

Justin Brooks - Episode 793

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SPEAKERS

Justin Brooks, James Geering

J James Geering 00:00

Welcome to the behind the shield podcast. As always, my name is James Geering. And this week, it is my absolute honor to welcome on the show, veteran lawyer, founder of the California Innocence Project and author of the new book, you might go to prison, even though you're innocent, Justin Brooks. Now we had an incredible conversation and really unpacked each of the elements that lead to so many of these wrongful convictions that destroy people's lives. From the initial investigation from law enforcement, the huge margin of error when it comes to lawyers and the legal system, racial bias, plea bargains, the psychology of interrogation, and so much more. Now, before we get to this incredible and much needed conversation, as I say, every week, please just take a moment, go to whichever app you listen to this on, subscribe to the show, leave feedback and leave a rating. Every single five star rating truly does elevate this podcast, therefore making it easier for others to find. And this is a free library of almost 800 episodes now. So all I ask in return is that you help share these incredible men and women's stories so I can get them to every single person on planet earth who needs to hear them. So with that being said, I introduce to you Justin Brooks enjoy. Justin, I want to start by saying thank you so much for taking the time and coming on the behind the shield podcast today.

J Justin Brooks 01:51
My pleasure.

J James Geering 01:53
Now interesting question. You're obviously from the States but we're on planet earth we finding you today.

J Justin Brooks 01:59
I am in right in the middle of the United Kingdom in Derbyshire on the edge of the Peak District.

J James Geering 02:06

So before we even get into your timeline, how have you found yourself having a home in the UK?

i 02:13

My mom is from Liverpool. My dad's from Australia, and my wife is from Darby. So I've been back and forth to the United Kingdom most of my life. And several years ago, I decided to buy this little 240 year old stone cottage as my escape from reality. And so I come here, I know when I need my fix. It's actually where I wrote my new book, I wrote the whole book, sitting in this cottage. And it's an interesting spot to reflect on the American criminal justice system. Because there's no crime. So basically, I mean, if someone steals a trolley from the local Morrison's supermarket and makes it in the newspaper,

J James Geering 02:56

it is a contrast and would definitely get into that because I grew up. You know, I spent the first 27 years of my life predominantly in the UK and then moved to the US becoming a firefighter and a paramedic. So it's a very interesting kind of spectrum of where some of the worst crime is. And then, you know, we forget to acknowledge where there are some beautifully safe places in the world. So starting at the very beginning of your timeline, you mentioned where your parents are from. Where did you see me Where were you born? And tell me a little about your family dynamic what your parents did, and how many siblings?

i 03:31

Sure. So my dad is a failed Australian tennis pro. Career never really took off, but ended up being a tennis teacher and a school teacher as well. My mom was a school teacher. They're both immigrated to the United States in the 60s to New York City. I was born in the Bronx. I've six brothers and sisters. And we moved all around the East Coast. As a child, I lived in New York and Philadelphia. And then when I was in high school, my parents moved to Puerto Rico. So I had most of them spent most my formative years on the island of Puerto Rico. I was the only gringo in my high school. I learned how to speak Spanish as quickly as I could. And then I went to college in Philadelphia, and I went to law school in Washington, DC. And that's where I started my career as a criminal defense attorney 30 Some years ago.

J James Geering 04:29

Well, firstly, you and Australian dad at British Mum, how did they find themselves in New York City?

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11 04:30

You know, my mum said that she just thought there'd be more opportunities for us in the United States. I mean, it's a classic immigrant tale, I suppose. You know, she grew up in Liverpool, and that period of time is not the Liverpool of today which is now you know, one of the biggest tourist attractions in the UK and is a lot more prosperous than it was in the 1950s and 60s. So Oh, yeah, that's that's, that's basically the only explanation I ever had from my mother of why she brought us all to the United States, I've often reflected how my life would have been different if we'd stayed in the UK, because I spend so much time here now. And maybe I would have been a different type of lawyer. If I'd grown up in this system, maybe I never would have made it to law school, because as you know, it's much harder to to get those kinds of degrees in the United Kingdom, it's and especially when I went to school now, now in the UK, a much larger percentage of the population goes to university than 2030 years ago. And so it'd be very hard to become a barrister in the British system in the United States, I was able to become a trial lawyer, and there was a lot more opportunity for that.

J James Geering 05:46

So with you growing up in the East Coast, and then going to Puerto Rico, my very first fire department was Hialeah, which is a suburb of Miami. And I think it was on paper and 98% Cuban. So it was quite interesting. They had the two groups of firefighters that Johnny's in the Julio is that John is where the, you know, I guess, European Americans and who knows, obviously, we're predominantly a Cuban firefighters too. But I kind of found myself learning Spanish, but at the same time, for me, the learning curve wasn't fast enough to really appease on a call, you know, to really kind of get an old person to feel comfortable to trust, you know, to not worry about the heart, get a young person in and not be scared of us, for example. So I kind of had that moment of being dropped into a completely different culture within in mainland us in this particular case, what was your transition from kind of predominantly English speaking east coast, I'm assuming to Puerto Rico,

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it was hard. You know, a lot of it I hated. And I look back at it now and realize was the most important thing that happened in my life. It changed the whole whole course of my life, it shaped a lot of the way my politics, the way I see the world was all of a sudden being another. I went from being yet another white kid in suburban Philadelphia and suburban New York. And all of a sudden, I was the only white kid in my school, and I had to completely adjust to that culture. Because mine didn't exist anymore. And, and I hated a lot of it, I had a headache at the end of the day, every day I, you know, school was really hard and Spanish, making friends and not making enemies, I learned a lot of prison tactics of how to, you know, survive in a group setting where you were on the outs. So gave me a totally different perspective of what what it's like to be in that situation. It made me look the United States differently, because Puerto Rico is part of the United States. But at that time, there was a lot of anti American sentiment there, there were a lot of issues, which there still are, in terms of the status of Puerto Rico, how Puerto Rico's treated by the United States, but as a kid, I just saw it, you know, I'm just a kid. One of the things I actually talk about in my new book is because I get into a chapter on race, and the race issues with the criminal justice system, as I talk about my first experience with white privilege. And it was that every weekend, because my family lived in a poor area of the island, I take a couple of buses, and I go to the resorts. And I would just walk in because I was a white American kid, I just grab a towel off the chair, and I was just hanging out in the resorts all day,


and there'd be food left out, I'd be eating, I'd be playing bingo, I'd be having a good time swimming in the pool. And then I go home. And one time I decided to bring one of my friends with me who was Puerto Rican. And we were kicked out inside of five minutes. I mean, as soon as the guard saw a Puerto Rican kid that came over in my mind, he blew up my spot. And I, you know, I reflected back on that 40 years later, and thinking at the time as a kid, you're just like, damn, this sucks, and kind of thrown out. And now I realized was sort of my first experience with what white privilege was all about was that I could do things that these other kids couldn't. So in the environment I was in at school, I was like the outsider. But then in the in the other world, which is the world I spent most of my life and I was within the majority of population. I was a white male, I had access to things that other people don't necessarily have.

 James Geering 09:21

Interesting. Well, that's definitely a topic I want to get into when we get into the kind of legal journey. Just before we do. We do though, you're on mainland, the US and you're in Puerto Rico. The school ages What were you playing as far as sports and athleticism?

 09:37

When I went to Puerto Rico, I was kind of a chunky kid. My dad had been a professional tennis player. And so we all played tennis. It's actually tough being the child of a professional athlete, though, and we all burnt out on it. My brothers and I all stopped playing. But just recently, my brothers and I started playing tennis again, quite a couple of times a week. I got into running and became a marathon runner in Puerto Rico. goes to real solitary sort of. I realized now to that that was anxiety that I was just trying to deal with by just going out running. And it started with doing a mile and then two miles and before I knew what I was doing, like 1012 miles a day, and then I, you know, set the school record for the mile at one point and then I became a marathon runner and that carried on for the rest of my life. I played some basketball but not on an organized high school team. I ended up playing all through college in a mural basketball. I actually played intramural basketball for 30 years college, I just recently retired. So that's something I've always done.

 James Geering 10:35

Now, will you chunky while you were being taught tennis, or did you get burned out and then have the weight gain?


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I was chunky as a kid, even when I was playing tennis, because in the East Coast, we only played it in the summer. And so it wasn't something we did all winter. So it was easy to easy to put on weight in the offseason, and I was never great, I would have been a lot better if I had been in better physical condition. And then I just kind of burnt out on tennis and, and I liked I liked the solitariness of running and nobody telling me what to do and no coach. And it just me trying to break my own records I was trying to set I mean, it really is an interesting personality thing when you look at different sports that people gravitate to. And I didn't have any

appreciation of team sports because I never played them until I went to college. And then I started playing basketball almost every day. And then I love the idea of a team sport. But my high school in Puerto Rico was tiny. We didn't have really, anything in the way of team sports. I kind of started our high school track team. That was captain of it. But there wasn't that sort of American, you know, big sport programs going on. It was a very small school. And it was it was run by actual missionaries, men and eight missionaries. So I did have a little bit of a strange experience there. We weren't allowed to dance. We weren't allowed to wear bright colors. It was an odd period of my life but important.

 James Geering 12:01

Yeah. Yeah, that's funny. I don't think any Messiah would be that miserable to ban dancing and bright colors. This is my personal

 12:10
concur.

 James Geering 12:13

Well, then staying on that can educational theme. You didn't have lawyers in your immediate family were you always dreaming of law was or something else. Before that.

 12:23

I actually do have my my oldest brother's a lawyer in Boston, I actually went and saw him on the way out here to the United Kingdom. And he's a civil lawyer. He's a condo lawyer, and he's made a fortune representing condominium associations and built a big law firm around that. And when I went to law school, I thought I was also going to be a civil lawyer. And then the first my first semester of law school, my law professor brought us all out to a prison. And I started talking to the guys and the next thing you know, I started teaching in a correctional facility while I was in law school, and it just changed the whole direction of my life, I decided I want to be a criminal lawyer. It's hard to actually pinpoint why we do these kinds of things with our life and why we take the directions that we take. I know some of it had to do with with growing up in Puerto Rico being around people who got into trouble. And some of it came from knowing that this sort of that could have been me. In such seeing people in situations that were doing things that I engaged in my friends engaged in but didn't get caught. But I don't know, I just just completely changed my idea. I wanted to be a civil lawyer because my dad had bankrupted so many businesses, it always seemed like the lawyers did. Okay. That looks good. Everybody else is doing bad in these bankruptcies, but the lawyers, but then I just got turned on to criminal law, and I have never looked back. That's what I ended up spending my entire career on.

 James Geering 13:54

That's something that comes up a lot. Is it really that concept of we were all babies once and

That's something that comes up a lot. Is it really that concept of we were all babies once and then we're led down a certain Road, some people let down a poor road and a mentor comes in, and then it turns them on the right path. Some people are extremely fortunate, and they always run a pretty decent path. And obviously, you've got a lot of people that you interact with that found themselves, you know, there wasn't that person to intervene, and they found themselves in addiction or homelessness or in prison. When you look back at your childhood now, were there elements of trauma? And also were there any mentor figures outside of your family?



