the news.

Today is the first anniversary of the Lee riot in South Carolina, the deadliest prison riot in the last 25 years. And I'm hoping to encourage everyone to show some love for the seven human beings, the seven men who died during the riot by using the hashtag *remember Lee* on social media today. I know today is also tax day. But I really believe like very deeply. That one of my cute, I have a lot of problems with what's going on in the South Carolina prisons right now. But one of the things that that made me the most angry was when the riot happened and literally no press outlets in South Carolina even attempted to provide a story or anything about the seven guys who passed away during the riot, all they did was post their criminal their their jacket, their information about their arrest, stuff like that they didn't try to talk to a family member, they didn't try to share any information. To this day, I still have not found very much information about any of the seven guys who were killed in the riot. And I just find that disgusting. So today, I'm hoping we can remote we can remember those guys, just remember hashtag. Remember, Lee, thank you for helping me out on that.

I probably should also mention that most of the problems that caused what happened at least still haven't been fixed. And many of the units across several South Carolina's prison system are still on lockdown. Even though it has been a literally a year since the end of the riot. Anyway, was a very busy week, I don't have much other news to share. And I'd really like to just keep the focus on the leak Correctional Facility in the South Carolina Department of Corrections today and throughout the week. So let's get to the second part of my interview with Sonia star.

So a few weeks ago, you and Professor JJ Prescott published what I think is really important research paper about expansion and how did you come to that project.

So this is actually my longest lived academic project. We started on it the summer that I arrived in Michigan, which was 2009. And so JJ, JJ Prescott, by the way, was my co clerk with Judge Garland. And so we had gone gone back a ways before that. And so when I arrived at Michigan, and he was already here, we started talking about things that we could collaborate on. And, and he actually, I had already had a conversation, I think, with a Michigan State Police about possibly getting access to some data, we started talking about, you know, things that we could do with the data in order to investigate the effects of criminal record expungement. So both both JJ and I have been interested for a long time in the collateral consequences of criminal records and kind of what happens to not just people who have gone to prison and

reenter the community, but also, you know, people, people, whether they went to prison or not people who are grappling with, with the consequences of have a conviction on their records. And so, so Michigan has this expungement law, and we knew that nobody had really ever studied the effects of expungement laws. And we knew that they were difficult to, to study, because basically, because expunge criminal records, by definition are generally not available to be studied, they researchers can't get access to them. And so so I gotta, I gotta give credit for finding the right contact in the Michigan State Police and also give credit to our, to the many people there and and and other parts of the state who have helped us along the way. But we ended up being able to enter a data sharing with agreement with them. And we got we've got some grant support from the federal government for for the project to support the work that the state did to prepare the data set for us. And basically, they agreed. So obviously, the data had to be de-identified before we could see it right, because the state can't turn over to us even to even for purely for research purposes, identified records that have been that have been expunged, that would undermine the whole purpose of expungement. But basically, they scrubbed away the the identifying information, before scrubbing it away, though, they first matched the records to wage records on the same individuals from the unemployment insurance agency. And so and so basically, we were able to get complete criminal records as well as, as well as wage and employment records from before and after, when they when they got the management and that, and then we also got similar data on a much larger pool of offenders. Who, who were of people with similar people with similar records, who didn't have experiments, basically people who were legally eligible for experiments, but didn't get them or people who also had relatively short records, but not quite short enough to qualify for the management. So people who had like two or three convictions on their records.

And one of the other interesting facts about that data set is that you were able to basically compare their criminal record their expungement because of the kind of weird thing about Michigan law where we can have one felony expunged, even if it's violent, what you were able to kind of look at the effects on violent and not a violent crime too right?

