

Lake Erie Yearly Meeting, July 29, 2016

Plenary Speaker, Natalie Finegar, Deputy District Public Defender for Baltimore

## **“Baltimore’s Uprising: A Window into the Flawed Justice System that Perpetuates Racial Inequalities”**

Thank you, Friends. It’s such an honor to be here. I thought I’d start out tonight with a quote from John Woolman that seemed appropriate, given your theme. I really found one that resonated with me and offer it to you to think about as well:

“Wealth is attended with power, by which bargains and proceedings, contrary to universal righteousness, are supported; and hence oppression, carried on with worldly policy and order, clothes itself with the name of justice and becomes like a seed of discord in the soul.”

This is really a new inspirational quote for my job.

When I was thinking about how to talk about the uprising in Baltimore and the current situation and everything we’ve experienced in the past year, I started to think about dedicating this talk to clients that had nothing to do with the Uprising. They are clients I represented long before the Uprising, but are indicative of the criminal justice system in Baltimore and I’m sure of many of your communities as well.

The second case I ever tried as a student attorney was assigned to me by my law professor. It involved a man who chained himself to the perimeter of the National Aquarium in Baltimore while wearing a dolphin head. He was a concerned over the inhumane practice of having dolphins in captivity. It was not the prize job for assignments in the clinic in Baltimore. In fact, there was a lot of snickering as I got assigned that case. But I loved it. My law professor suggested I read a massive amount of material that my client offered me about the rightness of his cause and about dolphins in general so I could get into the mentality of my client, and it was the best advice that I ever got. I read through a stack of materials that was probably about 10 inches thick, and read more material about dolphins than I did about how to represent him in that case. Since then, I have never been to a dolphin show and have never and will never swim with dolphins. I became convinced that he was right; his cause made every bit of sense to me. In the end, although he wanted the trial to be all about his cause, it was really about a little glitch in the system: there had been a park rule saying you could get a permit to be a protestor in the Baltimore Harbor by applying through the park system, but the rule had been shut down by the Fourth Circuit, a federal court, as being overly strict. They never rewrote the rule because they never read the opinion; there wasn’t a rule in place and my client didn’t have to ask permission to be protesting. So the case was all about the first amendment instead of the treatment of dolphins. I was really excited, but I didn’t realize until last week exactly how much that would hit me as irony.

The second person I want to dedicate this presentation to is a gentleman by the name of Raymond Smoot. You’ll not see him in the news now, particularly. If you Google him, you can read the past stories about him, but Raymond Smoot for me was the beginning and a way to really understand what would happen in the Baltimore Uprising. He was a gentleman who was 51 years of age, incarcerated in Central Booking in 2005. At the time I was the Chief Attorney inside Central Booking and worked in the jail every day. I trained new attorneys to handle bail reviews and then dealt with a lot of pretrials and

client issues. He had failed to appear in court for a theft charge, and the judge issued a warrant for him in the amount of \$5,000 in bail. People who are stealing from stores and then don't show up for court really don't have \$5,000. If they did, they might not be in the stores stealing. He was the youngest of five children, had a significant drug addiction, and some mental health issues on top of this that seemed to have never really been diagnosed. His family couldn't seem to get resources for that kind of care. When the judge heard the presentation by one of our attorneys, he lowered the bail from \$5000 to \$1500, which meant that \$150 could have freed Raymond Smoot. But no one in his family had or could spare \$150, so he remained incarcerated.

At the time Central Booking was extremely overcrowded. Our clients were in what were called "boats." The "boats" were little plastic tubs that were put out in the Commons area. You would lie down on the floor and there would be rats and you would have cockroaches crawling all over you. It was unbelievably inhumane conditions, and probably worse than a lot of the jails in in your community. But trust me, if I came to visit the jails in your communities I could find some pretty good stories there that would be horrific too.

Raymond Smoot had not yet been in Central Booking long enough to get a cell. I think he probably would have preferred to have stayed in a boat, because when you have mental health conditions and you're detoxing from drugs and you're not getting medical attention to detox from the drugs, you can imagine how great it would feel to be in a cell 23 hours a day. There were officers trying to get him into a cell and he punched one of the corrections officers, allegedly. I don't know, I wasn't there, so I can't say exactly what happened. But we do know that a code went out for 20 corrections officers to arrive.

This is an incredibly overcrowded jail, and these officers have not had a minute's training on how to defuse this kind of situation. These are relatively low paying jobs that are offered, basically, to my clients' families. A person that graduates from high school and doesn't have a criminal record can become a corrections officer. So both the folks I represent and the ones that are jailing them, the day to day jailers, are one and the same, and they frequently know each other.

