BRENNAN CENTER FOR JUSTICE

TRANSCRIPT:

How New York Reduced Mass Incarceration
January 30, 2013

MICHAEL WALDMAN: Good evening everybody, and welcome. My name is Michael Waldman. I am the President of the Brennan Center for Justice here at NYU School of Law and we are delighted to welcome you, to welcome our distinguished speakers and panelists, to this important and very crowded event. We're especially thrilled to see so many people here and so many even more who wanted to come but we didn't have room. I take that as a sign of the significance of the issue for our state and our country and for the values we care about. We are very thrilled to sponsor this event with the Vera Institute of Justice which you'll be hearing a little bit more about later, and also to be marking the release of this important new study about which we'll be speaking tonight.

We have a number of people to thank, but my colleague Inimai Chettiar will be making those thanks so as we lawyers say, by incorporation, I thank all of you as well. But we do want to acknowledge the presence here of one colleague in the law who is of course a leader in the struggle for justice, the former Chief Judge of the State of New York, Judith Kaye [applause] who is here with us today.

The battle for justice on behalf of young people that she is waging now, and the standards that she upheld while on the bench of course is what all of us in the law seek to emulate, and in a way is part of the spirit of the Brennan Center. For those of you who do not know, the Brennan Center is a law and policy institute affiliated with the law school here. We focus on the systems of democracy and justice, on reforming and improving those systems. We were founded sixteen years ago now by the family and clerks of the late, great Supreme Court justice, William J. Brennan, Jr. who himself started off course on a state supreme court in New Jersey. And we are imbued we hope with his spirit and the idea that he put forward that the test of the law, the test of laws are how they uphold simple human dignity. That's what we try to do at the Brennan Center in our work. We look at the institutions of American democracy and justice and hold them up next to the values that we cherish, those core constitutional values, the values set forth in the legendary preamble to the Declaration of Independence which we heard about on the Mall the other day from the President--the idea that we are all created equal. We hold up our institutions to those values, and when those systems, when those institutions are wanting, we change them. You may know of the Brennan Center's work especially over the past year or two in the fight for voting rights, to block the laws that were passed in nineteen states that would have made it harder for as many as five million people to vote. Our effort, our research, our communications, drive, our litigation helped block those laws so that by Election Day Americans who wanted to vote COULD vote. That's the kind of work the Brennan Center does.

[Applause]

And as we look at these systems of democracy and justice in our country, it is plainly the case that our criminal justice system must be at the heart of the work we do and must be at the center of all of our concerns. No other system touches people so directly, potentially so harshly. We balance many values, we want to keep our streets and communities safe but we want to do it without trampling on people's rights, with institutionalizing racial imbalances. We want to make sure that the policies we follow are based on facts and research and common sense and not fear. And so building on the success, building on the model in a way, that we found so successful in the fight on voting rights as I announced on our dinner this past December, we are launching a second front in our work on justice, in our longstanding justice program, in the fight to end mass incarceration, over incarceration in the United States. This is a big, big topic that so many of you care about and know about. It's something that many people here around the city and country have worked on. When we have 5% of the world's population and 25% of the world's prison population that's a scandal and it's something we need to do something about.

And so to lead that work for the Brennan Center we brought onto our ranks the person who will be moderating and spearheading this evening, Inimai Chettiar. She came to us from the American Civil Liberties Union where she did such vital work on this very issue of mass incarceration. Before that she was here at this law school in the think tank, The Institute for Policy Integrity that Dean Revez pulled together to bring these very values of economic analysis and rigor to very sensitive issues of justice and policy.

And we are very thrilled to help launch this effort for the Brennan Center by being able to publish with the Vera Institute and the JFA Institute this important study which we'll be hearing about and discussing and even debating tonight. It's called "How New York City Reduced Mass Incarceration: A Model for Change?" Question mark--you may not see the question mark but it's important. You've already read about many of its interesting and important finding in the *New York Times*, and it really addressees some startling and important trends that we see in our state. We know that all over the country prison ranks, prison populations have exploded. But here in New York after years in which that happened, the size of the prison population has shrank. Not just prison, but parole and probation. That happened at the same time the crime went down that didn't lead to some wild in the streets melee. Crime went down at the same time. How did this happen? Why did it happen? What's the connection? What is the connection as this report suggests, that the decrease in felony arrests and the shifting of resources toward policing had something to do with that. Is that true? What are the consequences? What are the implications? What are the implications of some of the controversies around policing practices in New York which so many people here have spent so much energy talking about, working on and fighting about over recent years? How in a sense can we gain the benefits of

expanded police presence without the detriments of some of the controversial practices? At a time when the whole country is focusing on the new Jim Crow, left and right looking at these costs of mass incarceration, what do we in New York have to teach--not just about how crime has gone down, which is fantastically important, but how prison populations have gone down and how criminal justice policy and local law enforcement might have had something to do with that? Those thorny questions are the topic for this evening.

First we're going to hear from the authors of this report, two of the country's leading criminal justice experts, leading criminologists, Michael Jacobsen and James Austin. Then after they've told us what they found, we're going to hear varied views from some of the leading advocates and experts on criminal justice policy here in New York, from very different and interesting and again, varied perspectives. I should mention the Brennan Center has had the opportunity to work with every one of these organizations on one issue or another. And then we'll have an opportunity for questions from the audience and comments. We'll also be able to hear, having heard the panel, we're hear from the authors responding to the panel. There'll be a lot of back and forth.

This is an important topic. It's an emotional topic. We certainly are devoted to the ideas that we will proceed with respect. We recognize that there are a lot of interesting, important and controversial views in this report, in this room. Its findings, if true, may challenge all of us. They challenge preconceptions in some ways of liberals and conservatives, of left and right. We're looking forward to a meaty, a meaningful, a respectful conversation with you and among ourselves and we are going to take our approach from Senator Moynihan and his line that I'm very fond of, which is that everybody is entitled to their opinion; not everybody is entitled to their own facts. And we're going to start by hearing some facts from our authors. And thank you very much all of you for being here and Inimai, please take it away.

[Applause]

INIMAI CHETTIAR: Thanks, Michael. As Michael mentioned, I'm Inimai Chettiar. I'm the director of the Justice program at the Brennan Center, and our priority initiative is to end mass incarceration. I'm thrilled to be moderating this even tonight as this is exactly the type of difficult conversation that we need to have to move criminal justice reform forward.

How to reduce prison populations, costs, and crime is a live national debate, and it's playing out across the country and in New York. Tonight we're here to discuss these issues as we analyze take-aways from Jim and Mike's report. The report provides primary data and draws a conclusion about what caused the drop in New York's

correctional population. As we analyze these policies and this model, we should carefully think about, identify, discuss, and weigh both the costs and benefits, and that's what we hope to do tonight.

Before we get to the program I quickly wanted to thank everybody who helped to put this event together--our phenomenal communications team, Jeanine Plant-Chirlin, Desiree Reiner, Jafreen Uddin, and Kimberly Lubrano; Thomas Giovanni, John (Abeland), Gabriel Solis, Meghna Philip, Nicole Fortier and Kate Robards from the Justice team whose passion for criminal justice and racial justice has been inspiring; John Kowal, Mary Crowley and Melissa Sipilone from Vera, and all the other staff and volunteers who helped tonight.

So I'd like to introduce our first panelist. Jim Austin is an expert in correction planning and research. Over the last twenty-five years he has worked directly with many states and local jurisdictions to reduce their correctional populations. Jim was the expert witness in *Brown v. Plata*, the Supreme Court case which mandated California to reduce its prison population. Jim is also the author of *It's About Time: America's Imprisonment Binge*. Michael Jacobson is a president and director of the Vera Institute. Mike's tenure at Vera has been described as transformative of the organization as it opened its new offices and expanded capabilities. Mike has also served as New York City's Correctional Commissioner, Probation Commissioner and in the Office of Management and Budget. He's the author of "Downsizing Prisons: How to Reduce Crime and Mass Incarceration." We're honored and thankful to have Jim and Mike here to discuss their research. So with that let's get the first panel started.

[Applause]

JAMES AUSTIN: Well thank you everyone. Thank you for coming. As Michael and Inimai have mentioned, we're going to present to you quickly the factual situation that happened in New York. I'm going to talk for like five or seven minutes -- hard for me to do, but I'll do it, and then Michael is going to give his twist on it. Just by big picture, I've been involved in this issue of prison systems for thirty years now, and it hasn't been a pretty picture. People are now talking about mass incarceration but quite frankly no one is doing much about it. From what we can see nationally, the prison system has stabilized but at rates of incarceration that are four times what they were some twenty-five, thirty years ago. And it doesn't look like there's any effort going on anywhere where we're going to see a drop in these incarceration rates unless we start doing some things differently.

The crime rate has also dropped. The crime rate today in the United States is where it was in the 1960s. That means, at that time, in the 1960s and for like, since we've been

recording incarceration rates, it was about 100 to 120 inmates per 100,000 population. And today it's at the 450 level. So my fear as a criminologist, and I think as a citizen, that unless we start doing some things differently we are about to institutionalize for many decades going forward this high incarceration rate. It certainly is not justified based on the crime rate because again, when we had the crime rates where they are today we would have an incarceration rate one fourth of what we have today. So something is going on that needs to be addressed.

What caught our eye, Michael and I, was the fact that as we were watching the states as we do, New York was doing something differently in terms of its numbers. It was starting to reduce its prison population. So we went to the Council of State Government and with funding from PEW got permission to try and do a study of what's was happening in New York. This was unique in the United States, what we were seeing. The only exception is New Jersey. New Jersey has also lowered its prison population substantially. California, that's another topic. California has more relocated its inmates rather than reduced it and that's certainly worth a seminar, Michael, if you want to do that one too.

So being the criminologists that we are, we got the authority to go ahead and see what was going on in New York and of course headed toward Albany. And I went up to Albany and in about a day, I figured out I was in the wrong place. I needed to go back to New York City because what was going on in Albany had nothing to do with the drop in the prison population. In fact, Albany had actually made things worse by passing truth in sentencing laws which encourages states under President Clinton's administration, we all recall President Clinton, they initiated a major policy which paid states to increase the length of stay for people who were convicted of violent crimes.

So I have some slides I'll go through real quickly, kind of get settled on the facts. They're in your handout, they're in the booklet. The first one I want to show you is Figure 1 and it's basically a simple comparison. It's the number of prisoners nationally from 1985 to 2010. You'll notice in all the figures that we've presented, we tried to make them in a format so that law professors and law students could understand them (audience laughter). I'm a sociologist. I gotta say that, anyway. And what you see is the drop, New York is dropping. New York is actually declined. The rest of the country continues to grow and is growing upward. It now has stabilized, to bring you up to date. It stabilized at about the rate where it's at right now. So there's the drop.

