

65 Alec Karakatsanis

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 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 these special Decarceration Nation podcast episodes from the 2019 Smart on Crime conference.

Hello, this is Robert and I'm here with Josh together we are decarceration nation and we're at Smart on Crime 2019 here at John Jay College. And I wanted to introduce Alec Karakatsanis. He's the founder and executive director of Civil Rights Corp an organization challenging the money bail system, working against the criminalization of poverty, trying to ensure adequate indigent defense and attempting to create prosecutorial accountability. Josh,

Welcome to the podcast Alec.

Wonderful to be here.

So I know you went to Yale and Harvard, but you're doing some pretty groundbreaking work fighting for some of the folks in our society with the least. Can you tell me a bit about what brought you to the work you're doing now?

I think the most direct answer to that is my time as a public defender. After I graduated from law school, I started my career as a public defender in Alabama. And the things I saw there really changed the course of my career. And one of the things that stood out to me the most, in addition to all the things you learn about in school, you learn about the racial disparities, the incredible tool of mass incarceration are all of our systems, whether whether it's the separation of families, and whether it's the ways in which we inflict pain over and over again on human beings in our cages, you learn about those things in the abstract, but then when you see them up close, and you see how families are actually torn apart and what it what it feels like. And when you tell those stories on behalf of your clients in court, it really affects you, at least for me, it affected me in a very different way. And I think getting to build a lot of those relationships with my clients, and then going into the courtroom, and watching how their lives and their struggles and, and their hopes and their dreams were utterly inconsequential to this bureaucracy that was interested in processing them as bodies. And for me, watching that

system become desensitized to the incredible pain and cruelty and brutality that was inflicting every single day was what led me to seek more systemic interventions that could maybe change the way the legal system was functioning more broadly. And then that in turn led me to trying to understand how do we get to this place where we're putting human beings in cages at rates that are unprecedented the market recorded history of the world where we're arresting 12 million people every single year. And then I understood that, that it can't it's not just a problem of what's called a criminal justice system, I don't use that phrase. So I use justice in quotes, or I say, the criminal punishment bureaucracy or the criminal injustice system. But it's not just a problem confined to that silo. We have as a society, we've used that system to accomplish all kinds of other goals to control and surveil and punish and cage certain populations. And so once I understood it as a function of a broader system of white supremacy and inequality, I was really interested in exploring ways in which we could fight that system, working with community groups, directly impacted people and others all over the country to organize power that would challenge that system and not just seek little victories in the courts. Because if you look at the history of American sports, I think you'll you'll see that never have an event really at the forefront of any kind of radical, so social change or social justice. And so that's sort of how I went from a student who read about things to a public defender who, you know, worked every single day on behalf of individual clients to a lawyer, who was fighting the systems were historically to a person who is much more focused now on building power and, and in communities rather than actual hearing.

And so what is what have you decided or finally lit upon that kind of connected all the fibers and made it? What do you think this if there is a secret sauce that you've come upon? What do you think the how do we bridge all the different separate little areas like courts and you know, all the way to legislators to communities and make it to build power? As you put it?

Yeah, well, we started having enormous success. For example, in one of the areas that we work on our bail cases, we started making the argument for the first time in a generation that the cash bail systems us all over the country violate HIPAA protection and due process because they keep a human being in a cage, just because you can't make a payment. But then when you start winning those cases, you see the system reacting to it, you see the system saying, oh, maybe we won't jail, this person, because they can't pay, we're just going to order them to be jailed. We're going to detain them without bond. Or maybe we're going to release these people. But instead of having to pay money to a bond company, we're going to make them pay the seminar, more money to electronic monitoring company. So now all of a sudden, you've got the same companies and the same systemic interests, doing the same practices, jailing people, largely poor, disproportionate people of color, that bond, or for the ones that they're releasing, making the same amount of money off of them and their families, calling it a different labor. And that that course of that, watching that process, it got me thinking about our legal system more generally. For example, you asked about the secret sauce? Well, I mean, it's it's about how do you build? And how do you contribute to if you're a lawyer, because lawyers really shouldn't be building or leading any of this movement. If you look back at like, for example, the same sex marriage issue, a bunch of smart lawyers is brought cases 30 or 40 years ago, on the due