Twenty officers arrived, and Raymond Smoot was essentially beaten to a pulp. His skull was fractured. The Medical Examiner couldn't tell you which blow was the fatal blow because there were so many of them. Eight corrections officers were fired, and three of them were indicted: Dameon Woods, Nathaniel Colbert, and James Hatcher. Raymond Smoot was an African-American gentleman. All three of the officers who were indicted were African-American gentlemen. All were from Baltimore and all three of them made bail. (They had belonged to a union; the union helped them post bail.) The officers went to trial in 2006. At this point, the story starts to fade in the newspapers, and honestly in my own memory, even though I was in the jail, I lived through this, and I was horrified, but I couldn't remember what happened to those corrections officers either. I went back and looked it up. The charges against Colbert were dismissed, Hatcher was acquitted, and then Woods was convicted of second degree assault and murder and faced a total of possibly 30 years' incarceration for what was a heated moment in a very, very charged jail. The news coverage drops off and I can't find any record at all of what sentence he may have received in the system.

This is the backdrop of the Uprising, because what caused the jail to be in that situation, at that point, was a policy being implemented by our then Mayor, and then he was our Governor, and then a presidential candidate, Martin O'Malley.

In the early 2000s, Martin O'Malley decided that he wanted to attack the crime rate in Baltimore City aggressively, particularly violent crime. You can control a lot about what looks like the crime rate in your city by not arresting. You can "not arrest" in drug cases and you can "not arrest" in robberies and burglaries, and on paper things look pretty good. But you can't do much to avoid it when someone shows up in the emergency room with a bullet in them or they show up in the medical examiner's office, and there's not a lot you can do to drive down those occurrences unless you actually drive down the crime rate. O'Malley borrowed a theory that that was being used in New York at the time that came from two theorists in 1982, Wilson and Kelling – the Broken Window Theory. Essentially the Broken Window Theory is the idea that you really sweat the small stuff in the neighborhood. By going after the small, quality-of-life crimes, the broken windows, the drinking on the public sidewalks, urinating in public, etc., with zero tolerance of those, people will then begin to care about their community, they will shape up, and you won't have a violent crime rate. Martin O'Malley put a personal twist on it. I think he understood that Baltimore was in a different position at the point and so he did zero tolerance that essentially just locked everybody up. I had officers describe this to me, and then later I got a message through the administration confirming it. His theory was this: "If you're not out on the street corner, you can't shoot or be shot at." When you're cycling through Central Booking, it takes 24 hours before you can get out, either by getting bail set or released on your own recognizance. That buys 24 hours when other crimes can't happen. And it worked. People were happy initially, particularly people who lived in the better neighborhoods, who worried about the values of their homes going down, what were they going to do about the taxes, or how they were going to continue to survive in this community – they were really happy about how Mayor O'Malley was able to drive those rates down.

But on the flip side of it, we went from a situation where we had what was normally 30,000 arrests to 100,000 arrests in one year. We had built systems to be able to operate with the needs we had, which means Central Booking was built for 1,000 and was designed essentially for you to go through it in three days and then be sent to the County Jail, which is called Baltimore City Detention Center.

Under zero tolerance the arresting officers had to state charges that looked ridiculous, because they had been told by their superiors what they had to do. The prosecutors who reviewed the statements of charges would say "I'm not going to even attempt to prosecute this." That resulted in what were called "release without charges" (our clients called them "walk throughs"). The people didn't understand what happened to them. They would get arrested, and they didn't understand why they got arrested. They would spend 24 hours in Central Booking and then they would be kicked out the back side and told they would never have to show up for court. They would come around the front side and come to our office and say "I don't know what just happened to me." It was called "release without charges" – but the system had never been designed to handle that.

When you are arrested, you get fingerprinted and the charges against you are reported to the NCIS, the National Criminal Repository Information System. When it is reported that you were arrested but no disposition is ever received, i.e., whether you were found innocent or guilty of the charge, that charge would still be on the national record forever. Eventually what happened in Baltimore is that a few people with privilege, with jobs, and privilege with their jobs, and an inkling that something's going on were caught in the "release without charges" game and then later needed to go through a security clearance. For instance, I had someone who was employed and probably arrested for getting a little sassy with a police officer, and when his security clearance was being renewed they wanted to know "What do you mean, no disposition was ever received?" Ultimately, Mayor O'Malley proposed legislation to have an automatic expungement to fix this, along with a big photo op that made him look like he was really liberal. So then the upshot was we're going to arrest you, lock you up, we're not going

to charge you because there weren't any charges to begin with that a prosecutor would use, and then we'll just wipe it off your record. All forgotten, except for the fact that you spent 24 hours in jail and maybe that meant that you were going to lose your home, and maybe that meant you lost a job opportunity, and maybe that meant your kids were taken by the Department of Social Services, and it sure as heck meant that you didn't trust the police.

Community relations between police officers and individuals in these poor neighborhoods where the arrests were predominantly happening plummeted. Then judges and prosecutors and the public lamented the fact that they couldn't get convictions in jury cases saying "We don't understand what's happening here." I'll tell you what was happening – the justice system didn't have any credibility with them.

The overcrowding got to the point where people could no longer be presented for a bail hearing in 24 hours, which was the Maryland rule. People were sitting in jail, in a holding cell which was designed for 8 people, with about 15 people crowded in there and not enough space for everyone to sit at the same time. You had to take turns sitting in the holding cell. And they would be there for two or three or four days. The holding cells were not an area my lawyers normally went to, but we started hearing what was happening and then we understood more by talking to our clients' family members. It was like you were "the disappeared." Family members would call our office and say "I haven't seen my brother for three days; it's not like him, can you check to see if he's in there?" They had heard that's what happens -- you get scooped up and then you disappear for four days.