So what's producing the drop? Well the only thing that's going to drop prison population -- there's only two factors that affect prison populations or any other population you want to project. That is the number of people being admitted to the system and/or their length of stay. So to lower prison population you have to attack

one or both of those equations. New York did not attack the length of stay. As I mentioned before, it actually passed a bunch of legislation that increased the length of stay requiring people to serve 80/85% of their sentence so they could get the federal funding.

On Figure 2, what you see dropping is called the “new commitments.” And they started dropping about 1991, 1992. So that's when we see this decline. Now, it takes some time for the prison population to start coming down because this length of stay -- there’s a chart in there, I don’t, I'm not going to show it to you but it's in the report, it's a chart showing you that the length of stay is going up across the board for the people that are being committed. There’s also an uptick in the parole violations that was going on at the same time but parole violators don't spend that much time in the prison system so that was not enough of a factor to offset the decline in the commitments and the overall decline in the prison population.

Now what's interesting then is what's causing the drop in the prison admissions. Certainly we have a big drop in crime--this is Figure 10--crime rate in New York City was well above the rest of the state. The original title of this paper was “A Tale of Two States.”And that's one thing you need to understand. What drove down the prison population and it also drove down the jail population, it also drove down the probation population and it also drove down the parole population-- it drove all these populations down and it was because of things that were happening just in New York. You can see the crime rate rise dropping and it's dropping very quickly in New York.

I’ll slip to this other slide which is -- this is the picture I'll leave you with. In 1992, 1993, 1994, New York Police Department changed the number of people that are being arrested for felonies and misdemeanors. You can see in this chart that actually the total number of arrests is relatively stable, but what's changing is an increase in misdemeanor arrests and a decrease in the felonies. When you start doing that, mathematically what's happening is, you start drying up the swamp. Misdemeanors spend very little time in jails--they’re booked and released quickly. Fewer commitments are coming to the prison system. Fewer people are getting felony probation and on the back side the parole population is dropping as the prison population drops. So our big finding here is that New York City Police Department produced this drop in the prison, jail, probation and parole so for whatever reasons -- which Michael will talk about next -- because it changed its arrest practices.

MICHAEL JACOBSEN: Good evening. I'm just going to use my Blackberry. I'm not tweeting my followers. I just don't want one of those time out signs. So I just want to make actually a few contextual points. The reason Jim and I took on this project is that we were asked what factors led to the reduction in incarceration in New York City and New York state, because as Jim said, it really is both the city and the state

are hugely different than any other big city and any other state, with the slight exception of New Jersey over the last fifteen years.

And so it's a really interesting question and just to be clear, we weren't asked to write about or study why crime went down. I'm sure people in the next panel all have opinions about that. I've heard them all before; they're all very sort of articulate. I think Jim and I would both say we don't know why crime went down. But we certainly try to get the answer to why local incarceration, state incarceration, and as Jim said, parole and probation populations went down. It's the only state that we know of where every single category of criminal justice populations went down. And as Jim said, our overall conclusion is that those same NYPD policy changes that are the subject of huge debate, law suites etc, etc. But those policy decisions to essentially move to very, a very strict and affirmative public order policing model -- huge increases in misdemeanor arrests, very intentionally, huge increases, controversial of course, in stop and frisks. Right? They're all sort of a piece at some level. That was a policy decision the NYPD made. It resulted, again, the debate you are about to hear is whether it resulted in crime reductions or not.

I don't know that that's true or not, but it certainly in our opinion was responsible, as Jim said, for the reduction in local and state populations, and that's both because the manpower—you know, it's not completely a zero sum game. Police officers and certainly NYPD can have the ability to be arrest-making machines. That's what they do. If you want them to make arrests they'll make arrests. But even the NYPD given the constraints of the manpower, once you've decided we're going to invest heavily in misdemeanor arrests and I forget whether that chart -- it's in the book, you can see a huge increase in misdemeanor arrests over time, of all kinds, but especially marijuana possession arrests and other sort of controversial parts of the strategy. Use of stop and frisk as a tactic, putting aside whether anyone thinks it's good, fair, effective, just, etc. But the manpower requirements to do that just didn't allow as a matter of course, of policy, the police to keep up the levels of felony arrests it was making. And so when you see over time what's happened--huge diversion of resources on the ground to low level arrests, low level enforcement of all kinds. Initially when this started in 1994, the felony arrest levels stayed about the same although the indictment rate for those cases started to fall. And then over about the last fifteen years or so, or twelve years, you see a slow steady decrease in felony arrest over time, along with a much lower indictment rate. That slow decrease in felony arrests happened for a number of reasons. One is as I said, and as we've both come to the conclusion, you can't do everything and once you make the decision to concentrate on low level arrests, you simply don't have the manpower, person power, to keep up the historic number of arrests. And also crime has been, as we all know, going down steadily. Explanations for why that's happened aside. And so over time we just have a smaller and smaller pool from which you can make felony arrests in any case.

So whether a direct result of the NYPD policy shift or an indirect result, our argument about why incarceration went down is tied exactly to those policy shifts. That leaves several big questions unanswered. One is, were those policy shifts also responsible for the crime decline? If so, was it worth it. What are the social costs? What does it mean to put this many young people, mostly people of color, through the criminal justice system? All perfectly legitimate debates to have, but that shift did, in terms of what's the answer to why incarceration went down--for us that is the answer. What's the answer to when crime went down? We don't know. But maybe when some of the funders here come up with $50 million over the next five years we can get to that.

The last point I'll make -- the other interesting thing about this is that it's an interesting case study for us--not necessarily even in what exactly New York did, but people talk about ending mass incarceration, understandably, it's a laudable goal. Most people think of working at the state level, sentencing changes, parole reform, probation reform and all that obviously makes sense and you can see some states have been more successful with that than others. But this is an interesting case study putting aside whether you think this was the right policy or not, it's an interesting case study in that a locality can actually have a huge effect on incarceration rates, both local and state. Does it mean other localities should do what New York did? Not necessarily, but it just means that in a place where you have less incarceration, and that's the good news story of New York. It's good news when you're fifty thousand feet up. It's more complicated news when you five feet up. Right? The good news is crime is down, incarceration is down, local and state incarceration is down, it's all good, right? The argument is about those tactics and what they mean and what the social costs are and those questions are all legitimate arguments, but for us one of the interesting things about New York and sort of should lead to some further research, is what other kinds of things can localities do, absent whether it's completely different than what the NYPD does, but it does sort of point to the fact that action to reduce incarceration local and state is not all at the state level. Localities have a big say in how that, how those rates are implicated. And that to me is one of the more interesting, even though one of the more maybe ephemeral findings, of this -- it's one of the more interesting findings. That the biggest reductions in the United States prison and jail system in decades as far as we know of all happened around action at the local level. And now you're going to hear a debate--because I see these folks--about things that are only slightly related to what Jim and I talked about.

[Audience laughter and applause]

INIMAI CHETTIAR: So I actually have one question. Jim, I know is a sociologist and you explain data to lawyers, but as a lawyer I need to ask you guys a couple questions. My question to you is about causation. So I'm curious about the causal link that you're drawing between the NYPD's policing tactics to the decrease in felony

arrests, and as well between the drop in felony arrests to the drop in correctional population, because there were other policy changes that were happening in New York during this time. So for example a 2010 report from The Sentencing Project and the Justice Strategies tells a more complex story. So I'm going to quote from that report. It attributes the drop in New York's population to refocusing police enforcement priorities, diversion and alternatives to incarceration, scaling back drug sentencing laws and increased use of release programs and parole incentives. So my question is how can you be sure that the driving factor in all of this is the NYPD arrest policy as opposed to one of these other policy changes or social changes?

JAMES AUSTIN: Well, we looked at those other policies and there were some things that were going on that did have an effect. But if you look at the scale of the effect, from what we could see, you look at the numbers, it was not the driving force. Just so people understand the scale of this thing. Riker's Island had 20,000 inmates before—

MICHAEL JACOBSEN: 22,000...

JAMES AUSTIN: I'm sorry, 22,000 inmates, packed to the gills prior to the change in the shift in the arrests that we show you up there. It's now I think about 11,000 and some change, Dora?

DORA: 11,000.

JAMES AUSTIN: 11,000. This is the most phenomenal drop in a jail population and the only logical -- and we tie it to the jail admissions. You can see on the chart -- the jail admissions are dropping as the arrests are increasing for the misdemeanors and as the felonies are declining. So everything is timing perfectly. Now, we don't have an experimental design but we try to look at other explanations why this thing would have happened, and the only thing you can see from a modeling point of view is that we're moving away from felonies, the felonies are the ones that stay in the jail because they can't get out. They're the ones that get convicted and go to prison. Now there was a change in the disposition rate, the felony disposition rate was also going down, but also going down statewide. The last thing I want to mention that is striking -- these drops did not occur anywhere else in New York. It was just in New York City, so you're kind of like putting the pieces together and it all seems to fit pretty tightly in terms of it's the arrest practices that are driving this. It's not 100% but I'd say it's in the 80/85% range.

MICHAEL JACOBSEN: Yeah, and just to add a quick note onto that -- I didn't realize Judy [unclear] had police enforcement practices as number one, so we clearly agree on that -- and there were a variety of things that happened. Rockefeller, there were two different stages of Rockefeller Drug Law Reform, there were increased uses

of alternatives to detention, alternatives to incarceration. A growth in specialized courts and ... there was a lot going on, but as Jim said, when you look at the numbers, when you look at the huge decreases, especially the cases, the effect on the jail system--because you need to have an effect on tens of thousands of cases for that system to essentially be half what it was. Right? There are other things going on. It's not that the only thing that's going on is changes in enforcement. But that's clearly at least for us the big one.

INIMAI CHETTIAR: But wouldn't the felony arrests have gone down on their own because the crime rate itself was going on -- as opposed to -- how do you know that's because of the NYPD practices and not because of the crime rate going down?

JAMES AUSTIN: Yeah, well that is the black box, which is -- I think what would be needed, and most of the research I've seen on the extent to which NYPD did this purposely, you would have had to have several ethnographic kinds of researchers out there on the ground where there's some kind of a mandate going on from the upper brass to start doing things differently. I wasn't that close -- Mike could probably talk to that better than I can, or the other panelists. So I can't -- and Mike really made the point -- we were just looking at why did prison populations, why did jails, why did probation, why did parole populations drop, and we can see mathematically what's going on. What is going on in the NYPD at the officer level? I can't tell you.