Yeah, that's right. So Michigan, and somebody says, I'm, in some ways, it's law is more flexible than then many states are. And in some ways, it's quite restrictive. It's flexible in the sense that yes, and includes violent crime. It's not not particularly limited by type of crime and exclude sex offenses because of the sex offender registry law, which would otherwise which would otherwise interfere with its its effect. And it actually includes the most serious violent offenses are it excludes any offense that carries a potential life sentence. So that's like the, you know, the the top class of felonies and in Michigan, but other than that, um, I it's at least in theory available for, for all kinds of crimes, although because it's discretionary. That doesn't mean that everybody with any kind of crime can easily get it can easily get it set aside were Michigan's law is very restrictive is in terms of the number of convictions that you can have. That is not just, it's not just that you can only get one conviction set aside, or now you can get to misdemeanor conviction set aside. But you but if you have other convictions on your record, then you can't get any conviction set aside. And so, for many years, it was even more restrictive than it is now. And because we needed data covering a broad span of time, like we wanted to be able to follow

people for five 10 years after they got their their set-asides. set-asides by the way. That's the Michigan term for expungement, so I use those interchangeably. In most states, they would call it expungement or ceiling. So So we, we focused on people who were eligible for or got their experiments under the old law that was in effect until the middle of, of 2011. And that law was even more restrictive than now it said that you could only have one conviction ever on one single count. And just to be clear about that, that means that like, you know, you could have one person who had committed, you know, a major crime like a Class B, felony, a you to a violent crime that was just short of the the carrying a, a life sense sense. And then and they would be eligible for for a set aside. But if somebody else had to misdemeanor accounts arising from the same incident, they, they would not be eligible, even though their overall criminal offending was much less serious. So we thought so. So that's pretty arbitrary. from a policy perspective, Michigan softens the law, a little bit in 2011, and then more in 2015. but it's still pretty restrictive, you can still only have one felony count to ever, even if it's just like to counter rising from the very same incidents. And you can now get a felony count, set aside if you have up to two other misdemeanors. But if you have three misdemeanors, then you know, then you're, then you're out of luck.

Bad luck.

Some of them are like. So some of these restrictions, I think, are pretty arbitrary, because they sort of draw lines in the sand that don't, that don't perfectly track like more severe cases on one side, and less severe cases on the other or more rehabilitated people on one side and less rehabilitated on the other. They're just not not very flexible. I will say, from a research perspective, the simplicity and restrictive of that old law that said, you can only have one one count was actually very helpful for us as researchers, just because it made the data very easy to work with, like when we were coding. We were trying to identify the pool of people who are eligible. So if we want to, if we want to say how many one of our key questions was of the people who are legally eligible, how many of them actually get get set asides? And in order to answer that question, we have to first decide, well, who's leaving eligible? And it turns out that the simpler the eligibility requirements, the easier it is to, to decide that basic, basically, it's people with just one conviction ever, those are pretty easy to identify. And they have to fall on the in the list of statutory codes that are not excluded by the various exceptions and the law. And it has to have been at least five years and since since they, since they got that conviction, or if they were incarcerated since they were released from since since they were released from jail or prison.

So, the first finding of your report is that not many people are taking advantage of expansions here in Michigan, right? It's a pretty small number. Why do you think this might be?

Yeah, so so I'll just like to give your listeners like the capsule summary of the findings. Like it's basically a bad news and good news story. The bad news is that is that hardly anyone gets six expungements and the good news is that when is that for the small fraction of people who do get access punishments, their their outcomes are really good, their wages go up, and their

crime rates are low. And so we think that the upshot of our paper is, we should figure out how to get more people to be able to get judgments, because it's, it's good when they do and there's no real downside, and very few people are, are being able to take advantage of this now. So um, so that that finding that few people take advantage, we that's referred to in our paper and and in other papers exploring similar question as a question of uptake. Like, here's this program that exists, how many how many people have those that are intended to benefit from it are actually taking it up, taking the taking advantage of the of the of the program, and we find that 6.5% of those people who are legally eligible, get satisfied within five years of becoming legally eligible. So remember, they have to wait five years before they become legally eligible. And so then we're following them in the five years after that, and only 6.5% take advantage of them it during that period, and we think maybe a few percent more take advantage of it later on in their lives.

But, but, but essentially, the vast majority of people aren't. And so why is that?