We started taking a look at what was happening, and it was horrific. Individuals were pounding on the cells. They wanted to know what time it was, they wanted to know what day it was, they wanted to know what was happening with their cases. And in some cases they were trying to say "Hey, we have a diabetic in here that you haven't screened and you don't know he's a diabetic and now it's an emergency care situation." Or, "We have somebody who is suicidal," "We have somebody who is detoxing and we think they have passed out and need some help." You can imagine the noise when you have that number of people, probably triple what are supposed to be in the holding area. It's a deafening noise to hear people banging on those metal doors. I also have a great deal of sympathy for correctional officers who are working under those conditions, trying to deal with this situation with no training and no resources. They are not inhumane people, for the most part. They did care about their jobs. They couldn't tell which was a crisis and which was just somebody saying "I need to get out of here, I can't take it, I'm claustrophobic," etc., which is a kind of crisis too. There was an increase in suicides, there was an increase in diabetic deaths and an increase in deaths altogether, and it became part of my job to notify family members when people had died.

We decided we had to do something about it, and we filed a temporary restraining order to order public safety "If you can't get them to the bail hearing in 24 hours, then you've got to let them go out the back door." In the end, there were about 300 people released before they decided to fix the problem, and those 300 will never forget it.

Raymond Smoot happened in the midst of this situation -- a slew of arrests and overcrowding. When he died there was really kind of a public pause for a moment. It was not as significant as the uproar after Freddie Gray's death is now, but hundreds of people took to the streets for one night and gathered around the jail basically screaming "Tear down the wall." That was the beginning of the Uprising, in my mind. It really goes back a good ten years, to 2005.

Between 2010 and 2014 thirty-one people died in police custody in Baltimore City. It's the highest, by far, of any other region across the state of Maryland. The City paid out \$5.7 million in judgments and settling lawsuits, and whenever they settled a lawsuit they required that you never were to speak about the fact that your lawsuit was settled and how much you received. They were basically trying to put gag orders on people.

Flash forward to 2014. As I said, it had become easy for me to try a case in Baltimore City now. It was easy for me to convince jurors that police officers are maybe not being truthful or maybe are being overly aggressive. Citizens had absolutely no trust in the police, and that caused some problems in the community. Most police officers now lived outside Baltimore City. It used to be a requirement that they were residents of Baltimore City and were in the community. But by this time a lot of the officers hired – and it was hard to recruit officers for Baltimore City and it is still hard to recruit officers for Baltimore City – lived in Pennsylvania, Harford County, which is way north of Baltimore City. The perception you have when you come from a comfortable suburb area into some of the most difficult parts of the city is that all of the city is like that and all of the residents are like that, and it antagonizes things even more.

Throughout my entire career as a public defender I have always dealt with police brutality, I have always dealt with clients telling me about the same officers over and over and over again. I could give you a list of the officers we know about now and so can my attorneys, because we hear the same stories. Again, I don't think they are bad people. They weren't bad people when they were hired for this job, but they haven't been given the appropriate training and the appropriate tools, and they haven't been given good marching orders, and most of them are still wrapped up in Martin O'Malley's thought of "High numbers of arrests means I'm doing my job" and they're rewarded for it by their sergeants. You hear people say, "He had x number of thousands arrests that year. Bravo!" And so it self-perpetuates.

In 2014, before Freddie Gray's death happened, there were other victims killed or injured during police encounters. Let me share the names of folks you probably didn't hear about but who were on the minds of Baltimore City: Travon Fox died in a holding cell from what looked like a blunt force trauma but was ruled that it was not a significant injury and no one could ever explain it. George King was repeatedly tasered in a hospital and eventually died. Anthony Anderson died of blunt force trauma that was recognized to be in the course of a police officer encounter, but no charges were ever filed. Tyrone West suffocated during a police encounter, with causes offered such as asthma and drug-related effects, but again there was not a clear situation. Then right around the time of Freddie Gray we had Keith Davis, who was shot at 41 times by a police officer. He is apparently incarcerated now for a separate charge and he still has a bullet lodged in his neck. That's what was on the minds of the citizens of Baltimore when Freddie Gray died in April 2015.

We shouldn't need a background like that. The fact that even one individual died and there are questions about how he died in the course of a police encounter should have all us disgusted and outraged and worried. But the fact is, that kind of experience had been the reality of the citizens of Baltimore City for a very long time. This was just one more drop in the bucket. Then the video from Freddie Gray's friend came out and it looked horrible; he was being dragged into the back of a wagon.

Meanwhile, the U.S. Department of Justice had been to Baltimore to do investigations several times. The last time I was probably a bit of a smart Alec because I was tired of dealing with them, spending a lot of time with them only to have nothing happen. They came after Raymond Smoot was beaten to death, they came again in 2014, and both times we heard "We really got a lot of valuable information. We really learned a lot about Baltimore. We'll be back."