MICHAEL JACOBSEN: Right, and I think one of the things to add onto that is as -- and I think over time that did become a factor, right? At some point when you have 60, 70, 80% reduction in reported felony crimes your pool -- even the NYPD can't keep up that level of felony arrests. But when you look around the country there's all sorts -- crime is down from forty to fifty percent across the country. And many of those big cities where crime is down, not as much as New York, but forty or fifty percent -- there are no drops like this. Police departments are really quite expert -- I mean, at some point the pool is going to be so small you can't keep up that number. But if what you want your police department to do is make felony arrests, they'll make felony arrests. This was a decision early on both sort of conscious and indirect to take activity away from that and at some point I'm sure it was true -- that just organically as you have less crime you're going to have fewer arrests. But it's not, when you look around the rest of the country, it's not remotely the case. If that was the case we'd see prison drops like this all over the place. Right? Big city police forces have an amazing ability to keep arrests up even while crime is falling hugely.

JAMES AUSTIN: And two of the reviewers that looked at the report said, well, are you saying that the NYPD ignored serious crimes? And those are important kinds of -- I don't think that's the case. And another theory is that criminals are being driven out of New York City and they flock to the rest of New York, you know. All those are

kind of interesting theories that really, there's no real data to suggest that. But to your point, this change in police practices happened I think under a couple of police chiefs. It -- the whole idea of community policing, broken windows, blah, blah, blah -- but that's been done elsewhere, as Mike says. And with drops in crime, but you don't see the drop in the correctional system. You don't see it.

INIMAI CHETTIAR: Okay, last question. I know we're running out of time. Can you just briefly talk about broken windows and hot spot policing and what that is, because I know a lot of your -- this is coming up in your report.

MICHAEL: Again, in some of these policing terms are so sort of overused now, they've become a little bit meaningless. Hot Spot Policing, which essentially is identifying trends, crime trends, crime problems emerging, crime problems really quickly and then putting police resources in quickly in real time -- that's something the NYPD has done for a long time. They're incredibly sophisticated technologically. Their data systems are probably unmatched. And that and the research generally, Hot Spot Policing is one of the few policing strategies that has some research behind it in terms of its efficacy on crime reduction.

One of the problems that you'll see in this debate about why crime went down is there's very little research generally on policing and what works in policing and almost no research in New York City about what happened, and one of the reasons for that -- there are several reasons for that but when you cut through the politics-- there's so many things going on in New York. Just on the policing side, you have Comp Stat, huge increases in Stop and Frisk, Hot Spot Policing, General Public Order Policing with gigantic increases in misdemeanor arrests. You have non-criminal justice things going on, huge increases in immigration and the more immigration you have, the research will say the less crime you'll have. Change in demographics, a change in the economy, and for a lot of these years the economy was booming. And so to try to decipher a) what works and then, and we really don't know, and then b) and here's part of the debates about Stop and Frisk, do we know how effective Stop and Frisk is? No, not really. Do we know that it could be more or less effective if you only did a quarter or a third? Maybe. It would be nice to look. One of the reasons Vera is doing a very big ethnographic study on the impact on kids who are stopped is because people talk all the time about what the impact is, what the social costs are for young people in neighborhoods with high levels of Stop and Frisk, but we don't really know. We can intuit, you can talk to some, you can get a sense and that's one of the reasons we want to do this. I know it's annoying for researchers to say especially in a sort of hot sometimes toxic debate about these kinds of things -- research would really be more useful. But research really would be more useful here because there's not that many data points to point to--certainly in terms of what different policing strategies have worked, to what extent and at what cost.

JAMES AUSTIN: I was just going to add--the other interesting site is Los Angeles where Bratton went to and after he left the jail population, the crime rates Los Angeles had dropped to what it was in 1956, and the jail population had dropped from 22,000 down to 14,000 and some change until AB109 got passed. So yet another model of police -- I'm not a police expert, but there's something going on there where if you put some of these things in place, you get these big drops in crime and big drops in the jail population.

MICHAEL JACOBSEN: Right. And just a quick note on that--the LA -- going back to the last point I made -- the LA story is an interesting story because in that case, and interesting that it was Bratton who started these policies here -- he really managed in a variety of ways -- I'm not sure it was walking in lockstep exactly -- but the advocates, the civil rights folks and Bratton really were on the same page in a lot of ways. You don't see -- I mean, there were different policies there, but it goes back to can there be other ways to get this, both without the potential costs but also certainly without the high levels of political debate. And in Los Angeles it didn't start out that way, but by the time Bratton left there was really a remarkable relationship between a lot of the community folks, a lot of the advocacy groups and places like the ACLU -- a very different sort of picture than you have in New York right now.

INIMAI CHETTIAR: Thank you. So we're out of time for this panel. I'm sure the audience will have questions for you and the final panel. Thank you.

[Applause]

So for our second panel we are joined by leaders in the criminal justice field to discuss the report and the implications and what we just heard from Mike and Jim. Our panelists are Donna Lieberman. Donna has been the Executive Director of the New York Civil Liberties Union since 2001. NYCLU is widely recognized as the state's leading voice for freedom, justice and equality. Donna has been a leader in the effort to end the NYPD Stop and Frisk practices, and one of the ACLU's national priorities is to end mass incarceration.

Heather Mac Donald is a John M. Olin fellow at the Manhattan Institute. The Manhattan Institute seeks to foster a greater economic choice and individual responsibility. Heather is a contributing editor of the City Journal and has written extensively on crime and policing. She is the author of *Are Cops Racist?* which discusses racial profiling as part of what she calls a "war on police."

Glenn Martin is a vice president at the Fortune Society. For over forty years, the Fortune Society has worked to insure the successful reentry of individuals with

criminal histories. As someone who was formerly incarcerated, Glenn has committed his career to advancing criminal justice reform.

And finally, Eugene O'Donnell. Eugene is a lecturer at John J. College of Criminal Justice. He's been an NYPD officer and also prosecutor in New York City. Eugene has taught the criminal investigation course for NYPD detectives and teaches the John Jay High School Program which helps explain Stop and Frisk to students. So as you can see, our panels are going to have very, our panelists are going to have very different views on some of these topics that we're going to cover.

There are four broad categories that we're going to cover today -- Broken Windows policing, Stop and Frisk, the drop in crime and New York as a model. So just to go over some of the logistics for this panel, we're going to have fifteen minutes per category and I'm going to address each question to one panelist who will have three minutes to respond. And then any other panelist can weigh in with an opposing view for three minutes, and then the first panelist can provide a short rebuttal. And when we get to fifteen minutes I'm going to call time--we actually have a time keeper up here as well. So both sides will have their fair time to respond so I ask the panelists not to interrupt each other. And I'll let people know when their time is up. And we're also, we're very eager to hear audience views but we ask that the audience please wait until the question and answer portion so that we can hear from the panelists first.
So with that we can start this. So, my first question is for Eugene. You've just heard Jim and Mike talk about the police's shift in arrest policies. So as a former NYPD officer can you tell us what is effective about Hot Spot Policing and Broken Windows, and can policing bring down the correctional population?

EUGENE O'DONNELL: Sure, and just by way of perhaps a boring restatement of this because many of the folks in the room know this, but long and short of Broken Windows policing comes to us in the crime emergency of the eighties and nineties, or the purported crime emergency of the eighties and nineties. Chief Bratton, who came to the transit police as some people may recall, really trotted it out there. Again, New York City subway riders of the 1980s would remember standing at various places in the subway and watching virtually nobody pay their fare. They'd be pushing the guy out of the way who wanted to pay his fair to vault the turnstile. Graffiti was -- essentially you couldn't look out the windows of the subway, and there was a perceived level of fear, coupled with some crime, although the subways were never particularly that dangerous. And so the Bratton strategy in the subway was basically to nip that in the bud, to try to stop people from fare evading and to take disorder seriously. And of course that came along accompanied with capital investment in the system because the trains were old and crummy so it's hard to say where the law enforcement ended and the capital improvement and other things began.

But this strategy is essentially the beginning of the New York City Police Department that you see today. That and Com Stat, which is a way in which crime is measured and the police department supposedly is able to devise strategies that are responsive to the crime that is measured. So what we see now in the NYC Police Department is you basically see a law enforcement, it's a massive law enforcement effort. The Police Department that I would have joined in the 1980s would have made maybe 80,000 arrests in a time when the city had probably extraordinary levels of crime relative to where it is today. It's about 80% less crime in categories today than there were in the 1980s. And yet 350,000 arrests, something around 350,000 arrests are made today, 80,000 arrests in the early 1980s -- coupled with more, something I think doesn't get a lot of attention -- the enforcement is not just for felony and misdemeanor arrests, there are also summonses which gets a lot of, which doesn't get a lot of attention, goes to the summons part; creation of tribunals like the Environmental Control Board, the Transit Adjudication Bureau, they eject people in the subways, Stop and Frisk--which is if you look at the enforcement levels in the last five years, 1.8 million arrests in the City of New York in the last five years and 600,000 times five, 500,000 times five stops and frisks, again with summonses and other kinds of enforcement actions, youth referrals and the like -- basically in the Police Department that you would have seen in the 1980s, crime really didn't matter, it really was not, wasn't front and center. You could go to your local precinct community council meeting and the captain seemed shocked to find out there was a robbery on somebody's street, or a rape. It really wasn't it tracked; it really wasn't measured. And then of course one of the more questionable things is the idea now with Com Stat, that there can never not be a strategy for crime problems. So that has been one of the things that's created a lot of pressure the police will tell you, individual officers will tell you.

It's become a numbers driven agency, and so when I hear Mike talk I think many of us wonder, trying to be objective, is this a machine that just can't be slowed down? Is it a machine that can't be, have we created something that just cannot be looked at again? And I'm going to try to stay under time. I just noticed Mr. Hayden, the former NSA Director, last night speaking about the drone attacks and talking about the collateral consequences, how that alienates people and that's not measured. And you can't help but thinking in New York City when we do this Com Stat, this numerical stuff, the negative impact that that can have on relationships with communities really doesn't get factored into the Com Stat equation.

INIMAI CHETTIAR: So Glenn, do you want to provide a perspective on that? Eugene talked a lot about Com Stat and Broken Windows--in terms of what your viewpoint is on both of those.