14:29

Yeah, there was definitely elements of trauma. I mean, my dad probably should have never had any children, let alone seven. So it starts from that he's fairly abusive guy. And, you know, we all got away from home as young as we possibly could. I actually skipped my senior year of high school without telling my parents and got admitted went to the only college that would accept me from 11th grade. And that's what how I ended up at Temple University in Philadelphia. I just wanted to get get out of the house, and my siblings The same way. So there was that I think that changing schools constantly, I don't remember going to the same school more than twice throughout my childhood. So I'd constantly had to adjust to a new group of kids. I was in upstate New York, I was also an inner city, New York. I was in Philadelphia, then I'm in Puerto Rico. So I moved, we moved around a lot. So I think, you know, in some ways I can say those were negative experiences, but ultimately, they were positive experiences, because I adapt very easily to new environments. You know, learning Spanish being bilingual, in being bicultural, and being in different environments. And also, I'm comfortable in your round European culture, because I spent a lot of time the United Kingdom, you know, so I don't feel lost in very many places. So yeah, I would say there were a lot of, of what people would describe as negative experiences growing up in a pretty poor family. With with just, you know, my dad just had these crazy ideas like he moved us to Puerto Rico, to work in an Orange Julius stand. I don't know if you remember Orange Julius, but they're like shakes. And he just every year had a different get rich scheme, or one point is building doll houses. Now the point is running a stake shop and Philadelphia where he wanted to have the cheapest cheesesteak, not the best, the cheapest, and the city was not a good marketing strategy. So he just kept doing different businesses, and they kept failing. And there are lots of times we moved out in the middle of the night, there were lots of times my family were on food stamps. So, so yeah, but I guess like I'd say, ultimately, those were positive experiences, because I see a lot of people who don't cope well with new environments, who can't do the kind of work that I do, and be able to be sustainable, over long periods of time dealing with, you know, cases of people on death row, when people would just horrendous problems. So I think ultimately, it all made me stronger. So I guess I'm happy about it at this point, but it wasn't as a child. I was also lucky that I went through circumstances of a poor kid, but I was always surrounded by well educated people. And I think, you know, I always knew in my head, I was going to college, for instance, I was never thought that I wasn't both my parents went to college, my family, my relatives all went to college. And I always had, and I know this now, and I talked to her recently, and my girlfriend when I was 16. I always dated very smart women, most of them were were smarter than me. And I think that helped. I had conversations in high school that I think most people at that age didn't. My girlfriend was German for a period of time. And she read the New York Times every day at 15. And she'd be talking about the troubles in Ireland and all these conversations that I don't think a lot of teenagers were having. But But yeah, when you're in

your 50s, you can look back and go like pinpoint. These were the important decisions. These were the important people in my life. These were the things that influenced how I ended up where I am.

J

James Geering 17:58

So I've always deliberately dated people seemingly less intelligent, because I My ego is so fragile that I seek out this woman and then my wife has this recessive Asian gene, where I met her and she was an optician doing pretty well. And then she got into optometry school and she's a straight A student. So she kind of did the whole bait and switch on me. I thought I was gonna look intelligent capacitor, and now like a complete, dumbass. So

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18:23

yeah, just like it's better to play with better tennis players to get better tennis, it's better to surround yourself with smarter people.

J

James Geering 18:30

I agree. 100%. So you visit a prison you end up teaching. So talk to me about that. Was that a kind of an altruistic moment for you rather than following an educational path that that you felt that there was a service you could provide on the side?

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18:46

Yeah, it just felt like there were a lot of lost people that didn't have a lot of information. And I was learning all these things in law school, and I knew how to look up you know, and it wasn't even a so criminal law. I was teaching a class on housing law. You know, guys, their their families were being evicted from their homes. They wanted to know how can I stop my my wife from getting kicked out of our house, my kids from getting kicked out of our house. They didn't understand about their welfare benefits. They didn't understand about parole and how they could maintain parole. It's it's actually sickening. How little education happens in prisons. And it's a tremendous opportunity actually, to educate people, make them into better people make them have more skills, because you never have a captive audience like that, literally a captive audience for those kinds of things. So actually, my wife and I after law school, we started a family literacy program in the prison, where my wife was a preschool teacher and we teach these guys how to teach their children to read. And we would bring the children read round them up on the weekends and bring them to the prison and in the prison school, we set up a classroom with books and toys, and we would have these family literacy sessions where we're trying to break break the cycle of illiteracy within these families, because, you know, illiterate parents have illiterate kids, and they end up in the system. And, you know, it's just this horrible cycle that continues to go on. And, and people told me that did family literacy in the community that they couldn't get anyone to come to it? You know, it's like you put out ads and say, Come to the Family Literacy Program, bring your kids, and you wouldn't get guys to show up. And yet in prison, you know, they will, we didn't have enough spaces for the amount of guys who wanted to participate in it, because they had nothing better going on. So yeah, I just,


I saw that I could be useful, I saw that the knowledge that I had could be used for something practical. And that felt really good. Because before that, I'd only really worked at McDonald's, worked in restaurants, worked in construction, done stuff where I'd never used my brain to help somebody. And so I loved it. And I still love it. By the way, I still love, I think, to me, when someone says What does a lawyer do? A lawyer is someone who takes someone else's problems and makes them their own. And then you try to figure them out. And that's what you do, and you start doing it in your personal life constantly. Like somebody tells you something all of a sudden, like, Okay, well, well, here's what I think you should do. And you start going through the steps with them. And that was my first experience with that, that I had knowledge that other people didn't have that can be very useful to them.

 James Geering 21:24

It's interesting, because I would argue a firefighter paramedic does the same thing. You walk into someone's life, you try and help them mitigate their problems.

 21:32

100%. And I think it's very obvious with what you do that that's true, horrible situations, and you're literally rescuing them from their horrible situation. But if you think about it, you start paying attention in your life, people are constantly telling you their problems, and it's not rescuing them from a fire. It's just like, I've got this issue. And you end up being this mode, that it's just what you do all day long, when you're not working, you know, from something simple to some things that are really complex.

 James Geering 22:01

Absolutely. Well, as you walk through your educational journey and law, were there any moments when you look back now, where you started to notice a difference between the academic side, and some of the things that you were seeing, or maybe even some of the cracks in the foundation that you're being taught on?

 22:21

I think there's a huge disconnect between education and the real world. And it's a weird thing to say, as a law professor, because I've been there for more than 30 years. And I just, I'm losing a lot of confidence in the educational system to start with. I think we're at a breaking point in the United States that it's just too expensive, and doesn't make a lot of sense anymore for most people. And that's a weird thing I know to say as a as a law professor, but like, people are taking out hundreds of 1000s of dollars in student loans to go through four years of sitting in classrooms. And a lot of times it doesn't necessarily give them the practical skills they need to do the things they want to do. And I've seen so many times people go through law school and end up not being lawyers, and now they have these massive debts. So as a professor, I try to teach highly practical classes. You know, that's that's why I'm a clinical professor, where I run a clinic, where I work with my law students on real cases, and getting people out of prison. And that kind of education, I realized that my first innocence case, which was this woman who was


Puerto Rican on death row in Chicago, and I read about her story in the newspaper, and the story said that she'd been sentenced to death on a plea bargain. So I was thinking, how the hell is anyone sentenced to death on a plea bargain? So I go and meet with her on death row. She's scheduled to be executed. And she tells me she's innocent. And I said, you're innocent, even sentenced to death. And you pled out. You never had a trial? No. So she had a horrible lawyer who didn't No idea what he was doing. Who pled her out? Who's now by the way, Catholic priest? It's just a weird enough story.

 James Geering 24:04

He hates dancing and bright colors.

 24:08

Exactly. And so I recruited a few of my law students, I was teaching first year criminal law. I said, this woman is on death row. She says she's an innocent, who wants to help me out. And these kids, four kids raise their hands and they came to my house that night, we sat around the kitchen table. And for me that night, the Innocence Project was born, where it was the idea that I would I started working with students on real cases, and we all went to the crime scene. The next Saturday, we found out the key witness was lying because you couldn't see the crime scene from her her window which she said she saw the crime happened. And I realized as I was working on a case that that first of all, I wanted to do that kind of work of representing innocent people. But second, that the best way to teach someone to be a great lawyer is to do the work. You know, not to sit in a classroom. Just like you can't become a plumber without turning a wrench. And, you know, and a lot of skills that go with being a paramedic and being a firefighter, you know, if you just sat in a classroom, and at the end of it, you go like, okay, you know, get out there and fight fires, get out there and go rescue people, you'd be screwed. And being a lawyer is the same way. But but we do that, we have them sitting in classrooms, and they graduate from law school, and then they take an exam, and now you're a lawyer. And here's my first client. And I have no skills whatsoever in terms of investigating crime scene talking to witnesses, doing criminal analysis of crime scenes. And so I'm just a, it's impacted me a great way that I'm a big believer in practical education. And I think we have to move that way to make it even make sense of people getting degrees that cost huge amounts of money, like, you've got to give them skills that are meat that are marketable, and that I'm getting hired, and I'm going to be good, I'm going to be better than the guy who just showed up and learned on the job in four weeks, because I went for four years to college. And the truth is, a lot of time, the guy who spent four weeks on the job is better than the person who's been four years in college. And that's just the reality.

 James Geering 26:07

When he talks about a plea, deal, plea bargain, and the death penalty, now I'm not in any way shape, or form educated in the law, but I would assume that a play is normally to take a lesser event. And death penalty doesn't seem like a lesser event. So kind of walk me through the the sequence of errors that led to that.



26:28

So and this is the first chapter of my new book I've referred to a couple of times, but it's called you might go to prison, even though you're innocent, now available on Amazon and other booksellers. But the first chapter is you hired the wrong lawyer. And my book goes through all the causes of wrongful conviction that I've learned about in my career. And one of the things I've learned is often bad lawyering leads innocent people to prison. And the mistake that my client made was she was assigned a really great public defender, a woman who'd done hundreds of jury trials, had done a lot of homicide cases and really knew what she was doing. But my client, like many people I've seen over the last few decades, believes that public defenders aren't real lawyers, public defenders are crappy, if they think they're even lawyers, they think they're crappy lawyers. And the truth is that a lot of public defenders are overworked, and underpaid. But they have training, they have experience, they have supervisors, and most important and innocence cases, they have investigators, a lot of people just think if I get a private lawyer, they're going to be better. Now, I'm not saying there's not a lot of great private lawyers out there. And if you got 100 to \$200,000, and a homicide trial to pay for a great lawyer, then go for it find the best homicide lawyer in your town, I'll guarantee that person probably was a former public defender where they really learned their trade, because most people get charged with murder, don't have money and can't hire a lawyer. So it's really public defenders who have all that experience in that arena. So my client had a great lawyer, she fired that lawyer, and her friends got together \$10,000 and hired a guy in their neighborhood who had no experience doing this stuff. And he just entered in what's called a blind plea of guilty, didn't even meet with the DA to get a deal, and ends up pleading her out. And she got the death penalty on a plea bargain. And that it is shocking. And she's 21 years old, a 21 year old kid who gets sentenced to death without a trial. And on top of having a terrible lawyer, she had a terrible judge, a guy who's also was a former homicide detective who worked in that precinct. And he just accepted the play. And it ended up that the defense attorney never even met with the prosecutor to negotiate a deal. It's like walking into a car dealership and say, I'll pay over sticker price. You know, it's ridiculous. Our entire system is based on negotiations. 95% of cases are pled out. But what happens to those plea bargains as you get a lesser sentence, you don't get the death penalty on a plea bargain. plea was not a bargain.



James Geering 29:04

Well, speaking of that, thing has come up a few times now. I've had some lawyers on here, as you had Greg Kelly, who was falsely accused of sexual assault and the Netflix outcry, kind of detail his story. And we'll get into that a little bit something that's pertinent. But this concept of this high, high level of plea deals and other people that actually are innocent, but they're almost kind of scared into the fact that well, if I don't take it, I'm going to serve time and it's going to be horrendous. Talk to me about that push and is that element being abused in our judicial system at the moment?