In early 2015 they did come back. This time they came at the invitation of the Police Department, of Police Commissioner Anthony Batts. I remember having a conversation with them before Freddie Gray's injury and they said "So what is your impression of what is happening with police relations in Baltimore City and with your clients?" and I said "it's a powder keg, it's ready to blow, just add a match to it." They were pretty shocked about that.

Then Freddie Gray was injured and in the hospital and the Department of Justice set up what we would call listening sessions, which was just brilliant. They invited members of the community to come to Coppin State University, a historically black university in the center of Baltimore, surrounded by neighborhoods where some of these individuals were injured. It was a good set up. I wondered what was going to happen, because I knew the frustrations of my clients, and I knew they didn't necessarily understand how the Department of Justice hears things. Sometimes if you're so frustrated and you're so upset, you're yelling and screaming because you're venting your emotions, and you get labelled as a crazy person. I was worried about that as I showed up with a bunch of my colleagues.

I was never so proud of my city, and of my clients as I was at those sessions. They stood with dozens of people deep in line waiting for an opportunity to speak. It was like the culmination of listening to the venting for twenty years, and it felt like a healing situation to me. One gentleman just stands out in my mind. He had a pair of khaki's on, a navy blue blazer, a tie, and stood with his wife holding hands with his two children as he spoke into the microphone. This is what he said: "The first time I was beaten by an officer was when I was twelve." I was floored. And I thought I had a pretty clear understanding of what was happening in the community.

Then Freddie Gray died, and the powder keg does blow up. The people of privilege, and the have's, and the people who didn't understand and didn't really get the extent of what was happening in Baltimore, called it a riot. And those of us who really did understand and those who were trying to organize around it, called it an uprising. The Mayor stepped in, in the wake of some fires being set and some violence happening, with a little bit of looting, but for the vast majority of the time, it really was a peaceful demonstration. It was an attempt to drive home a message about the suffering that happened in the city. It's unfortunate that the extreme cases are the ones that get the media attention, and the media just flocked into Baltimore. It was unbelievable. Helicopters were flying over our office. The night that I was sitting at home and watching the fires being set and the looting of CVS's, I knew what was about to happen. I knew what Baltimore City police's response was going to be. The only thing they really knew was "Lock everybody up. Just get them off of the street so we can calm things down." I went to bed early. My son stayed up and watched what was historical live TV unfolding.

The next day I got up and I packed a suit to wear the next day, I packed all kinds of things I need, and I packed a pillowcase and a blanket, because I didn't know when I was coming home again. Honestly. Because I knew what was going to happen. At that point we heard there were 200 arrests. When I was on the phone with people from my office who had worked in the jail that night, no one had seen the Commissioner who set bails, and, in fact none of those arrested had had a statement of probable cause written for them. Nobody had charges lodged against them, so they were literally just warehousing folks. Since our arrests had gone down dramatically for a while after Martin O'Malley left, none of the corrections officers remembered how to deal with large numbers of arrests.

At that point, I'm thinking that it doesn't really matter if they're going to charge them or they're not going to charge them, I just want to see them get out. I knew what I could do, because I had

remembered doing the legal maneuvering before and I knew how to respond to the pressure. I was sitting in my office with another attorney that night writing a *habeas* motion when I got a call from the Administrative Judge, on my cell phone. (A habeas challenge is made when people are being illegally detained, which is what they were doing when they held people more than 24 hours without seeing a Commissioner, who would either set the original bail or let people go on their own recognizance.) I had been in touch with the judge, trying to deal with the situation that the courts were inexplicably closed and how to reopen them and do bail reviews. I told her I would do the bail reviews. She said "You don't understand how many bail reviews there are." I said "I don't care, Judge. I will bring an army, trust me, to do the bail reviews. Don't delay a single person from having their reviews with the Bail Commissioner." And she said "Natalie, sit down." I said "I am sitting down, I'm typing this motion at 10:00 at night." She said "The Governor has suspended prompt presentment." Governor Hogan's response to "We can't get people to the Commissioner" is essentially to say "That's okay. Bring them the next day. We'll give them 48 hours." The argument he was making was based on a standard from a Court of Appeals, so it was like reaching over to another branch of government and taking their rules. The irony did not escape me that the vast majority of folks that were arrested that night and being held in Central Booking were arrested for a curfew violation, an order which I had challenged the Mayor's ability to impose. Folks were arrested because they were out past 10 o'clock in a peaceful demonstration, but because we arrested all of you folks and just didn't release you in time to follow the citation and you can't show up in a court in time, now we can't follow the rules. Try to explain that one to me.

I recruited a bunch of private attorneys as well as public defenders, and the next day we showed up with 40 attorneys. (Normally we do bail review with five attorneys.) We also had written a stack of motions. When we got into the jail I looked at the Security Chief and said "You know you're not supposed to let me into certain parts of the jail, and I understand it; but here I am, and you've got a problem on your hands, and if you just get us in to them, we will get them out." He said, "Good choice."