GLENN MARTIN: Sure, I'll respond to that. I had a hard time with causation when I read the report. I know you mentioned it. But I think it's important to bring it up again

because when I read the report last night and today all I kept thinking was with all due respect, that a lot of things are conflated in the report. And Mike touched on a few of them now and I want to reiterate some of them and add some other points to them, some other factors that I think are really important because -- and I think I can take license to just speak the way I want up here. I'm an advocate, right, so if it's snowing outside and the snow starts to dissipate and I go and I bake a cake and suddenly the snow stops, it did not stop snowing because I baked a cake, right?

[Audience laughter]

And as I read this report I kept thinking to myself, there's a lot of stuff missing in between here, and I think about criminologists all over the country trying to figure out what happened in New York. I have the chance to travel all over the country doing my work and everyone is asking that question. And so I think we have to be hugely responsible in thinking about what our response to those questions are going to be. And I think there's some mayor somewhere of some small town somewhere called "I have a lot of black residents-ville" and he's going to adopt this concept, what I call, I call the report the Minority Report actually -- because I think of this movie called Minority Report where the idea, if you catch people when they're doing misdemeanor crimes, somehow you're going to have an effect because these are the people who potentially down the line may have committed more serious crimes. Are you just going to send this strong message to other people who might commit felonies that they shouldn't as a result of this? And what I've seen is quite the opposite. As a person who sort of was out the middle of the nineties, the late eighties and watching what happened in the streets -- and communities were decimated by these policies, these Hot Spot Policing, Zero Tolerance, Quality of Life, Broken Windows and now Stop and Frisk. And so I want to mention some of the other factors I think are important that are not in this study, there's no research out that makes the case necessarily but I think it's important to say out loud.

The report mentioned alternatives to incarceration. I think it didn't do enough to talk about what the robust infrastructure of alternatives to incarcerations in New York's programs--in New York City--have done to reduce the amount of people that went to state prison. I think it conflated a bit conditional discharge and the kind of diversion that we're responsible for as agencies. I mean, we target peaceful people who are facing a year or more in prison very deliberately so that we don't engage in net widening. And if you look at all the programs that are part of the Coalition, we served over 14,000 people last year alone. So I think that that can't be discounted.

I think of demographics, declining birth rates, less youth in New York City, high unemployment during the 1990s, reduction in illicit drug markets, the advancement of technology -- cell phones, video cameras in subways, traffic, street signs, street lights,

the waning of the crack epidemic, the community's response -- I think we diminish the fact that the communities that are directly impacted by these issues did step up and do things within the community that helped to reduce crime. The unique community of formerly incarcerated people in New York City who are entrenched in these communities and helping to reduce crime in these communities and increase public safety. You don't have that anywhere else in the country. The response of the states to things like double and triple bunking which was a huge debate in the nineties -- state bed triple bunking in prisons. People returning to upstate communities. You mentioned that Mike. There's actually evidence from DCJS that the majority of people who are exiting prison now are going back to upstate communities. Why? Because they've been locked up so long and because of things like the unaffordability of housing here in New York City. So no family left in New York City, unable to pay for rent here in New York City, many have gone to upstate communities.

And then the question we have to ask is, who is safer? Who has experienced the increase in public safety? Because there are specific communities in New York City that have actually seen a rise in violent crime. And then finally gentrification. I think gentrification masks exactly who has benefitted from this reduction in crime.

[Applause from audience]

I mean, the community -- I grew up in Brooklyn, I remember Fort Greene and I remember when it was a lot more Fort and lot less Greene [audience laughter] and the fact of the matter is that while you can say Fort Greene is a lot safer now, Fort Greene looks a lot different than it did during the crack epidemic.

[Applause]

INIMAI CHETTIAR: Do you want to provide a short response?

DONNA LIEBERMAN: Thank you so much, and let me just say I'm honored to be here on this extraordinary panel and responding to these great criminologists. First of all, the police have a absolutely indefeasible duty to treat everybody with respect, and that is not always the case. And the police need to work much harder on explaining to people why they initiate an interaction with them.

But I want to respond most immediately to Glenn's question of who is safer. Let me first give the broad outlines of the crime drop and answer very specifically who has benefited overwhelmingly from that crime drop. New York City has the lowest crime drop in history. There's nothing like it. Most New Yorkers are sort of unaware of how unique this city is. It's lasted twice as long and is twice as deep as the national average. No other city except Los Angeles, which imported the Com Stat policing

model, comes close to New York. We're about 17% of the homicides today than we had in 1990. And the overwhelming beneficiary of that drop in murder and violent crime is minority males how have made up 79% of the drop in homicide victims. Young men, young minority men in New York are killed at one quarter of the rate as those in Chicago. And the crime drop has reduced the death rate of young men in New York City by half. Homicide before the crime drop was about two-thirds of the cause of death for young minority males.

So violent crime is the most regressive of all taxes. It hits the hardest in minority neighborhoods; conversely, policing-driven crime drops is the most progressive of government programs because that's who benefits. Now we can weigh whether an increase in misdemeanor enforcement in those communities and the greater likelihood that you will be stopped--both questioned and arrested for a misdemeanor--outweighs the fact that your life expectancy now has risen by two times if you're a young minority male. And your chance of being shot has gone way, way down. But in fact, that is where the crime benefit has occurred. So it may be that communities were decimated as Glenn says by policing but I would argue that they were decimated even more by the levels of crime that we had in the 1980s and 1990s. There's been an economic rebirth. You can call it gentrification but there's many, many residents of inner city neighborhoods who have stayed. They have shopping abilities that they didn't have before because businesses have been willing to move in and give them a range of [inaudible]. Elderly citizens can go to the store now to shop without fear of getting mugged. Vacant lots have been developed that were a source of crime. There's been a complete transformation in New York that I would argue -- and we can get again to the policing question later -- but that minority communities, poor minority communities have uncontestedly benefitted from the crime drop.

INIMAI CHETTIAR: OK. So we're out of time for this category. I know people want to weigh in. You'll get a chance. We're going to come back to this crime rate question. But just to hold that -- I actually wanted to address a question to Donna. So my question to you is about Stop and Frisk. So the report says that Broken Windows policing reduced the correctional population because it shifted resources toward misdemeanor arrests. So Stop and Frisk arguably does the same thing. So on that theory, shouldn't Stop and Frisk be a method that we should use to reduce mass incarceration?

DONNA LIEBERMAN: So I don't think that this report stands for the proposition that humongous numbers of misdemeanor arrests are responsible for the decline in the prison population. I think it stands for the proposition that the decline in felony arrests is responsible for the decline in the prison population, and that's kind of like, duh. So you know, I just want to back up a second. This report has generated a lot of buzz about New York's success in reducing the prison population and rah, rah, of course,

that's fabulous. It's also generated a lot of buzz obviously about whether Broken Windows is responsible for the crime reduction or for the reduced prison populations. The authors say they don't know what's responsible for crime reduction. In fact, you know, Ray Kelly once said, "Taking responsibility for reduction in crime is like taking responsibility for a solar eclipse," or maybe he said lunar eclipse. Anyway, I agree with him-- tell Ray Kelly that I agree with him on something.

[Audience laughter]

DONNA LIEBERMAN: But I think it's important to define our terms--what's Broken Windows? You know, I've been in this business for a while and I have never associated Broken Windows with lower arrest rates for anything. Okay? But what I do associate Broken Windows policing or NYPD arrest practices with is zero tolerance, arresting any possible misdemeanor that you can, sometimes concocting misdemeanors, and humongous rates of Stop and Frisk. We've seen misdemeanor arrests go from, in 1980, 65,000 to almost four times as many in 2011--that's 250,000.

And a critical driver of misdemeanor arrests is marijuana, and we all know Mayor Bloomberg tried it and liked it and he didn't turn into a felon [applause], and the rest of you guys didn't turn into criminals for using marijuana and there's no sociologist who has demonstrated any connection to between marijuana and violent crime.

Another cornerstone is Stop and Frisk, and I know that's what you want me to talk about. This report notes that the surge in NYPD Stop and Frisk activity during the Bloomberg Administration came after the beginning of the decline in the state prison population and New York City's contribution to that, and I think that's important, and it doesn't really talk about the--it does acknowledge that we need to deal with Stop and Frisk even though you don't deal with it—[inaudible] in the report—

What are the numbers? Well, in 2011, 685,000 approximately stops; 351,000 of those were black; 224,000 Latinos; 62,000 white; 86% black and Latino, 9% white. And disproportionately, people of color, whether you're talking about the east side of Manhattan or Brownsville Brooklyn. It's justified as a way to get guns off the street and thereby reduce violent crime and save lives. But it's not aimed at criminals; it's aimed overwhelmingly in an era of zero tolerance, in an era of quotas that are rewarded-- police being rewarded for meeting quotas, it is aimed at people who are so innocent that they walk away without a summons, without an arrest.

[APPLAUSE]

DONNA LIEBERMAN: And it's aimed at people of color; it's aimed at a lot--young people of color. There are, in 2011, 158,000 black men aged 14-24 in New York

City--they accounted for 168, that's 10,000 more Stop and Frisk. Is it an effective way to get guns off the street? I say no; guns were found incident to a stop .5% of the time -- that means once in 879 stops. I don't think that's very good at getting guns off the street; you do better with a buyback program. Does it prevent shootings? Well, from 2003-2011, as Stop and Frisk skyrocketed, shootings averaged kind of the same the whole time, in the eighteen hundreds; shootings didn't go up or down a lot as Stop and--shootings went like this kind of, and Stop and Frisk went like that. What an effective way to deal with shootings! And people--my criminologist friends tell me, talk about shootings rather than the murder rate 'cause the murder rate is susceptible to a lot of other factors. Is it a gentle or a genteel encounter when you do a Stop and Frisk? Well, 22% of the time if you're black, there's use of force, like, "Up against the wall!" "Down on the ground!" and being kicked. If you're white, that doesn't happen so often; it only happens 15% of the time. But is any police encounter a genteel, gentle encounter? I submit not.

INIMAI CHETTIAR: So Donna, we're actually out of time—

DONNA LIEBERMAN: Just give me—I gotta—

INIMAI CHETTIAR: You can rebut.

DONNA LIEBERMAN: I just have to say one more thing. Is it a deterrent? As the Police Department says, yes; I believe it is. What's it a deterrent to? It's a deterrent, as Judge Schindlin found to moms letting their sons of color go out on the street. It's a deterrent to visiting relatives if they live in communities of color, and it's a deterrent to people feeling like they have rights in this city, and that's not something I agree with.

[Applause]

INIMAI CHETTIAR: So, does someone want to present an opposing viewpoint on that? Or add their viewpoint? Eugene, do you want to go ahead?