process clause and equal protection clauses, and they lost every court that they were in. few decades later, similar lawyers, some of the same lawyers using the same few words and the 14th amendment, right the same cases, and they won in the US Supreme Court. Now, it wasn't that those lawyers became smarter, or that the 14th amendment was amended in your in the intervening period, it was that there was a social movement that changed the way our society thinks about same sex marriage. And we need to be part of a similar social movement that changes the way our society thinks about human gauging. And, and so for me, it's about trying to find the way to be a lawyer that can contribute to some kind of broader narrative change to some kind of broader structural change to some kind of effort to build some power among people who are traditionally oppressed by the criminal legal system, to make sure that that legal system changes in really fundamental ways. It doesn't just tweak its practices and put new labels over them.

So most of us who do this work are kind of familiar with the Ferguson report, you were there suing the cities of Ferguson in Jennings, Missouri, can you talk a little bit about your experience there and let us know anything about you learned from being there that can inform the broader battle and criminal justice debt?

I had done my first major case in this area in Montgomery, Alabama, 2014. And fresh off settling that case, and actually the city let everybody out of the jail and, and perform its practices that it would no longer jail anyone for court debt. And we got some money for our clients. And I read an article in The New York Times about about report that is written by a local organization in St. Louis called RTD defenders. And it was shortly after the murder of Michael Brown. This uprising in Ferguson was was, you know, gaining a lot of momentum. And what this report pointed out was a lot of what people are are fighting against, with every fiber of their being. It's not just the brutality of the murder of Michael Brown, it was the everyday brutality inherent in how Ferguson had had had converted its local municipal government into a source of oppression. And so I actually just called up the people that wrote the report and asked them if I could stay on the couch and went to went to Ferguson and embedded myself with with people there. And I went from house to house in person to person and heard the stories then they would bring their families and their friends and we would have these incredible, really transformative meetings, where I learned about what Ferguson had been doing in Ferguson averaged at that time, 3.6 arrest warrants per household. And the vast majority of those arrest warrants were for unpaid debt to the city. And Ferguson's jail the time as our lawsuit describes. And similarly with Jennings was a place of unspeakable horror. People were subjected to the most grotesque and unsanitary, filth, squalor, abuse, mocking. And all of these people were could have freed themselves any moment by paying 100 or 200, or \$300. And if you look on our website, it's a the rights court org, you can read the Ferguson and Jennings complaints, you can get a sense of the stories that that our clients had to endure like our lead plaintiff, Kelly Phantom, who spent 48 days in the Ferguson jail because she couldn't afford to make a small payment, without a toothbrush without a shower, without hygiene products. And, and you can listen to these stories, in a lot of the media that was around the time. They're not operational. This is what Ferguson was doing. This is what Jennings was doing. And so we filed a major class action lawsuit

against each town. And I think it's telling you know, the different reactions of the two towns had Jennings settled almost immediately they reformed their practices, they basically closed their municipal jail, they agreed to a settlement of about \$4.75 million for about 1900 people that they had to legally jail in the previous five years. Ferguson is fought a separate tooth and nail, we're still fighting them, they're taking another appeal of the of the latest victory that we got in the trial court. And the case, you know, maybe years before even goes to trial, who knows. And it's, it's an interesting experience, sort of watching a community try to reckon with the incredible pain that it caused. And I think that reckoning is far from complete, not just in Ferguson, Jennings, but all throughout St. Louis County, where they were, you know, over 80 municipalities that had their own little systems like this, that were many of them are doing almost exactly the same thing. We also sued a couple other ones actually, or exceeded defenders has sued dozens of them in the intervening period. And then more broadly than that, what the DOJ report in Ferguson, what my own investigation and the investigation that Archie defenders did, and the investigation that we did with the community groups, all confirmed that this was not isolated practice in Ferguson, or Jennings, it was all throughout St. Louis County. And then what we've seen in our work all over the country, is that this is the norm in thousands of jurisdictions, all over the country, we have turned our local criminal system into a mechanism of wealth preservation and wealth generation, and, and surveillance and control all at the expense of the people who have the least power in our society.

So what have you learned from being embedded in those situations and around those activists and people doing a lot of work on the ground, that you think other people can maybe apply in other areas that are suffering from some of this?