Well, for the most part, it's not because judges are denying set asides. Like that does happen sometimes. But when somebody legally eligible applies, most of the time, it's granted, like we got numbers from the Michigan State Police that showed that they grant about three quarter that that about three quarters of applications that gets sent to get granted and of the quarter that gets denied, in some cases, because they found something that made the person legally not eligible. So for the most part, they're getting granted, although certainly not always, so so but the bigger thing is like that people aren't applying in the first place. And you might think, like, why would they not apply given how big a burden it is to have a criminal record? And I think so our data can't really answer the question of why it only it only tells us that they don't apply. And so to try to supplement our quantitative data, we went out and talked to, to a bunch of experts, people who are lawyers that have that have brought a bunch of punishment cases, people who are advocates for people with records people who work for like the city of Detroit's program, to clean slate program. So people who are really in this this space and and might have have more qualitative insights. And I'd say everybody basically pointed consistently to the same set of explanation. So that leads us to believe that they're probably right, that those are the explanations. So I'd say like, the number one explanation that people pointed to is just that most people don't know that expungement is an option. This isn't something. So by the time you become legally eligible, you've probably been out of out of touch with your criminal defense lawyer for for five years or more. And it's not something that most criminal defense lawyers are advising people about in advance at the time of at the time of their, of their conviction. And so people don't have legal advice. The law itself is very difficult for lay people to read. In fact, Jay Jay and I are law professors, and we struggled with some components of like, understanding what the what what the law means. And so, um, so, so I think I'm expecting,

I've read that law many times, and I can definitely concur with you.

Yeah. It's not easy. I mean, laws in general aren't easy to read, but like, but But yeah, so so expecting people to navigate that, without lawyers is difficult. And then the second thing is that even when people find it, find out where, you know, maybe they have heard of the idea of

expunging convictions, but they don't know what the eligibility rules and they don't know, are, they don't know that they qualify, right. And they may have heard, because so that, I mean, remember this 6.5%, that's a small percent of an already small percent, right, like the the percentage of all Michigan people with records who are who are eligible is pretty small to begin with, right. And so maybe if like, you just think like, you've heard from other people with records that you know, that they looked into it and they weren't eligible, maybe you just get discouraged, and you just assume, oh, this is some random program that like nobody is eligible for it. So people who might actually be eligible, maybe missing out for for that reason. But then the other thing is that like, even once you find out about the program, it's really administrative Lee difficult to take advantage of it. So you know, you go to the, to the website that the state courts administrative office puts out and they put out you know, a have a form that you can fill out and a and detailed instructions, but those detailed instructions, they're like in fine print, and they're, you know, 13 or 14 steps or something like that, that involve trips to the police station, multiple trips to the courthouse, because you got to go request a certified copy of the record, and you've got to get, you've either got to go to a notary or get the clerk of the court to sign off and your of your application, and then later, you're going to have to go back to court, because after the police have processed your fingerprints and, and declared that you you you past that screen, then then you gotta have have a court date. And all of this takes a lot of time, it takes a lot of organization to follow through all of those steps. And it takes some money, like the amounts of money may not sound that high to some listeners, but for people who are, you know, struggling with socio economic disadvantages, the way that most people with records are the, you know, that's a \$50 application fee. And then there's smaller fees that add up for other things like getting the certified copy of the record, getting the fingerprints, painting, the notary etc. And then there's transportation to the police station, and the and the courthouse, and then there's taking the time, if you're working, then take the time off work, to do all of those things. And so, you know, given and then add to all that that like for many people who are justice involved, right there, their experiences with the criminal justice system, are usually not positive, right? Like for many of them, it may have been an especially traumatic experience in their life. And so the idea of going through huge numbers of administrative hoops that involve showing up at at in a criminal court, back before the judge who sentence you in general, and, and showing up at a police station to get fingerprinted, when you are, you know, five years out of the system, at least and have a clean record and like have been trying to move on with your life. I think that for a lot of people that both administrative Lee and maybe emotional that's just like, and financially in some cases, like it's all it's all just a lot to go through. And so I think those are probably the biggest reasons, I think that that most people don't apply.

So I know when I talked to legislators, which happens quite a bit, and I suggest broad Nick expunge when I get this crazy look. And they kind of look at me like, Well, hold on, why would you do that? They'll put society at risk. You know, and I think that's been the presumption for a really long time. But that's not what your research found. Is that correct?