EUGENE O'DONNELL: If I could just say two things on this, just because of the position that I'm taking this evening:--one is that there's calls to eliminate Stop and Frisk, which makes me believe that some folks don't understand what Stop 'n' Frisk actually is. Uh, this is a tool that if somebody was mugged in the City of New York and called the police and if you happen to be in a precinct where the cops are looking for the people that did the crime, they would show up and put a description out over the air of the person that did the mugging. I don't think anybody thinks that it should not be a tool that the police have in their toolbox. Similarly, people remember the Terry case, that kind of stuff where the police don't have probable cause but there's

actual legitimate suspicion that somebody's casing a store, maybe robbing Missus McGillicutty on her way home--this is really Stop 'n' Frisk that I think most people would agree cannot be eliminated. It's this massive numbers of weapons-driven Stop and Frisks that is troubling to folks and understandably so. Second thing I want to say quickly is in my classes, I show the Philadelphia Murder Map and I show the Chicago Murder Map and I show this at Fordham to a group of soon-to-be pubic interest lawyers--people gasp when they see that map. And I think, as somebody who considers himself a progressive, it's not acceptable to just shrug your shoulders and in some of those cities, that's exactly what has been happening. There's been a--what can we do?

Chicago for a very long time had no strategy and, by the way, if you know Chicago, you know the people that got hammered in Chicago was the African-American middle class, that's outside the boundaries of the City of Chicago and if you go into the streets in those suburban neighborhoods, you see the signs at every street corner and it's--they would--a totalitarian regime would blush at the signs that are put on the corners of suburban Chicago about what the people on that street don't want to have happen on their street. No card playing, no car washing, no playing on the grass--they really want to have order and I think people who are progressives should look hard at this idea of just shrugging at the notion of people being killed and we had a city that 2,200 people are being killed a year… 22,000 people would've been killed in a decade, and this should be taken a lot more seriously. And ultimately for people, again, who consider themselves to be on the left side of this, the progressive side of this, the reality is that there's a lot of heat around this, but when people have a chance to reflect--like this program in the Bronx that has been under fire, the Trespass Affidavit Program, uhm, I was a liaison in the DA's office to people that lived in public housing and you will know if you've been in public housing that the vast majority of people that live in public housing, just like the vast majority of people that live on Sutton Place, don't want to come into their home at night and have people in the stairwell smoking marijuana or who don't belong there. There's a very Mainstreet USA element of people in public housing and elsewhere and they're very supportive of some of these initiatives. So, I don't want to--I think Michael Jacobs is absolutely correct: nobody knows for sure what works, but it's totally reprehensible to have cities where people are being murdered by the dozens, by the scores, and to have no strategy at all to do anything about it. Obviously, gun control's a legitimate issue. We can get into all that conversation but while some of these cities have been talking, people are getting murdered--a lot of people have been getting murdered.

INIMAI CHETTIAR: So, I think Glenn wants to weigh in for—we have two minutes.

GLENN E. MARTIN:Yeah, I wasn't even going to wait for permission. So this is how we got ourselves in this mess, right? If you put up a map of Philadelphia and

show the murder rate and scare people enough, you can convince them to move forward any sort of criminal justice policy, number one. Number two, you cannot continue to say that people who live in these communities themselves don't care about public safety -- they care about public safety just as much as anyone else. I'm on Community Board 10, Central Harlem, four shootings right around the corner from our building in the last year and a half, two years; that's all we talk about is how to increase public safety. The reason that they have to make a choice is that--it's the police offering them a choice, right? And if you're a hammer, everything looks like a nail; so if you have-- if you're the police, all you have to offer is arrests, right?

That's what we do; we have to arrest more people, arrest less people, but really, are you offering the community many options? McGillicutty? She doesn't live in my neighborhood; I think that's why I don't recognize the Stop and Frisk that you're describing 'cause the Stop and Frisk that happens in my neighborhood looks a whole lot different. People may walk away smiling but if they do, it's because they're scared to death and they don't want to end up with handcuffs on. So, while the Stop and Frisk is a legitimate policing practice, it should be used like a scalpel, not like a blunt axe. And in my community, it really is the equivalent of like fishing with a machine gun. It destroys the entire community and I don't want black men's lives saved at the risk of their children losing hope, and that's what ends up ends up happening. We are decimating these communities; they're under siege; they're policed as if they're jails. I mean, you come to my community, if a crime happens, the police only have one response-- to put up a gun tower and to flood the streets with rookie cops, through impact. It doesn't work; it destroys the community and it damages police legitimacy.

[Applause]

Eugene O'Donnell: Can I just add one quick thing. I just want to add one quick thing because the data up here is intriguing, and stuff I hadn't thought about. Again, I'm not endorsing any particular strategy, but the reality is for anybody's who ever been to a murder trial, you'll see the two families destroyed in that process. And that anything that can be done to stop people from offending that's legitimate and lawful and measured also helps save people from themselves and again, it might sound perverse, it might sound like Spiro Agnew and George Orwell, but the idea that any person who may be thinking about carrying a gun is dissuaded from carrying a gun, stops a double tragedy for anybody's who's seen the horrors of a murder trial where there's a family of the survivor, or the family of the deceased and a family of the kid who's gonna spend the rest of his life in prison…

GLENN E. MARTIN: It's often the same family in the communities I come from.

INIMAI CHETTIAR: Okay, so we are out of time on this category. I'm actually gonna go to Heather; it's a related question. So, Jim and Mike's report says that they don't know why the crime rate went down, but the crime rate is very tied up in a lot of what that they've been talking about; and so Glenn mentioned a couple of things that he's suggested had brought down the crime rate and everything from an increase in abortions to an increase in policing to an aging population has been cited. Last month, a widely publicized economic study concluded that the Clean Air Act decreased childhood lead exposure and that that explained 56% of the drop in violent crime—

[Audience laughter]

INIMAI CHETTIAR: So an economist ran a regression analyzing a number of possible causes before drawing this conclusion. So this is actually another causation question--so Heather, you wrote in the Wall Street Journal, I'm going to quote, "An increase in the number of people incarcerated had a large effect on crime in the last decade and continues to affect crime rates today, however much anti-incarceration activists deny it." So my question is, how do you know the prison population, or policing, was a driving cause of the drop in crime rate? And what's your response to some of these other theories?

HEATHER MAC DONALD: Well, I think a lot of the analysis of Mr. Jacobsen and Mr. Austin is replicated by Frank Zimring's book, which I find very persuasive, which argues that in fact, New York did not change in any of the traditional causes that are invoked for crime; in fact, the youth population slightly rose. The unemployment rate was always much higher than in the nation at large; poverty stayed basically flat. Conservatives' favorite root cause, one that I've often invoked as an explanation for crime, which is the rate of out-of-wedlock child rearing, that stayed flat as well. But New York's crime drop was twice the national average and the only thing that changed significantly in New York City from the start of the absolute going off the cliff of crime to today was its style of policing, which we've heard today about the Com Stat, which is a acute fanatical obsession about crime data and trying to deploy police as rationally as possible. I would disagree with Donna who seems to suggest that race is the overriding driver of what the police do. If you go to a Com Stat meeting in One Police Plaza, race doesn't come up; the only thing that they're talking about is--where are people being victimized? Where are the crime patterns breaking out? Where are robberies happening? Where are burglaries happening? And what is the Precinct Commander's strategy for addressing that?

Now, given what the demographics of both crime victimization and crime commission are in New York and every other city, you cannot do preventive policing without generating racially disparate crime statistics. Donna mentioned Brownsville; Brownsville has an eighty-one times higher per capita shooting rate than Bay Ridge,

Brooklyn. That suggests that police are going to be deployed at a much higher rate in Brownsville and are gonna be looking for suspicious behavior to try to prevent and deter shootings and other types of crime. Blacks commit 80% of all shootings in New York City according to the victims and witnesses; whites commit a little over 1%. Given those disparities, which again come from the victims and the witnesses, not the police. The police are going to be targeted in [unclear] in high crime neighborhoods, trying to protect the law-abiding residents there.

I think the mechanism that Mr. Austin and Mr. Jacobsen point to in this paper, without absolutely trumpeting a cause--a causal relationship is very powerful. That what's happening is they are making misdemeanor stops and summonses before a felony can develop. So if somebody is drinking on the corner at 11:00 A.M., the police may make a misdemeanor arrest, pour out the alcohol before somebody becomes drunk and that results in a shooting or a stabbing at 11:00 P.M. The misdemeanor arrest rate has gone way up, but the actual jail population has gone down because the felonies are not being committed. So, I think it's a similar population that is being interfered with by the police; again, I cannot stress strongly enough the imperative that the police have to treat people with courtesy and respect. But the other alternatives-- I support Glenn's efforts at community involvement, communities trying to avert crime; and the NYPD is experimenting with some of the other methods that other cities have used-- the Operation Cease Fires. If those have as strong an effect, believe me, the NYPD will implement them. But at this point, there is simply no other city that comes close to New York's crime drop. And I think it's a luxury to be able to say, we'd rather have higher rates of crime and lower rates of stop. I just don't think we want to go back to what people experienced in the seventies and eighties here when you had children sleeping in bathtubs to avoid stray bullets…

INIMAI CHETTIAR: Okay, thanks Heather; so does someone want to respond to that?

DONNA LIEBERMAN: I just want to say for the record I don't want to have higher rates of crime and lower rates of stops; I want to have lower rates of crime and lower rates of stops—duh. Now--

[Audience laughter]

DONNA LIEBERMAN: --I also believe that cops should go where the crime is and I also believe that they ought to go after suspicious behavior. I also believe that they should protect law-abiding citizens--or residents, not just citizens. How on earth is it protecting law-abiding residents to Stop and Frisk them and throw them up against the wall for walking down the street without any suspicion? Over half of the Stop and Frisks are for furtive movements. You know, you know, of the frisks, which are

supposed to be based on suspicion that the person has a gun that's gonna be used in a dangerous--suspicion that the person has a weapon and presents a danger, of the frisks pursuant to NYPD Stop and Frisk, the number of those that ends up recovering a weapon -- a gun, a box cutter anything like that -- is less than two percent. Okay? This is not a program about protecting law-abiding people. It's a program about preventive detention, preventive interdiction. What that means is interfering with the quality of life of law-abiding citizens. And those law-abiding citizens who are impacted by this program, who don't have the same liberty that I do or my son has walking down the street, are people of color. I don't think Ray Kelly wants to hurt people of color. I think he wants to help them. But I think that his policies are, in fact, undermining their quality of life and their liberty.

