

## Episode 66 Marc Levin

Hello, and welcome to this episode and a special set of episodes of the decarceration nation podcast from the Smart on Crime innovations conference in New York City. I say we because I'm thrilled that our web guru Robert Alvarez was able to join me in New York City for the conference. As a result, Robert and I got to interview several thought leaders in the criminal justice reform field. The episode you're about to hear is one of a series of five interviews, which will be releasing over the next two and a half weeks. Each episode will be intentionally shorter than our normal episodes running for this, they'll probably be running between 20 and 30 minutes. Okay, here we go. I hope you enjoy the special decarceration Nation podcast episodes from the 2019 Smart on Crime conference.

Hello, my name is Robert Alvarez, and I'm here with Josh B Hoe. We represent Decarceration Nation and we're at the Smart on Crime 2019 conference at John Jay in New York. And with us, we have Mark Levin, Mark Levin is vice president of criminal justice at the Texas public policy foundation and right on crime, and attorney and accomplished author on legal and public policy issues. Mark began the foundation's criminal justice program in 2005. This work contributed to nationally praised policy changes that had been followed by dramatic declines in crime and incarceration in Texas,

Hey, welcome to the podcast Mark.

Great to be with you.

So can you share the story of how you came to the work at the Texas public policy foundation and got into this part of the work?

Sure, well, I'm a lawyer by background and really going back to 2005, one of our board members, at that time textbook policy foundation free market Think Tank had like five people, literally five people on its staff, but one of our board members felt that we really need to start looking at criminal justice because we're saying we're for less government and all these areas, and here's the system, it's growing like crazy. We're building prison after prison, billions of dollars, and not getting very good results. And then also from the perspective that we're not restoring victims, we're not getting the restitution. Sometimes we're, you know, locking people up for not paying a finder's fee to the government and the victims still not getting anything out of it. So and that really kind of with our board member from a biblical standpoint, it didn't reflect the kind of justice he wanted to see either. So between that and kind of the fiscal argument, what he said to our president at the time, Brooke Rollins, who's now in the White House, find someone who can, you know, dig into this. And so she hired me part time, I was still practicing law. And I just began looking at why the Texas correctional system had grown so much, and what we could do to try to reverse that while also promoting public safety. And basically, for the first few years did a lot of research a lot of reports, and we still do those, looking at what was going on. And what we really found our prosecutors and judges were saying we're sending these people to prison, because there's no other programs, there's a way was four months to go into a drug quarter a mental health treatment that so we realized, and this is what led to the justice reinvestment in 2007, where we put \$241 million into alternatives to prison. Instead of building more prisons, we had the legislative budget boy said we need to build 17,000 prison beds by 2012. And so instead of spending 3 billion on that building, and operating those we spend 241 million on putting in place, I'll tell you those,

That's great. But was there a moment that this big kind of became more like, is this what I'm going to do with? You know, because it's come a long way since then. Yeah. Was there something that really, you know, you

were an attorney, you're in this your was there something about the work itself that started to become, you know, personal to you? Or?

Yeah, you know, I think I always was, had a skepticism of authority. And so, I think I was I got into a lot of trouble, frankly, when I was in elementary school of behavior. Course. Yeah. Learning on the answers getting sent to the office and all that, but, I think I had a just a willingness to question authority, and sometimes probably took that too far. But I think, you know, there is this tendency still, especially among, you know, my friends on the right to say, and sometimes this has come up in even foreign policy where people say whatever the military wants, let's just write a blank check. Right? So the same thing was in criminal justice, a lot of conservatives said, whatever. Prison administrators say if they said, We need 10 more prisons, just write a check, don't ask any questions, don't measure results like you would in any other government program. So we wanted to kind of bring the same lens of accountability to this work, and also say, we want to restrict people's freedom, no more than necessary to protect public safety. And I think government programs, they have a tendency to just grow, rather than ever, never do we, and we work on this and kind of over criminalization now where there's thousands of criminal laws, and we can't even begin to count them. So it seems like governments of one way ratchet it just keeps getting bigger and more intrusive. And so we have be willing to question,

Yeah, for sure. I lived in Texas for a long time. I remember it can be a pretty punitive place, when you were starting out how you in the foundation kind of approach, not just coming up with better policies, but kind of changing hearts and minds, you know?

Yeah, actually, there's a great initiative now to get policymakers to visit prisons. And I visited one a couple of weeks ago, prison

Famm foundation?