29:38

Absolutely. 100% What I got out of law school when I was looking at plea deals, it might be if I go to trial, my clients looking at 12 years if I take this deal, I can get you know, six to eight deal, you know, possibly of six to eight. Now, the deal sometimes are so crazy compared to the risk that innocent people plead, and my my probably my most famous client, Brian banks,

whose became a famous case, because there's a movie now about it, and he played in the NFL after he was exonerated. But Brian was one of the best football players in the country in high school, he was being recruited to USC, everybody said, he's going to the NFL. And one day a 15 year old classmate accuses him of rape. He then gets arrested, he sits in a juvenile detention facility, he's only 16 years old. For a year, the day of his trial, his lawyer comes in and says, I got a deal. You got to take this deal. And he said, I don't want to have a deal. I didn't do anything. And he starts crying. And she said, No, no, no. If you take this deal, I might be able to get you probation, you might be going home, if you don't take this deal and walk in that courtroom, it's an all white jury. You're a big black teenager, it's gonna be your word against hers, and you're looking at 44 years to life. And he starts crying, he says, Can I talk to my parents to right outside, and she says, Nope, you got to make this decision yourself right now. So you have a teenager, who's told if you go to trial, you're going to die in prison. If you take this deal, I might be able to get your home. Now, of course, he took the deal and didn't go home, he got six years in prison. But he could have done 44 years in prison if he'd gone to trial and lost. And that's where we've gotten into a crazy period of time. Now, the sentences have gotten so huge, that the risks of going to trial are so great that people will plead out when they're innocent, because now it's just a business negotiation. Now she's cutting my losses. It's not about whether I did it or not, that's not even relevant. When you're doing your analysis of whether you're it's just what evidence does the government have? What are my chances of getting convicted? And what's my risk. So it's just basically a casino, you know, door number one, a better option than the possibility of what happens at door number two, if you head into that courtroom. And that's why we're at like 95 96% of cases plead out, because it's just too risky to go to trial. And the whole system pushes you that way. Right. The judge wants to play the prosecutor wants to play often the defense wants to play, everyone's got huge case loads. And as the United States became the largest, you know, criminal justice system in the world. And we have the largest prison system now on the world. And we incarcerate the highest percentage of our population in the world. As that grew, these plea bargains grew out of necessity, because the courts don't have the time to do trials for people who come in. So all the stuff I'm often saying, well you see on TV and movies, but all these people going to trial is nonsense. Very few cases go to trial.

 James Geering 32:47

So I want to break this down into all the little the elements that are compounding to this absolute nightmare of this wrongful imprisonment, some of these men and women when you've lived in Puerto Rico, you've lived in various areas of the state, you know, you kind of sounds like you were on the wrong side of law once now you're on the the other side of the law. When you look at what was once a little baby, what are the compounding elements that you see some of the common denominators that are leading, as you said, a huge amount of of America's I think if I'm not mistaken, we have 70% of the world's incarcerated population. And we account for 4%, I think, as the US population that's leading a lot of these people in the grid regardless of innocence or guilty, just just compounding factors to a life towards crime.

 33:40

Well, the interesting thing is, one of the first things I think about is poverty and crime and its connection. Although interestingly enough, the United States is the richest country in the world, and yet in incarcerates the highest percentage as population. Now the answer to that can be

answered with with three words, war on drugs, which is where we really did a turn, which was crazy. You know, if you go back to before the 1980s, the maximum sentence you could get in federal court for any drug crime, any drug crime was one year in prison. And then what we did is we created these massive sentences for drug crimes. And we shifted huge amounts of resources into policing them and to representing people in court in them, and ultimately, the incarceration costs of them. So we made, we made basically the same colossal error we made in the 1920s with alcohol. And it's unbelievable. We didn't learn from prohibition. I mean, we had to amend the Constitution twice for that one. And now, you know, 60 years later, we do the same thing with drugs. So that's the thing that cannot be taken out of the equation. But poverty certainly leads to people being in situations living in environments where there's going to be more crime. People when people are poor, both parents are typically working People have worse childcare situations, children are more likely to join gangs, when you're living in certain neighborhoods, because it's not safe not to join a gang, you kind of have to do that. And then when there's less parental involvement, you're more likely to do that. So you know, and when I, when I used to live in DC, I taught in the prisons, I also ran a high school, called what's called a street law program, where students at Georgetown Law School would teach in the high schools law classes. And when you go to juniors and seniors in high schools, kids in 11th, and 12th grade, back then to be almost no boys left in the room. Those kids either join gangs were out dealing drugs had been shot, they were just disappearing from the education system. And so you know, there's a direct correlation between education and crime, there's clearly a direct correlation between opportunities and crime, of people seeing opportunities, seeing a way out. And with so many of my clients over the years, it just seemed to be like a fundamental, not understanding how to navigate life, from A to B to C, in a lawful way, you know, not having good problem solving skills, all these kinds of things that I think we could we could do as a society. And we could certainly do a better job of, I mean, even stupid things, I think back to school, and actually, I'm interested if in the UK, you had this, but in the US when you're a kid in gym class, we they have some of the stupidest things you do when you're a kid. And one of them is all the kids stand around a parachute, and kind of bounce it up and down on the playground. And we do like a lot of meaningless. And I always think, you know, if they just taught me how to stretch when I was eight years old, I wouldn't have any back problems, we probably save a trillion dollars a year back injuries in the United States. We don't teach people how to balance their, you know, checkbooks and how to understand finance, even my son and I felt really bad that I didn't teach them this, but I've got one son who's a lawyer, the other son is a high school teacher. And when my son was about 19, and in college, he said he didn't understand why his credit card balance wasn't going down, because he was paying off what they were sending him to pay every month. And I said, Hannity, I said, it says minimum payment. That means all you're doing is paying the interest. And he said, What do you mean? And I was like, I can't believe I didn't explain this before now. But I had to explain that. So there's a lot of like life skills that we don't do a good job of educating people on. And I think it all kind of comes together to create places where people turn to crime, where people end up in these situations where they see that as their way out, or their way through. And and there's just no simple answer to the question of, of, you know, what leads to crime because it's so many different factors. And it's different in every community. And, you know, it's it's chicken and egg thing to have for what happens first, what's really leading to it? Is it a cause or an effect? It it's tough to answer?

J

James Geering 38:21

Well, you touched on the war on drugs and people that listen to this podcast for a while, we're gonna go, oh, here we go. This is something that I talk about a huge amount. And it all started

with my mom and brother moving to Portugal, like 20 years ago. And when I started this up, they said, or mum said, Hey, did you know that we decriminalized addiction here in Portugal? So about five years ago, I sat in Lisbon and interviewed the man who spearheaded that initiative, and we just had another conversation about three weeks ago, to follow up on it. But when and then you read Johann Hari is chasing the scream, for example, you start to realize that, you know, prohibition, of drugs started right after the failure of prohibition of alcohol in the 30s and Harry Anslinger. But then, as you said, the law is compounded and compounded. So a big cry in 2023 is, oh, well, if these you know, these families just parented their kids, will you just illustrate it that? What if you're in a community where by the time you turn 18, kids, a lot of kids are in prison, or they're dead? You know, or they're part of a gang? They're not being taught Mr. Rogers philosophy, you're not I mean, it's a whole different set of laws. And so you got a lot of single parent families, you got a lot of grandparents raising children. And so you can't just point a finger and say, Oh, if you just do that thing, it'll be solved. But when you reverse engineer a lot of the problems that as far as I can see, whether it's the kind of Reefer Madness kind of racism that was founded on and also the whole loitering laws, sent a lot of our, you know, people of color into prisons. You know, it was set up for failure. And you look at the prohibition of drugs. What we've done is you criminalized a mental health issue. And we've sent the people that are suffering from that into the underworld. And we wonder why 80 years later, people are talking about building walls to keep Mexicans away when we created that fucking problem in the first place. So, you know, that was a huge one, like, set this question up. So again with that prohibition, what have you seen as far as the ripple effects of the illegality of addiction, and the empowerment of the underworld on filling our prisons full of men and women?



40:29

Oh, it's, it's the perfect storm, right? I mean, when you look at it, and for me, some of it, some of it started with Willie Horton. And I don't know, if you remember or have read about you, we're probably not live in the United States at this time. But, and you're a little younger than me, I can tell by the color of your hair. But when George Bush, the first was running against Mike Dukakis for the presidency, Mike Dukakis was the governor of Massachusetts. And, and he was winning by a lot. And George Bush's team came up with this idea of all we got to do is find a guy on parole from Massachusetts who did a violent crime when he got out. And then we'll just go on national television and say, Mike Dukakis is soft on crime. And they find this guy, Willie Horton, who committed these violent crimes. And they say Mike Dukakis is soft on crime, he's soft on crime, he's soft on crime, look at me let a murderer out of prison, and it worked. George Bush became president, every politician has learned that lesson since then, it's how Bill Clinton became president, you know, comes out of the south, southern Democrat who has this tough on crime message. Biden, when he was in the Senate, back then that was his whole gig. And judges learned it, you know, we've elected judges in the United States, they know they gotta be tough on crime, prosecutors, when they're running for office, they gotta be tough on crime. But the reason it's in governor's for sure. And the reason it's such an evil cycle is because it's one of the few issues where you literally can take a position that will both help you get votes from the populace, and you can get support from different powerful communities and money. So when you say you're tough on crime, you know, you're going to get money from the corrections industry, support from the police officers union support from the prosecutors Union, and the voters are going to eat it up. So you're going to both get elected and get that kind of support behind you. Whereas things like guns, other topics, you take risks, getting up in front of a podium and supporting those things. But it's a win win for politician to be tough on crime. And so that's how we just keep building prisons, building prisons, building prisons. Now interesting

phenomenon, if you pay attention to it recently, and it's interesting you brought up immigration, is that in California, for example, we've decreased our prison population in the last five years by legalizing marijuana by reforming our three strikes law, number of things that now we don't have the biggest prison population anymore, Texas is now number one. So what's the new growth industry? The growth industry is immigration detention facilities. And that's what's being built. And the people who build them are out there lobbying to change immigration laws to make them arrestable offenses. And you see the politicians talking about convoys coming from the Honduras. And, you know, people are crossing our borders, and it's this big, evil thing we're supposed to be concerned about. That's treated basically at the level of, you know, Russia invading Ukraine. And it's just an absurdity. If you really look at the reality of it all, you're looking at a country that has extremely low unemployment, that needs immigrants to be the backbone of our economy to do the hard work. And yet, it works. Three words, slogans, build a wall, lock them up. And unless people get into conversations like you and I are having, we really get into what's really going on here. Most voters have not a clue and fear, you also have, by the way, the beauty of the strongest political tool you can have in your toolbox. And that's fear. And that's scaring people into voting for you. And if you can make that you can make voters scared and you are going to be the one to protect them. That's the best position to be in. And everybody and you're in Florida, where it definitely is a major source of political process with from your, your governor on down.