They didn't actually know where everybody was in the jail. They limited how many folks we could send, and I could respect that, because there was a lot of chaos in the jail, and they did have security concerns. I put a team of lawyers up there who were really bright, energetic attorneys, and they just went and found people. They were wandering around with a stack of Habeas motions saying "Were you arrested in the Uprising? And how long have you been here?" In Maryland when you want to challenge the illegal detention of your client from inside the jail, you have to fill out a motion that's six pages long; then, since there's a \$150 filing fee because it's a civil case, you have to fill out a whole bunch of information about your personal finances to prove that you can't actually pay the \$150 while you're illegally detained. Thankfully, the Administrative Judge found out that I was about to blow my gasket over that one and decided just to waive them by the power of the bench.

We filed 82 Habeas motions. Eighty-two times six-pages of paperwork that needed to be completed were laid out on a conference table. They had to be filed by 4:30 that afternoon or we couldn't have a hearing the next day, which meant that the people detained would have probably been in for three days by that point. And not only do you have to make one, but you have to make four copies, they have to be delivered four different places, and they have to be given to the clerk's office. My attorneys were just fried at that point. I had been up almost 48 hours, and these folks were really struggling. Our copier broke on top of it. Thank you, state budget.

The first time we sent a stack of motions to the Clerk's office they called us and said "We can't handle all those motions." And I was "Really? You're going to tell me that my client, who was out at 11:00 at night

at a peaceful demonstration, accused of violating a rule that may or may not have been legal, since we've never even talked about our challenge to it, and that has no real legal penalty attached to it, and I go through, and I follow all the rules with the silly paperwork and everything you want me to do and then you're going to say that you can't accept it because it's just too much for you?" I mean, at that point, I think I was ready to lose it. I hadn't slept in two days, or eaten a full meal, and my brain's about to lose it.

At the end of the day, the Attorney General's Office who represents public safety and the jailors, turned to their client and said, "You have major liability on your hands if you don't let those folks go." So we filed 82 Habeas motions and 105 people got released. It was the first time in my career I actually had more people released than the motions I had filed. I think that's government efficiency at its best, right?

Besides all those papers being filed, all of the individuals who had been charged within the allowed time had to be represented, and many of them qualified for the services of the office of the Public Defender. On the news we had seen some individuals who were smashing police cars and traffic cones and all kinds of visually disturbing cases, but a lot of the folks who were charged were not actually there for the protest. They were just walking by. There were walking home from a job, they were walking through, or some people stopped and took a look. Here's the reality. The Mayor imposed this curfew, and some businesses suffered, and I had to carry my ID around with me in Baltimore City after 10 o'clock, because you were supposed to have a letter from the boss saying you had to work past 10, but we are all fine. The businesses will lean on their insurance. But my clients, and the people who were struggling, and the people who were hovering on just the edge of absolute, dire poverty, they went to work. Because their employers said, "You show up and I'll pay you." Maybe they were being paid under the table, or off the books, so there they were with no employer letters, and they were caught and they were arrested.

On the day we showed up to do bail review they assigned the four toughest judges to bail court. I had 40 attorneys spread out across four courtrooms doing the bail reviews and we could see they had their theory lined up ahead of time. What they didn't understand was that the world press was going to descend upon them. The judges hadn't been around people from the press and public who had a different perspective from just "Lock them up." They didn't understand that the world outside Baltimore was changing, nor aware that many people around the country were changing, and that many courts were getting rid of money bail, were getting rid of the concept of the bail bondsmen because they understood that pretrial supervision was the way to go, and keeping people incarcerated just makes things much worse for everybody in the community. Baltimore City has traditionally had very high bails. A lot of individuals arrested in the Uprising had bails that were set higher than the police officers charged in the death of Freddie Gray. When the press came to ask me "Are you upset about that?" and I said "No, I'm not upset about that. I don't have a problem with what the officers got, I have a problem with the fact that there are two different brands of justice in Baltimore City." The world press noticed that and wrote stories about it. And there were reporters from the New York Times sitting in the courtroom when a judge said something like this: "Counsel, I'm not going to listen to that. I'm just presuming that they're guilty at this stage in the proceedings." I understand that the judge was tired, but it was shocking. The reporter was there, they got it on tape, they wrote it down, and even though the judge might wish otherwise, it is not inaccurate, it is what they said.

How did we get to this point? How did this happen to Baltimore City? We like to joke around in Baltimore City about never quite getting ourselves together, but the reality is there are a lot of fine people in Baltimore, there are a lot of dedicated people, there are a lot of people who love the city, and how did we get there? The same thing has happened in a lot of cities. The war on drugs was the first



step. We were just going to lock everyone up who had drugs. But we didn't have the resources to go after the high end dealers, so we just went for the local street trade. They're out there slinging because it's not easy to get a job, and it's not easy to get a job because it's not easy to graduate from high school, and it's not easy to graduate from high school because a teacher had 30 other students to deal with who had lead poisoning and other issues that we've ignored for years and years and years. Here in the Baltimore City schools you can't even take a textbook home. If you don't understand the lesson that day, then it's tough to be you. But if we're going to hire you, we want that high school diploma. How about my clients who sit in houses because their mothers are strung out on drugs and they're raising their younger siblings? They don't go to school because if they do go to school those kids are essentially abandoned.

