

2021 D.C. CRIMINAL JUSTICE FORUM SERIES

JUNE 30, 2021

What if We Were in Charge?

*Imagining a Future Without a
Federalized Justice System in D.C.*

Report by the Council for Court Excellence
on behalf of the Office of the District of Columbia Auditor

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Joseph Fagan, *Partner*

Evan Reese, *Partner*

Taylor Amato, *Associate*

Sophia Browning, *Associate*

Margaret Czepiel, *Associate*

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Introduction and Executive Summary

What follows is an edited transcript of a June 30, 2021, forum held by the Council for Court Excellence (CCE) and the Office of the District of Columbia Auditor (ODCA), which focused on imagining a future with local control of D.C.'s criminal justice system and how D.C. statehood impact might regaining local control. This event was the second in a four-part series of forums focused on timely criminal justice issues in the District. Each forum featured a panel of experts, local stakeholders and impacted individuals who have come together to address emerging topics of criminal law or policy. The discussions were designed to address barriers to effective policy, explore whether community needs are being addressed, and review options for action on each forum topic.

In this report, we share the discussion from the second forum, **What if We Were in Charge? Imagining a Future Without a Federalized Justice System in D.C.**, which focused on how D.C. statehood might impact regaining local control, including the unique impacts that federal control has on our local courts, prosecutors, corrections, supervision services, and paroling authority. For more than 20 years, the majority of criminal justice functions in D.C. have been under federal government authority. Looking to the future, discussants explored the details of what would – and should – be different for D.C. residents if there was local control of all criminal law functions. Topics included the possibility of reform, the implications for D.C.'s statehood strategy, and the top priorities behind making such a transition. This forum featured local experts who talked about these timely topics and what they expect to happen in the coming years.

This conversation on local control of our justice system largely stems from the expiration of the United States Parole Commission (USPC), which was set to sunset in 2020, but at the request of D.C. Mayor Muriel Bowser, Congress extended the deadline until November 2022. This extension gave District leaders the opportunity to establish a new, local mechanism for making parole and supervise release decisions and revocations. Forum participants drew from personal and professional experiences with the criminal justice system, the D.C. government, and the USPC to inform their discussion on the steps that can and should be taken to create and establish a new paroling authority, the ways in which the District can work to regain local control without statehood, and how achieving statehood would impact local control of D.C.'s criminal justice system.

D.C. Auditor **Kathy Patterson** moderated the discussion. Auditor Patterson served for 12 years on the D.C. Council, during which time she chaired the Council's Judiciary Committee and served on the Criminal Justice Coordinating Council. The discussants included:

- **Jon Bouker**, a partner at the Arent Fox LLP, who also leads the firm's Government Relations Practice and chairs their Pro Bono Program, and who also served as Co-Chair of the Committee on Local Control for the District Task Force on Jails & Justice;
- **Chiquisha Robinson**, a D.C. public defender who has served people in the criminal legal system for 16 years, serves as the Deputy Chief of the Prisoner and Reentry Legal Services Program, and is a Co-Chair of the DC Reentry Action Network;
- **Robert Davis**, a Reentry Advocate for the DC Jail and Prison Advocacy Project at Disability Rights DC at University Legal Services and returning citizen;
- **Janene Jackson**, a partner at Holland and Knight, who has also worked as Deputy Chief of Staff to former D.C. Mayor Gray, served as Committee Director for the Committee of the Judiciary and Public Safety, was a former litigator out of the Office of Corporation Council, and clerked for the D.C. Superior Court for Judge Reggie B. Walton; and
- **Walter Smith**, the Director of DC Appleseed, who has also served as the Deputy Chief for the Corporation Council, and worked as a partner for Hogan Lovells LLP.

The disagreements in this conversation demonstrate the complexity of the issue: What is the best model for a new paroling authority in the District? In this report, "paroling authority" is used as a neutral term to describe a new entity that will assume parole decision-making and revocation powers, without making a recommendation on which model will assume those powers. Certain participants argue that parole decision-making should be handled by the same courts and judges who originally sentenced the individual. Those supporting this position argue that the judges at the Superior Court for the District of Columbia ("D.C. Superior Court") are best situated to decide how long an individual should be incarcerated due to the legal expertise and understanding judges possess. In addition, these proponents believe that appearing before a judge allows incarcerated individuals the highest degree of constitutional protections, especially of their due process rights. On the other hand, other discussants argue that D.C. should create its own local Parole Board. Those in support of this position point out that judges in D.C. are appointed by the President of the United States, and believe that having federally-appointed judges who work at the federally-funded D.C. Superior Court making parole decisions does not constitute meaningful local control of parole. The discussion makes clear how strongly D.C. residents feel about establishing a new paroling authority before the USPC sunsets.

Beyond the issue of parole, the discussants focus on the values inherent in District of Columbia policies and the prioritization of critical needs--such as access to affordable

housing and healthcare—for individuals who are returning home after incarceration. The stated values of the District include accessibility, diversity, equity, livability, opportunity, prosperity, resilience, and safety. The discussants emphasized that such values should apply to all residents, regardless of whether they served time in prison. Panelists also discussed how the District could pay for a local criminal justice system and the budgeting process in the District.

Finally, while our panelists spoke about the possibility of D.C. statehood they generally agreed that the D.C. government cannot use the absence of statehood as an excuse to avoid critical reform. There are policy initiatives, social services, and programs that the District can — and should — pursue *now*, even without statehood. Although the participants agreed that there is a long road ahead to help returning citizens succeed, they all indicated that the District has a unique opportunity to re-imagine a local paroling authority. Discussants also said that District leaders should work collaboratively with community organizations and directly impacted individuals to create this new paroling authority.

For further reading on local control, D.C. statehood, the D.C. parole system and other issues discussed throughout the forum, please see the Bibliography section of this report. Biographies of the discussants are also included at the end of this report. Finally, a full video of the forum can be found at: <https://youtu.be/vsxtfFOesUo>. The transcript in this report has been lightly edited for length and clarity.

Forum Participants

Moderator

Hon. Kathy Patterson, *D.C. Auditor*

Discussants

Jon Bouker, *Arent Fox LLP*

Robert Davis, *DC Jail and Prison Advocacy Project at Disability Rights DC*

Janene Jackson, *Holland & Knight LLP*

Chiquisha Robinson, *Prison and Reentry Policy Expert*

Walter Smith, *DC Appleseed*

What if We Were in Charge? Imagining a Future Without a Federalized Justice System in D.C.

The Forum convened virtually via Zoom at 7:00 p.m. on June 30, 2021.

Opening Remarks

Auditor Patterson: Good evening everyone. I'd like to welcome you to the second D.C. Justice Forum hosted by the Council for Court Excellence in partnership with the Office of the D.C. Auditor. I love the title of our forum tonight, *What if We Were in Charge?* The topic is imagining a future without a federalized justice system in the District of Columbia. As most of us know, most of the District's criminal justice system is federal. We have federal courts, we have federal prosecution of felonies, and we have the federal Bureau of Prison hosting District of Columbia folks who have been convicted of felonies and all that that entails. Tonight we're going to imagine what it would be like if that was different – if we had statehood and could take over our own criminal justice systems.

I'm delighted to welcome our panelists here tonight. We are joined by Chiquisha Robinson, Robert Davis, Walter Smith, Jon Bouker and Janene Jackson. By way of introduction, I am going to ask that each of us say what it is that brings us here tonight and our own expertise in any of these issues. I served on the D.C. Council from 1995 to 2007, chaired the Council's Committee on the Judiciary, which had oversight over criminal justice policy as well as the public safety agencies. I was also privileged to serve on the Criminal Justice Coordinating Council, which coordinates all of the federal and District elements of the criminal justice system, and then served on the Council for Court Excellence Board after I left D.C. government.