Yeah, no, we, we found that in terms of putting society at risk, so yeah, the the common counter argument by opponents of punishment laws is that it deprives the public of information that they

need to protect themselves from crime risk. So if you're an employer or landlord or something like you should know whether someone has a criminal record before you decide to, to hire them, or rent to them. And the problem with that argument is that like, even if you think that it's true for people who have, you know, extensive criminal records, or recent criminal records, people who, at least who meet the criteria of the Michigan law, which remember requires that you have had a clean record for the past five years before you can qualify, and requires that you haven't like a pretty limited criminal record to begin with, um, the, the rates of subsequent crime among those people is very low. And in particular, for people who, who get set asides, we found? Well, it depends what measure you use, whether it's within two years, or within five years, and whether it's arrests or convictions. But now, I'm trying to remember all the stats off the off the top of my head, I think we found a only that in five years after they got a set aside only 4%. Or maybe it was less than that, wherever convicted of another crime, and mostly, if they were convicted of another crime, it was just a, you know, a misdemeanor, often a traffic misdemeanor, like not nothing particularly serious. So I think it was something like 1%, who were in five years, convicted of a felony. And something like 0.6%, or maybe it was 0.4%, that were convicted of a violent crime, which is really the thing that I think policymakers have in mind when they say, oh, but what about this, this public safety risk? And so then, so those rates seem just objectively low, right? So like, 99% will not commit a violent crime and not commit a felony right? In five years, which is a pretty long time. Um, so so then is that low? So maybe somebody might say, Well, yes, but that's not zero, some, some of them might commit another crime. But the thing is, in no human population, if you follow them over five years, is there going to be a zero percent chance of crime rate, there's always a baseline risk in because humans are flawed and commit crimes at some rate, right. So we compared the rate of the number of arrests over five years, for people who received set asides to the number of arrests that the average adult in Michigan has over a given five year period, just taking the number is that the state police produce on total number of arrests each year in Michigan and device it by by the adult population. And we found that the rate of arrests for people with set asides is considerably lower than the general population rate, right. Which means, which suggests that, really, it's a very strong sign, if you have gone those five years without committing another crime, it's just it's like, it's quite a strong sign that you're very unlikely to, to commit one again. And so I'm not saying that there's no instance out there in which there would be relevant information for employers are landlords are the public to have, but it's just swamped by the vast majority of cases in which it essentially isn't relevant information. Right. And, and again, like there is a baseline risk and in in every human populations,

It seems like you also make the case that broadening expungement beyond the current strictures of the Michigan law would probably be equally as beneficial. Am I wrong about that?

Yeah. So um, so I think so let's suppose I suppose you said, Okay, well, yes, this group has a low crime rate, but there are a very selected group, right, first of all, they have have made it through all the legal hoops like they are, they only have these very limited criminal records. And they're five years old, or, like those records, or more, and then suppose and then they've also been the people who, who went through all those that 13 step procedure to get their records

expunged and got them granted by the judge. So they're like, particularly motivated people. And the judge, if presumably, if the judge thought they were especially dangerous, they'd be less likely to have granted them a set aside. And so you might say, well, if we need set asides automatic, or if we loosened the eligibility requirements, so that they reached way more people, then you wouldn't see such low crime rates afterwards. Because the pool just wouldn't be as low risk. And that on the one hand, that's, that's true, right? That the that the the bigger you make the potential pool, like the the less restrictively, you define it, the more it's likely that it won't have the, you know, especially low rates that we, which again, were substantially lower than the general population. Right. So and eventually, like, if you loosen that enough, maybe it would be a rate that's higher than the general population, but then you have to ask, okay, is that actually an argument against expanding, expanding set asides or making set asides easier to obtain? And I think the answer to that is, no, it's not an argument for that. Because in order for it to be an argument that's relevant to the to the set aside policy, you would have to think that giving somebody the set aside, actually increases their risk of committing a crime, right? Because otherwise, you're just saying, like this pool of, like, let's say, if you if you move from a slightly from a low risk pool to a slightly higher risk pool, then you have a higher risk pool, but you haven't made the pool higher risk by giving them set asides. In fact, like, there's every reason to believe that you would actually make them lower risk, right, since getting a set aside, increases the people's employment rates and wages. And since, which is another finding that we make, and since other research, and criminology suggests that higher wages and employment, or are very good predictors of not committing crime, there's every reason to believe that actually, you'd be reducing the net crime risk. And so if you extended it to a somewhat riskier pool, you might actually just be having bigger benefits for for public safety. Because so you know, if you think again, I suppose from the narrow perspective of a particular employer, or a particular landlord, who says, I just want to protect myself by not renting the person this house, right, or by not hiring this person, then that might make sense from the perspective of the individual landlord if the person is sort of high risk enough. But all they have done then is shift the risk elsewhere in society, right? Because there's there's no suggestion that making it impossible for people to find housing or impossible for people to find jobs, is actually going to make them less likely to commit crime. It's quite the opposite. Right? And so if you're a policy maker, and you have to think about public safety and Michigan as a whole, rather than just like the the particular interests of like one, one employer, right, then then you got to think like, how can we best reduce the risk posed by this by whatever the pool is of people that were considering applying the law to? And I think that if we, that the answer to that has got to be that it's not going to make things worse, and it might make things better, to allow people to have a clean slate and have more access to legitimate sources of income and housing stability on these these other things that are positive factors and in promoting reintegration.

