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Community Justice: Viewing Mass Incarceration from the Ground Up

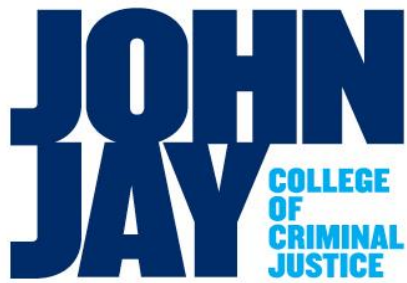
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CUNY John Jay College

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**COMMUNITY JUSTICE:
VIEWING MASS INCARCERATION FROM THE GROUND UP**

**ADDRESS BY JEREMY TRAVIS
PRESIDENT, JOHN JAY COLLEGE OF CRIMINAL JUSTICE**

**AT THE
5TH NATIONAL CONFERENCE ON COMMUNITY AND
RESTORATIVE JUSTICE**

JUNE 2, 2015

Dear friends and colleagues:

I am delighted to be with you this morning at this important conference on community and restorative justice. I regret that I could not be here for the entire conference, and that I must leave later this morning to return to New York City. This is a busy time of year for those involved in leading academic institutions. John Jay is celebrating its Commencement on Wednesday, and our dinner for honorary degree candidates later tonight, and I must be there!

When Mara Schiff, a member of the Board of Directors of the National Association of Community and Restorative Justice and my good friend for many years, extended an invitation to speak with you, I was immediately inclined to say yes. In part, I simply wanted to catch up with developments in the field. I have a long-standing interest in restorative justice principles, and more broadly, in alternative ways to respond to crime. When I was director of the Victim/Witness Assistance Project at the Vera Institute of Justice, I sponsored a cutting edge mediation project that handled only felony cases between people who knew each other. We conducted a random assignment evaluation design to determine whether this approach would produce better results. (The answer: yes, we got much better results in terms of satisfaction of the parties, but no difference in the recurrence of the conflict.) Later, when I was director of the National Institute of Justice in the Clinton Administration, my colleagues and I hosted a major national conference on restorative justice, which brought some of the thought-leaders in this embryonic field to Washington – including Mark Umbreit and Howard Zehr – to discuss the principles of restorative justice. I was pleased to see that some of those ideas took hold in the federal funding programs – particularly the Balanced and Restorative Justice Initiative of the Office of Juvenile Justice and Delinquency. More recently, at John Jay College, I was thrilled to see that my colleague Tanya Coke, a Distinguished Lecturer at John Jay, hosted a major conference on restorative justice in school discipline. I was proud of the leadership role John Jay is playing in promoting restorative practices.

But to be truthful, I accepted the invitation for another reason – more than just reconnecting with people working in this field. I am pleased to be here so I can challenge you to play a role in bringing an end to the era of mass incarceration in America. The title of my talk only begins to capture this challenge: the program lists this lecture as titled, “Community Justice: Viewing Mass Incarceration from the Ground Up.” But this is really too passive. On second thought, a better title would be, “Community Justice: Building a Movement from the Ground Up to End the Era of Mass Incarceration.” So, to be blunt, I am here to enlist your support for a movement – a national movement that is, in my opinion, essential to the future of our democracy. And, in my view, this movement will succeed only if we harness the power of community and insist upon a new form of justice.

Let me underscore the urgency of this mission. Over the past few years I have come to the conclusion that mass incarceration is one of the most important moral challenges facing our democracy. We have unleashed forces in our society that have resulted in massive deprivation of human liberty, unprecedented in our history and without parallel in the western world. If this level of incarceration, or anything close to it, becomes our new normal, we should be concerned about the future of our democratic experiment, our notion of limited government, and our

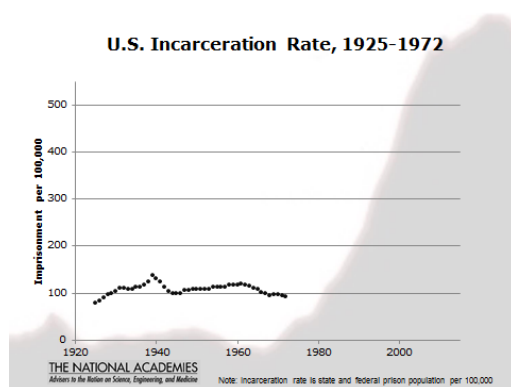
pursuit of racial justice. By asking you to join the movement to roll back mass incarceration, I am asking you to engage in a campaign to save our democracy. Nothing less.