Mr. Bouker: Thanks, Kathy and good evening everybody. My name is Jon Bouker. I'm a partner at the law firm Arent Fox where I have been for nearly 20 years now. I lead our government relations practice and also chair our pro bono program. For 10 years before that, I was chief counsel to Congresswoman Eleanor Holmes Norton, and worked with her on the Revitalization Act, which set up most of the system that we're going to be talking about tonight. I've spent a lot of time since then working on these issues, including most recently serving on the Local Control Committee for the District Task Force on Jails & Justice, Co-Chairing that committee with Attorney General Karl Racine. I am also a lifelong proponent of D.C. Statehood and I have worked on those issues as well, including serving on an outside legal team that has assisted the Mayor with statehood issues along with my friend Walter Smith, who is on the panel this evening.

Ms. Robinson: Good evening, my name is Chiquisha Robinson and I have been a public defender in the city on the ground working on behalf of people for the past 16 years. I've worked in many divisions at the Public Defender Service. I was a trial attorney for many years, representing people in the most serious felony cases, but I also worked in the parole division representing people before the United States Parole Commission on revocation hearings, and recently I've been in our community defender division. I am the Deputy Chief for the Prisoner & Reentry Legal Services Program, which means that we try to assist

anyone who is affected by a D.C. criminal record, whether they are in the D.C. jail, serving a sentence in the federal Bureau of Prisons (BOP), or they are in the community living with the collateral consequences of a D.C. criminal record. I am also the Co-Chair of the D.C. Reentry Action Network, which is a coalition of over 30 organizations and growing in the District of Columbia that focus their energy on serving people seeking to successfully reenter and reintegrate. With many other contributors, I just authored the D.C. Reentry Navigator, a 900 page book from soup to nuts on reentry, which is designed to empower people living with a D.C. criminal record.¹

Mr. Davis: Good evening everyone, my name is Robert Davis and I'm here to share my expertise. Unfortunately, I did 21 years, mostly in the federal Bureau of Prisons, and also in D.C.'s own prison in Lorton, Virginia. More recently after coming home, I was hired by University Legal Services, and I am now a reentry advocate, trying to support all folks coming home from jail, but particularly those with disabilities.

Ms. Jackson: Good evening everyone, I'm Janene Jackson. I'm a partner at Holland & Knight where I've been for almost seven years. Prior to that, I worked as the Deputy Chief of Staff to former Mayor Gray, where I was responsible for all federal relations and intergovernmental affairs. I am a panelist tonight because I am a former committee director for the Committee on the Judiciary and Public Safety. In addition, I have worked for three elected officials on the D.C. Council, including former at-large Councilmember, Phil Mendelson, now Chairman of the Council, who took over for the Committee on the Judiciary and Public Safety after Kathy Patterson. Additionally, I am a former litigator out of the Office of Corporation Council before it was called the office of the Attorney General, where I represented the District of Columbia. Finally, I clerked on the D.C. Superior Court for Judge Reggie B. Walton where many of these cases were heard.

Mr. Smith: Hello everyone, my name is Walter Smith. I am the Director of DC Appleseed, which is a non-profit that works on a number of issues facing the District of Columbia. Before that, I was the Special Deputy Corporation Counsel. Before that, I was a partner at Hogan Lovells where I had the privilege of being the pro bono partner. In all of those capacities, I have been very interested in and worked on efforts to bring greater autonomy and greater democracy to the residents of the District of Columbia, which is largely what the issue here tonight is all about.

Top Priority in Order for D.C. to Take Local Control of Our Justice System

Auditor Patterson: Thank you all. To start off with our first question, from your experience as a resident or professionally, what do you most want changed in our justice system in terms of D.C. taking over its own system?

Mr. Bouker: I can start from the perspective of the Revitalization Act because this one has kept me up at night for many, many years. When we wrote the Revitalization Act, there was a promise that folks would

¹ The Public Defender Service of the District of Columbia, *The D.C. Reentry Navigator: Empowering You to Succeed with a D.C. Criminal Record* (March, 2021), https://www.pdsdc.org/docs/default-source/d.c.-reentry-navigator/the-d-c-reentry-navigator-empowering-you-to-succeed-with-a-d-c-criminal-record_1.pdf?sfvrsn=118898d0_2.

be close to home when they were incarcerated and, as we all know, that never happened. There are 122 facilities in the Bureau of Prisons, and as far as I can tell, there is at least one D.C. Code offender in each of those facilities. Those facilities are all over the country, which is absolutely outrageous. You are trying to provide an opportunity for folks to keep connections and be able to come home back to the community smoothly.

When I was working on the Committee on Local Control of the District Task Force on Jails & Justice, we had a formerly incarcerated citizen who was part of that committee and he told a harrowing story, one which I suspect is all too common, where when he was released to go back to the District of Columbia from one of these facilities out in the hinterlands somewhere, he was given a certain amount of money and shown the door. He went to the bus station, and it wasn't enough to buy him a bus ticket to get back to the District of Columbia, so he had to beg from the folks in the bus station to be able to come up with enough money to come home. And that is a travesty. So for me, I think the thing that we really, really need to get right among all of these things is that issue of proximity to the District.

Mr. Smith: From the 30,000 feet perspective, we have recently worked with a number of our lawyers who are trying to look at what the criminal justice system might look like in the city if we have statehood, and we're looking at three big areas, all of which are related and all of which D.C. needs to control if we are going to be in charge. The first is that we need to be in charge of our own courts, the second is that we need to be in charge of our own prosecution, and the third is that we need to be in charge of our prisons, parole and auxiliary services. All three of those fit together and they need to be looked at, with a unified perspective based on local values and local accountability.

Ms. Jackson: Having served for the Mayor, and in particular, when Mayor Gray was championing statehood, one of the conversations that we had on the Hill was about cost. One of the things that I would love to see is for the Council and the Mayor to plan for assumption of control of the courts. Planning for control is essential. The government should initiate a plan for all of this and also plan for the funding, because it is a significant cost. The rubber meets the road when these things have to be paid for. I'd like to see the leadership get in the room and figure out how much it's going to cost and for the government to actually initiate the planning. They should ask what would local control look like? And figure out how to properly pay for it.

Ms. Robinson: I have many things I would like. First, our criminal statute is over a hundred years old, it's extremely broad and ill-defined, and the Council is currently considering rewriting all of the offenses and penalties, thanks to the work of the Criminal Code Reform Commission. I would like to see those recommendations implemented. Additionally, to Jon's point, our people need to be incarcerated locally. They essentially disappear into the federal Bureau of Prisons, and we do not know what happens to our people. We do not have data on how they're doing mentally, physically, emotionally. For many people, we do not know why they're there, we don't know what their needs are upon release, so that there can be a seamless transition for reentry. That's a problem, and does not exist in any other state system. So that needs to change.

Further, we need to re-imagine a new prison facility that looks nothing like the old Lorton, the current D.C. Jail or the federal Bureau of Prisons. It needs to be forward-thinking and aligned with our values and committed to racial justice and decarceration. We need to drastically shrink the parole system. And that starts with process and procedural justice for the people who will be impacted by that system. We need to reform supervised release and surveillance in general, which I feel is the new mass incarceration. I believe that paternalism is the cousin of racism. There are too many interruptions in people's lives, there are too many conditions that they're forced to contend with as they seek to reintegrate. I think that we should rethink policing and the charging decisions. I think that we should invest in reentry services and that is starting to happen in the Mayor's most recent proposed budget.

It's the most money I've ever seen for reentry services and that needs to become the floor, and that needs to be the new direction. And finally, there needs to be a dramatic and radical commitment to decarceration. What does that mean? That means all of the sentence reduction mechanisms of the last year, compassionate release, Incarceration Reduction Amendment Act (IRAA) Second Look,² good time reduction [of sentences]. That needs to be for everyone. If we are committed to decarceration and Black folks and our D.C. values, then we will be committed to giving people a second chance. We don't need to reform our system, we need to rebuild it.