And you also made the argument that I don't think that while there's a feel that that there really isn't any evidence that giving punishments increases crime is that fair to say,

Yeah, exactly. Like, there's no. So look, our we're reporting the crime rates, like we're not actually trying to make from our data, a claim about whether it's punishment increases or

decreases crime. That's something that our data doesn't allow us to answer. So instead like to inform that question, we're looking at other research out there, right. Like the broad research and criminology about what are the factors that predict criminal recidivism? And it turns out that things like not having a house and not having a job, predict recidivism, right. And nobody finds the opposite? Right. And, and there's there's no empirical evidence out there at all that suggests that having your criminal record be public, right, having it be a source of embarrassment, like a source of, of, you know, something that that everyone in your community can know about that that somehow discourages people from, from committing crimes like the advocates of this, they never point to empirical or the advocates of this argument. Right. Right. That is the opponents of experiment. They never are able to point to empirical support for for that claim. It's just this sort of Lucy goosey reasoning about public safety that doesn't, it doesn't quite add up.

So you talk just briefly, I just want to give you a couple more seconds to talk about this. But about the employment benefits of expungement?

Yeah, so so to study an empty employment benefits, what we did we use that wage data that we've got, which shows both your employment status and your wages, it's not totally complete, it covers people who are it covers the type of employer who is in the the UI, the unemployment insurance system, but that's about 97%, of of wage earners. In Michigan, it basically excludes people who are self employed. But but so so we track people's wages, and whether they're employed at all, before and after the set aside. And so we're sort of following their their trajectories over time. And we're looking at how the the verse, the moment where they receive the set aside, what happens to their, the trajectory of their wages and their employment rates at that time, that is, when we control for the earlier patterns, what do the subsequent patterns look like, right. And essentially, we find that, that wages within one to two years go up by about 25%. And most of that is driven by people, either getting jobs in the first place, like going from zero wages to some form of wages, or, or people going from really minimally employed, like people who might be picking up, you know, a few hours a week here in there, moving into more regular employment, right. And so, so yeah, and that's like, that's intuitive to expect that, because, because there's other research, including, for instance, rb on the box project, and lots of other research, showing that criminal records are a barrier to employment, it makes sense to expect that a punishment would increase employment access. But the magnitude of that effect was kind of unknown. And a lot of people have been, even people who are sympathetic to the ideas behind experiment laws are often a little bit skeptical of them, because they say, Oh, you know, it's the age of Google, like, the genie can't be put back in the bottle, as punishment isn't really going to work, because employers are going to figure out that you have this crime anyway. And that may like sometimes be true, right? There might be some people at for whom their crime has such a digital trail that they can't escape it. But the truth is, we find these quite even though, like our study was done in the age of the internet, we, we find these quite large effects, regardless, so even if not everybody is maxing maximum maxing out on the possible benefits they could get. The aggregate benefits to the group of people who get x punishments is still pretty large. And I think in that in that to some extent, is probably because like, not every First of all, not every crime does create a major digital trail, like most of them are not very newsworthy, right?