I've learned a few important lessons. And one of the things I've learned the power of stories, I've understood how it's only by people who are most directly impacted from these systems by these systems, telling their stories and being given the space and the platform, and the resources to tell those stories in the way that that is authentic and genuine, that we have any help of moving people around our society to think differently about what we're all complicit in the creation of this giant bureaucracy of pain. And, and that's it. So number one is, you know, how do we how do we resource those those groups? And how do we effectively help them tell their stories, because those stories are vital, the system has been telling a certain story about what the criminal punishment system is up to, you know, you hear it, it's, it's about keeping people safe, and it's about victims. And and, and so we need to tell a different story. The mine is a true story, which is that the for its entire history, the criminal punishment proxy in this country has been about preserving wealth, and about white supremacy. And that you can't help but look at what happened in Ferguson, hear those stories, and watch what happened to people of color in Ferguson, and then go to New Orleans and Harris County, and everywhere else, that we have our cases and watch what the systems are doing, just go sit in a courtroom and watch hear those stories. And there's a reason the system tries to silence them. So I you know, that's one big lesson. Another lesson is that the people who are most directly impacted by these systems have to be the ones guiding the solutions. You can see that when the DOJ came in and and imposed a bunch of solutions on purpose and the consent decree, one of the things that that

has resulted from that is the DOJ at times demanding that there be more resources given to the Ferguson Police, better training, you know, things like body cameras, apparently to watch the police as they oppress people. turn them off, obviously, more more officers being hired, you know, better training budgets, like one of the central features that I've come away with, about our punishment bureaucracy is if we have any hope of changing or dismantling it, we can't keep feeding it more resources. So if somebody tells you the solution to some problem is to give more resources to prosecutors or police or any other cultural actor, you know, that person doesn't understand what the problem is our communities need resources, we need to be attacking the underlying inequalities that form the basis of the punishment, bureaucracy, not giving more money to the institutions and unaccountable groups that have created all of this pain. A lot of times the other ones who are actively involved in creating the pain.

So I came to know you because you're worked in cash bail, I was just in an event where the bail Association testified, claiming that the third wave of bail reform has been another failure. I which might be true, but it seems to be more of a reason to get rid of cash bail than did you move toward it? I feel like cash bail itself is a pretty big failure. Can you talk about where we are from your perspective in the fight and cash bail?

I think we're interesting and dangerous place. So I think we have done a very good job of communicating a public narrative, that the decision about whether to keep a human being in a cage should not be based on how much money that person has. I think the public gets that there's a basic inequality. I found it's really only lawyers that don't seem to be able to wrap their head around how silly that and how unjust that is lawyers are able to go to fancy schools and they learn how to concoct explanations for things that no ordinary person would would take with a straight face. But I think people around the country because of the stories of Khalif Browder, Sandra Bland of some of the cases that we would have there starting to understand the injustice of the cash bail system. The dangerous part. Of course, we we've won a lot of cases, you know, our settlement in Harris County, Texas is going to keep hopefully 18 or 19,000 people every year out of jail, Justin Harris County alone, the work that we've done in Chicago has dramatically reduced the jail population and change the bail practices, even though both jurisdictions still have a long way to go before they have what I would call even acceptable bail systems, minimally acceptable bail systems. The Humphrey case anyone in California that police case you want to New Orleans, I mean, these are all monumental victories that have a lot of potential. The dangerous part goes as I mentioned a little bit ago, when they eliminated the cash bail system from the federal courts decades ago, the detention rate was about 24%. So about 24% of people weren't able to pay their money bond and were detained prior to trial. Today, the detention rate in federal courts, which doesn't use cash bail anymore, and it's you know, bail reformed, is 72.4%. So the percentage of people who are detained in presumptively innocent people who are being charged in federal court awaiting their trial has tripled since they made their so called cash bail reforms. What does that tell you? It tells you that that system created cash bail for a reason. Right? It created it to process lots of people into pre trial, the tension so that, of course, they're guilty pleas because it knows that there's no way all those people would plead guilty so quickly if they were out with their families fighting their case with a

lawyer. And so and there's some really great data in Harris County case actually proved this over a course of hundreds of thousands of cases in Houston. But the general point exists all over the country, one of the functions of the cash bail system is to create a very quick, easy mechanism for filtering people into jail cells. So they plead guilty quickly so that the system doesn't have to have lawyers and prosecutors and judges and jury trials for all of these cases. And that appeals it would be, there'd be no way for this bureaucracy to actually have trials for the 12 million people that are resting every year. So we create things like the money. I've actually seen,

I think it was in the The New Jim Crow, they make the argument that maybe we should just all stop taking plea bargains because it would collapse the system, which is a rip related argument to what you're talking about?