Mr. Davis: Just to piggyback on everyone, because everyone touched on beautiful subjects, I do believe we need to rebuild things, but one thing in particular that I would like to just see changed tomorrow is more consistency from the Parole Commission, period. Currently, we just have no idea what they're going to do from one day to the next.

Local Control of Parole

Ms. Robinson: On that point, I have to say parole should be considered by the courts. To expand, procedural justice is due process. The parole decision is essentially an extension of sentencing because it impacts the liberty interests. The parole decision determines how long a person actually serves. When we're talking about sentencing and liberty interests, what we should be talking about is constitutional due process. We know from the Model Penal Code that there is no model parole system in any state, and so people get the most due process rights in an open transparent forum, which is D.C. Superior Court. People often forget the parole function has two sides. There's the parole grant function, which is dramatically diminishing for our D.C. folks, and so that should be decided by D.C. Superior Court. That would be in line with the sentence reduction mechanisms that we already have and that we've seen be successful, especially during COVID. We personally appealed to the United States Parole Commission to release 60 people when COVID first hit, they released two. Many of those people were released under compassionate release and IRAA. So we see sentence reductions and decarceration working better in the courts. People also have a fact finder who is informed on the law, who knows the law, there's an appellate right process. For me it is not about policy in the abstract, it's about the clients that I serve on the front lines, and what they want and what we would all want is constitutional due process.

2 Second Look Amendment Act, Omnibus Public Safety and Justice Amendment Act of 2020, D.C. Law 23-274 (2021).

But more importantly, here's the secret that doesn't get enough attention: The system that would keep the parole system going would be the *revocation* system. Give it a certain number of years, and the majority of what will keep that system going is supervised release. The federal courts release people on supervised release, people who are facing parole revocation, they go back before their sentencing judge, because in their mind supervised release looks a lot like probation. The same should also be true in D.C. People on supervised release should go back before their sentencing judge.

So we should not create systems that incentivize *us*, as criminal legal system actors to keep our profession going and our reputation going and our economic interests going, but that will benefit the 90% of people who are impacted by the system, which in this city is 90% Black people. If we really want to change things for them, we should be decreasing the system.

Mr. Bouker: This issue is the only issue in the Local Control Task Force Subcommittee where we don't have full agreement, and it is a live issue. What I mean by that is that for some of these things, you need congressional legislation now to deal with them, or you need statehood to deal with them, but this issue of the U.S. Parole Commission, which of course is another one of these Revitalization Act issues, that is going to have to be resolved in the near future. It was supposed to be next year but it has already been extended. The USPC was supposed to sunset, and the city wasn't ready yet to receive that function back, so the Mayor asked Congresswoman Norton to get it extended, which she did. So now the city has to decide between whether they have this as a function of the court, as was just argued, or whether the city decides that it wants to set up its own local Board to replace the federal Board, which would have local residents on it and make those decisions.

The record on these local Boards around the country has been spotty, but a few people feel very strongly about this because the judges are still appointed by the President of the United States, not local government. Even if we get statehood, it's going to take a while for those judges no longer to be appointed by the President of the United States, because that's going to happen through attrition as people retire and new judges come on board.

So some folks think that we don't want these decisions still being handled by the federal government. In any event, this is a very live issue and there are folks on both sides. We decided in the Local Control Task Force to [not take a position on where the parole authority should sit, but did recommend] for courts to continue to do second look and for compassionate release. This is an issue that should be watched closely because there's going to have to be a robust debate in the City Council about how to resolve this.

Auditor Patterson: I think we need a little more explanatory information here: what is being put in front of policymakers today that is requiring this decision between court-control or a local Board?

Mr. Bouker: The USPC's authority over the parole function is going to expire [in November] of next year, based on the sunset of the federal statute.³ The sunset timeline has already been extended. So the local system is going to have to be set up. The question is whether or not the local elected officials want this to be handled by the court, or whether they want it to be handled by a Board or some kind of hybrid.

Ms. Jackson: This goes directly to my point about planning. Ideologically, local control here sounds great. Practically, there is no current institution that exists to absorb this function right now. And I say this in the most respectful way. You can want what you want, but if it doesn't exist for you to receive it, it doesn't matter. When we think about some of the big issues here, such as housing prisoners here, a lot of questions come up. What does it mean to house people in D.C.? Where would we put a prison facility in the District of Columbia? We had Lorton, which was in Virginia, but the D.C. Jail is the only facility that is here and hopefully one day will be torn down and rebuilt built better.

The notion is that we can want these things, but they have to actually be planned for. That's the nitty gritty part of what we talk about. If you asked me what would I do if I were in charge, I'd actually plan. Because that's essential to this entire discussion. Without the money, the thought is really just an idea.

Auditor Patterson: So where are our policymakers on this now?

Ms. Robinson: The Mayor, first of all, has identified some money in the recent proposed budget for a commission to study this, on how to actually get it done. There is also a group of people, including myself, who were working on the fine details of how to get it done. This is not speculation for me. This is not a dream world for me. I know that we need to figure out what the policy guidelines look like, what the legislation look like. How that works with Congress. I understand that. I would disagree that the record is "spotty" on Parole Boards across the country. The record is not spotty. They are failed institutions. They are not what is in best interest of the people who are being impacted by them, but they are in the interest of the people who will benefit from serving on and employed by that Board, with a \$30 million budget as of the latest proposal. In the latest proposal I saw a proposal for hiring upwards of 30 people to work for a diminishing population, who will be incentivized to keep the revocation system going. This is not a matter of "we can't do it now" or "we don't have all the answers now." We need to commit ourselves to figuring that out.

Mr. Bouker: When I said the record was spotty, I was being diplomatic, because there are folks who feel strongly about this. But I do agree with Janene that if we have to ask for another extension, that is going to look really bad. Particularly for those of us fighting so hard for statehood.

Ms. Robinson: All the more reason for the court to absorb this function instead of trying to create this new Parole Board from scratch to fund it and to have people be employed by it. That is not ready to go in the next year.

³ The federal statute referred to here is the Revitalization Act, which gave the federal government control over parole for the District of Columbia. See National Capital Revitalization and Self-Government Improvement Act of 1997 ("Revitalization Act"), Pub. L. No. 105-33, 111 Stat. 712 (1997).

Mr. Davis: I may not have the broader outlook on things, but if you asked me four or five years ago, when it was time for me to see the Parole Board who I would have wanted to see, I would have said that I wanted to see a Board of my peers in front of me. Not the judge who gave me all the time in the world. I don't want to see him. I want to see somebody who may understand a little bit better.

Ms. Robinson: I respect that. All of the returning citizens at the last hearing, the vast majority testified that they would rather it be in the court. For me, this is not theory. I'm on these community calls at night, I'm in the community daily, before the pandemic. The vast majority of the returning citizens I speak to prefer to go before a judge. Why? Because they want a "fair fight."

The Distance Issue: Bringing Home D.C. Citizens Incarcerated Across the Country

Auditor Patterson: Coming back to one of the first points that was made on where our people are housed: The point was made that in each one of 122 facilities all over the country someone is from D.C. In a world where we are in charge, how do we in fact bring people home? What are the planning steps there?

Mr. Bouker: The Council for Court Excellence has put forward as part of their report, a three-part plan that would bring folks back.⁴

Auditor Patterson: But back where?

Mr. Bouker: Well, at first, the D.C. Jail. But a decision ultimately would have to be made by local elected officials here, whether or not they're going to build a prison here in D.C. or whether they're going to contract to build a prison someplace else. I will tell you that one of the reasons why we didn't build the prison was the promise of the Revitalization Act that there would be facilities close to or in the District. The Bureau of Prisons came to the District of Columbia. They went around to different neighborhoods. They looked at sites, they talked to folks and what they heard was no, no, no. Don't put that here.