Exactly. And so I think that being obviously proximate to people impacted by the criminal justice system, and obviously, not just people who committed crimes, but victims who frankly often feel like they're not getting out of it what they wanted. So the power of stories of individual stories, but obviously, also being more of a think tank, our big thing was data, you know, show people that have been mentally have been better data than when we started still a long way to go. But just to give you an example, in Harris County, which is Houston, a couple years ago, the probation director realized and the DA, that all of these individuals charged with state jail felony for less than a gram of drugs, they were cheap state jail, instead of probation. probation, we have to five years state jail, a lot of them couldn't afford to bail out, they had already accumulated a bunch of time and county jail. And so they would matter matter, it was a matter of going to state jail for maybe another six weeks, another month or two versus up to five years of probation. Most them thought they're going to be revoked. Anyway, their defense lawyer said just choose do the time. And so this was exactly they weren't getting treatment, we're just warehousing people were citizen rates are off the charts. So she said, let's do something different. let's identify these people within 48 hours of coming into the county jail and offer them pretrial diversion where there's nothing on their record if they complete the treatment program. And so it turns out now we've got the data a couple years later, and these are the exact same profile risk type. And the people that ended up doing the pre trial diversion, never cynicism rates are much, much lower, and it costs a lot less. So it's just like a no brainer, like to say surprisingly, but, for some reason people still don't get that that actually happens. Yeah. So I mean, I do think once you show people what the facts are, there's a willingness, perhaps this more in this area than some other policy areas where people have kind of more firmly held views, that you can really make a difference. And now of course, we're able to leverage a lot of voices, even before refotm-minded prosecutors, increasingly, police leaders, there's people that are saying this stuff really works. And so whether you have you know, empathy towards the individual

has been charged with the crime, or you just want a safer society, or you want to spend less money or you want to follow the principles of every major religion in terms of redemption. There's a lot of ways into this.

So since you started, what are some of the other when you say, the greatest hits of things that you all have accomplished since the since you started the project?

Well, so basically, what happened was, after Texas did the justice reinvestment in 2007, we started to get a lot of inquiries from other states, which were basically legislators, other states, and part of that was doing national coverage to state legislators conferences, Alec, which is the American Legislative Exchange Council, conservative legislators, so and then also these other free market think tanks draw with 50 states, none of them are working on criminal justice, then they started contacting us and saying, you know, since at that time, corrections was the second fastest growing budget item app for Medicaid, could you help us because we are trying to help our lawmakers with the budget. So and of course, we have the, you know, huge economic downturn in 2008. I think that brought a number of states to the table, we always say, you know, the appetizer is saving money. The main course is public safety, redemption, employment, actually, now we're really seeing employment. Because the tightest labor market, companies are saying, All even paid to train this person. And so you see, like in Arizona, their construction companies going inside prisons and training people, they already have a job the day they leave. So But anyway, the 2010, kind of because of this interest that we were seeing from other states and what Texas had done in 2007, I was just kind of thinking I'm going in other states and saying Texas, this Texas, that so we really need a national brand. And so the phrase right on crime popped into my head, and we just kind of we built the statement of principles signed by conservative leaders. Actually, other idea I had was a national newspaper on criminal justice reform, like a national magazine, which was terrible, right, as everything was going to the internet. So thankfully, we took the

Good morning. But yeah, I mean, I think what we really wanted to do is to be able to say, this isn't just folks an issue for folks on the left, that that the ideas of limited government and individual liberty, you know, getting results, measuring performance, these are things that we ought to embrace for folks who are right of center as well.

Yeah, for sure. So you said, when we talked yesterday, we were talking about some of the work that you've done, and you said that you're starting to do some work on solitary confinement is that?

Yeah, and so I think that's another one of the changes, we noticed, in addition to the growing interest in workforce development, relating to formerly incarcerated people and people with criminal records. We're also seeing grief of growing interest in conditions of confinement. And one of the ways that manifests itself in addition to solitary confinement, which I'll talk about in just a second, but was also dignity for incarcerated women. So we've got seven bills this year in Texas dealing with you know, not shackling pregnant women making sure they have feminine hygiene products. And so, but the other issue was obviously solitary confinement, which, you know, really what we're talking about is prolonged, but not somebody who's going in for a day or two to, you know, cool off but, but are the use of problems of prolonged solitary finding United States is really, it's out of proportion to what you see in other developed countries.

And just to give some context, I've told this story before, but when I first got arrested, the very first thing that happened to me is I answered the questions wrong that they the screening questions, and I found myself in suicide watch, you know what they call a Bam Bam suit for 24 hours. And I spent the next two days basically 23 hours solitary in the mental health wing, and I met people there who'd been in solitary for up to a year as a form of treatment, which is crazy. But it's I've it's not just there, I've certainly come into contact with that all throughout. Everything I've done since leaving, is, so that's sort of what you're talking.