[Applause]

HEATHER MAC DONALD: Donna's absolutely correct, obviously. If police are making stops without suspicion, that is unconstitutional and must be stopped. But I don't think we can decide yet on a wholesale basis whether that's what's going on. The arrest and summons rate is identical for whites and blacks, which suggests that the police are using the same quantum of suspicion in order to make a stop. It's about 12 percent overall summons and arrests. The fact that the gun rate now -- the yield rate is low -- you can argue it either way. You know, Donna argues that that shows that this is an ineffectual policy. Arguably, it also shows that the gun carrying has been deterred by stops. In fact, you saw that in the first two years when Bratton came in; the yield of guns dropped about thirty percent on people that are being stopped.

So if we had a better way to do it, by all means let's do it. The fact that somebody is not arrested, however, after a stop does not necessarily mean that they were not engaged in criminal activity. The fact that they were innocent also doesn't mean that the stop was illegal. But if somebody's on a drug set and is casing, looking for the police, and the police observe behavior indicative of drug transactions and stop the person, he might not have evidence of a crime on him to justify an arrest. But that stop could have, in fact, broken up a drug deal, or if he's casing a victim. So the mere fact that somebody's not arrested does not necessarily prove that that was not a criminal looking to engage in crime.

INIMAI CHETTIAR: Okay, thanks. I'm gonna go to you next. Okay, so last question. This one's for Glenn. So, Jim and Mike conclude that a shift in arrest policies reduce mass incarceration in New York. And I'm going to read an excerpt from the weekend's New York Times article covering this report, quoting a University of Chicago economist. "So the million-dollar question right now is whether there are ways to get the benefits of Stop and Frisk and Broken Windows without the collateral costs. Getting the police to stop people more often and search them for illegal guns

does keep guns off the street and reduce gun violence. That's not to say whether or not Stop and Frisk is worth the cost of the practice imposed on society. But there's a complicated trade-off that needs to be acknowledged."
So my question to you is, what is your answer to this million-dollar question, which is also the overarching question of the night? Is the New York policing model that is offered in their report a good way for other states to end mass incarceration? And Heather just mentioned, if there's a better way, let's do it. So my question to you is, if it's not, what would be the better way?

GLENN E. MARTIN: Sure, I think I have the answer. [Audience laughter] Yeah, right. So, I took a quote out of the report: "When evaluating big picture, reducing mass incarceration in New York might be worth more misdemeanor arrests." First of all, I think we're being extremely premature in talking about the reduction of mass incarceration in New York. We have 56,000 in prison still in New York State. So let's add that for context. And then I believe about 100,000 cycling through -- 100,000 admissions on Rikers Island annually. So numbers are still hugely significant, and I don't want to discount that.

I have a hard time when we make the leap from "communities of color are the ones engaging in violent crime" to "Stop and Frisk works." I just think that's a significant leap that you just can't make, and it's conflating things significantly. Because we live in a resource-rich city, yet when we respond to crime we respond with law enforcement alone. There's so many things we could be mobilizing into communities to respond to crime, to get better outcomes, without the collateral damage that's done by Stop and Frisk and these other policies, that I have a hard time understanding why we only marshal law enforcement resources. We have a mayor who's invested over $50 million dollars of his own resources in his Young Men's Initiative -- clearly a message that says that connecting people to jobs, connecting people to housing, connecting people to education are hugely important to reducing crime and, at the same time, endorses these policies, which I think totally undermine all of the work of his YMI initiative. The idea that Stop and Frisks are courteous are done with respect -- you know what, if you're violating my civil rights, I don't care if you're being courteous. And the fact of the matter is that Stop and Frisk violates people's civil rights. [Applause]

So again, that goes right back to the beginning where I talked about my concern about other people adopting this as a model. I don't think it's a model. I think that there's a lot more research that needs to be done. I think it's a small part of the equation. Again, I want to remind people that the communities that are disproportionately impacted by crime also want to solve this problem. They are not necessarily saying, don't deploy police officers to our communities. People do feel safer when they see a police officer. But people don't feel safe when police officers are targeting them, even

though they're innocent, because they're taking a potshot at whether a person may be carrying--and it doesn't happen the way that it's been laid out here today. NYPD officers often respond to me by saying, you know, why don't you take a ride with me; why don't you take a ride and see what it looks like from our perspective? And I've done that a couple of times before. But I think it would behoove some of the folks here to take a ride in my car through my hood and take a look at how it plays out. Because I see young men standing in front of a Chinese food restaurant with their bicycle, and within seconds the situation changes. Police officers jump out on them. Their car plates, licenses are bent up so that you can't identify them. They're throwing the guy up against the wall. They're cursing at him; they're roughing him up. And God forbid he says anything about what his rights are, 'cause he knows where he's gonna end up.

INIMAI CHETTIAR: So does someone want to provide another response to that question in terms of, is this New York policing model a model for reducing mass incarceration? If not, what would it be?

EUGENE O'DONNELL: I'll do twenty seconds. That's not going to counter that, because it deserves to be said that, you can't look at the level of enforcement and not be troubled by the amount of enforcement in this super--it's a super safe city at this point -- beyond belief; beyond anyplace we ever thought it would be. If you go to individual precincts, even in the outer boroughs now, the levels of crime, even the calls that the cops get -- very, very quiet relative to where it was. And the idea of having this machine going at full throttle in the midst of the safe city we have, the idea of having 600,000 stops and frisks, sends a terrible message. People are being frisked unnecessarily. And more importantly, from where I come from, where we try to train people who are going to be going into the law enforcement world and teach them, the cops hate this numbers-driven policing. It's not what they took the job to do. They didn't take the job to bully people. The most idealistic people I see don't want to be doing this just 'cause they have to be doing it. There's also a terrible integrity issue that comes up from mass production in the criminal justice system. All you've got to do is take a trip through night arraignments, take a trip through criminal court, and you'll see that you can't just do these things without creating an ongoing issue. Forms are being filled out; things are being attested to; people are swearing to things. You've got cops that are not particularly into making these frisks. They have to do it as a numerical requirement. The integrity of the system really can get called into question.

And then you go to these criminal court parts, and they're overwhelmed with what can only be described in many of these cases as junk arrests, right? So if you've been to criminal court it's embarrassingly junky. The judges have forty-seven seconds to dispose of the cases. How can you look at that system and be satisfied that that's a good system? We have to find a way obviously to keep the city safe. But this

machinery of enforcement -- to have a city that's eighty percent safer and to be doing millions of enforcement actions every year -- troubles a lot of people. And it deserves to be said -- the police union, which is not one of the most popular entities in the city, they have been very adamant about this--they do not want to have people out there doing numbers-driven enforcement. It's, it really ultimately can really -- I think it really creates integrity issues for the police, for the courts--there's a tremendous temptation to say things happen that don't happen, to misstate things and the like.

HEATHER MAC DONALD: You know, I agree. I actually support the proposal that has been put out, that I know Donna and Glenn support, to have officers give their business card when they make a stop, because I think the person stopped has a right to know who the public official is who has accosted them and temporarily possibly curtailed his freedom. And there's no question that the NYPD is determined to keep the crime rate low and not have--Kelly doesn't want it to go up on his watch. I think probably the quote that Donna gave at the beginning was before he was commissioner the second time around. I think today if you asked him, he would be absolutely unequivocal that policing does lower crime. But they are probably getting diminishing returns, and yet at this point this is the tool that they have available to them.

So we may see in experiments in the future, if there is continuing and successful political pressure -- which is obviously, you know Donna and Glenn are experts in that, in scaling back Stop and Frisk -- you know, if we want to put alternatives in place, let's make sure that we're measuring what's going on and conduct one of these randomized controlled experiments. Mr. Jacobson is right; it's very difficult in policing. But I would also say though that the quotas that are invoked to claim that police are under draconian pressures, the ones that have come out publically are fairly modest. Officers are asked to make two stops a month. And that's not a whole lot when you consider what New York still looks like. I mean, our homicide rate, as low as it is -- and let's just, again, to put this in perspective, our homicide rate is lower than in Chicago though the city is over twice as large. We resemble a small suburb at this point. And again, I would say the most basic right is freedom from crime and assault. Freedom from unconstitutional police behavior is absolutely important as well, but I would rank that -- at least I would rank the freedom from fear of murder at least equal to that. So if we can come up with an alternative, let's do it. But the stop rates look very large in an absolute sense. But compared to the amount of civilian police contacts each year, which is 22 million, they're not huge. And if every police officer made just one stop a month, that would be over a million stops. So part of the reason we have those quotas is to try and avoid the phenomenon that most people are familiar with, which is officers sleeping in the cars and not doing anything, which is the other problem you have.

INIMAI CHETTIAR: Thanks, Heather. Donna, do you want to add two minutes?

DONNA LIEBERMAN: You know, the Rand Corporation -- not exactly the ACLU constituency -- did a report commissioned by the NYPD a couple of years ago about Stop and Frisk. And at that time, the stop rate was about 300,000 a year. And the Rand Corporation said, in a city the size of New York one would expect about 250,000 stops, not the level that they had then. Well, it's only gone up. So that was the NYPD's own study -- which we have a lot of criticisms of for other reasons.

But you know, one of the reasons why we've seen I think the NYPD's Stop and Frisk Program run out of control is that it's like nobody's watching the shop. The mayor has delegated authority to the commissioner, who's a very decent and likeable guy and deserves a lot of respect. But like, there is no check or balance on the NYPD. We don't have an inspector general's office. We've got an inspector general for every other major agency in the city, but not for the NYPD. There is nobody watching. We need an entity that is watching and evaluating the trends and saying something officially from the government that, hey, they're stopping 90 percent innocent people, and 85 percent of the people who you're stopping are black and Latino. Is there something wrong with this picture?

And I think that, you know, junk arrests need a little bit of attention. You know, junk arrests are not nothing to the people who are junk arrested. They are not nothing to the people who are arrested for carrying marijuana and for a misdemeanor when it should be a ticket. Because you know, even if you just get a summons for it, you know, 25 percent of the summonses result in a bench warrant. Well, that results in jail time. You know, people lose work, they lose pay, they lose their liberty when they're arrested. And there is no correlation. Nobody can convince me as a matter of my own personal experience or logic or any statistic that when you arrest 50,000 people in 2011 for marijuana possession as a misdemeanor that does anything to make anybody in New York City or anyplace else any safer. So we've got to put an end to that immediately.