And so they did what bureaucrats do, they took the path of least resistance, which was just to put these folks all over the place in BOP facilities around the country. So that's going to be a very difficult decision that politicians are going to have to make. That decision is made easier by the fact that I think we are all committed to decarceration. So there are 4,000 folks in these facilities now. Many of us would like to see less than 2,000 or 1,500. A lot of these incarcerated folks are there on drug crimes, Class B felonies and the like. With fewer people incarcerated, this does not have to be some behemoth prison that is built. But, we have to be planning for it right now because statehood is a live issue, it's not just an academic exercise anymore.

⁴ The report referred to hear was facilitated by the Council for Court Excellence and published by the District Task Force on Jails & Justice. See District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today* (Feb. 2021), <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>.

Ms. Robinson: We have to plan, but everything, and I'm going to repeat this all night, centers from our values. Once you decide where you want to be, you can work on the plan to get there. I have a saying, let's figure out all the ways in which this can work and not how it can't work. If you start from the premise of it's too expensive, it's too hard, it's too big, there's no political will, then you're going to play right into your own negative mindset. We have these new values that have really increased in the last couple of years, especially with George Floyd, the racial reckoning, the nationwide commitment to decarceration and police reform and all of these values say we want to see a change. Now, we need to do the work to get the change done and not be daunted by how hard it's going to be. I'm ready to work.

Mr. Bouker: I agree and I think part of the problem in the past has been who these folks are. Incarcerated individuals were demonized, and seen as the "other." They were not folks whose votes politicians were trying to get. But we are seeing a change in this country. I think that there's going to be a renewed focus on how we do these things and to accept our brothers and sisters, who happened to be incarcerated, as our brothers and sisters. And to do the right thing by them.

Ms. Jackson: I'm struck by what has been said because I agree that once we set our values, it becomes our true north. But I wouldn't say that we all have the same values. Because we have a Bureau of Prisons that tried to put a halfway house in the District, in two different sites. And you saw elected officials on the Council try to stop that from going into Ward 7 or going into Ward 5. And we saw the same issue when trying to site a homeless shelter, no one wanted it in their backyard.

Auditor Patterson: The difference is that those institutions are functioning. Despite the issues, those were policy initiatives that did go forward.

Ms. Jackson: Yes, my point is that I wouldn't assume everybody shares your values. You have to figure it out. You've got to plan for that. And then you have to be able to withstand the backlash that comes with that. It is knowing your true north and saying, this is the right thing to do. So it should be done. I want to make sure that we appreciate this, since not everyone shares the values. When there is a difference of opinion, we have to figure out how to speak to that person and not just overrun them because then they become the obstacle. They become the reason why we can't get a halfway house in Ward 7.

So it's not just bringing our neighbors or residents home. It's figuring out how to teach people not to be afraid. How do we help people understand that if this were your family member, wouldn't you want this person near you, close to you, want them to be successful? That's the reason why the reentry services are so extremely important because that's the negating argument against those saying "not in my backyard." It's showing that this person has a job and is going to work and has a support structure.

When I worked at the criminal justice agency that the Vera Institute started in New York City, what they did was made bail recommendations to the judges. And I worked from 11:00 PM to 6:00 AM in the morning. But the point is that the two most important things in terms of making a bail recommendation were employment and stable housing. Those are the two most important things in terms of reentry services I believe as well. Stable housing and a job. And we have to help people understand what does it look like to return someone to the District? So that there's a greater degree of comfort with that, so that it does become our shared community value.

Connecting Local Values to the Criminal Justice System and D.C. Statehood

Mr. Smith: It seems to me although the topic tonight was “What if we were in charge, how would we make things better?,” there are things that this conversation demonstrates that the District of Columbia can and should be doing today, even without local control, even without being in charge. There are things that we can control now and should be doing. Some of them are things we could ensure we are investing in right now in the city that are part of decarceration, housing issues, workforce development issues, mental health issues, and drug abuse issues. So much of the criminal justice system gets triggered with those issues. And so much of the needs on reentry could be improved in this city if we were doing more investing in our community.

And we can and should be doing that, whether or not we control what the U.S. Attorney’s Office is doing, whether or not we appoint our judges, whether or not we are now running all of our prisons. I don’t want people to think that the topic here ought to be “Gee, if we only had statehood, we could take control of things.” The likelihood of statehood anytime soon, in my own view, is not great, but I am glad that statehood has in some ways teed up that issue. The fact that statehood may be out there and it’s caused people to say, “Well, if we had statehood, what would we do about criminal justice reform?” Let’s also be thinking about what we should be doing on criminal justice reform, even though we don’t have statehood *right now*.

And let me 100% agree that whatever you decide are your priorities now, before we get statehood, you have to plan for them. They are not self-executing, they are not free. Most of the things we are talking about, I believe are good investments, but you’re going to have to figure out what are the dollars you’re going to use to make those investments.

Ms. Robinson: I want to talk about the values first. We know what the values were as voted on by D.C. residents. Are they going to be everyone’s values? Of course not. That’s never going to be the case. Millions of people valued slavery as an institution, to keep going and were not in favor of abolition, right? So we know it’s often the case that values do not align. But in this city, the eight values that have been identified are *accessibility, diversity, equity, livability, opportunity, prosperity, resilience, and safety*.⁵ And those eight values are for everyone. So for the people coming home, they’re not those people to me, they’re not returning citizens to me. They are people who have just as much right as anyone else to those eight values.

And so when we talk about those values, we have our compass and our guide in our city. I completely agree that we have to plan. But we know what those values are, and we know that they work, even in spite of NIMBY [Not In My Back Yard]. Again, I was on the ground doing a lot of the community activism and work around the halfway house. Our Mayor is on record stating that there should be a halfway house in the District of Columbia. The majority of the Council said there should be a halfway house in

⁵ Mayor Bowser submitted an update to the District’s Comprehensive Plan, which sets a positive long-term vision for the District and articulated the values of focus for the D.C. government. For more information see: <https://mayor.dc.gov/release/mayor-bowser-comprehensive-plan-proposal-approved-dc-council>.

the District of Columbia. There was a minority voice that said that there should not be a halfway house in certain wards. But the people came together and said no; for our people, we want a halfway house. Because particularly for Black people, at any given point, you're a victim, you're an offender, you're a family member. The majority of police in this city are Black. The majority of people who are incarcerated are Black. Many of the victims are Black. And so for Black people, they have a lot of the same interests on those same constituencies.

Mr. Bouker: I think it's important for folks to underscore a point Walter made. I think a lot of us are for statehood and I'm certainly for statehood. Statehood would be a very "neat way," and I say that with quotes because there's a lot of details, but a very neat way to fix all of this because immediately you have control. Yes, there would have to be a transition to be able to phase in the elements of that control. But statehood is the big fix and we are all for that. But everything we're talking about tonight can be done without statehood, every single thing.

The secret is that the Bureau of Prisons wants to give us back the system now, right now. There have been discussions between the District of Columbia and the Bureau of Prisons. If the BOP could give control back to D.C. tomorrow, they would. They don't want to deal with this. They have a whole system that they have to deal with. The fact of the matter is, we are not yet in a position to be able to assume those functions back again. Part of the problem is cost, because for the Bureau of Prisons, it costs them far less to incarcerate somebody per day than it costs us. Part of that is because we provide a lot more services than they do in the Bureau of Prisons, because of our values.

But you don't need statehood to make change. Many of these issues are live. We talked about parole, that's a very live issue. Prisons, if we wanted them back tomorrow, we could figure that out. The prosecutors and the courts are a little different because I don't think the courts are too ready to give up that commission from the president of United States. And of course the prosecutors, the U.S. Attorney, doesn't want to give up its prosecutorial function immediately, I would say. But we can be working on this stuff now before we get statehood, because statehood is not going to happen tomorrow. We're closer than we've ever been, but there are still significant hurdles. We can be getting parts of this system back right now.