Yeah, so just so the listeners know, I mean, we're talking about people 23 hours a day, and a cell with no stimulation, no programming, they may be escorted out just to take a shower or get a meal. And there's a lot of, you know, research about the psychological and physical health consequences of this profound isolation. I mean, we're innately social creatures. So it's really at odds with the human condition. And so, you know, the problem is that this is really used far in excess of what's necessary for, you know, protecting other prisoners protecting correctional staff. And I'm so fortunate are some really good examples of states that are making reforms Colorado, for example, after By the way, Director Clemens, who was previously head of their prison system, he was actually assassinated by someone who was released directly from solitary confinement, which is like, the worst possible thing you could do is release someone to the street from solitary confinement, but they were doing that. And we actually ended on this. I mean, it was a study in Washington state of the Supermax, which is all solitary confinement. And basically, people who released directly from solitary had extremely high rates of committing violent new offenses, and even those that had the same background, you know, but had been stepped down. So at least in six months leading up to the release, they were in general custody, they have substantial low rate. So the what, there's lots of things that can be done, obviously, first of all, making sure there's an appropriate process. I mean, you don't want just one correctional officer is frustrated with someone to being able to put somebody in solitary indefinitely. So for example, in Maine, they have the director of corrections has to review each case, after 72 hours that somebody has been in solitary to say, do, they really still need to be there. And so I think that's very important to put the procedures, reviews in place. And then also, obviously, for the people that that are in solitary to have. And we can do this through technology, I was just talking to some people about Bill and Melinda Gates toward a prison. And we're really interested in solitary. And, but you know, obviously, you could think of that, whether it's a tablet or some other method, they could be doing programs. So one of the things we have in

Texas, one of the challenges we face, and some people are put in solitary, not even because of any disciplinary violation, but because our suspected gang member, and there's all sorts of issues with you know, his information being relied upon really accurate. But one thing we've done in Texas is the gang renunciation program, so you can get out of solitary through that. And actually, no one who's completed that program has ever had to be placed back into solitary. So it has a very good track record. But I think there really needs to be a high bar before somebody kept in this type of isolation, given everything we know about how damaging is.

So we both worked together a little bit on passing the First Step Act, what was your feeling about the results? And what were your takeaways from that legislative battle?

Yeah, well, it really was remarkable and unexpected, you know, success. At that time, there was a lot of skepticism is, you know, about whether bipartisan reform can happen in Washington, given the gridlock. I think that it really showed, one of the things I think it demonstrated was, you know, when I started in this in 2005, there was almost no one else on the right working in this space. And what we saw on the first step back debate was, you had first of all, you know, the, Justin, for comparing to 2005, you add, you know, conservative grassroots groups, like americans for prosperity, freedom works engaged, and, you know, they're, they do things like getting people to call their lawmaker, which we don't do that, you know. And so that was very helpful. And then you also have this movement of formerly incarcerated people that didn't exist in 2005, who were reaching out and, you know, meeting with their members of Congress. So that was very valuable as well. So I think it kind of demonstrated the maturity of this movement. And, you know, of course, in any effort like that, there's going to be trade offs, there's going to be it was call first step for a reason. There's a whole lot left to do. But I think what we tried to encourage people as I mean, a lot of it stems from the successes in the States. I mean, you literally have members of Congress, I time tell us, it's because of their

involvement in state reforms that made them so enthusiastic because they saw that they work. And the other thing we saw was, you look at Georgia, almost every session from five or six sessions in a row, they pass major form, so many people are worried about, okay, this would be a one and done thing. So we'll have to wait 20 years for the next opportunity. But I think what I found about talking to somebody state, state legislators is it was self reinforcing. A lot of them always thought these things were right, based on the evidence, but they were worried about losing the next election. And when the fact that he didn't come up in their primary that their voters actually liked it. And it worked. It means that the next session, they were willing to take another step.

So you were here at Smart on Crime innovations conference. You just finished your presentation, just briefly, what was your presentation about?

Well, I was on a panel on community supervision, looking at what we can do to transform probation and parole. And I think a lot of it was about, you know, moving from a system that is designed to be a trip wire for failure to one that incentivizes success. And so we talked about a lot of the positive steps that been taken in many jurisdictions, things like our own time, early termination, you know, Alice Marie Johnson, who all of us know, she recently applied for early termination of her parole, and of course, the prosecutor pushed personally supervision. Yeah, the district attorney acknowledged or this case US Attorney, that she wasn't a public safety risk, but complained that she was making money off the book, well, would you rather live under a bridge and she's helping other people, the reason she's traveling out of state is to try to help other people in her second face the same challenges be successful. So I think that, you know, there was an old sign on the California parole officers that trail on nail him in jail. And that's exactly, you know, the old mentality versus what we have to be saying is, I'm glad somebody on probation, parole is working, they're making money, they're providing a good example for others. And so I think we have to get

out of the mindset of always just be being focused on failure and really focus on success.

Well, I really like thank you for taking the time to do this really nice to you to stop by and great talk to you.

Oh, my pleasure.

Hope you enjoyed that special episode of decarceration. nation. Any content from the Smart on Crime conference was courtesy of the Center for American Progress. John Jay College of Criminal Justice, and the Draper Richards Kaplan foundation.

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