J

James Geering 44:29

Well, speaking of the prisons, and the war on drugs, and a lot of people and it's been amazing the genesis of this conversation from when I first asked it seven years ago to now a huge amount of our law enforcement community are also saying this war on drugs isn't working. You can't arrest your way out this problem, which is really really, you know, invigorating to hear from our men or women in uniform. And they don't want to leave their you know, their station looking like they're about to go in Afghanistan, but this is the crisis we've created a lot of us rates and even our schools, our children are literally having to rehearse their own murders in America in these Code Red drills, which is heartbreaking. When I talk to my veteran, you know, guests, the the element of the military industrial complex comes in. And again, from a non military members eyes as a pure layman, the checks and balances element of the you have a world war two scenario, we need to pick up arms and fight. But where's the resistance where we've simply going into a nation or staying in a nation? Because there are a lot of people making a shitload of money while our boys and girls are out there dying. So talk to me about the lobby slash financial pool to maintain the status quo, this failed kind of judicial system that we have at the moment.

o

45:48

Yeah, I mean, it's it. There's an industry there that's going on. And there's also we're in a really weird time in this country. I, I was on a panel a few weeks ago in Los Angeles, talking about my book, and I had some fairly radical thinkers on the panel. And the woman who was hosting it was an LA Times reporter, who was a big believer in getting rid of police. And she said, you know, Professor Brooks, I've read your book, and, you know, you don't advocate, getting rid of the police. And she's kind of looking at me with disdain. And I said, Well, you know, I've spent a lot of my life working in Latin America, I've been in countries where there's either not really any police, or if there is police, they're not really doing anything to help people. And I think, you

know, when you have an American view of this, you can have this kind of, you know, just myopic kind of just fantasy view of what a world looks like without police. And I said, I'll go along with you on should we shift resources to some social services that every police situation doesn't require an armed response. But the idea of abolishing police, it's just make believe that that would be a better world for us to live in. And it but it's such a it's such a hard time right now. I've got I've got my, my here in the UK, as you know, the police aren't armed, particularly up in places like I am now and my sister in law's boyfriend is a police officer in Derbyshire. And he doesn't carry a weapon. And he has a nightstick. And he told me he's never used it. And he's this big guy. I said, Well, what do you do, like there's a lot of bar fights, as you know, and Britain on every Friday, Saturday, every night of the week, I mean, and one of my theories in that, by the way, is people aren't as afraid to get a bar fight in Britain, because you don't think anyone's got a gun. So you know, maybe I'll get my butt kicked here, but I'm not going to be dead. So you see a lot of these fights, he says he just wraps his arms around him and falls to the ground. And he's like this 250 pound guy. But we're in such a such a weird time that we have militarized the police were having the police dealing with these drug cases that have ended up being extremely violent situations. And we have fueled all this. And you know, I don't know I have a great deal of sympathy of someone being a police officer in 2023, who's going out there, just trying to do a good job, and help people and gets drawn into the job for that. And then you're seen as the enemy. And and I don't know where we go with this because everything is black and white. Right now in the United States. It's either you love guns or hate guns. It's either your it's all this or that. And there's no discussion in the middle, there's no like, well, maybe we could have some regulations on guns, maybe we don't want kids to be able to buy them in Walmart. But you have to be taking one side or another on these issues. And that's why I think it is very hard to be involved in law enforcement. And sitting on that panel when I'm seen as a kind of, you know, criminal defense attorney, you know, fairly progressive guy. And this panel, I was all of a sudden, like the evil, you know, pro police. It's such a weird place to be sitting. But that's what you end up but you're this this war on drugs in the hallway, we've built that all up over the last 30 years is what's mostly led us to that. And there's also no conversation, by the way, and I spent about a third of my time in Latin America now. Because I do speak Spanish. I spend a lot of time training lawyers and Mexico for the first time in 400 years to start and have trials. And so I teach Mexican lawyers, how to do trials, how to cross examine witnesses, how to do opening statements, things like that. But one of the things that discussed in a country is while we're doing this war on drugs, what's really happening in Latin America is we're flooding Latin America with weapons. And so you know, we're up here complaining about people crossing the border to come find work. And of course, drugs cross the border and people trafficking people because we've made all of it illegal and built an industry around that as well. But meanwhile, hundreds of 1000s of weapons are going the other direction, because the US is where those come from. And those are what are being used to kill young people all throughout Latin America. And you never see any discussion about that in the United States.

J

James Geering 50:11

Well, it's never in the addiction conversation. You know, this is what what is so maddening if you listen to and I think Portugal is a great example, because they haven't legalized or decriminalized addiction, so all their resources all the time and the courts or the police resources, and now going to fighting people selling drugs, and people smuggling drugs. So the addicts, which is the vast number of arrests are filtered into simply an education, this is the addiction resources available to you. This is the mental health counseling. These are the jobs that we have to try and get you back on your feet, get you in a home, etc. And so it's a very

progressive, proactive way of looking at it, that addiction is a mental health crisis, not a crime. And then the you imagine that someone gets funneled into those, they're not arrested, so they don't have a criminal record, which is yet another barrier to someone getting back on their feet. But the ripple effect then is you've cut the head off the snake, you know, we I think I believe the US is the largest consumer of of any type of drug but even opiates alone, we've consumed 75% of the world's opiates. I mean, it's insane. And then we have the audacity to look down on those at the border. But if you remove the illicit sale of drugs, what would happen to the cartels? What would happen to Colombia years ago, you know, your supply and demand is basically economics. But it's the ego and it's the you said the bullshit from the politicians or Kamala Harris, you know, with her stance, and everyone forgets that Trump wanted to execute five black children in Central Park Five, you know, these mouthpieces aren't even matching the very public holy buildings that they supposedly go to when they worship, Jesus wouldn't be crying for five dead black people in New York. You know what I mean? So this is what I find so maddening is we, we, a lot of people go to Holy buildings and talk about kindness and compassion, yet there's nothing but but you know, hateful speech when it's actually on a public platform. And if we, the people, ignore the extremists and stand in the middle, which I think 80% of us are there and have these middle of the road conversations and ask other countries in the world, Norway, tell me about your present prison systems, Portugal, tell me about your drug policy, Finland, your school system, and have the humility to learn from other people, we will then I think, make a huge impact on this problem.



52:33

Yeah, we've never really done that. I mean, I'm sure you realize from the years that you've lived in the United States, United States is very isolated from the rest of the world in a lot of ways. And even when you're educating people about ways things are done in the rest of the world. They'll say things like, that's not the way it's done here. There's almost like an indignant thing about it. Michael Moore did a documentary I don't know if you ever saw called, where do we invade next. And he goes throughout Europe to show different things like in France, how they have children at lunchtime learning how to cook their own meals and having these fantastic meals and the German school system and as you say it Scandinavians prison system and Portugal's where they deal with drugs. And it's just it's a, it's sad, because these utilitarian solutions, which they really are, aren't looked to because they're harder to explain and accept. And then, as you said, religion gets involved. And one topic, we haven't talked about the fits in this as well as the way we deal with sex workers in the United States. In Europe, a lot of Europe just recognize this as something that should be regulated that these women should be protected, that it shouldn't be something we're putting them in prison for. Because how does that solve any problem? I mean, are people not wanting going to want to have sex anymore? is, are we going to get rid of that urge? Are people not going to pay for sex anymore? And he sort of realized, like, you can't do that. And when I practiced in DC, when I first got out of law school, I represented a lot of sex workers. And I saw a crazy study once that showed how expensive how much money the District of Columbia spent every year, just by having being a sex worker being illegal. And it was something like \$200,000 Because every time they got arrested, you appoint a lawyer, then it'd be a prosecutor, then they'd be a judge dealing with it, then they'd be clerks. Then every minute they're in court. There's 30, lawyers all billing the government who are waiting for their case, then you put them in jail, and you're paying for corrections costs, and then they get out and then they go right back to it because you haven't done anything to change their circumstances. Their circumstances are now worse than I've worst psychological issues. They've got worse economic issues. They've got lower self esteem, all those kinds of the things that if you took a utilitarian approach to it and said, like how can

we get to the root of the issue here of Why are women being sex workers? What are the risks that they have in that job? What are ways to help? them and treated as a problem, then you take a totally different approach than if you take approach of, you know, this is immoral. And these people should be punished for doing it. And that's what gets us caught up in this. And that's why religion and and all this kind of stuff just gets us to a bad place ultimately, because we're not thinking of good solutions where we're just reacting. And politicians manipulate us with that stuff. And it works.

J James Geering 55:26

Yeah, well, we're also distorting the message. I mean, I'm pretty sure Mary Magdalene was in that career field. And Jesus seemed pretty cool with her. So I mean, you know, I mean, I'm tongue in cheek, but it's true. Like, you tell me about these books, you tell me about these stories. And you know, you talk about them, you study them. And then you walk out the door and do the complete opposite. So you're not even doing what these holy books are telling you to do. And so that kindness and compassion over and over and over again, that little girl never dreamt of being a sex worker when she was in kindergarten, that little boy never dreamt of paying for sex when he's in kindergarten, I would argue that there's a mental health element to the road to prostitution most often. And there's probably a mental health road to the desperation that you need to pay for it, that you're not able to have healthy, nurturing relationships. And it's not a judgmental thing. I just think we're in this kind of global mental health crisis at the moment.

o 56:16

Yeah, no, I agree with you. 100%. You know, it's funny with religion, I was raised by my mum was your classic Irish Catholic. And, you know, it's going to church all the time. And I stopped doing that when I got older. And she said to me one day, she said, You know what, I've come to terms with the fact that you don't go to church because I know you go to work every day and you do work that that's consistent with my beliefs, you know, and your time is spent doing that, getting helping innocent people helping the lowest of the low. And, you know, so one of the best conversations I ever had with her and she was just hardcore Irish Catholic but did recom did recognize ultimately, it is about values and often that's lost in the the whole thing of organized religion of what is it really about?

J James Geering 57:06

Yeah, yeah, I had Wayne Dyer once say, you know, it's the point is not to be a Christian, it's to be Christ like meaning that's the examples written down now go outside your front door and do the same thing which I thought was was perfect. Whatever your religion. Well, of these these pieces, there's a lot of people listening in the first responder communities. So a classic example from my own life of a complete disregard of GE, lack of education, ownership of your profession, happened to my son when he was in middle school, he was going through some hit in his mind was divorced in his mother was dating someone else, there was a lot of tension and some, you know, a lot of physical arguments going on. And my son was just in a bad place. He was seeing a counselor at the school talking to her. And one of the classes he kind of had a you know, just a depressive moment really broke down was crying at his desk. I'm driving back

from the fire station that morning. And normally, he's letting me know that he's he's home. And I don't get this this phone call so I call and he answers and he's in the school. And he says, Oh, they I've got to give you the phone to this the police officer so anyway, there was a principal I'm sorry, long story short, he had literally been having a little emotional breakdown, not not violent, not threatening self harm nothing. And they ended up Baker acting him without my consent without talking to me and they stay locked him up for three days. A microcosm version of what we're talking about. Through my discussion of this conversation, and a lot of other people that have been doing this fight a lot longer the laws were changed and what those to the principle in this fucking awful SRO school resource officer did to my child, they would actually be locked up now because they basically kidnapped him. There was no grounds they deviated from protocol 1,000%. But I got to see the negative result of awful policing, and that woman should have lost her job. And I've say this every time I hope she does, eventually, but anyway, that's beside the point. Talk to me about what you've seen from the police officer level that have contributed to a lot of these wrongful convictions that you've overturned.