We know now that addiction is a medical issue. The Baltimore City Health Commissioner invited judges and prosecutors to a meeting to which I was invited too, and she lectured them, "This is a medical issue. Addiction is a medical health issue. And locking folks up is not going to solve the problem." And then she proceeded to offer a prescription to Narcan to everyone around the room who would take training in how to use it. Narcan is a substance that you can squirt into someone's nose and prevent them from overdosing on opiates, which is a huge problem in Baltimore City. But less than half a dozen folks availed themselves of the offer to get the prescription. We have a lot of work to do on that issue alone in our country. Addiction is not a crime. It can't be a crime. If you make it a crime, you are not going to get yourself out of it. If you make it a medical issue, then we have a possibility of improvement. Heroin and cocaine are really easy to get in Baltimore City. We're just starting to learn that a lot of heroin addiction in Baltimore City starts out with painkillers, which doctors are happy to prescribe and pharmaceutical companies are happy to have them do it. So give me a break. I have a real problem with you telling me about drug dealers and drug addicts. Who's the drug dealer? Who's the person who's pushing? Who's the person who's ignoring the pushers?

We had one hundred thousand arrests each year, a lot of them not removed from records. People pled "time served" to get out of jail regardless of whether or not they were guilty of anything, and then they couldn't get a job. The thing that's really difficult is that criminal records have never been easier to get ahold of. So many times I hear people say, "Before I let somebody work on my house, I go to Maryland Judiciary Case search and look up to see if they have had a case, if they have a record. It's publically available to everybody.

In response to these issues, the criminal justice system gave us problem solving courts. You see them on television – drug court, mental health court, homeless court, veterans court. You see them touted on the news as really wonderful warm, fuzzy, "we're going to help you" situations. And I say – "why did you have to lock them up to begin with?" We now know from studies that the instability of just being incarcerated by itself is a far greater punishment than we can imagine. Then, for most of them, you have to plead guilty to get services. People take the felony drug conviction because it is the only way they can get an inpatient detox bed. I have been in situations where I have been trying a client and they tell me they want treatment more than anything. And I can appreciate that. I understand what they're telling me is that they think if they go out again and they're not detoxed, they're going to die. They're telling me they're going to plead guilty to a felony that maybe they don't even feel like they've committed, because they want that treatment bed. And why are there purse strings on the treatment bed? Because judges want to feel like they're helping people. The system wants to feel like it's helping people. They don't want to disengage treatment from the criminal justice system. And the longer the judges sit on these problem-solving courts, the more they begin to feel that they know how to treat people. Every single time we've had a problem-solving court start, we've had a well-intentioned judge

doing some great things for our clients, and about five years in, they've bought into another side. The last time I checked, none of them had addiction degrees. None.

What do we do, now that I've just totally horrified you? Where do we go from here? I've got a list of things to do that I want you to consider. Some of them I've tried and some have worked, and some of them are going to take a long time to try, but we have to do it. Here's one to start out with:

Go sit in court. Just go sit in court. I started with a group of Quakers from Homewood Friends and Stony Spring Friends who were concerned about bails because of the arrests after the death of Freddie Gray. I gave them a lecture and they became really concerned about bails. They just started sitting in court. One day I got a call from a friend who's a judge now, who said "I was sitting in court the other day and I was doing bail reviews and there were like three rows of people sitting there." I said "oh yeah?" "Yeah, they said they were Quakers. And I talked to them afterward and they told me what they were concerned about and I really started thinking 'What am I doing? What's the difference between a \$10,000 bail and a \$5,000 bail and a \$1,000 bail, that we're always shilling back and forth like we're buying a used car in that courtroom?'" And he's gotten a lot better on bails. Some judges haven't. When I'm worried about a judge doing something really horrific, I bring 30 of my closest friends with me. I did it just last week. I saved a guy from getting a life sentence, because 30 people showed up in court, and changed the outcome.

Op-eds. If there's a case in the paper, start writing. The people in charge of the criminal justice system think you all, the ones with the privilege, they think this is what you want. They think they're giving you what you want. They don't realize that times have changed and that they've kind of sheltered themselves off with each other and with other parts of the system and don't realize that the rest of us have moved on. So tell them it's not what you want. When you are electing a state's attorney, show up at one of the forums and ask them: "Can you cut down on the prosecution of minor drug offenses? Can you just not process or dismiss them?"

Court support. For individuals who are facing significant jail time, whether they are incarcerated or not incarcerated, and for their family members, it is one of the most traumatic things ever. The client that I just represented last week, I was afraid if I didn't lose him to a life sentence, I was going to lose him to a suicide, because he was just unwinding. But he had people who were supporting him outside of court, so I could be freed up to do my job and be a support to him, because of that other group in place. You can do that as well.