Everybody knows that the mass incarceration system that we have now is completely inconsistent with the Constitution, you have to ignore every single one of the Bill of Rights, essentially, if you're going to enforce the criminal punishment bureaucracy as we know it. And so I think, as I mentioned, also, there's that big fear. And other fear is that there's a lot of money to be made off the pre trial system. And for the people that making billions of dollars a year of the money bail system, they see another market. And that's the profiting off of non financial conditions. So give them people drug and alcohol testing, for profit supervision by for profit officers, electronic GPS monitoring, which costs about 10 to \$12 a day.

And...

I was on monitor for two years, I got charged that every day for two years,

You know better than anyone, right? I mean, in addition to being having your every movement tracked. And so what I'm what I'm really fascinated by is why aren't more The so called reformers, talking about them the way that system might morph as the federal system did to one based on pre child attention.

So let me ask you a quick question about that. What may not be a quick question, but it seems like what you're talking about is what's the replacement And I might be wrong. But what's replace the cash bail system in that case is a presumption of danger. So at some level, how do we deal with or how have you dealt with? When, because I, you know, in many of these cases, what you know, I've been certainly in a bunch of places where the first thing that happens is people say, you know, parade a bunch of people's pictures, mug shots, it's a dangerous, dangerous, dangerous, you can't let these people out. And then the judge starts becoming a proxy for what used to be cash bail, is that accurate?

That is certainly the playbook that they use. I mean, it's very important for any listener to understand what the criminal punishment bureaucracy is doing. Only 4% of all arrests nationwide are four things the FBI calls violent crime, the vast bulk of the criminal punishment bureaucracy is managing where I think of it as, as, like sort of public health, and other sort of

related issues, mental health issues, drug addiction and treatment. issues related directly to poverty is a very small, actual percentage of the system. That's, that's a policing and arrest and bail that is devoted to the so called, you know, violent criminals at one point, the second point is, there's zero evidence that putting someone in a cage leads to any positive outcome, including less violent crime. In fact, there's overwhelming evidence that jailing someone, even for a few days, makes them more likely to commit crime in the future. And this is something that we know everybody in the system knows this, it's not a secret. Nobody thinks that the system that we have now brutal punishment and isolation and lack of medical care, and treatment is actually creating a safer community. It's controlling certain populations and keeping them in a cycle of jail. And that's profitable to some people in our society. But nobody actually thinks it's doing any good. So we need to reframe a lot of these conversations and ask, if you, like me, are interested in a world where there are less, where there's less violence, there are fewer people hurting other people, we have adopted exactly the wrong strategies, and really couldn't have imagined a worse way to go exactly.

And engaging more people away from their families and stigmatizing them and making it impossible for them to get jobs and giving them a criminal record. And exposing them to dangerous environmental conditions. And via physical violence inside is not the way to create a safer society.

So we're here at the Smart on Crime innovations conference in New York City. So what's your presentation going to be about tonight?

Today yhey've asked me to talk a little bit about the state of pre trial reform in this country. And so I'll talk about some of the things that you and I just spoke about, and and some of the things that I think are moving in the right direction. And some of the things I'm very scared about?

And is there any way that people can...You already mentioned your website or any other way people can get involved in some of the work you're doing or get connected with your organization?

Yeah, so you can, I think one amazing thing is that I just wrote a book called usual cruelty, you can Google my name and usual cruelty. And all the royalties are going to an amazing organization called see justice group, which organizes women with incarcerated loved ones. Oh, nice. And I talked about a lot of these things in the book, and it talks about the sort of how the criminal punishment bureaucracy really works and what it's going to take to dismantle it. And and I talked about the complicity of lawyers in particular, and how the system is constructed. And then you can also follow us on Twitter at civil rights core. And you can google civil rights core.org and, and take a look at all of our work on prosecutors on bail on combination of poverty and all the issues that we've been working on. And then you can also follow me on twitter at equality Alec.

Excellent. Thanks so much for doing this. Really appreciate you taking the time.

Thank you so much to you both.

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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