I ask for your patience as I lay out the building blocks of this argument. First, I will describe the phenomenon of mass incarceration; then I will describe the damage we have done to communities around our country, particularly communities of color. In these two sections I will draw extensively on the report of the National Research Council (*The Growth of Incarceration in the United States: Exploring Causes and Consequences*) reflecting the work of a panel of scholars and experts I was privileged to chair.¹ Then, shifting gears, I will describe two essential ingredients to a movement to roll back the overuse of prison in our society. To jump to my bottom line: I think we need to engage communities in the new discussion about reducing incarceration rates by half and we need to find ways to engage in processes of racial reconciliation that begin with an honest acknowledgment that our criminal justice policies have caused enormous harm to communities of color.

I. The Origins of Mass Incarceration

Let's start with some facts. What are the dimensions of what we call "mass incarceration"? Today, one in a hundred adults in America is in prison or jail. America incarcerates twenty-five percent of the world's prison population, but is home to only five percent of the world's population. Today, approximately 3.6 percent of minor children in America have a parent in prison, totaling 2.7 million children. We spend nearly \$80 billion a year on prisons and jails. In 2012 we housed about 2.3 million people in prison and jail, 1.9 million more than we did forty years ago in 1972.²

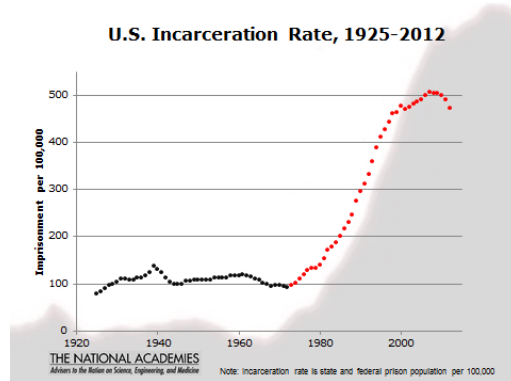
We should quickly put these data into the appropriate historical and comparative contexts. Here I will draw on some findings from the NRC report. First, we need to recognize that we have not always lived in an era of mass incarceration. In fact, as this slide shows [slide 1],



¹ Unless referenced otherwise, all citations can be found in the following report: National Research Council (NRC). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press, 2014.

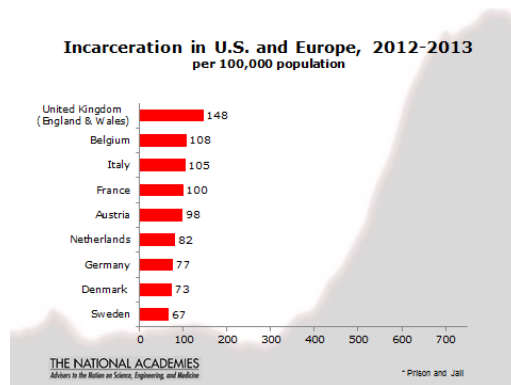
² NRC, p. 34.

from 1920 to 1972, we had low rates of incarceration, about 110 people in prison per 100,000 residents of the U.S. Then, beginning in 1972 [slide 2],

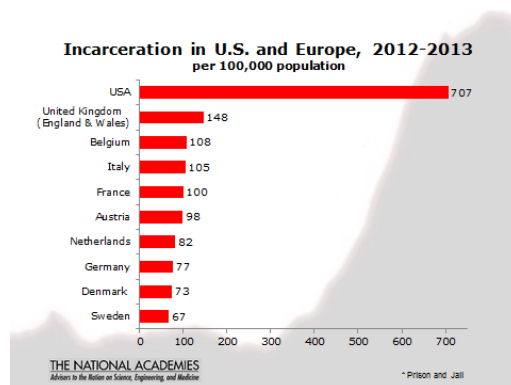


the rates of incarceration started to increase and rose every year, until they peaked in 2009. Over this period, our rates of incarceration more than quadrupled; using absolute numbers, the number of people in prison increased more than seven fold.