Make phone calls about cases. You can call the prosecutor's office. They get tired of answering the phones after a while, but you're their constituents, and you're the "good guys" in their mind, so they have to answer the phone for you. I had a case that came out of the Uprising, and they offered him 90 days. A bunch of phone calls were made, and they put it out on Facebook, and then it went down to 60 days, and then it went down to time served, all in the course of one afternoon. Hundreds and hundreds of calls were made. When they offered time served, I said "we're getting closer, but we're not quite there yet; I'm not pleading guilty to this."

Legislation. I think it's Minnesota, if I recall correctly from a public defender conference, that imposed a requirement that every time they have a new piece of legislation they have to have a "racial note" attached to it. They have to ask "Does this law have implicit bias and have you double-checked that?" It's like a fiscal note that you see attached to some laws. Why don't we have that in every state? You all can make that happen. Quakers are good at that.

Parity of funding by geographic areas. I don't understand why the rest of the state of Maryland is not on board for Baltimore City to get the funding that it needs for its school system. Our students are undereducated, but the folks that want to hire them are not looking at this as if we're all in it together. So look at that. Why do we have pockets of underfunded places and can't we be doing something about that?

Decriminalization of low level offenses. Colorado is raking it in by legalizing marijuana. Raking it in, and they're doing some really interesting things with that money. You could do the same thing with prostitution, you could do the same thing with a lot of things. Maybe you'll say, "I don't like that behavior, I don't want that behavior, I don't want to encourage that behavior," but let me tell you something – you can make it illegal, but it's still going to happen. And making it legal does not necessarily make it happen more. Studies have shown that again and again and again. But you can stop spending money on cases you don't care about in the end.

Bail reform. I don't understand why we still have bail bonds in this country. Maybe you all haven't been educated about that. The bail bond industry started in California from a mob-based family. For a hundred years we have still had this system, based upon the mob gouging money from people who wanted to get out of jail. Bail bondsmen are funded by large insurance companies. The mom and pop shops that you think are on the corner really don't exist. They are paying money to this much larger conglomerate, and they are killing it. They are taking money out of your community, because the mom and pop shops send a significant amount to the national companies. I'm looking for the person who can track how much money has been siphoned out of Baltimore City through this. They'll tell you, "oh, we perform great services," but the bottom line is, as studies have shown time and time again, that bail bondsmen do nothing for it. So, eliminate money bail. You're either so dangerous that we have to put a pause button on the situation until we can evaluate it, or we're going to release you. Sometimes we are going to release you because we understand there are mental health issues or drug addiction issues and we're going to order you to participate in some treatment while you're pending. About five years ago there was a study showing that if they moved 30 women out of the Women's Detention Center in Baltimore City, they would save \$100,000 per month. So I don't understand why we still have bail bonds and that's something you all could do. It's a hard fight – they have a lot of political pull. But you can make your elected officials accountable.

Oversight of correctional facilities. Did you know the largest providers of mental health services are some correctional facilities? There's something wrong with that, and they're not doing a good job of it. Many of them do it for blanket contracts. When the state agrees to pay a contractor a certain amount of money per year and they think that's great and they're saving money. What it really does is drive the medical services contractor inside the correctional facility to deny services, because then they don't have to spend very much.

Expungement, shielding, removing things from the record. Give the public the opportunity *not* to see what your past was. It used to be, fifty years ago, you could just move to another town. My grandfather apparently moved to another town, got a new social security number, a new name, and nobody could find him. You can't do that anymore. Your fingerprints and everything follow you. When you're getting your second chance, when you're doing the right thing or you get yourself in recovery and your head's a little straight, the system starts up against you, and you give up and ask "What's the point of me doing this?"

Engage with the victims of the system, and by that I mean not just the victims of crimes. You have to broaden the definition of who the victims of crimes are.

Bail funds. For as long as we have bail bondsmen out there, try starting up a community bail fund. Some states have a system in which bail can be posted from the fund, and you can get the money redeemed back to the fund in certain circumstances. Remove the bail bondsmen from the process. Start a bail fund. They've actually been very successful, and there wasn't a lot of defaulted money. Someone approached us about doing one in Maryland but we can't actually do it, by statute.

Volunteer in public defender offices. There are probably a lot of public defender offices or private attorney offices that handle public defender cases that would be willing to take on volunteers. If they don't, come to Baltimore. I'll take you. Just call up and find out what you can do. If nothing else, you might listen to the stories of folks who have been incarcerated. And listen with an open mind, because for so many years we have said "you're lying because you want to get released, or you're lying because you don't want to be convicted." We just kept saying that, and it turns out they weren't lying a lot of the time at all. I think just listening to stories broadens your perspective and gives you some fuel for the fire.

Educate the public. I know I'm speaking to a very friendly crowd. There are other times when I speak to folks and I kind of scale back a little bit because I know they're just not anywhere near where you guys are. But that doesn't mean that we can't bring them there, that we can't consensus build, that we can't really educate the public about why these issues matter to them. Bring the ex-offenders to those who are "have's." Bring somebody with a criminal record to a meeting where people would never imagine they would sit next to somebody with a criminal record. My kids have grown up with this, so they kind of know the gig is up. They've been around my office, they've been around clients all the time. Once you sit down and you talk with somebody and *then* you learn about their past, it really changes your perspective. Bring that as an opportunity for people.