Mr. Smith: I think we all agree with that, and I hope this is a message that people can take away from this conversation. A lot of the reforms that are being discussed here are reforms that we ought to be working on right now with or without statehood – irrespective of whether or not the federal system controls us. But, even the minor things we're talking about here that are so important, they too are going to cost money and they too are going to take planning if we're going to get them implemented. I happen to think they would be good investments for the city. I happen to think the payoff from making those investments might end up paying for themselves through the improvements we would make within the city.

Some of the investments are in the report that Jon and his group did.⁶ But for some examples, I believe we need to be much more concerned about workforce development, affordable housing and about drug

⁶ Council for Court Excellence, *Report of the Committee on Local Control to the District Task Force on Jails & Justice* (Aug. 9, 2019), <http://www.courtexcellence.org/uploads/publications/LocalControl.pdf>.

abuse and mental health support. All of those not only improve our citizenry, but they serve a word we've used here many times tonight, decarceration. I think they may serve us well in preventing crimes from happening in the first place. I think the more we start investing in those kinds of community undertakings, the better off we're going to be. I realize this is broader than the issue that we're talking about here, but I think it relates to us achieving success on the issues we're talking about here.

Ms. Robinson: To amplify what was just said, it is true that we use our lack of control as an escape clause or an excuse. There is a lot that we can be doing right now because for my clients, it doesn't matter whether the label is federal government or D.C. government, what they care about is liberty and dignity. What they care about is a second chance. And what they care about are investments. We know from James Forman's book *Locking Up Our Own* that there were 40 years of piecemeal policies that led to mass incarceration specifically in the District of Columbia.⁷ Many of the leaders were Black and there were a lot of harmful policies when we did have local control. So let's not be seduced by the idea that just because we have local control, all of a sudden everything will be solved.

We can start solving things now. We can start to identify our values. We saw how quickly we were able to change things with COVID and make a change in the good time credits. These reforms had major benefits and consequences for our clients. It ended up releasing some people immediately. So we know there are things that we can do. We look at the investment in reentry. The reentry landscape in D.C. has changed dramatically in the last three years because we are leading with our values.

Incarceration Reform in D.C.

Auditor Patterson: What are the specific policy steps being taken for decarceration? Are they on anyone's agenda? How urgently are these issues being addressed?

Ms. Robinson: For the specific policy steps, I often think of a tool belt. My team has any number of tools to try to help people get their liberty. That's the bottom line, we can increase those tools. The District of Columbia, whether it's a tool such as compassionate release, the Incarceration Reduction Amendment Act,⁸ or sentence reduction, whatever label you want to give it, we need it for everyone. Everyone should be given an opportunity to make their case. The vast majority of people are not released, but give them the guaranteed opportunity to make their case. Because what do we know from the vast majority of the IRAA recipients, they are thriving. They are doing well. They are leaders in our community. They add value to our community. They add value to their families. Black families are broken. We are weathered. And we are traumatized from what mass incarceration did. Not to just the people suffering like Mr. Davis. But to all of us, I know personally what that does to families and communities. And so everyone needs to

⁷ Forman, James Jr., *Locking Up Our Own: Crime and Punishment in Black America* (2017).

⁸ The Incarceration Reduction Amendment Act (IRAA) allows incarcerated residents who committed serious crimes before they turned 18 to petition the court for resentencing after fifteen years. In 2021, the DC Council passed the Second Look Amendment Act of 2019, which expanded the IRAA. For more information see: <https://cic.dc.gov/release/dc-council-passes-second-look-amendment-act-2019#:~:text=On%20April%2027%2C%202021%2C%20the,2019%20became%20an%20effective%20law.&text=Introduced%20in%202019%2C%20the%20law,to%20have%20their%20sentence%20reviewed>.

be given that opportunity for their dignity to be valued. For other policy steps, there could be presumptive parole at 60, presumptive second chance review at 60. And there's so many things that we can do that would give people a second chance.

Mr. Bouker: Again, this is stuff we can do now. Frankly, I think that values, aren't going to be the biggest hurdle here. I think the biggest hurdle here is money. These things that we're talking about, if you add all of them up, we're talking hundreds of millions of dollars. There are only so many ways you could get that money. You can either cut services or you can raise revenue.

Until we're a state, we don't have the ability to tax all of the income derived at the source here in the District of Columbia, which is again a fancy way of saying commuter tax. So if we're going to do some of these things or try to do some of these things before statehood, we've got to make the decision. Do we want to cut services, certain services or certain agencies to be able to fund these things that we would assume back into the District system? Or do we want to raise taxes on rich folks to pay for it? And we saw the Council tried to do that fairly recently, it was stopped and there's going to be another effort this budget cycle to do the same, so we will see on that.

Ms. Jackson: The other thing is to practice oversight. For example, when Odie Washington was in charge of the Department of Corrections, Kathy Patterson pushed him on a regular basis to drive down overcrowding in the jail. When the department of Fire and Emergency Medical Services was rampant with overtime, Phil Mendelson called a hearing every month to drive down overtime.

Mr. Bouker: True, but that's not going to get you \$700 or \$800 million.

Ms. Jackson: But the reason this is important is because it also matters for when we take over functions. If we don't get our own house in order, in terms of how we behave and how we govern, then the cost is higher. The fact of the matter is that during budget season, populations are pitted against each other because nobody has enough money. Charter schools are battling D.C. Public Schools, affordable housing is battling developers who say it costs so much to develop. Then you have high income earners who complain about funding the District government coupled with commercial property tax and don't want to pay more.

So that is what the budget is. It is a battle of interests. And the Mayor did an exceptional job when she first came into office in 2015 on our first budget. She held these budget forums and she forced residents to parcel out that dollar. I say that having worked for three different elected officials who had three different agendas, but all the same agenda. There are competing interests at all times. And you know the true master of an elected official is reelection.

Ms. Robinson: I attended several of those budget forums in the community, by the way, those were good. I was happily there with my pencil and paper. This issue that you're bringing up is a real issue because we need to fund the machine.

So if we think for a second, imagine our system was cut in half so that our incarcerated population is 2,000 or 1,500. Can we do that? Yes we can and we should. We just saw it with the pandemic. Arrests went

down, detention went down, compassionate release went up. We weren't so blood thirsty for this solution to public safety, which has been courts prosecution and judges. We can choose to reinvest our money in jobs, education, housing, these other leading systems by shrinking criminal justice. Now you may ask about all the crime that's happening, but that's not what is fueling our mass incarceration. We know the crime rate has been going down. We know that what fuels incarceration in the District of Columbia is often parole revocation. We could change and shrink the parole system and the supervised release system. We can dramatically decide to do something different, not to mention all the people you can take out of the system from the beginning. They are called "off ramps" and we can do it. I recommend that everyone watched *13th* on Netflix because it poses a lot of interesting questions that we should come to terms with: Do we really want to reduce our system? Because it keeps a lot of people employed. It keeps a lot of private companies making money. It employs, many of us, it keeps it all going all in the name of public safety.

Ms. Jackson: We see your point, and to that, every year that I worked on the D.C. Council, every year that I worked for Mayor Gray, every single year, Council member, after Council member called for an increase in the size of the police force. I started on the Council on an ominous day, September 11th, 2001. In 2002, that was part of the budget, increasing the size of the police force. I remember when I left government in 2014, the call was for 4,000 officers. So you're absolutely right. I remember thinking after 9/11, this is why we need so many police officers. But part of the reason why we need so many police officers is because residents *feel* unsafe, not that they really aren't safe. So that's another thing that we really have to grapple with. The fact of the matter is that there are only three vote-able issues in the District of Columbia: economic development, schools, and public safety. Elected officials will say all the right things to get elected. So you're right. The system is self-perpetuating.