This trend can also be put in a comparative context. In the countries of Europe, as seen on this slide [slide 3],

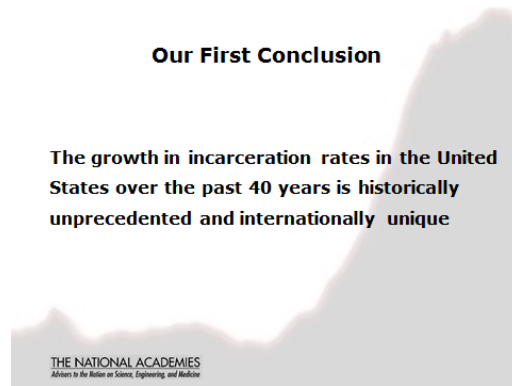


the rate of incarceration per 100,000 population is in the range of 67 to 148 (here we are talking about both prisons and jails.) In the United States, by contrast [slide 4],



the rate of incarceration is over 700 per 100,000.

The consensus panel of the National Research Council reached this simple yet powerful conclusion [slide 5]:



The growth in incarceration rates in the United States over the past 40 years is historically unprecedented and internationally unique.

How did this happen? How did we arrive at this unprecedented reality?

Again, we come to a bracing conclusion: we are here because we chose to be here. We have arrived at the reality of mass incarceration through a series of policy choices. These policy choices have been made in our name by individuals we elected to office – as governors, legislators, judges and prosecutors. The NRC report was also clear that we have not quadrupled our rate of incarceration because of increases in crime – in fact, if you look at the crime rates over those forty years, they went up and down, up again and down sharply. But crime rates did play a role in a different sense – the sharp increases in rates of violent crime in the 1960s and 1970s, combined with a general sense of social unrest and insecurity, created the environment in which “tough on crime” political rhetoric became successful. In the highly racialized rhetoric of that era, politicians found it useful to promise to crack down on crime, and this typically meant increasing the use of prison as a response to crime.

The National Research Council panel identified three drivers of the increase in prison rates. First, we chose, through our legislative processes, to make long sentences longer. We followed slogans such as “three-strikes and you’re out”. “Truth in sentencing.” “Life without parole.” “Abolish parole release.” “Eliminate good time.” All of these sentencing enhancements meant that people already sentenced to prison are now serving much longer sentences. Second, we enacted mandatory minimum sentences. Through legislative enactments, we removed judicial discretion and required judges to sentence people to prison who would otherwise have been sentenced to a community sanction such as probation. Third, we launched a War on Drugs, imposing criminal penalties and long prison sentences for offenses that would otherwise have been handled in the community or, in the case of addiction and substance abuse, through the health and treatment systems. As the overall incarceration rate quadrupled, the incarceration rate for drug offenses increased ten-fold.

Aside from these three specific drivers of the increase in incarceration rates, the unifying theme that we must keep in mind is this: we live in an era of mass incarceration because we have chosen, through policy choices, to dramatically expand the use of prison as a response to crime. There is a corollary to this finding: if our democracy got us here, it is our democracy that must get us out of here. I will return to this theme in a moment, but ask you to remember that we need a political strategy, not a crime strategy, to reduce mass incarceration.

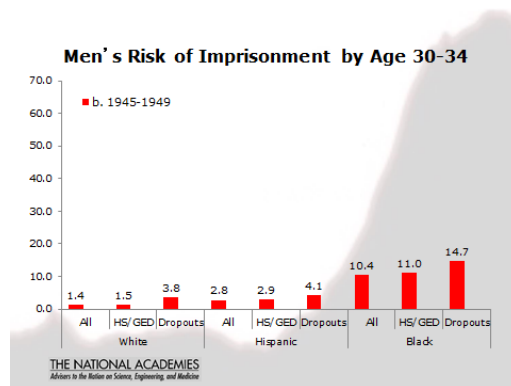
II. The Consequences of Mass Incarceration for Communities and Racial Justice

We are only now beginning to have a clear sense of the consequences of this massive shift in American criminal justice policy. It will take another generation to fully assess the impact of this unprecedented build-up on the hundreds of thousands of individuals being released each year, on their long-term employment prospects and life-time earnings power, on their health, on their children and families, on the social fabric of the communities to which they return, to our democracy. Yet, even in the absence of definitive research evidence, the early indications are very troubling. I refer you to the report of the NRC panel where we assessed the state of research on the impact of high incarceration rates on individuals, families, the economy, public health, communities and civic participation. Without reviewing those findings in detail, suffice it to say that all indications are that we have done enormous harm. If we consider the combined effect of patterns of harm, e.g., psychological damage caused by the deprivation of liberty, especially during periods of solitary confinement, decreased earnings power following release from prison, poor developmental outcomes for children with a parent in prison, and withdrawal from civic life in the community – the result is a deeply troubling picture.