And, and also, like, not every input a lot of employers actually do, like there's a reason that employers overwhelmingly do criminal record background checks is because that's what they intend to rely on, not a social media search. And when they do that background check, and they find that you don't have a record, then that's trustworthy information. Right? And so it does not seem to be the case that like every employer is like, digging, digging, digging until they find your mug shot. So that's good news. It's, um, and and yeah, so so employment rates go up substantially up and wages go substantially up.

I always ask the same last question. And it's okay, if you don't have a good answer, what did I miss? What questions should I have asked, but did not?

Um, well, I think that you asked a lot of questions. I thought, because you asked about the beyond the box paper to begin with that you might ask like, hey, if man the box is troubling, in the in that it might have disparate racial effects? Like would x management laws potentially have the same effects? So I will, I will try to answer that question, even though it's purely, because I have not, I have not researched that, right. Like we did not look, we looked at the effect of experiment laws on people who receive experiments and not on other people out there. But I will say that, like, I think it would, experiment would have to become way, way, way, way more available than it is now before I would start worrying about the kinds of effects that we saw with Ban the Box laws now, right? Because, you know, given the the very tiny fraction of people who are eligible for punishment, and then can obtain experiment, now an employer would have to be crazy to get a clean criminal background check and assume that like, there must be something out there. And they have to rely on race as a proxy for figuring out what it is, especially because if there is something out there, then it's like, a single conviction that's five years or more old, right? Like, it's, it's like, it's not the thing that employers are the most worried about. And so I actually think, you know, it's punishment. Ban, the box laws are great as an approach to opening doors for people with records in the sense that there are sweeping like they don't, they don't have like tons of eligibility constraints, but they're also only affecting the front door to the employment part process. And they're also only that is like people can still do the criminal records check later on. And they're also in general only focused on employment, whereas expansion, if you can get it, I think, really offers the opportunity of a clean slate that cuts across a lot of dimensions of life. So we studied employment effects, but we suspect there's also probably positive housing effects and effects on people's eligibility for for educational loans for other kinds of benefits, etc. And so and, and it can wipe out a lot of the collateral legal consequences that like effect, licensing and so forth. And so, you know, so I do think that it has a lot of potential to do a lot of good for a lot of people. And while you know, I can imagine that if, if, if every criminal record in the state was like, immediately expunged, then then employers might start acting as though the box had been banned. Right. And they had literally no information, but so long as the eligibility for so long as there are these waiting periods and at least, you know, some eligibility constraints, I think, I wouldn't expect employers to act to act that way. But you know, I, I could be wrong. I'm I'm only speculating.

Well, thanks so much for doing this. It's been really great to reconnect this year. And thank you for taking the time.

Yeah. Thank you so much, Josh, it's great to talk to you.

All right, bye, bye.

Now, my take, we know that the best way is to ensure that people returned from prison or jail successfully is to ensure that each and every person who returns has access to stable housing, a good job and a pathway to community connections, broadened expunged from would serve all three purposes, because we know that a public criminal record haunts people when they are looking for housing when they're applying for jobs. And when they're trying to establish roots in their communities. I personally have experienced this at all three levels. And so I know that a public criminal record really does follow you for the rest of your life. We know that people's time, crime free is much more significant to their likelihood of reoffending, then is the crime that they committed. But what's Professor stars Reacher's it does is add an entirely new reason for everyone to support brand expansion of criminal records with a clean slate mechanism. Her research with JJ Prescott prove that broaden dicks punishment is a crime fighting tool. For years, whenever we suggested legislators and broad next month when we've been told by them that would put public safety at risk. But now we learned that there is no evidence that suggests that's true and profound evidence that proves that giving people true second chances, makes our community safer, and fights recidivism and crime, we really could not have designed a less effective criminal justice system than the one that we have now is truly amazing how counterproductive and poorly thought through so many parts of this system are, is if we really care about public safety, if we really want people to come back and 96% of all people who get arrested come back. It is time for our radical reimagining of this system. And that should start with creating true second chances by broadening expunged and by creating a clean slate mechanism for clearing people's public criminal records.

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