Then you are also right that people are employed by this system and are unionized. We have to figure out what to do about that, and that is part of the planning. Planning requires looking at the prison system or reentry and also figuring out how we can stop people from going to jail. It's not just the police officers.

Regaining Local Control of Prosecutions

Auditor Patterson: Can we come back to the prosecution function? Why do we want local control of our prosecuting agencies? What are the factors in not having local control of prosecution that contribute to what we're speaking about? Why should that be on the list of things to address prior to statehood? What can we do about prosecutions?

Mr. Bouker: It's about liberty, pure and simple. If you're going to take somebody's liberty away, you have to be accountable to somebody.

Ms. Robinson: Accountability, plain and simple. Many people feel that some in the U.S. Attorney's Office basically use poor Black folks as target practice, so that they can say "I was a federal prosecutor."

I want to double down on this premise for a second. Local control, statehood, it doesn't equal more liberty for my clients necessarily. It's not automatic. These same values would apply if we had local control.

But to your point, if we had a local prosecutor, it would impact charging decisions. But really, that first starts with the criminal code, which was the very first thing that I mentioned on this call that needs to be changed. The tools and the armor that prosecutors have in the first place need to be changed, then charging decisions and discretion need to change. If folks are aligned with the community's values, and don't forget, the community is changing, gentrification is real, so we don't necessarily know what things are going to look like in 5, 10, 15, or 20 years from now. But right now, the community is committed toward decarceration, a public health approach, racial justice. Those are our values right now.

Mr. Smith: I have to pick up on that point and tie it to the question. We looked at how prosecutions function in other jurisdictions, and in the majority of them, you would have someone who would be an elected District Attorney. So unless we have assigned everything the U.S. Attorney's Office has right now over to the Attorney General, one option would be that we would have a new office – an elected District Attorney who would prosecute the D.C. Code offenses that our U.S. Attorney prosecutes right now. To pick up on the accountability piece, that elected person would be accountable to the public because it would be an elected position. Presumably, if we are right about our shared values, then that elected person would share those values. Right now, of course, we have no control over who the U.S. Attorney is or what choices the U.S. Attorney is making. There is often very little coordination between what is happening there and what the District elected officials would want to be choosing or what our elected Attorney General would want to be choosing.

However, I want to come back to the point that if we are going to do that, it is a major cost to undertake. I think the U.S. Attorney's office here in the District is by far the largest in the country with over 300 attorney and 300 staff support. So this is a major undertaking. So if your values are such that having that kind of control and knowing that your values are going to be reflected by an elected District Attorney, then you decide that's an investment that you want to make and the payoff is going to be worth it. But we are not there yet. I don't think we've even begun to have that conversation, but we're going to have a transition period if we can achieve statehood and we can figure out whether or not we want to spend the money.

“The Moment” for Reform: Next Steps for the Parole System

Mr. Bouker: That really is the beauty of all of this. How often do you get a chance to really design this from the ground up? Let me put it this way. The Revitalization Act was passed in 1997. That was a generation ago and we have another opportunity right now. A once in a generation opportunity. I believe as we are re-imagining what this country is going to look like with respect to racial justice, following the death of George Floyd, coming out of this pandemic, building back better, whatever you want to call it. We are in a moment in this country. And I think we're at a moment here in the District of Columbia where we can take a really hard look at some of these things, and we can decide how we want to design this system for the next generation and take control of some of these things now.

I think this should be one of the most important things, if not the most important thing that we're dealing with right now in the District of Columbia. I think it's important for all the folks listening here, who care about these issues to talk to their elected officials, to talk to their council members, to talk to the Mayor, to talk to the Mayor's office and to explain how important this is and how we have this moment, which could pass us by.

Ms. Robinson: We do have a moment. Now you said we're not focused enough on this issue. I think that's true. However, I get chills from the amount of organizing that is going on about reentry, returning citizen-led organizations like The National Reentry Network for Returning Citizens. There are folks who are on the ground. If you look at the last oversight hearing, so many returning citizens testified and so many reentry organizations testified. I wrote an entire chapter in the book about civic participation, the new voting law that recently passed enfranchising people now with felony convictions. Who was doing that work on the ground? Returning citizens.

Ninety percent of the people impacted are Black folks in Black communities. We need to center them in this discussion, not just as a token person on a committee or a working group, but it should be from the inside out. They should not only be at the table. They should be setting the table.

Mr. Davis: So one thing I do is I don't stop talking. I don't stop talking about my experiences. For example, after doing 21 years and then coming home I was supposed to be on parole for the rest of my life. I'm doing great on parole. I have two jobs and I asked my parole officer if I can be taken off parole. Well somewhere previously in the line of the many parole officers that I had, somebody had put in for me to get early termination and it was approved, but it never made it to my current parole officer. So I wound up doing eight months on supervised release. And I had a signed certificate from the U.S. Parole Commission dated eight months prior that I was released. If not for friends inquiring about my hearing that I was supposed to have, I would still be on parole. So one of the things that I do is I don't stop talking. I tell everyone. I tell everyone about all of my experiences, good and bad. Right now I work for University Legal Services. I do everything I possibly can for all my returning citizens, all my clients, but I don't stop talking. I want everyone to know just how unpredictable things are with USPC. To give you a quick example, I came home five years ago. There were three of us, three co-defendants and I was the primary. I got 21 years and they got their years. I saw the USPC. I come home. They are still in jail. One of them just got a five-year hit. How is that possible when you have the primary out on the street? There's just no communication going on. And so some of the things I do is I just don't shut up.

Ms. Robinson: Those are the stories that I hear every day. Not just here. Those are the stories that I cry about when I'm sitting next to Mr. Davis's co-defendant who got a five year hit. It's called a set-off by the USPC. What does five years mean? It means I thought I was going to come out in time for my daughter's middle school graduation, now I'm hoping I come out in time for her high school graduation. It means my mom who's on dialysis and I don't know how much longer she has, it's possible she's going to die before I get out. These are real conversations. Nobody can tell that story like the people who actually experience it.

For example, there are so many conditions. Mr. Davis was talking about conditions of parole or supervised release. We've been talking about courts and prosecutors but no, we should focus on supervision. Supervision is the new mass incarceration. It is what perpetuates the system, the ongoing surveillance in the many, many corners, all of the conditions that aren't necessarily narrowly tailored to people's personal needs. Conditions such as you can't engage with anyone else who has a felony conviction. What does that mean for entire communities in the District of Columbia? Who does that actually serve? That's a problem. There are all these conditions that completely interrupt people's lives. And the budget for this supervision system is a \$300 million budget.

Under the old D.C. system, there was a commitment to social services. Many of the supervision officers had a background in social work. So these are the things that we really need to talk about. I say that paternalism is the cousin to racism. We should be in people's lives for a limited amount of time for the sole purpose of serving their needs.

Auditor Patterson: So where do we go on that issue?

Ms. Robinson: You can reform the supervised release statute, you can have a presumption of early termination. That's already in the statute. That's a service that we provide, early termination representation. There's a lot that we can do. There's no reason for people to necessarily be on supervision. They're working, they're law abiding, so there's not a concern about re-offending and they are great citizens in their community. Supervision is designed in many ways for people to feel that they can't compete with all of the conditions, and so they get revoked for technical violations, which was also better under the old local system, and they get sent back to jail. Now, yes, little reforms are happening along the way, but I'm not talking about incremental reforms. I'm talking about a radical change in our values and how we design the system.

Mr. Davis: I just wanted to piggyback on that because it relates back to prosecution. Guys go through the court system and they've got to see the Parole Board then they come home. The Parole Board who is supposed to be helping but who is actually trying to lock them up. But we have the resources, let's give them to them. Let's not just tell them to "do better" let's give them a working chance.