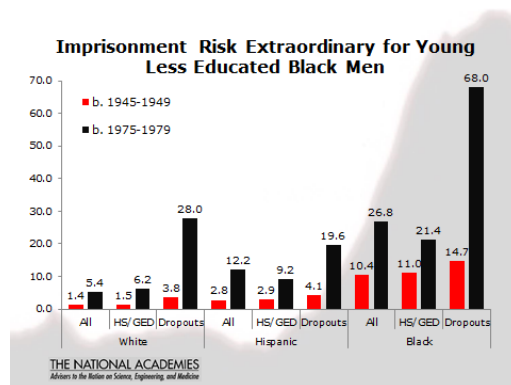
This morning I would like to focus on two dimensions of the consequences of the era of mass incarceration—the disparate impact on African-American men, and the heavy footprint of high incarceration rates on a small number of communities.

One of the most powerful findings of the NRC report was the conclusion that almost all of the prison growth was drawn from one subgroup in the American population –high school drop outs. Perhaps this is not surprising. The crimes that typically lead to prison sentences are typically committed by those at society’s margins. So, in terms of educational levels, the impact would predictably be concentrated among those with the lowest levels of educational attainment. But when this reality is combined with two other dimensions of the prison phenomenon – disparities by gender and race – then the total effect is quite staggering.

I will illustrate this using data presented in the NRC report. We will be comparing two cohorts of men who have dropped out of high school. The first cohort consists of those men born between 1945 and 1949, well before the prison boom began. For this cohort, looking at black high school drop outs [slide 6],



the chance that an African-American male high school drop-out would serve at least a year in prison before his mid-30's was 14.7%. Compare this with a later birth cohort, born between 1975-79. These men came of age during the prison boom. For an African-American male high school drop-out born in this later cohort [slide 7],



the chance of serving at least a year in prison before turning 35 rose to 68%. Think about it! Two of three men in this category will go to prison for a year or more. And this does not count short jail sentences, periods of pretrial detention, or simply arrest for a crime. Just to be clear – this shocking reality is not proportionate to offending rates. In fact, we are now experiencing the lowest crime rates in a generation. Rather, our choices to increase the use of prison in response to crime, particularly the ramp up of the War on Drugs, has created a new reality that has dramatically altered the life chances of young people, particularly young black men who drop out of high school.

In my view, this new reality poses significant challenges to our nation's pursuit of racial justice. Can this really become the new normal in our country? How can we sustain our promise of a brighter future for our young people when those who are already struggling are so burdened by a justice system that has become so punitive? I will return to this question in a moment, but first I would like to broaden our lens to talk about the impact of mass incarceration on communities generally, not just individuals.

The NRC report used a metaphor to describe the new realities of high rates of incarceration that seems quite apt this morning. We wrote about the unprecedented “footprint” of the justice system. We know that the increase in incarceration rates is not spread evenly across the

country; rather it is concentrated in a small number of communities, and highly concentrated in communities of color. The spatial concentration of the realities of mass incarceration – and the strong correlation between those neighborhoods and racial minorities – has created a profound new reality in our country. In our report, we cited many examples of the intersection of prison, race and poverty. Perhaps the data from Chicago are most compelling. In Chicago, two neighborhoods – West Garfield Park and East Garfield Park – in the words of our report “stand out as the epicenter of incarceration” in that City.³ These neighborhoods are very poor, and predominantly black. Yet when we compared the incarceration rate of West Garfield Park with the incarceration rate of the white neighborhood with the highest rate of incarceration among all predominantly white neighborhoods, the rate of admission to prison in West Garfield is more than 40 times higher. To cite our report: “This is a difference of kind, not just degree.”⁴

This reality is not limited to Chicago. Although perhaps not so extreme, virtually every city in America where this analysis has been conducted has shown the same pattern: high concentrations of incarceration in communities differentiated by poverty and race. This is the “footprint” of mass incarceration.