59:25

Sure. Well, first of all, I think you know, when I first got out of law school, I was a very aggressive young criminal defense attorney and I thought that you know, a lot of times people are out to get my clients and what I've learned in my you know, three decades doing this is most people get up every morning, put their pants on, try to do the best they can in their job. Whether you're talking about police officer, whether you're talking about a dentist, when we're talking about a plumber, most people try to do it. And life is a bell curve, right? I mean, the bell curve of there's a small percentage of people are extraordinary what they do, most of us fall good to Okay. And then there's the terrible and the horrible. And I always reflect on that. And I had an example of of that a few years ago where this officer had done the most ridiculous photo array I'd ever seen where it was a bank robbery. And they knew the one guy who did it. And so then all this officer did is he put all these photos of everyone who lived in this guy's neighborhood, in the photo array, where none of them match the descriptions given by the witnesses except my client. And so my client, of course, gets picked. And when I first looked at, I thought, This guy must have just not cared and just been like, I'm just gonna take somebody off the street, I don't even care. And I get my cross examination already for that. And I get up and I tear into this officer, like, have you read this manual on how to put together photo raise? Have you read this report of it, and I'm going at him. And he's, he's befuddled. And he comes up to me after my cross examination, he says, Look, if your guy's innocent, I am really sorry, like, I really did not know how to do these photo arrays in a proper way. And, and it ended up that he said, You know, I hope your guy gets out. And I really see really just had not been trained on how to properly do this thing. And he was just not good at it. And so, you know, what I've seen in my career is, yeah, by and large, particularly United States, and again, I work in Latin America a lot. So I see a lot worse stuff down there. The pay for police is so terrible in Latin America, that you can make more money working at McDonald's. So they have about that much care for their job, whether they have it or lose it. They're also highly corruptible, particularly talking about the war on drugs, when people are willing to pay them large sums of money to look the other way, or assist. I was I was asked actually in Mexico by a guy who was talking to people running for president, he said, Give me a simple policy that we could improve the police department in Mexico. And I said, here's my idea, fire half the police in Mexico and double the salary the other half, they said, You will then have higher quality people and you can get rid of all the the worst ones from the force. I don't think that's true. In the United States, I think we have this sort of small percentage. First of all, very small percentage of people are actually trying to set people up. I have seen it in my career, we did have the

Rampart scandal in Los Angeles, where there was a unit of the police department that were actually operating as a gang, and were selling drugs, buying drugs, selling weapons. But these are the sort of extraordinary cases that I think don't come along very often. And then what I've seen mostly is just that sort of thing that this officer didn't know how to put a photo array together, I've seen innocent people go to prison, because officers sometimes are poorly trained. One of the things I explore in my book is the difference between police officers in rural communities and police officers in the inner city. And what I've seen in rural areas, is not a lot of training, for example, on how to process homicide scenes, because they don't have a lot of them. And you see a lot of contamination going on. And you see a lot of mistakes, where they're not getting time, a time of death analysis isn't done, or takes hours for the police to get there. And so in California, where I practice in rural areas in these small towns in the desert, and I also practice in Los Angeles and these big cities, I see a huge contrast between training and resources. So I think just like everything else we're talking about today, there's no simple answer to any of this there is occasionally, just like a lot of people think that everyone in prison is associate path, and I should be scared to death of them. You and I both know that there's this tiny percentage of real sick individuals who absolutely will kill you and need to be locked up. And there's not really a lot to do in those situations. It's a tiny percentage of the prison population. Most of them are people who made poor decisions, who had drug addictions, had some other mental health issues came from poverty don't have skills, and could be turned around. And I think it's the same thing. When you look at law enforcement, I think there's a small percentage of real crazy dudes who for some reason went into this field and you know, are corrupted easily. I think there's another percentage that just are poorly trained. And I think overall, you look at the police force to doing a decent job. And I think that's why the idea of getting rid of the police is just a ridiculous notion. Instead, what we should be doing is better training, better screening, higher salaries, more resources, and really think it through from utilitarian perspective. So yeah, and then you know, things like the read method that police are trained on. We now know 17% of innocent people who were wrongfully convicted can test. So we know that innocent people do sometimes confess. Well, I think one of the problems that we have is the resistance to the reforms that we know can make that better. And one of them is stop using the Reid technique, which is a technique of interrogation designed not to get the truth, but to get the suspect to agree with the narrative the officer already has. And after 12 1314 hours, often officers get guilt most of the time they get guilty people to confess, but every once in a while, it's also it's an innocent person who just went along with the story eventually, because they wanted to get the hell out of there or had been browbeaten or for whatever reason, we now know there's better ways to do identification techniques, like six pack photo raise, we now know don't work. But it's so hard to change police procedures, and it's not because of the officers on the ground. It's because of lawyers like me, usually, but they're representing the police department and the people who are in charge not wanting to make changes and resisting them. And so we can do a lot of things better. But I think, you know, what we have to start with is okay, what are actually the problems? What are we really looking at? What's the utilitarian solution to that?

J

James Geering 1:06:13

When you watch outcry, and I had Greg Kelly on the show, you see, so basically, he he's staying with a family friend, his mother is sick, so they've moved away closer to where she can get treatment. He's one of the high school football stars. So he moves in with his friends family, who's also on the team. The family happens to have a kind of kindergarten within their or daycare within their home. One of these kids makes an outcry and said the guy that touched him was Greg. So they do a full investigation on Greg Kelly, and totally disregard interviewing

basically, anyone else in the house, Greg gets accused of basically pedophilia, which I can imagine is absolutely horrific when you go to prison with that tag on you. And has this amazing lawyer Keith, come in Keith Hampton was his lawyers name. And it just you know, again, someone who like yourself from the outside looking in was going something's not right here. But when they start unpacking the case, and the interview techniques, and the kind of it seemed like it wasn't so much vindictive, as at the moment that mistake was made, there was just this compounding refusal of lack of ownership of their mistakes, and doing the right thing saying put my hand on my heart. I made a mistake. This wasn't the sky, we need to go back and investigate. So And what ended up happening that predator was still free, he ended up raping another woman until they finally figured out it was him the whole time.



1:07:44

Yeah, I've had a few cases like that, sadly. You know, it's heartbreaking. I had a guy named John Stoll spent 20 years in prison for child molestation. And when the kids were older, they all came forward and said, It never happened, that the police just told them what to say. And they just said it. And then they thought, well, they must have molested the other kids. So what difference does it make? It didn't happen to me. And when we got them all into court, they all admitted that it never happened. My client, Brian banks is 15 year old girl, so she's raped. Nobody investigates it, no one goes into it, he ends up going to prison coming out. He's a convicted sex offender that now can't live near schools or playgrounds and has to wear an ankle monitor. You know, the pen pendulum always swings on these things. Like they weren't prosecuting any child molestation cases before the 1980s. And then the 1980s they started looking for him. And often when you look for stuff you find it on it's not there. And, and so yeah, and uh, you're right, it is the worst thing to go to prison for. It's amazing. You can even survive prison as a child molester is convicted child molester. It's very, very difficult. And it's tough because when I talk about it, I think people get the idea of like, oh, I don't think child molestation exists. And that's not it. child molestation does exist. Child abuse does exist. But you gotta be careful how wide a net you put out there, because you're going to catch some people in it that that didn't commit those crimes. And those investigations have to be done very well. And it's very, and when you interview children, you can't suggest stuff to them, because often they just parrot it back. And in the John Stoll case, for example, the kids it ended up we found out the kids not only said John molested them, they started saying the police also molested them and the prosecutor molested them and the judge molested them. Of course, none of that is in any of the police reports. But ended up that's what they started saying because they would just you know, they just start saying this stuff crazy stuff back. It's It's heartbreaking those cases.



James Geering 1:09:40

So that's such a, you know, a pertinent topic and sadly, a huge amount of people that be on the show, especially a lot of people that found themselves in a very dark place mid or after their military career, their first responder career, a huge like a startling percentage of these men and women were sexually abused when they were children. So clearly At least in my profession that is, you know, a very, very real thing. How you know, what, what would you tell agencies as far as training, education bringing in, you know, experience forensic psychologists? What are the tools that you would need to make sure that you absolutely hammer down a true pedophile? But also, you know, not arresting someone and accusing someone falsely, who isn't?



1:10:24

Well, it's just like any other police investigation, right? You have to be so careful not to contaminate the evidence. And if you start thinking about it from that perspective, you have a different approach to it. And you absolutely contaminate the evidence, when you suggest to people things you think they've done, things that have happened, things that have happened to you. And with children, they're just so fragile, like you can convince a child of anything. I have, I've got an anecdote in my book, where I talk about how if your child wants to go to Disneyland, in three suggestions, you can convince your child they've already been to Disneyland. You just say, you know, it's a five year old girl, and you say, remember, I bought you that red dress at Disneyland, and you bought the red dress at some local shop. And now you confuse the child because you have a real facts of the fake fact. And then you say, remember, I got you that cherry coke at Disneyland, and you got the cherry coke at a movie theater. After three or four combinations of real facts and false facts, that child will have a memory of going to Disneyland. And you know, it's cheaper, you don't have to wait on any lines. My children have no idea what's true from their childhood. But it's just so easy. If you look at the I don't know if you've heard of the McMartin preschool case, but it was the most expensive trial in the United States history. And it was because these children said there were underground caverns at this preschool where they were doing all these rituals and, and they ended up excavating the entire neighborhood looking for these caverns. And the whole thing was just children's fantasy, because they were bouncing back and forth with the investigators these crazy facts. And so yeah, my advice to any investigator is approach an interview with an adult or child, as you would any other examination of evidence, being sure not to contaminate the evidence through suggestibility. It's the same thing when you're, you're doing a lineup. Right? You see, you cannot have an officer in the room who's investigating the case and knows who the suspect is participate in a lineup, because they're not good poker players. So there's always some kind of like indicator. And but what I've seen, even when the officers do it really well, and they don't say anything, the witness will say, it kind of looks like number three, I think it might be number three, and the officer will say good job. We got him great, or just like respond in a positive way. Well, now in that witness's head, when they go to court, they're 100%. Sure, and they're like 100% Sure, it's that dude, and they will never 100% Sure. So contamination, we just think of it as like, don't walk on the crime scene, you know, don't do this or that with physical evidence. But when you're doing an investigation, you can contaminate any type of evidence, including people statements, people's memories, all kinds of things. And if you approach it like that, you get experts who understand how to how to interview children, you don't do it yourself, unless you're an expert at it. Because it's very, very difficult to get information from a child without giving them information. We're all programmed to give children information, and then seek confirmation of it. And that doesn't work.



James Geering 1:13:36

So you had the first case with the woman forsook who accused the Puerto Rican woman of that initial murder that kind of led you through this path? Talk to me about the metamorphosis of the California Innocence Project as the years went through.



1:13:50

Yeah. so I decided to after I got MS Melero. Marilvn Melero. after she got her death sentence

reversed by the Illinois Supreme Court. Some lawyers from the Illinois public defender's office handled that and then went back to trial, and I took her case back in front of a jury, along with some public defenders. But the problem was the court would not withdraw her guilty plea, they would only let me do a reset and sing. So I convinced the jury to give her life sentence which was their only choice life or death. And then my experience working on my case decided I decided to go start the California Innocence Project because California was, you know, the biggest prison system. There was no project out there. There'd been a few projects starting around the United States, and that was in 1999. And since then, that's what I've been doing is investigating cases of wrongful convictions. I've got a team of eight lawyers, full time lawyers. I've got about 100 volunteer lawyers who work with me. I've got any any from 20 to 40 law students at a time, and we receive 1000s of letters a year, and we investigate every one of them And we pick out the cases we believe that we can win. And we've been able to walk 40 Innocent people out of prison. We've changed about 12 laws in California to improve the system. We've I've trained hundreds of law students and lawyers on how to do this kind of work. And but sadly, it took me 27 years to get Maryland ultimately out of prison. I actually started that case when I was 29 years old. And I finished it last October. And I'm 57. When I started the case, she was just 21. Now she's nearly 50. So yeah, the work is hard. It's very hard to unring the bell once someone's wrongfully convicted. There's a number of cases I've worked on for 10 to 15 years before I ended up walking the person out of prison. And it's very meaningful work. I've I've loved it. But it's not easy.