Insist that there are treatment options outside of the justice system. It's your tax dollars, it's your system. Make it work for you. Highlight the value of not prosecuting cases and demand for it. "You're not going to use my tax dollars to do that. I'm not doing that. I will take my tax dollars someplace else. I will take my vote someplace else. I will take me someplace else."

And then there's radical reform. There's the reform that's growing more and more in Baltimore City, with more and more protest going on. We just had some folks on an interstate, blocking it, during an Artscape festival. There are folks who are willing to get arrested for the cause. To them I've said, "If you're there, I'm there, so anytime somebody get arrested for that, I will come down hard for their ability to educate the public about what my clients are going through."

Jury nullification. This is the pretty radical concept, that a jury can decide a law is wrong or a crime is not jail worthy. I'm not going to suggest that all of you will buy into it. I read a book, Paul Butler's "Let's Get Free: A Hip Hop Theory of Justice," and it was an eye opening experience. The author had started as a prosecutor and then became a law professor, and he was calling for jury nullification. He was essentially saying this: "Yeah, you get sworn in, take an oath that you're going to decide a case beyond a reasonable doubt. My definition of reasonable doubt is that it's pretty small." You can do that when you're on a jury. You can educate the rest of the jury, you can be the holdout person. You can be the person who says "They didn't prove it enough for me."

Public chastising of judges and prosecutors. You know, when you're court watching and you hear a judge say something offensive, put it in your op-ed. Trust me, it will get a response. And it will get a response from the rest of the public. Don't make the legislative hearings and the funding hearings in your area comfortable. Make people uncomfortable. Say, "hey, I know you're increasing the funding for the local jail and if it's not going to medical or educational or pretrial release, what are you doing here? I'm not for that." When a candidate is up for election, show up at one of their election events and start asking them some pretty serious questions. It's not hard to find information online about your state, about national trends, etc. They're not prepared for it, and they're not prepared for it from you. They're used to people ranting and raving, saying "it's not fair" and they dismiss them, saying "there's just another person whose son got locked up, whose nephew got locked up and they just have a chip on their shoulder." But they're not prepared for you, who might say "Nobody in my family got locked up, but I just think it's wrong, and here's my reason." Those are all possibilities.

So at the end of this talk you might say, "I get why you dedicated this to Raymond Smoot, but why would you dedicate it to your client with the dolphin head?" Here's why. As I was sitting at my desk thinking about how I wanted to frame this whole talk and put my experience with the Uprising and what led up to it into perspective, I saw a Baltimore City *Sun* article that said the Baltimore National Aquarium would no longer keep dolphins in captivity. Twenty-three years later. The system was ready to prosecute that gentleman, but he was a white man of privilege, and he didn't have a criminal record, he had a house, and he had a diploma, and while we might think he's kooky, we're not going to have a problem letting him go out on a loophole. It turns out, he had wisdom at the time that turned into success 23 years later. And if we had decided to saddle him with a conviction, what would have happened? It just struck me, and I really started to think about it. What are we going to think 100 years from now about our criminal justice system? If 23 years afterward we realize that the crazy guy with the dolphin head chained to the aquarium is right, and he really was trying to save what he believed to be sentient beings' lives, what are we going to think looking back 100 years from now? I don't know about that, but I think history is not going to be kind to us.

I want to close with two quotes from Bryan Stevenson. Bryan Stevenson wrote the book *Just Mercy* and has done some amazing public defense work. People in my office read his material, we go watch him, we could be groupies and just follow him around. Here are a couple of things he had to say that I want to leave you with:

"Proximity has taught me some basic and humbling truths, including this vital lesson: Each of us is more than the worst thing we've ever done. My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth, the opposite of poverty is justice. Finally, I've come to believe that the true measure of our commitment to justice is the character of how our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned."

The second quote from him is:

"We are all implicated when we allow other people to be mistreated. An absence of compassion can corrupt the decency of a community, a state, a nation. Fear and anger can make us vindictive and abusive and unjust and unfair until we all suffer from the absence of mercy, and we condemn ourselves as much as we victimize others. The closer we get to mass incarceration and extreme levels of

punishment, the more I believe it's necessary to recognize that we all need mercy, we all need justice, and perhaps we all need some measure of unmerited grace."

I think history is not going to be favorable to us. I think we already know that a great deal of damage has been done, and we know that it's been done in a very unjust fashion and that we all bear some responsibility for it. I think until the truth can really be revealed about how we need to move forward in our justice system, we have to ask ourselves: "What can we do to just mitigate the damage?"

I don't think we have all the solutions to the complex issues about gun violence and the things we face. But I know we know enough about what we *can* do to try to stop some of the bleeding that's happening. We can prevent more Raymond Smoot's. We can prevent more damaged law enforcement officers that are trigger happy or respond quickly. We can prevent Freddie Gray's death and the mass arrests and civil unrest and incipient poverty that follows those events. And I would say to you this: I ask for mercy for my clients all the time. But I think it's not just my clients that need mercy. I think we all need some mercy, Friends. And right now it's all completely unmerited on our part.