There are many ways to describe this new reality. One is to document the “million dollar blocks” in our cities. My colleague Eric Cadora of the Justice Mapping Center coined this term when his analysis showed that the taxpayers of New York State pay more than a million dollars each year to incarcerate the men (and some women) from certain city blocks with high incarceration rates.⁵ Imagine what we could do with a million dollars to respond more effectively to the crimes committed by those residents on the block? Another way of describing this reality is to quantify the extent of “coercive mobility” to use a phrase coined by Todd Clear and Dina Rose.⁶ In blocks whose residents are experiencing high rates of incarceration, one in eight men living on those blocks is placed in jail or prison each year. It’s hard to imagine a healthy environment for growing into adulthood when jail or prison is such a common occurrence. A third way of describing this new reality is to calculate what Donald Braman called the “gender imbalance”.⁷ Because so many men are now incarcerated, or die at an early age, the ratio between men and women is severely out of balance. Braman conducted his research in Washington, DC, and found that, in neighborhoods with the highest rates of incarceration, there are fewer than 62 men for every 100 women. In those neighborhoods, more than 12 percent of the men were behind bars. What does this “gender imbalance” mean for the natural processes of dating, family formation and male participation in community life? Not surprisingly, Braman also found that in neighborhoods with the highest incarceration rates, three quarters of the families had a father absent.

Whatever metrics we use, the picture that emerges is deeply troubling. A small number of neighborhoods in our country, places already struggling with poor schools, poor health care, high rates of unemployment, are now struggling with the unprecedented reality that large

³ NRC, p. 283.

⁴ NRC, p. 283.

⁵ NRC, p. 287.

⁶ NRC, p. 289.

⁷ NRC, p. 298.

number of their men – and to a lesser extent their women – are in and out of prison, sometimes removed for extreme prison sentences, and are left to struggle with the consequences. Furthermore, to link this phenomenon to other topics in the news, these neighborhoods continue to experience high rates of violence, even during the unprecedented crime decline, and they often bear the brunt of aggressive policing tactics. It is no wonder that the entire justice system is under attack as having lost public trust and legitimacy.

III. Community Justice and Racial Reconciliation

If you agree with me that this new reality poses significant risks to the well-being of our country, then we should ask what role you can play in a movement to undo these harms. You have unique powers to engage in important work – you are committed to new visions of justice, concerned about the well-being of communities, and steeped in the theories and processes of restorative practices. Come to think of it, you could be critically important leaders in this movement!

If you allow me to be forward, I would like to suggest two specific contributions that you can make. First you can help design a community organizing strategy that will create pressures from the ground up to bring about significant change. Second, you can help the country engage in processes of racial reconciliation to come to terms with the injustices that have been committed in the name of justice in our country.

A. A community justice reinvestment model

My first suggestion is that the community organizers in this room think seriously about ways to engage the communities most affected by mass incarceration in a sustained campaign to roll back the criminal justice policies that created this reality. There is a lot of optimism in the air these days about the new bipartisan, left-right coalition committed to criminal justice reform generally, and reductions in prison populations specifically. I join in the applause, but am concerned that the consensus is not strong enough to do the hard political work necessary to bring about significant reductions. Our political leaders will need support from below to do the right thing. This is where we need community organizing, particularly to energize the voices of those who are under the “footprint” of the justice system.

I have a more specific suggestion for your consideration. As you may know, a new rallying cry has emerged in our world: “Cut by Fifty!” A number of organizations and high profile figures – the ACLU, Van Jones, JustLeadershipUSA – have set a very specific goal: a fifty percent reduction in the prison population by a date certain, typically 2025. This is well and good, but how should we translate this rallying cry into a new vision for our justice system? Here’s where the community organizing comes into play. Imagine that we worked with representatives of a community now experiencing high incarceration rates, provided them data on the cost of incarceration of those individuals from those communities, then projected the savings if the incarceration rate were cut in half, and then asked them to go through the policy exercise of spending those dollars differently. Millions and millions of dollars would be in play. The money could be spent under different rules. Perhaps it could all go to crime prevention purposes. Perhaps it could be spent on other social purposes, like higher education or mental health services. Perhaps it could be allocated to support new policing strategies that would result in

lower crime rates. Perhaps it could support services for the victims of crime who are now not necessarily getting justice when someone goes to prison.