 James Geering 1:15:53

Well, one of the beautiful things about the concept of the book is you're trying to show the average person how vulnerable they are. I think when we look at a lot of these innocent project cases, it's it's a convict that is, you know, being released from a prison. So it's Oh, that's not me. That's that person that was in prison. So it detaches you from it. When you were on the public defenseless podcast, I think I've got that right. Great interview, by the way. You talked about a husband's wife being killed and him being falsely accused. Talk to me about that scenario, because that seems like the kind of thing that any one of us could do, we come home from work, we're faced with this nightmare situation. And then you know, the next thing you're behind bars.

 1:16:39

So I've had several cases where husbands wives, boyfriends, girlfriends, are convicted of murdering their partners. And one thing people don't realize is because more than 50% of homicides in the United States are domestic, the partners are always a suspect. They're always going to be a suspect. And often, that's correct, because there is like I said, it's like a child molestation, a lot of times there's smoke, there's fire. But sometimes they're not the person who did it. And it's not obvious who the person is that did it. And maybe there's some circumstantial evidence that then ends up convicting them. So for instance, Kim long my client came home one night, found her boyfriend beaten to death. Now, there were a couple of people who had reasons to kill him, he actually had a restraining order against one person. And yet, because Kim had the unfortunate occasion that she got an argument with her boyfriend earlier in the day in a bar, and then left the bar with another guy. When it was presented to a jury, they convicted her. The judge, actually, after the jury convicted or said, If this had been a bench trial, a judge trial with no jury, he wouldn't have convicted her. He didn't think there was

sufficient evidence, but he didn't reverse the jury's decision, which judges typically will not do. And so she ended up in prison seven years, until we were able to prove definitively that she was innocent that he was dead by the time she got home, because mistakes were made in the Time Time of death analysis. And also another key piece of evidence was everyone agreed that whoever killed her boyfriend would have had blood on them. And the prosecution had a theory that she must have changed her clothes when she came home. And the defense attorney sadly, did not see a photo that was in her arrest photo, that she was wearing the exact same clothes that the witness described her as wearing at the bar earlier. But anyway, we got her conviction reversed and brought her home. Bill Richards was another client came home found his wife beaten to death. And they couldn't find another suspect. So they tried him four separate times before they convicted him, just basically because they couldn't find anybody else. And so when I talk about my book, I just did a presentation at a bookstore in Brooklyn. A couple weeks ago, I kind of did the had the crowd raise their hand every time there was a clause in my book that might lead them to prisons, I said, How many of you live with your partner, bunch of hands go up, I said, Well, you just increased your chances of going to prison. Because is living with someone who might end up dead increases your chance the same way having children increases your chance of going to prison, because there's a lot of bad shake and baby death cases. Having you know, there's bad sexual molestation cases, that now you've put yourself at risk by being in proximity to children. And then there's certain neighborhoods you're going to live in that are going to increase your chances go into prison, your your gender, your your race, your socio economic class, all these things factor into your statistical chances of ending up in prison. And as you saw in my book, I even if it have ultimately accepted myself that I might end up in prison. So because I've seen so many other innocent people that happened to that I literally have a plan for day one, which is, you know, provide my services to the gang leaders and tell them keep all these other guys away from me and I'll be here Prison lawyer and try to get you out of here. So it's, it can happen anybody and that is why I wrote the book. I think there's a lot of I think, when I first started doing this work, people didn't believe they're innocent people in prison. Now people believe it, but they don't believe it could happen to them or somebody they know or a family member. And that's just not reality. It can happen anybody?

 James Geering 1:20:20

Yeah, well, again, I think if people watch out cry, and in that show, they even talked about that other preschool event that you referenced with the underground tunnels. But you know, he was doing nothing wrong. He was a successful high school football player, great grades girlfriend. And you know, none of it added up. But you took some horrific policing, and then a complete lack of ownership along with that carrying through through the courts as well. It was just an absolute recipe for disaster. And, you know, I think it's a miracle that Greg wasn't murdered or took his own life before we realize what was actually going on.

 1:20:54

That's tragic. Absolutely.

 James Geering 1:20:56

Well, you touched on race, I want to just unpack that for a second. When, for example, you hear people say, you know, police department X targets black people, when I, for example, worked

in Hialeah, Florida, with 96 98% Cuban, and I was safe, a police officer, not a firefighter, everyone I arrest is probably going to be Cuban, because that is the environment they're in. So you know, I would argue as a responder has worked alongside some great members of law enforcement, despite some of the poor examples that I mentioned before. Now that these people are predominantly doing their job, but the environment they work in and as you said, the socio economic struggles and criminal elements within that society or that that area, contribute to a disproportionate amount of people of certain backgrounds, ending up behind bars. With the race issue, talk to me about you know, that element influencing the likelihood of incarceration, and then what are the contributing factors to that?



1:22:01

Sure. Well, I think first, it starts with anyone who believes that the criminal legal system isn't racist, must believe that society isn't racist. And that doesn't mean that everyone is racist within that system. But the truth is that the criminal legal system is just a small part, it's a microcosm of society at large. And society at large has its own biases, prejudices, we all have them at some level. Of course, you know, it doesn't have to be at the level of your Ku Klux Klan member to have bias, we all have bias, every time we open a door, we're using bias to do that, because bias is just using past experiences to inform us on our current thinking, our current actions. And so it depends on our lifelong exposure of how we react in situations. So for example, we know from studies that race impacts, sentences people get and convictions that they get, because when people look like people you love people you trust, you have a different response to that than when people don't look like people you love people you trust. And when you look across the courtroom, and you see someone who could be your mother, could be your daughter could be your sister, you're gonna have a different reaction to that. And that's human nature, by the way. I mean, that's why when we wake up in the morning, and you listen to the news, and you hear about all these horrible things, if they're not in your community, or in your country, or something you can connect to, you can go on with your day. If we had empathy for every horrible thing that happened in the world, we'd never get out of bed. So if our first thing is our family, and when that bad things happen to our children or our loved ones, it's devastating. And then that extends to our community, where, you know, we'll be impacted more than if it's further away. And the further away it goes, the less impacted we are. And so, for example, when we look at race of victims, the system just responds differently. And there's many studies that prove this definitively. And there's literally now a thing called white women syndrome, where when a white woman is lost, it's a news story. And if that white woman is found dead, it's now a bigger news story. And now a prosecutor will step into the limelight of that news story. And now, they'll be saying, I'm going for the death penalty on this case, and they will push for the death penalty. And then maybe they'll name a law after that dead white woman. I mean, it's literally that impactful on the system. And we know when people of color disappear. It's not a big news story when people of color die. It's not a big news story. When I lived in DC, every day young black man was killed. And every day it was in the Metro section. And whenever white person was killed was on the front page. And why even asked a Washington Post reporter about and they said, well, it's not news. When a young black kid gets killed, there's real implications to that. And our society now he might be telling the truth that people do stop caring, or get shut off emotionally. And it's not a story. In the same way, what we've seen in the last week, we look at the last week of the news, there is a boat that sinks in Greece and killed hundreds of people, these were all these refugees go down, they're calling for a rescue, nobody comes. Nobody comes in, rescues them. There's five billionaires that are in a submarine going down to see the Titanic. You know, they paid \$250,000 ahead to do it. And

whereas I think it's absolutely horrific, what happened to those guys, and it's horrific, what happened to these hundreds of refugees? It was literally wall to wall coverage of what was going on with that little submarine. Why? Why were people relating more to that story? Why did they care more about that story? Why was it more meaningful? Why did the news give us a background? So we got to know each one of those people who died? And why doesn't that happen with these refugees that are out dying in the Mediterranean or dying along the border of the United States, it's just, we have to see it for what it is, or we're never gonna get anywhere with it. And and it's it's, as I talked about, in my book, overt racism, explicit racism was a lot easier to deal with than implicit racism, because explicit racism is when the law on its face is racist. And that's how Jim Crow laws where we have a long history of racist laws, but we can wipe race out of the laws. But when we're applying it, there's just human beings making those decisions. And we all carry implicit bias, implicit, and that's just the reality. We all have a different life experience. You know, I talked earlier about my life experience in Puerto Rico. I know, because of spending all my formative years in Puerto Rico, I see Puerto Ricans differently than someone who didn't have that experience. You know, I see my best friends, I see my best friend's moms, I see my school teachers. That's, that's because I had that experience. And that doesn't make me a better person. Because I see other things definitely that I didn't experience. We only, we all have the days on this earth and what we're exposed to, and it's going to change us every single day. And we're all we all have bias.

J

James Geering 1:27:23

So that mean that when you watch, for example, the Central Park Five, documentary, and you see how that factored in, I mean, there's there's a lot of a lot of cases where you can hold that up. But as you mentioned, there's also a lot of cases where people are treated fairly, and they're not sent to prison. And, you know, the police and the court system do the right thing. What I'm seeing at the moment is the pendulum has swung so far to this kind of victim mentality of everyone is racist, that it's actually getting in the way of finding that middle ground where we can reform where we need to reform and add some altruism and compassion to the areas that need it. What is your perception of the squeaky wheels on all the on the other side? getting in the way of the actual issues that need to be fixed?

U

1:28:13

Well, I think sometimes people fail to see who their allies are, I think they start seeing enemies everywhere. And that's not a good way to live. I find that sad. Like I said, I do believe to a certain first of all, I do believe that everybody has their own biases, it won't be necessarily, I mean, it won't be necessarily clear cut, either. I mean, you know, you and I have had a lot of experience in the United Kingdom, you grew up here until you said you were 27. Like that has to shape the way you see the world. It's got to shape the way you think about British people, you are one thing and who you were exposed to, and how you think about Ireland, and how you think about Europe and how you look at the United States. So I just think, I think if we recognize that, and we also don't line up, you know, and think about shooting people because they have bias we have to recognize, you know, again, there are the extreme people who are like, Oh, who are racists, who are active racist, who will stand there and talk about being racist. And then there's the rest of us that have our own biases one way or the other. And I think we have to stop making the majority of people, the enemy and see people as allies, because I think it's kind of like the me to movement. I'm going to dabble in this for a minute dangerously. Because

I've had this debate with my wife and a few other people. I think the women have known forever that men sexually harass women. So the only way to get a movement to be successful that me too movement is about getting men to see that. And I think you always have to be very careful with a movement to stay clear with your messaging. And that's why for instance, the Innocence Project and the innocence work I've done we only represent innocent people because we don't want to be just a Defense Organization. because then we lose our mission, we lose what makes us unique. And I think with the me to movement, there hasn't necessarily because there isn't somebody kind of in charge of it. There's not always the best choices made in terms of targeting people is saying, This is terrible. So for example, without saying Kevin Spacey did the things he's accused of, but let's say he did the things he's accused of, when you're talking about guys committed serious felonies, and should be incarcerated for what he's doing. Now we you lump in guys like Aziz Ansari, or people who've done things that are offensive in some way all into one big lump. Of these are all people who should be villainized, you have a problem, in the same way, that when you say, abolish the police, as opposed to shift some resources and change, the way we're doing that is a more productive way to doing it. When you say abolish the police, you've now shut off a huge portion of the population doesn't even want to listen to you now. They're just like, now you're just irrational. So I think that's I think we've not just it's not just been an issue of race, I think it's been an issue about a lot of things in our society, where if we can't stay focused on the problem, we're trying to solve and isolate the group, we start pulling too many people in, and then you start getting rational people saying things that become too PC, things that become too, you know, now I was on board with not using, you know, the R word. I was on board with a lot of these things. But now you've gotten to the point of like, I can't say anything anymore. And now I'm, I'm not on board with any of it. And the politicians love that, by the way, particularly again, you're a governor of just saying, you know, the PC mob, it just becomes now. Okay, now, you're not only not accomplishing something, it's become a negative. I don't have an answer to solve this. I just think we need to be careful in all our movements to not overdo it. Because then it's counterproductive. And it's the same thing I said earlier I said about guns. It's like most Americans meet at a perp at a point where they think guns should be regulated more than they are. Why doesn't that happen? Because everyone fell into two camps. And so the middle doesn't kick doesn't happen.