Auditor Patterson: What else do folks listening need to know about these issues in order to think about the changes that can be made now prior to statehood? You all have a huge amount of expertise. What are we not touching on?

Ms. Robinson: I think so often we hear Black Lives Matter. Black lives matter in the context of people's lives being snuffed out on the streets by law enforcement. We get that. Somebody should have the ability to live. But Black lives mattering begins before they're snuffed out on the street. Black lives mattering means I should be able to see and to touch, and to hug my family so I can be whole. Black lives mattering means I'm not dropped off on a mountain hundreds of miles away from my family in the federal Bureau of Prisons. Black lives mattering means I don't see my mother once every three years when she can afford to get the money to come see me. Black lives mattering means, after you've incarcerated me for 20, 30, 40 years that you don't drop me out of the window without a parachute when I come home.

Black lives mattering means not leaving me out to dry for a transition plan for housing, for job placement and training, computer training because that would not be neglected for people who are not Black people.

Look at the Affluenza case.⁹ You all remember the Affluenza case. The young boy who killed four people in Texas and only got probation. Why? Because for dominant culture, who's usually in charge, white folks. They could see their son in him. They could see their potential in him. It is easy to have destructive, heartbreaking heart-wrenching policies like slavery and mass incarceration when the people that are damaged by it don't matter to those in charge. It is easy to disassociate and put people far off when you can't see yourself in them. For me, I see myself, I see my family. It is one and the same. And when we all feel that way, things will change. That is what is missing.

Mr. Bouker: Can I ask Robert a question along these lines? Because I'm fascinated to know, Robert, how far away were you when you were incarcerated, and what barriers did you feel in terms of connections back to the community, and how were you able to try and keep those connections so that when you came home? I'm interested in your experience along those lines.

Mr. Davis: I'm sorry to say, I did eight years in California. That was as far away as I could be. I did eight years, and it was terrible. There's no easy way to put it. If you don't know, every BOP facility has its own rules. It has its own mayor, its own governor. And it was just terrible. So some of the things I did trying to get over the hurdle of being so far away from home, I tried to write a lot and I tried to read a lot. I tried to take out of the mindset of where I was. But there wasn't much I could do to fix what maybe I could have fixed if I was closer to home. There was nothing that I could do about it. But I just tried to weather the storm as much as I could.

The furthest away from home was that eight year chunk in California. But, like I said, every prison has its own set of everything. So it's like Victorville, California may allow you to be more family-oriented, as opposed to Atwater, California where they don't care about you and your family. So it's the luck of the draw. Even on this end, right now, in the role that I play now, I make legal calls because I try to get in touch with guys before they're even coming out to establish a relationship so that maybe I can be there when they get off the bus. If they don't have family I can just do everything I possibly can. So I try to start my work when they're in. But I call one institution and one counselor lets me talk to the guy. I call another institution and that counselor was like, "I'm not giving him a legal call. He doesn't have a court case in the next 10 days." There's no guidelines or anything. It was tough to be so far away from home. I just did the best I could with keeping my family abreast of what was going on with me. I tried to make sure that I didn't lose contact with anyone. Quite frankly, I'm just glad that I was able to come home and not sink. I was able to float and then take off because now I can speak for some of the guys who need my voice.

The three hardest things that returning citizens come up against but need so much when they come home is employment, housing and healthcare. But those are the three scarcest things. Maybe we can get

9 "Affluenza" refers to the case of Ethan Couch, who, at the age of sixteen, killed four people and injured several others while driving under the influence in Texas. Couch's attorney argued that Couch had "affluenza" and needed rehabilitation instead of prison, because he had no understanding of boundaries due to his affluent upbringing. The term sparked national debates about wealth and race in the criminal justice system. See Manny Fernandez and John Schwartz, *Teenager's Sentence in Fatal Drunken-Driving Case Stirs "Affluenza" Debate*, NY Times (Dec. 13, 2013), <https://www.nytimes.com/2013/12/14/us/teenagers-sentence-in-fatal-drunken-driving-case-stirs-affluenza-debate.html>.

healthcare, but the employment and the housing is so hard to get. So my role right now, as minute as it is, is to make sure I can get those things for every guy I touch.

Mr. Smith: In housing and healthcare, and in just basic support for people, this city needs to be doing a better job, period. Not only to be supporting returning citizens, but to be supporting other low-income residents in this city. I think the city needs to better understand that these kinds of investments are win-win across the board because the fewer people we send to prison and the more we take care of the returning citizens, the more benefit is going to come to the city in the first place. So we need to invest up front in these basic needs. It's very easy for me to say, it's hard to do, but it's part also of the basic values that we've been talking about. That's one of the lessons that I take from this conversation. What is really interesting to me is really not so much about the fight between local control and federal control, but rather it's about things that the District of Columbia can itself be doing now.

Auditor Patterson: We have a couple of questions from the audience now. Let me thank you all for your participation. Thank you for being with the Council for Court Excellence and the Office of D.C. Auditor tonight.

Question and Answer

It's one thing to say that our political leaders have stated values and are talking about the need to do these things, but we haven't seen people allocate money for transferring parole from the U.S. oversight. We haven't seen money for opening up more spots to bring people home from the BOP. Do either of you have thoughts about what it will take to actually get D.C. to take those next steps?

Ms. Robinson: Well, you put your money into things that you care about. I think it's an excellent point by the person who asks the question. What we can do is hold our elected officials accountable. They are accountable to us. We touched on this earlier, but so much of this policy is led by politicians getting reelected.

In James Forman's book, *Locking Up Our Own*, he discusses how the community wanted a court, a prosecutor, and a prison as an approach to public safety, but it also simultaneously wanted jobs, housing, and education. That part of the conversation gets lost, or it gets dropped because it's easier to focus on the criminal justice machine that already exists. It's harder to do the work, to invest in housing and jobs and education, but that's happening. We're seeing that literally start this year, millions of dollars going into reentry, but we have to divorce ourselves from the desire to see this system continue to perpetuate itself. We want to radically diminish the system only for the absolute, most necessary reasons for it to exist.

D.C. has done some of this in the past, we used to have a prison. What are some of the things that we need to change when we do, presuming that we do have our own authority in the future? What are some of the things that you want to see us doing differently?

Mr. Davis: I really liked the idea of Lorton. Even though Lorton didn't work out, I liked the idea of just everything in comparison with the BOP, I like everything about Lorton. One of the things that I believe if we built it now, a prison closer to us would be a lot safer than Lorton and it would be more modern than

Lorton. One of the things that I like to see is a more modernized prison system for us. We can take some of the advice from the Bureau of Prisons, as far as when we're building them. Once they are here we can modernize them and make them safer and better places. That way we wouldn't have so many lawsuits about the conditions in the prison and people wouldn't be so turned off by the prison being here.

Bibliography

Below is a compiled list of the sources cited throughout the forum as well as options for additional reading and edification as provided by the discussants and CCE.

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Speaker Bios

Jon Bouker, *Arent Fox*

Jon Bouker serves as the Co-Leader of Government Relations Practice for Arent Fox. He represents clients before Congress, the White House and federal agencies, the government of the District of Columbia, and surrounding counties. Jon is the Co-Chair of Arent Fox's Pro Bono Committee.

Prior to his time at Arent Fox, Jon worked extensively in the US House of Representatives. He served as chief counsel and legislative director to Congresswoman Eleanor Holmes Norton (D-DC) while at the same time serving as minority counsel to Congressman Henry Waxman (D-CA), then ranking member of the House Government Reform Committee. Jon's primary duty on the committee was his role as the Democratic staff director for the House Subcommittee on the District of Columbia, the subcommittee with federal legislative jurisdiction over the nation's capital. In his work as the House Democrats' primary staff member for District of Columbia matters, Jon played a central role in developing, negotiating, and passing historic legislation to spur the District's revitalization, including passage of the National Capital Revitalization and Self-Government Improvement Act of 1997.