[Applause]

INIMAI CHETTIAR: So I think Glenn wants--

GLENN E. MARTIN: Sure. So I'm glad Donna said "people" like ten times just now, because I do want to end on a note about a story, about a person. And I don't have to go that far back to find a story. Just yesterday one of our clients walked out of the Fortune Society. We give clients Metro cards to get on the subway. I'm about to start a conference call. I get a call from the front desk saying, two police officers at the

train station have him detained, and that if someone came down from Fortune to have a conversation with them there might be some room for discretion.

I go down to the subway, rush down. There's one of our staff members there. He's already speaking to the young man's mom. This man is 18 -- this young man's 18 years old. The young man is showing the police officer that he has six or seven Metro cards in his pocket, and that he just made the mistake of not using the Metro card. He did jump the turnstile. But the officers admitted that they saw him through the camera trying all these different cards, not getting it right, and then ultimately jumping the turnstile, right -- misdemeanor theft of services. He's on parole. So I say to the officers, is there any discretion; is there anything you could do? They said, well, we would, but it's on camera. So there's nothing we can do. So we have to take him to the precinct. I said, but his mom is right here on the phone. Can't you talk to the mom? And I'm here. I'm telling you, he's been in our program for two months. Can't you use your discretion? No. What can I do? Maybe you can call the precinct once we get there.

So these officers actually give me the name of the sergeant at the precinct, telling me not to tell the sergeant that they gave it to me. So I wait ‘till he gets to the precinct, a few minutes. I call; I ask to speak to the sergeant. They said, he'll call you back in a few minutes. An hour later, no call. I call back again. He's gonna call you back. An hour later I call back. I said, I want to speak to a lieutenant. Now the sergeant gets on the phone. The sergeant says to me, I'm not extending any discretion. We have zero tolerance for people jumping on the subway -- period. That was the end of the conversation. He hung up the phone on me before I could even respond to him. This is how these policies played out. The hope of this young man, everything we told him that he could do with his life, is out the freaking window. Because we convinced him that he can extricate his self from the criminal justice system, and that one incident reinforced everything he's been taught his entire life. And that's how these polices play out for young men of color in these communities. So for me, ultimately that means more that you're destroying an entire generation of young people of color than this concept of saving black men's lives, when you have no evidence of causation between Stop and Frisk and these other policies and actually saving black men's lives.

[Applause]

INIMAI CHETTIAR: Okay, thank you. So we are out of time for this panel. Just want to thank our panelists for this discussion. [Applause] And we're going to invite Jim and Mike to come up and join the rest of us for questions.

MICHAEL WALDMAN: So we're gonna start. And the very first question is Moderator's prerogative for Jim and Mike. Which is, having heard this discussion, do you have any responses to what you've heard?

JAMES AUSTIN: Yes.

MICHAEL WALDMAN: --and how it relates generally, but also to your report.

JAMES AUSTIN: Yeah. Well, I think -- and Mike will chime in -- I think in some ways it's kind of disappointing to hear this conversation, because it has nothing to do with our paper. [audience laughter]. Our paper is not about Stop and Frisk. And it's like the panelists -- Donna, one exception -- didn't read it. The paper makes very clear that the drops in crime, the drops in the correctional populations, the drop in the felony arrest pre-date Stop and Frisk. So Stop and Frisk is irrelevant to the achievements that have occurred with respect to drops in crime and drops in the correctional populations. And quite frankly, you know, I hope people understand there's a horrific thing going out there in this country which is incarceration rates, which is extremely devastating -- you want to talk about devastation -- devastation to people, communities and families. And what we hope some of you get out of this is that we have to find a way to reduce incarceration. That's what our panel's about--not Stop and Frisk. And I've heard more than I want to hear about Stop and Frisk tonight because that's a different topic. And we just would point out again that [in] Los Angeles, this is not even an issue. The Stop and Frisk is not being used. They have a much smaller police department. I think you can make an extremely strong case in New York City there's way too many police officers—[one person applauds]—needed-- I don't need applause. I'm just saying, you know, there's all sorts of issues about law enforcement that are important. But I hope we get back on the topic of how do we reduce prison population. The good news about New York City in terms of harm to the communities is that you have a correctional footprint that's about one half the rest of the country. That's where we need to get to; we need to get to that.

MICHAEL JACOBSON: Just a couple of things. I love it when I can see the future play out in front of me. So, a couple of things, as Jim said; I mean, not much was said about the report itself. There were a few issues though. Let me try to respond to them. I mean, Glenn brought up I think the legitimate point that there are other things going on other than the change in police tactics, and specifically talked about the sort of capacity of the ATI groups and the coalition and the groups like Cases and Fortune and Osborne, CEO. And that's, that's true. I mean, New York City has a very rich array of alternative programs, both at the sort of detention and incarceration level. And we mentioned that one of the reasons we don't spend a tremendous amount of time on it -- again, going back to the first, the question we were asked to answer -- right, what are the major factors in reducing jail and prison populations -- that's in

there. But it's not like -- you know -- the capacity of those organizations has always been -- certainly compared to other cities -- pretty rich and pretty large. And it's not like there was over this period some fifty-fold increase in them that could explain some huge part of this decrease. So it's true; they're in the base line; it's true, they got more resources over this time and they undoubtedly diverted more people. But when you have a jail system essentially going to half the size it was -- 22,000 to 23,000 -- to 11,000, and the sort of twenty percent or more decrease in prison population, it's almost always system factors, and that's what it is in this case.

You know, Donna mentioned that, well, of course the decline, both in the jails and the prisons, is due to a decrease in felony arrests. And I believe, I believe she added a "duh" at the end. And of course that's true, right. But the question is, why? Right, why did that happen? Did it just happen organically? Did decreasing arrests just fall from the sky? Did the police just say, you know what would be a good idea? Let's make fewer felony arrests. No. We argue the reason it happened is because there was a very conscious decision to divert resources to this very resource-intensive, low-level -- and whether it's, you know, the huge decrease in misdemeanors or even Stop and Frisk -- because I do think there are some resource issues associated with it -- right, that's why felony arrests fell. It didn't happen out of nowhere, right? It was part of a policy decision.

I know I'm out of time. But I will say, you know, life, life is complicated, right? There's always more nuance than you'd like if you feel particularly strongly about one thing or another. And you know, we were not asked to join.—and it's not like I can't get enough of hearing this debate, I mean, I -- you know… [laughter] But, you know, we were asked a very simple question in some ways--why did incarceration go down at the local and state level? And we've tried to answer that. And I understand that may, for various people, implicate things one way or another. Is this good, is this great, is it a model? It may not be good or great. It may be terrible. It may not be a model. But the fact is, at least that we found, those policies did result in a decline in incarceration. But it still leaves these other debates, right, about the kind of policing, the fairness of policing, the effectiveness of policing. Those are still wide open.

INIMAI CHETTIAR: So we're going to open the floor to questions. Before that, we go to questions--sure, go ahead.

UNIDENTIFIED FEMALE: Yes, I have a question. We've been very focused on numbers, and watching the numbers of the misdemeanor arrests rise. I can't -- I have not read the report yet. I will this evening, I assure you. What about age? And what are the long-term implications of arresting more younger people for misdemeanors?

MICHAEL JACOBSON: Oh, well, I'm sure -- and again, one of the, one of the things I mentioned early on, although it's not the misdemeanors, is Vera's doing a very big study on the impact of people who are stopped and frisked, right? And so it bleeds into that question, right: what does it mean to have huge numbers of people -- mostly young people, mostly people of color -- have that kind of contact with the criminal justice system, and in the case of misdemeanors arrests go through the system sometimes several times? The costs have to be, you would think, pretty substantial. Right? That's one of the things we would like to get a better handle on -- not just from having a record, but all sorts of labor market and life course implications.

So all these things, even if you knew whether they were effective or not -- and we don't -- all these things come with costs and all sorts of potential collateral consequences. And you could imagine what they were. It would be nice to see precisely, even if you believe, for instance, low-level arrest and high-volume are effective, and we don't know that -- but it would be nice to know precisely, what does that mean for these kids? Nothing good. But it would be nice to inject in this debate some more objective information about what precisely the costs are. Because as Eugene's saying, well, cumulatively over time, right, the number of young people going through the system, as we say -- either initially or again and again and again -- those have to be some pretty serious costs. And are those costs worth -- even if you could prove that these were effective -- are those costs worth the benefit? You know, we don't quite know, 'cause we don't really know what the costs are, nor do we know what the benefit is. But that's an area that would be really helpful, but not just for this debate, but for the field. I will say, this is not…at some level this is a New York issue, right? 'Cause it's a hot topic in New York. People are debating back and forth. There's legal cases making their way through the court system; the police will probably be on the losing end of those cases.

But this is a national issue, right? People are -- do sort of look to New York in a variety of ways -- what works, what makes sense, what doesn't. And it would just be nice to inject some more sort of objective data on the cost side and on the effectiveness side than we have now. So with the little data we have now, you can take that data and, you know, if you have one view versus another you can use it to make your case.

INIMAI CHETTIAR: I think Donna wants to weigh in, and then Heather.

DONNA LIEBERMAN: Yeah, I'm glad you asked about the impact of misdemeanor arrests on young people. One of the, you know, phenomena that we have in New York City is the criminalization of school disciplinary issues. Every year in New York City under the Bloomberg Administration we see approximately 2,600 arrests or summonses to kids for behavior that happens in school. And it's behavior like writing

on the desk; like cursing at a school safety officer. And there's a real -- you know, I can't give you the exact data 'cause I didn't bring it with me. But the data is out there that any child who is thrown into the criminal justice system, any child who is arrested or given a summons for behavior is less likely to graduate from high school than a child who is, for the same behavior, treated with the trip to the principal's office. So -- and we're arresting kids for truancy as well -- for being late to school, many times. So I think that, that the impact has, in fact, been documented. And because so much of the policing practices impact young people, and particularly the population that the mayor rightly cares about, young men of color -- we really do have to consider that as we're looking at how we're gonna achieve greater opportunity, less mass in the incarceration, and a fair and just society.

INIMAI CHETTIAR: Heather, do you want to weigh in?

HEATHER MAC DONALD: I'd like to ask Mr. Jacobson and Mr. Austin how they would suggest establishing or refuting the causal connection? Let me just --the story that I take away from their report, which I'm sure many people on this panel will disagree with, is that if you want to end the epidemic of mass incarceration and bring the prison population down, the solution is not less law enforcement but more law enforcement. That what has gone on, although you're not saying you can establish the causal link, is that you are making more misdemeanor arrests; you're interacting with a crime-prone population more and early; and you're averting felonies down the line. So felony arrests are down not out of the blue, but because less felonies are happening, and less felonies are happening because we are making more misdemeanor arrests. That is one causal story that you can tell from this data. How would you propose an experiment to try and flesh out those causal relations? And I would just, as a P.S. -- Los Angeles has the identical ratio of Stop and Frisks to population as we do in New York. Bratton did do Stop and Frisk there. But I know this is not a Stop and Frisk discussion, but I just wanted to put that in.