J James Geering 1:32:19

Yeah, which I've made that comment over and over and over again, because we will have some horrific shooting in a school. And it will, you know, be on television. And there'll be interviewing random people passing the school that had no nothing to do with it whatsoever, and sticking microphones into these grieving parents faces. And then like you said, a submarine comes along and like, oh, sorry, what Valley? What? No, we're onto the submarine now. So again, you know, this conversation is so divisive, but there's no meat to it. And I think where we lose people is that, you know, people are so focused on how their differences rather than focusing on the 80% of commonalities that unites us, you ask most people of all colors and creeds, do you want shelter? Do you want food in your back? Do you want your kids to be safe and food in their stomachs? Yeah, all right, well, then we agree on a huge part of the hierarchy of needs of our family dynamic. You happen to be a Muslim, I happen to be you know, Jewish, or Christian or whatever. Okay, beautiful. We're both spiritual both believe in a higher power. Also commonalities, we don't need to go to Ireland and start murdering each other because you're Protestant, and I'm Catholic. So the moment we get dragged into these extremes, where we're forced by these basically tyrants to to look at each other, as you said, as enemies rather than unite and look at this problem, then fentanyl is killing people regardless of color, creed,

sexuality, you know, income. The same with so many elements, suicide, I mean, you name it, it's killing us all. But as long as we stay divided, we're missing these huge issues that we should be banding together and fixing. And some of the things that we discussed are included in this conversation.



1:33:58

100% if you're saying something I say it so often what you just said, I've never seen this country as divided as it is, you know, I've been in the United States for now it's, you know, 58 years. And I've never seen it like this. Sometimes I think like, how were some of these people who are talking about how did we grew up in the same country? How did we have similar experiences? How do we end up here, where we're on these polar opposites and nobody wants to talk things through and have these conversations like we're having now. It's, we got to get back there. And we got to stop letting politicians lead us around by the nose to get our votes and put us on two teams red and blue. It just doesn't work. A part of it too, is you know, it's also interesting that you know, you grew up outside the country. I spent a lot of time outside the country if you have a different perspective, if your life wasn't limited to just being in one country and as you know, in Britain, you have multiple parties that then have to make coalition's to accomplish things, you know, in Parliament. You can't there isn't just two parties in the UK. There's there's this general notion of, you know, concern Whatever labor, but then the Green Party, all these other different parties, and they often have to make a coalition and then they elect a leader from that coalition so that the leader represents the majority viewpoint. And our system in United States, we thought we're, we're improving on that by separating the president, from the election to Congress. But in the old days, it worked when Congress wouldn't just block everything the President did if they were in the opposition party. But now that's what they do. So now, you can't afford to have two different parties in the White House as running Congress, because they won't go along with anything. And then nothing gets done. It's really, it's really interesting, traveling around the world and seeing different countries, I think that brings that perspective that is hard to maintain in the US. And social media has also done it to us that everyone's in a sound chamber, and it keeps feeding you back. What you like,



James Geering 1:35:56

confirmation bias.



1:35:57

It's such a dangerous thing, that whole stuff, and it just does it to everybody, everybody gets it. I don't care how aware you are of it. You're still there. It's feeding you what you want to say.



James Geering 1:36:12

With that international theme on I hit one more area, and then and talk about one more thing, and then we'll wrap up. But when, because I've traveled a lot, because I've sat not only talked to the guy in Portugal, but seen Portugal and lived in Portugal and lived in Japan and all these

different places around the world. You get so embedded sometimes in the US that you forget that there are lots of places not every place but a lot of places around the world where there aren't gangs, when there isn't homelessness everywhere there were an addict shooting up on every corner. What is what is your kind of philosophy when you when you leave, for example, LA or you know, Philadelphia, some of these places that we do have a lot of this desperation in certain pockets. When you go to other countries is there? Does it kind of is there an aha moment where you're like, oh, you know, the US is unique. And this isn't normal to have children cowering in schools and during a code read.



1:37:10

Well, definitely for the cowering in schools. In fact, I just recently said to someone, you know, it says unique as it's as American as bourbon hotdogs in school shootings, because school shootings are unique American thing. And I don't think Americans know that, that, you know, they talk about Latin America all the time being violent. There's no school shootings in Latin America, like that's when someone goes off and they have a gun, they don't think let me go to school and start killing kids. So that's just one example of that, that becomes very apparent to me, as I travel around the world. I mean, I've seen a lot of places with worse systems with more violence with more crime than the US I spend time in Honduras, which is insanely violent, and what's going on there, and why people are fleeing it so much. But like, like we were talking earlier, if we if we fought globally, and really respected the rest of the world and thought, you know, these people are coming up with solutions all around the world for problems that we really should look to where solutions are happening for these things and model it. It's like, it's like all these great examples. And we think we have all the answers and we don't. So you know, Japan, you brought up Japan, I went to Japan for the first time a few years ago. And I remember when I when I got to Tokyo, I was getting on a bus and they said, what hotel are you going to, and I told them and they put a tag on my my luggage for that hotel. So for the first time in my life, when I'm taking a bus, I'm not every time the bus stops looking out the window to see who's stealing my bag. Because my bag was labeled, it was going and the bus driver was taking them off. And I thought, How the hell did we think this up. And Japan has so many amazing systems, that we just sit back and observe them, they've really thought through systems in a really powerful ways. So yeah, I'm constantly thinking about how something's I was talking to my wife today about real estate in the UK. And I don't know if you got involved in any of that when you're here. But in the UK, you can only sell properties that you list. You can't sell properties that other agencies are listing. And so the only way to be a realtor in the UK is have listings and it basically keeps people out of the business keep it creates a monopoly that only the big real estate companies have listings. And if you don't have listings, you're not in business. And so when you want to buy a house, you got to keep going to different companies to look what properties they have. You can't hire an agent to show you around properties. And it was just an example again, I said of like, the system is terrible, but somebody's making some money off it. That's why it's not changing. And that's why I think you know, there's always someone making money off some bad decision and you know, the fact that now you can traverse the Arctic and a boat in the winter because of global A warming, some people are making a lot of money on the fact that chips can cut through areas that used to be frozen over. And to kid ourselves that that doesn't influence decisions that are made that look very poor. On the surface. His, you know, is naive, I think a lot of times so like there's reasons change doesn't happen. Sometimes it's ignorance and ignorance combined with somebody else thinking, this is working fine for me. Let's keep doing it this way.

 James Geering 1:40:28

Yeah, I think just that traveling lens is so unique. And you know, when you see a solution, a lot of times I hear, but that'll never work here. Well, maybe the exact version wouldn't. But an American version, if you take it and apply it to your state or your county or your country, even? Why not? It worked there. They're humans, you're humans, there's no difference. You know, yes, there's some, you know, steep, deep cultural issues that we're dealing with, as far as like I said, you know, the, the addiction in some of these other areas, but again, so you just keep reverse engineering, reverse engineering. But if, you know, for example, the NHS see and how that was, was presented to the American people as socialized medicine, that you had to have a hammer and a sickle every time he went into the doctor's office was absolute bullshit, because I know it's not fully funded and fully support at the moment. But the principal, the reality when it is that when you get sick, you just go to a doctor, no one asks you for a social security number, you don't have a yellow pages pile of fake paperwork to fill out before you even get any help. And aspirin doesn't cost \$100. You know, it's an altruistic kind system. And I think if it's done correctly, which isn't the case at the in the UK at the moment, there would be a huge push for prevention to have healthier people. And that's where I think they're missing at the moment with some of the privatization elements is we're dry drowning in an obesity epidemic there as well. But the philosophy better

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example than the one you just gave. I wished I thought of that example. Because there's there's no better example of exactly what I was just talking about that, you know, you I mean, they were talking about if we can't have socialized medicine, United States, I think we'll wait a minute. It's not like sharp, and all these companies are going to suddenly give their companies to the government. No one's even talking about socialized medicine, like they have in the UK. They're talking about socializing insurance, talking about giving people insurance to now use these bit this business. But you couldn't break through the nonsense on that, because it's way too powerful against it. And by politicians calling it socialism, it worked as other nonsense. So it's not that that solution wasn't there, the solution is right there in front of us. It's just it's it was ignorance, combined with somebody benefiting from peddling that ignorance, absolute perfect example.

 James Geering 1:42:54

So I want to hit one more area of this kind of legal jigsaw puzzle and then get then go to the book and talk about exactly what people are going to expect and where to find it. But just before we do another thing that's come up a few times, is people challenging the concept that it's a jury of your peers. So we talked about police, we talked about some of the legal issues, what about jury selection, etc, and bias within that group, contributing to some of the issues that we've discussed today?

 1:43:21

Yeah, and that's the thing is, is our criminal legal system is a microcosm of society. And then it's 12 people from society put in a box to make these decisions. And we kind of pretend it's scientific. by putting terms on it. like you must find beyond a reasonable doubt. But we know

reality, those people are going to make decisions like they did the rest of their lives, which is I think, I think I'm hungry, I think I love her, I think this guy's guilty. That's what it's gonna be. So again, all your biases, all your prejudices, all your knowledge, everything that led you to that moment of sitting in that box is going to influence ultimately, that decision. And we're not robots. Now there's problems with using AI to make these kinds of decisions, we're probably going to end up there that we're going to program and a lot of information and a computer is going to make the decision. But and that's got that's probably going to be problematic as well. But it's just crazy to think that that stuff doesn't impact. So for example, I wrote a short story called jury island a number of years ago, and it was on this exact topic. And the concept was that they created an island where they raised jurors, and when you turn 18 You get to choose do I want to stay on jury Island and be paid for all every all my expenses, the rest of my life, and every day, I just go on a boat to a courthouse and I come back to the boat and stay on the island. And the idea was we'd keep these jurors, you know, pristine and unbiased, and ultimately explores how that doesn't work at all. And actually, by separating them from human experience made them more biased, but it It's just that's the reality is that it is they are perhaps in some notion, a jury of our peers, because we all have biases. But it's very different. It's very different for each each individual, each community each case. And it's why being a trial lawyer is an art form, in a lot of ways, is trying to figure those things out trying to read people, and try to weed them out. And it's my favorite part, by the way of doing a trial is jury selection. And maybe it's because I'm a professor, too, I like, I like trying to figure people out, and trying to weed their biases out of them without them knowing I'm doing that. But that's, it's hard. It's hard.

 James Geering 1:45:41

So I was gonna ask you, if you were king for a day, what would you do to lower the chance of a wrongful conviction, but I'm gonna go one step further than that. If you are a king for a year, because you'd need a lot more time, what would you change in society to make a huge dent in the amount of men, women and arguably children that are incarcerated wrongfully or rightfully?