This is a call for a true justice reinvestment policy – one that involves the communities that have been harmed by mass incarceration. Lest you think this idea is too ambitious, the state of California just went through a version of this exercise. Proposition 47 represents the cutting edge of justice reform. In this referendum, the voters of California approved, by a historic margin of 60%, a package of justice reforms that accomplished two things simultaneously. First, by reducing the severity level of a number of crimes, Proposition 47 cut back on the prison population and brought about the release of thousands of prisoners. Second, the language of the referendum explicitly directed the savings from the prison reductions to certain purposes – mental health and drug treatment (65%), K-12 school programs for at-risk youth (25%), and trauma recovery services for crime victims (10%). The state is now creating a process for communities to submit proposals for these funds.⁸ This is the real justice reinvestment.

B. Exploring the processes of racial reconciliation

Now imagine that this idea is carried out under the “cut by 50%” banner. Imagine that communities all around your state developed alternative investment portfolios. Imagine that those communities, and their elected officials, started to demand changes in sentencing laws so that these savings could be realized and communities strengthened by the reinvestment. Imagine that we set a goal of reducing our prison population by 50% by 2025 and accompanied that lofty rhetoric with an explicit proposal for the reinvestment of the savings. Can we imagine that millions of dollars would be invested in badly needed services for young people, mental health programs, job training and education programs, victim services, crime prevention activities, diversion programs and community policing initiatives? Would this not bring us closer to a true vision of community justice?

My second suggestion is a call to your expertise in processes of restoration, reparation and reconciliation. In my opinion, there is a compelling need for our country to come to terms with the harms caused by our systems of justice and law enforcement to communities of color, in particular the African-American community. The recent events leading to the “black lives matter” movement in our country only reinforces this point: the racial dimensions of the injustices caused by our system of justice run deep, throughout our history, and are only reinforced with each new death at the hands of the police. One need only read “The New Jim Crow” by Michelle Alexander to understand the historical undercurrents that link today’s realities of mass incarceration, particularly the war on drugs, with our shameful history of racial oppression under the color of law. The data I presented earlier about the impact of high incarceration rates on young male high school drop outs only reinforce the depth of this injustice.

Perhaps we can find a way to cut back on the use of prison as a response to crime in America. Perhaps we can find a way to cut back on aggressive policing practices like the overuse of stop and frisk in New York City, or the burdensome imposition of traffic fines in Ferguson, but those

⁸ *Proposition 47: The Safe Neighborhoods and Schools Act* (retrieved from the World Wide Web on May 31, 2015, <http://www.safeandjust.org/prop47faq>).

successes will be hollow without a forthright acknowledgement of the racial dimensions of the harm we have caused.

A number of national leaders are starting to talk about the need for a process of racial reconciliation. Police leaders including Commissioner Bratton in New York City and Superintendent McCarthy in Chicago have spoken frankly about the racial injustices carried out by law enforcement agencies in the past. Prof. Bryan Stevenson, President of the Equal Justice Initiative, has called for racial reconciliation.

I am proud to note that the Department of Justice has funded an initiative at John Jay College, called the National Initiative for Building Community Trust and Justice that will work in six cities over the next three years on issues of race, legitimacy and policing, with a special emphasis on processes of racial reconciliation.

As part of that grant my colleagues at John Jay convened a small, closed-door two day workshop on reconciliation with a combination of some of our long-time partners and a number of leading reconciliation intellectuals and practitioners, including some who have been engaged in similar work in South Africa, the Middle East, the American South, and elsewhere. At this convening they discussed the theory and practice of effective reconciliation processes, and localized it to the law enforcement context by including a representative from the NYPD. Since that meeting they have continued to collaborate with two of the attendees on furthering design based on work they have done. We are currently planning a follow-up meeting in Chicago, which will include a number of the same participants as the first meeting as well as Chicago partners from our team out there, the police department, the city, universities, and foundations, as well as various other community leaders who are invested in the process. This meeting will address the nuts and bolts of process design in more concrete terms than the original meeting.