INIMAI CHETTIAR: So if Jim or Mike want to weigh in for a minute, and then I just really want to get to audience questions.

JAMES AUSTIN: I don't think, Heather, that I'm willing to say that increasing misdemeanor arrests produces a drop in crime, prevents felony… It all depends on how you're doing it. And I can find jurisdictions that they didn't do this, and they have dramatic drops in crime. So we are not testing that -- at least I'm not testing that proposition. The one that I just want to argue strongly is our real test is looking at the fact that the incarceration rates, the jail rates, the probation rates, prison grow rates either stayed the same or went up every place in the state of New York except for New York City. So it's only in New York City that these rates go down. And the only thing that's different between, you know, non-New York City and New York City is

this flip in the arrests, of the drop in the felonies. I just want to [inaudible] one thing -- we're not arguing you need an increase of misdemeanor arrests. We're saying, if you want to reduce your mass incarceration, go after those felony arrests and reduce them. Now one way you can do that is legislative change, by reclassifying certain behaviors as misdemeanors. That's a real easy way to do it. And if you look at it -- my big thing is, is the punishment proportional to the crime? And I think we have gotten so far out of line on our punishments being so far above what's required for punishment that that's the issue. So Mike may differ. I am not an advocate anywhere of increasing law enforcement or number of arrests. I think we need to go in the opposite direction. And we can do it if we do it in a smart way. [Applause]

INIMAI CHETTIAR: Okay, so just before we open the floor to questions, I know there are a lot of people with criminal justice expertise and views on this. If people could please just limit questions to one to two minutes and address them to particular panelists. And we have Brennan Center staff with mikes who are walking around.

UNIDENTIFIED MALE: I first want to thank Donna and the brother over here -- thank you for the work you're doing. My question is to everybody else on the panel. I'm just going to call it what it is--the new Jim Crow. And what I want to know is, is that in assessing this, right, one of thing you talked about was gentrification. How come that wasn't used as a way to explain how these incarceration statistics are being used in New York? Because if you're going to use New York as a model, you know, gentrification and basically the money grab that comes with -- well, you say, you call it costs, but he calls it, you know, as the MTA did, a capital improvement -- you know, fixing up the stations, making the buildings all new because you make money. And with the NYPD having, what, 51,000 people who just wear the badge and walk the beat every day, not to mention the Criminal Justice Department, the C.O.'s, the Corrections, and all the stuff that comes into it -- why isn't that what you're using as opposed to just--when they come in and they time they stay as the basis of what you get your thing on?

Because to me, reading the report and looking at it, it just seems like the best way to end mass incarceration through this report and what it shows, the data showed here, it's just basically get the negative population -- the population that people don't want to be around or that that there's a negative stigma to -- move them and herd them out of the city; either warehouse them or scare them so bad and terrorize them that they forcibly are either move, killed -- like (Romali Graham) or people like Chantel Davis and stuff like that, where this is going on all, all year -- every day -- you just basically move them out. And that's what it seems like to me, somebody being in the community—I'm not…

INIMAI CHETTIAR: Okay. I'm going to address that question to either Jim or Mike, if they want to respond to that--take a minute.

JAMES AUSTIN: Not really. [Audience laughter]

INIMAI CHETTIAR: I think the question is about, that those factors could have contributed to the drop in crime rate, and that that could have been--affected the arrest shifts.

JAMES AUSTIN: Well, see, the crime rate is dropping everywhere. If you look at the crime drop -- if we just show you the chart -- non-New York, New York City -- huge drops. And you go anywhere in the country now, you're gonna see these huge drops, whether gentrification's going on or not. I'm not saying it's not relevant. But there's larger forces at work here that are dropping… I mean, the one study -- I mean, we, I think there is consensus that drop in crime, no more than 20, 25 percent of that can be attributed to increases in incarceration. That means that most of the drop is for other factors that are going on in our society.

INIMAI CHETTIAR: So we have the time for a couple more questions.

UNIDENTIFIED FEMALE: Thanks. So I think my question for Dr. Austin. And it's this. It has to do with the report and how I understand the report. So I understand the question was what caused the reductions in correctional populations in New York? And I understand -- and tell me if I'm wrong -- that the answer to that question mathematically is a drop in felony arrests. That's…

JAMES AUSTIN: Correct.

UNIDENTIFIED FEMALE: …that's the mathematical answer to the question. Okay. So then I guess -- and so you're saying, so you're saying that it is not the case that the answer to the question is an increase in misdemeanor arrests. So then my question is, so you make the statement in your report that it may be that more misdemeanor arrests is worth it. And so that's what I'm having trouble understanding. This is Glenn's question originally. That sounds to me like a policy judgment; that it may be that more misdemeanor arrests are worth the costs. And given what we know about the costs, and given the mathematical answer to the question that was posed to you, I have trouble understanding that statement. So I would just like a little more understanding about that statement.

JAMES AUSTIN: Well, we… the take-away should be is the drop in felony arrests. And if it's coming across that an increase in misdemeanors is a necessary component of getting a drop in felony arrests, it shouldn't be interpreted that way. You can drop

felony arrests without having an increase in misdemeanor… You can drop the whole sucker, you know, if you want, and that's another way of looking at it.

MICHAEL JACOBSON: But I think the answer to that is that they're not inseparable. I mean, put aside whether it's worth it. I mean, we don't know -- my guess is it probably isn't. But what explains it in the New York case for us is the institutional decision to make those more misdemeanor arrests. Put aside whether that's a good thing, a bad thing, it's a model, it's worth it, maybe the worst thing ever known to law enforcement; but coming from that institutional decision where all these things that happen directly or indirectly to drop felony arrests. It's not like the police made a decision, we're just going to drop felony arrests. They essentially made a decision, but we were not asked what they could do; we were asked what they did do. And what they did is make a decision to concentrate on low-level enforcement. And that, for a variety of reasons, led to a decrease in felony arrests, which probably was accelerated at some point, when there's such a low amount of felony crime you just don't have the pool to keep making those arrests.
But the two things in New York are related. It's not like increasing misdemeanor arrests sort of help you or got you there. I mean, if you just lowered felony arrests and didn't increase misdemeanor arrests, you'd be better off now, right? But they did make -- in terms of incarcerated populations -- but that's the decision they make; that's why there's a relationship. That doesn't necessarily mean it's a good relationship in terms of crime reduction. But that's what sort of started to generate the lowering of local and state populations.

INIMAI CHETTIAR: So we heard from Jim and Mike. Do we, can we -- if other panelists want to just give their last closing thoughts?

GLENN E. MARTIN: Yeah, I'll be brief. I think that message has to be sharpened in this report. Because the reason we had a conversation about Stop and Frisk and all these other policing practices is because I think what's written in the report now can easily be interpreted the way Heather interpreted it, right? That if we do more misdemeanor arrests, we -- *Minority Report* -- can stop these people from committing felonies later on. And that's just not true. And my concern again, which I said in the beginning, is that that's how it's going to be interpreted by people across the country.

INIMAI CHETTIAR: So, Donna, last thoughts, 'cause we're almost out of time.

DONNA LIEBERMAN: It's just puzzling, your response. Because you know, what it sounds like is we have to find something for the cops to do so that they don't do so many felony arrests. That just doesn't make sense.

MICHAEL JACOBSON: It's not -- again, this is a historical look. We -- you can find all sorts of things for the cops to do. The question is, what did these cops do? What did they do? And what they did, starting in 1994, was decide to change their tactics, go to low-level enforcement, bump up all those low -- whether it's Stop and Frisk or misdemeanor arrests -- and that had, for a variety of reasons -- that decreased felony arrest. We're not saying that should be the policy; that's the only thing police can do to lower felony crime. But in New York, the decision was made to do that, and as a result, felony arrests, right -- again, we're talking about outputs here; we're not talking about crime -- felony arrests declined. That is what happened in New York, right? It may be uncomfortable; it may be annoying; it may be a problem for all sorts of narratives. But that's what happened in the New York City case.

INIMAI CHETTIAR: Heather, do you want to add any last closing thoughts?

HEATHER MAC DONALD: No, I think that it, it led not only to a decrease in felony arrests, but a decrease in felony crime. And I think that saving lives is the most important thing that the police do. And that is what we have experienced in New York, at a rate that is beyond anybody's imagining. And the biggest beneficiaries, again, have been law-abiding minorities that now don't have to live with the fear that they did in the early 1990s.

INIMAI CHETTIAR: Eugene, do you want to add anything to this?

EUGENE O'DONNELL: Just very briefly. There is a giant qualitative question about what's happening. And it is an evening to talk about mass incarceration, but you can't ignore--when you have real crimes committed against real victims, the issue of clearance rates for those crimes. Law enforcement has a tendency to do a lot of easy things and to resist doing the hard things. So it may very well be that more resources should be put into it -- and this may not reduce mass incarceration -- but we've got precincts in the city who have the murderers get away--60 percent homicide clearance rate. Meanwhile, we've got 50,000 marijuana arrests, thousands of other kinds of arrests. So in the U.K. they say there's a lack of joined justice. New York City is the lack of joined justice capital of the world. One side of this system has absolutely no idea what the other side is doing. So when we talk about data, there's no follow-through, there's -- nobody looks to do anything. It's just, the machine -- it just keeps on going, without any time to reflect to see what works and what does not.

INIMAI CHETTIAR: Yes, so we are out of time. I think the panelists hopefully will stick around for a little bit, if folks have questions. But I'm gonna let Michael give some closing remarks.

MICHAEL WALDMAN: No, you've just done it. We -- first of all, we want to thank the panelists for their thoughtful, their honest and their impassioned views and statements; and for grappling with some morally, factually, predictively and empirically difficult questions. We want to thank all of you. We know there's pent-up demand for questions. But it's also been over two hours that we've been having this conversation. I'm guessing that you'll be able to have a conversation that continues with our panelists.

We think this a topic of great continued interest. As I said, the plague of mass incarceration -- the highest incarceration rates in the civilized world -- the terribly deleterious impact that has on people is something we're focusing on. This is a piece of that. We'll be looking at the true economic costs of the current system. We'll be looking at policy changes in federal funding and other places that can make a difference. And we will be continuing this conversation with further research. So again, thank you to all of you.