 1:46:11

I mean, I do think it's a topic we talked about earliest decriminalizing. Lots of stuff. I think we always look to the law to be the panacea for our problems in society. If we make it illegal, then it's solved. We've done it with abortion. If we make it illegal, the problem goes away. Even though we know the problem doesn't go away if the problem is unwanted pregnancies, though, we know that those occurred when abortion is legal or illegal, they still occur. So legalizing things is not often a solution to what we're seeking. So I think if we first started by dealing with things like sex workers, dealing with things like drugs, dealing with low level offenses, dealing with not treating nonviolent people different than violent people, and not putting them all in the same place, we could free up enough resources in our system to do the good work of then getting people treatment, getting more mental health treatment, getting more drug treatment. Now, I don't think people realize who haven't been involved in someone with mental health issues of how little there is available in our society for those people. You check yourself even into a mental institution, they're going to kick you out pretty quickly. insurance doesn't pay for a lot of that stuff. People have drug and alcohol problems, can't get into rehabilitation centers, there's not beds, most people don't have the money to pay for ones that are, you know, the

high end stuff that stars are going to Los Angeles, I think it starts with freeing up resources to then better utilize them. And we cannot have the largest prison system in the world. We cannot incarcerate more people than China, they have a billion more people than us. And we incarcerate more people than they do. So if you just start looking at resource allocation, we've really messed up. But we can turn it back by just looking where we're spending money, are we getting bang for our buck for not change it no matter what politicians are saying no matter how you get votes. And so if I'm King, I can do that. Unfortunately, a lot of bad things also come with a monarchy, and who knows, I might be corrupted immediately. Until it happens,

J

James Geering 1:48:24

I think it was the documentary 13th I used to have this this, these statistics in my head and they've kind of fallen out but I think it was something like in 1970, we had around 300,000 prisoners. And I think when that documentary was made, it was in the millions by that point. So again, like the war on drugs, and I've witnessed this, you know, as a firefighter paramedic, you know, I've pulled the yellow sheets over 15 year old gangbangers and prostitutes, and you know, fentanyl overdoses, and you name it all these are kind of ripple effects of what we talked about. But when you have a system that, you know, is multiplied, I think it was like, tenfold in the end the numbers. It's broken. It's not working, you know, but I think the we talked about that kind of military industrial complex element. What I wasn't aware of was the amount of industry that happens in our prisons. So they do a great job in that film of talking about that shift from slavery, to incarceration and having having that work happen behind bars instead.

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Yeah, and people people on Nixon's team, by the way, admitted to that that the the two things the Nixon administration hated were black people and hippies and using drugs and the war on drugs was a way to lock them all up. And and everything about the industry is people ask me all the time. Well, what do you think about private prisons and I say all prisons are private. All prisons are private. This whole thing is just private prisons of the problems is nonsense. Every prison has industry attached to it. All the services, all the food, all the building, all the everything to do with The prison is the most expensive type of industry, whether you're buying a door, or you're supplying food, or you're supplying medical treatment, it's incredibly expensive. And it's a giant industry that is very, very powerful. And it's going to be hard to turn that clock back. But we see we seen in California changing that because we had to take a billion dollars out of the budget a few years ago, and they cut all the university budgets. And when people said where's all the money going, they started realizing it was all going to corrections. And and they're starting to wake up to that a little bit. But we got a long way to go.

J

James Geering 1:50:35

I mentioned noise prison. I had Tom Eberhardt on who was the governor of bad stories I've been on twice now. The second time was with a prison warden from the northwest. I think it was I think it was Oregon. That will kind of start in the model the Norwegian model. But when you look at when you look at an absolute sociopath, like you said, like the one that murdered all the kids on the camp in Norway, he's in a box he's behind bars, he's never gonna see like day again. But many of these people including murderers, were living in these communities now it's

on basta Island, it's you know, they've lost their freedom. But they live together, they cook together, they they clean the home, they go to work, they educate. And so the whole philosophy is one day, I think it's 90 something percent of the prison population will move back into your street. So what kind of person do you want moving back in your children's neighborhood, and their recidivism rate is ridiculously low. The God the wardens on arm there they are, in a violence cases are almost unheard of between prisoners on the guards themselves. So with the kind of prison lenses for a second, king for a day again, what should we be looking at as the next generation of prison systems and philosophies so that we can actually rehabilitate?



1:51:53

Well, if you think about it, we've been so uncreative about it for 1000 years, it hasn't changed. It's just been like lock people up, lock them away. And it's about as creative as if your, your son goes and steals a cookie out of the kitchen. And you say, go to your room for an hour, or your son kills your, your daughter, and you say, go to your room for a million hours, it's literally we give the same punishment, we just measure it by time, there's like, nothing creative about that. So when they say let's have the punishment, meet the crime, let's have the solution, meet the crime. And with some things, you can look at the cause and effect of how people got to where they got to, and we want to get them to a place that they can reintegrate into our community. Because the United States on top of having the highest incarceration rate and largest prison population, we also have one of the worst recidivism rates. And so it is not working, is not working. And so I would say we just we have to be creative about it. And we have to look at every case individually, we got to figure out how people got there. If someone is extremely violent person who's a danger to society, I'm not one of these people who says, oh, yeah, no, let them you know, whatever. They don't have to be locked up. There are certain people we have to take out of society. But it's a very small percentage when we look at the amount that we were doing. So I would just say we got to be creative. We got to look at the problems and come up with our solutions from there. And there's no one simple answer to it. It's very, very nuanced.



James Geering 1:53:20

Yeah, I think that's that's so many areas, you have to have all the conversations. But the most disarming, cowardly thing I hear people say, Oh, but it's complicated. Okay, then let's start breaking it down. Let's start grabbing one piece of the jigsaw puzzle and fix that. Alright, let's go to the next one. Because it's compounding interest, the more you fix the, the easier, it's going to be to address the next element.



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Yeah, I'll tell you a reassuring thing about that. I've got a friend who just became a judge. And that's when you know, you're old when your friends start becoming judges. And he said, part of his judge training was they had them role play, what happens when they give finds out, and they were trying to teach the judges that you give someone a fine of \$1,000, and then they can't pay their rent, they may end up homeless, and they might go down this whole bad path, and to try and get the judges to really think of the consequences of their sentencing that


they're doing that not to just knee jerk, give everybody the same thing. And to really look at that. Because there's I mean, California, the homeless populations is become massive, and people can't afford housing. And you can easily be pushing people over the edge. And so it's that kind of thing. Yeah, I don't want to give a simple answer of like I have it. I do think we got to dig in. But it is literally a case by case thing, and it's a problem by problem thing to think of appropriate solutions. We got to start doing that hard work.

 James Geering 1:54:46

Absolutely. Well, I'm sure people are fascinated. So your book is you might go to prison, even though you're innocent. So talk to me about first why you wrote the book and then kind of give us some overview so people can pique their interest and go on In the Amazon or wherever they buy it from?

 1:55:02

Sure. So I wrote this book because I just heard too many people. When I go do public speaking about wrongful convictions, talk about how they didn't think it would happen to them that, you know, people saying, I would never confess to a crime I didn't do, that would never be me. And so I first sat down, I was on a plane, and I wrote down what I came up with as a top 10 reasons innocent people go to prison, based on the cases I've done. And my publisher thought that was to click Beatty, even though click Beatty sounded like a good idea. So it became you might go to prison, even though you're innocent, but it's still 10 chapters, and each chapter is devoted to a different cause. So in the first chapter, I talk about, you know, the problem with bad lawyering, and how you can think about that to avoid it. I talked about as we talked about, that, you might come home and find your spouse dead. Talk about the risks of wrongful conviction in the country versus being in the city. I talk about what's maybe the leading cause of wrongful conviction, you look like other people in the world, you get that identified. And I wrote each chapter in a way that a regular person could read it and understand it, that even though I'm a law professor, I want it to be something you could read at the beach, and utilize in your own life and talk about with other people. And I want people who read it to be better jurors and better voters. So they don't they're not suckers for all the stuff we've been talking about, that they really understand, like what's going on with this system? Because ultimately, it is our system, we can just sit back and go like, well, I've got nothing to do with people being wrongfully convicted. But the truth is, it's our legal system, it protects us, it protects our families, we rely on it in our lives, so we're responsible for it. So if somebody's wrongful conviction, that's the community's responsibility. If we're putting people in prisons that shouldn't be there, if we're, we're locking people up in solitary confinement, and they're ending up being brain damaged. As a result, we're all responsible for that, because we're allowing it to happen in our name. And that's why I want people to be better informed. So I think it's very readable. And you know, I hope people will pick it up and read it,

 James Geering 1:57:11
and where can they find it?



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So every website bookseller, amazon.com, all those things, and it's in, it's not in every bookstore, I've been to this in some bookstores, you can ask your library to order it or any bookstore to order it. And again, it's you might go to prison, even though you're innocent. You could also, if people want more information, I put together a website called you might go to prison.com. And it's got a lot of videos and News Features and articles and things about all these topics.



James Geering 1:57:40

Fantastic. Well, this is one of the closing questions. That's your book. Are there any other books that you love to recommend? It can be related to our discussion today, or completely unrelated.



1:57:52

One of my favorite books about wrongful convictions is a book called picking cotton. Because it's told from the voice of Jennifer Thompson, who was a woman who was raped. And it's told from the perspective of Ronald cotton, who was wrongfully charged with that rape. And the story goes through their parallel experience. And what I love about that book is it goes to exactly what you and I have talked about, which is you can accept both things. Both things can coexist, people are raped, and people are victims. And then there's people who are wrongfully convicted and they're victims too. And it's sort of like we can meet in the middle and have a conversation that's not one sided. I always have my students read it. It's beautifully written. There's so many good books about these topics of criminal justice reform. But that's a nice simple one. I think anyone can read and get a much better understanding of what's going on.



James Geering 1:58:47

Beautiful. Well, I hadn't heard of that one until I listened to the other podcast, so I already wrote that one down. It sounds amazing. What about movies and or documentaries that you love?



1:58:58

Well, they certainly should see the Brian banks movie available on Hulu. It's about my client, Brian banks and Greg Kinnear plays the in that movie. my actual favorite movie about wrongful convictions is a documentary called press one taco powerplay presented COPPA lay presumed guilty, you can actually just Google it, because the guy who directed it, he just threw it out there so the whole world could watch it. And it's available for free. And you see somebody being wrongfully convicted in Mexico and follow them through the whole process. It's beautifully done the same directory to the series. It's now on Netflix called Duda address, when outlay reasonable doubt. And that is really well done to where he follows a case of one of the projects I've worked with in Mexico, and the city of Tabasco, and you see these guys wrongfully convicted in that case, too. There's, there's so much good stuff out there. I think making a murderer is real interesting. I think the serial NPR series is good. All of it has helped that people are becoming waking up to the problems in the criminal legal system.

 James Geering 2:00:05

Was it making a murderer was the following that family and they have the scrap yard and to this day now what's what's your perception on that particular case?

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I mean, without a doubt Brandon, the nephew was wrongfully convicted. I mean, there's just no doubt that he's an innocent person. You know, and Steven Avery was wrongfully convicted the first time I don't know if he was wrongfully convicted the second time but it certainly is a strong possibility

 James Geering 2:00:31

that because it was right before they were supposed to make the legal pout wasn't it that the second arrest Kane?

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Yeah, and I don't know. I don't know about that part of it. What What motivated that but I know Brandon was innocent for sure because the whole case was fabricated against him.

 James Geering 2:00:45

They still working on that the the Innocence Projects in that state. He has

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up they have other lawyers that are working, but Brandon is represented by Yeah, Laura and I writer who works at the center of wrongful convictions in Chicago and Steve Dresden, who are both great lawyers. So I'm confident they're gonna hopefully get him out at some point.