Because racial reconciliation is also one of the three pillars of the 3-year, Department of Justice funded National Initiative for Building Community Trust and Justice, we will be adapting the lessons of the Chicago process to the 6 pilot sites chosen for the initiative. Further, we are working on a number of case studies to describe reconciliation processes that have occurred in various cities throughout the country. We will draw lessons from the successes and challenges of these cases to inform a larger report on the mechanisms and concepts underpinning effective police-community reconciliation.

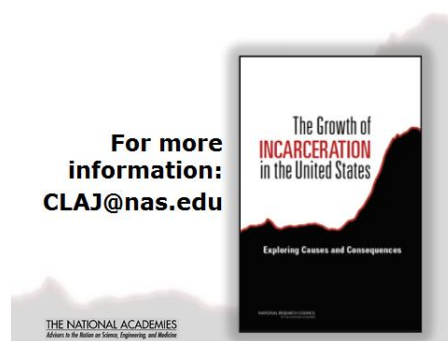
As I think about the new realities of mass incarceration, the damage we have caused through our policy choices, and the imperative of reversing course and reimagining our approach to crime and justice, I always return to the issue of race. How much will the history of slavery in America, the unfulfilled promise of emancipation, the use of the justice system to enforce Jim Crow, the reign of terror known as lynching, the exclusion of African-Americans from the ballot box and the jury box, the hatred suffered by the first African-Americans to wear the police uniform, the high rates of violence and the poor performance of police in communities of color – how much will this history stand in the way of true progress? When I ask these questions, I realize that we cannot improve our modern system of criminal justice without facing this history squarely. When we do that, we will find ourselves – all of us of all races and backgrounds – ready to move from an acknowledgment of harm to a willingness to redress that harm. In this

audience, we have experts in these processes of restoration and reconciliation. Now we need your skills and passion more than ever.

This past weekend I went to visit the FDR Museum in Hyde Park. What an impressive story of one individual who literally saved our country! He is one of my heroes, but he also made some significant mistakes and bears the burden of the injustices carried out during his presidency. Looking at this exhibition one sees on vivid display the controversies about FDR's administration. Did he move too slowly to recognize the evils of the Holocaust and provide refuge to the Jews of Europe? Did he cave to the power of the Southern Democrats when he failed to support legislation to stop the horror of lynching in America? Did he appoint too few women to positions of power? On one wall there is the story of the Japanese internment. Following the horrific attack on Pearl Harbor, our government swept up 127,000 individuals of Japanese ancestry, all of them American citizens, and sent them to internment camps. They lost their jobs, their homes, and their dignity. This was a moment of moral panic. To its eternal shame, the United States Supreme Court upheld this action by the government.

Yet, years later, we found our way to an explicit recognition of the harm we caused. By enacting the Civil Liberties Act of 1988, Congress acknowledged the harm done, apologized on behalf of the United States to the World War II internment victims, provided for a public education fund, and promised reparations checks of \$20,000 to those victims. Congress noted that this legislature would "make more credible and sincere any declaration of concern by the United States over violations of human rights committed by other nations."⁹ Years later, on October 1, 1993 President Bill Clinton issued a formal letter of apology, echoing the message of the Civil Liberties Act, and recognizing that: "In retrospect, we understand that the nation's actions were rooted deeply in racial prejudice, wartime hysteria, and a lack of political leadership. We must learn from the past and dedicate ourselves as a nation to renewing the spirit of equality and our love of freedom."¹⁰ Powerful words – words that could be spoken today.

Clearly we have it within our power to acknowledge harm and take official steps to admit error. I hope that, in this era of mass incarceration, we can once again call upon that element of the American character that is both forward looking and at the same time honest about our history.



⁹ PBS: Internment history, historical documents: *Civil Liberties Act of 1988*. Enacted by the United States Congress August 10, 1988. Retrieved from the World Wide Web on May 31, 2015: <http://www.pbs.org/childofcamp/history/civilact.html>.

¹⁰ PBS: Internment history, historical documents: Presidential Letter of Apology. Retrieved from the World Wide Web on May 31, 2015: <http://www.pbs.org/childofcamp/history/clinton.html>.