Additionally, Jon is an adjunct professor of law at American University's Washington College of Law, where he taught the legislation course from 1999 to 2008, and an adjunct professor of law teaching State and Local Government Law at the University of the District of Columbia David A. Clarke Law School, where he is the current chair. He is also the former chair of DC Appleseed, as well as the former chair of DC Vote and the District of Columbia Affairs Section of the DC Bar. On top of this, he has served on the boards of the DC Public Library Foundation and the National Women's History Museum.

Jon is co-chair of the District of Columbia Federal Law Enforcement Nominating Commission that recommends candidates for the US District Court, US Attorney, and other federal agencies; co-Chair, along with DC Attorney General Karl Racine, of the Council for Court Excellence task force on securing local control of the District's prison populations; and a past member of and current pro bono counsel to the District of Columbia Access to Justice Commission. Jon is also a Trustee of the Federal City Council and a member of the Mayor's legal advisory team for DC statehood.

The Washington Business Journal has recognized Jon as a Top Washington Lawyer in the categories of "Young Guns" and "State and Local Lobbying." Chambers USA has also recognized Jon as a leading attorney in its Government Relations category (2019).

Jon and Arent Fox are the recipients of DC Appleseed's Community Service Award for contributions to DC voting rights and the CAEAR Coalition's Partnership Award for work on behalf of those living with HIV/AIDS.

Robert Davis, *DC Jail and Prison Advocacy Project at Disability Rights DC*

Robert was charged and incarcerated in 1994 at the age of 18. After serving 21 years between the D.C. Jail, Lorton Correctional Facility, and Federal Bureau of Prison facilities across the US, he was released in 2015 to the District Of Columbia where he spent his childhood. He was accepted into FreeMinds Book Club and enrolled in a Job Readiness and Personal Skill Building Apprenticeship Program where he excelled and where he regularly speaks with community members about his personal journey of growth and change.

Since 2018 Robert has helped Georgetown Law's Internship Director run regular Reentry Support Sessions at F.C.I. Petersburg, while working full-time at Catholic Charities as a Program Assistant. In March of 2021 Robert was hired by University Legal Services to be a Reentry Advocate for Victims Services. He regularly offers to connect FreeMinds alumni and old Georgetown clients with job opportunities and is always on hand to talk with newly returning citizens to offer words of advice and encouragement.

Janene Jackson, *Holland & Knight*

Janene Jackson is a partner in Holland & Knight's Public Policy & Regulation Group who utilizes her extensive experience to help clients navigate the legislative and regulatory aspects of local government. Having worked in all branches of the government of the District of Columbia, Ms. Jackson brings a 360-degree approach to assisting clients with their government relations and lobbying needs, business development interests and legal representations in administrative proceedings.

Ms. Jackson uses her comprehensive background to understand how to influence and help clients navigate the issues and opportunities they face. As deputy chief of staff and director of the Office of Policy and Legislative Affairs, she was responsible for the regional, federal, and local relationships for the mayor, as well as lobbying the Council of the District of Columbia and Congress. As senior vice president for government affairs at the DC Chamber of Commerce, she was responsible for crafting and executing legislative strategies and negotiating with the executive and legislative branches of government. Ms. Jackson has additionally served as committee counsel to the Committee on Public Safety and Judiciary Chairman Phil Mendelson, and she has served as the executive director of the State Complaint Office of the District of Columbia Public Schools, where she conducted investigations against local education agencies alleged to have violated the Individuals with Disabilities Education Act. As a result, the District of Columbia Public Schools moved from noncompliance status to compliance status with the U.S. Department of Education. Finally, Ms. Jackson served as the assistant corporation counsel in the Office of Corporation Counsel, where she represented the government of the District of Columbia in class action lawsuits.

Chiquisha Robinson, *Prison and Reentry Policy Expert*

Ms. Robinson serves as the Deputy Chief for the Prisoner & Reentry Legal Services (PRLS) program in the D.C. Public Defender Service' Community Defender Division. The Community Defender Division (CDD) provides legal advice, social services, and community education and outreach to adults and children who are in the post-adjudication stage of a criminal or juvenile delinquency case arising out of the D.C. Superior Court. Ms. Robinson manages a team of attorneys who respond to the legal and social services needs of newly released individuals and others with D.C. criminal records, assisting them in making a successful transition back into the community. Further, she serves as the Public Defender Service' (PDS) liaison to

individuals convicted of District of Columbia Code offenses who are serving sentences in the D.C. Department of Corrections, Central Treatment Facility, and Federal Bureau of Prisons, by providing legal information to assist these individuals, monitor their conditions of confinement, and provide legal representation in parole, early termination of supervision, and other release-related legal matters.

Before joining the CDD, Ms. Robinson was an attorney in the Public Defender Service' Trial Division handling only the most serious felonies. As a trial attorney, she was also a member of PDS' nationally recognized Forensic Practice Group, which trains lawyers around the country on forensic and scientific matters. Ms. Robinson is also the Co-chair of the D.C. Reentry Action Network, a coalition of reentry direct service providers and the Co-Chair of the ABA's Committee on Reentry and Collateral Consequences. She is also the Director of Social Policy and Advocacy for the Black Public Defender Association. Ms. Robinson is also the author of PDS' new book, *The D.C. Reentry Navigator: Empowering You to Succeed with a D.C. Criminal Record*. She received her law degree from Boston College Law School and her undergraduate degree (magna cum laude) from the Commonwealth Honors College at the University of Massachusetts, Amherst. Ms. Robinson has an enduring commitment to the District of Columbia where she has passionately served people with D.C. criminal records in both the pre- and post-adjudication phases of the criminal justice system for many years.

Walter Smith, DC Appleseed

Walter has been the executive director of DC Appleseed since 2001. Before coming to Appleseed, he served as the Special Deputy Corporation Counsel for the city (now the Office of the Attorney General) -- where he focused on addressing the many receiverships in the District, supervising litigation affecting the school system, setting up pro bono assistance for the District from private law firms, and bringing a suit before a three-judge federal court seeking voting representation for the District in Congress.

Walter previously practiced for 16 years at the law firm of Hogan Lovells, where he specialized in appellate litigation. For several years, he served as the full-time partner-director of the firm's pro bono practice. He also served as a Lieutenant in the U.S. Navy JAG Corps defending courts-martials, and earlier clerked for the Chief Judge of the Fifth Circuit Court of Appeals.

Walter has argued numerous cases before the U.S. Supreme Court, the U.S. Court of Appeals for the D.C. Circuit, and the D.C. Court of Appeals.

Walter received the President's Award from the Washington Council of Lawyers, the Brennan Award from the DC Bar, and was named by *The Legal Times* as one of the "90 Greatest Washington Lawyers of the last 30 years." Equally important, Walter reigned as the Hula Hoop Champion of Oklahoma in junior high.

Kathy Patterson, D.C. Auditor – Moderator

Kathleen (Kathy) Patterson, former 3-term D.C. Councilmember, became D.C. Auditor on December 15, 2014, after being nominated and confirmed unanimously by the D.C. Council. Patterson comes to ODCA after working for nearly eight years for the Pew Charitable Trusts, first as federal policy director for Pre-K Now, a 10-year Pew campaign that succeeded in doubling state investments in high-quality voluntary

pre-k across the country, then as a director in Pew's Government Relations department. Her work for Pew included outreach to federal and state policymakers on a wide range of public policy issues including performance budgeting, home visiting, dental care for children, election reform, and corrections reform.

Patterson was elected to the D.C. Council from Ward 3 in 1994, was re-elected in 1998 and 2002, and ran unsuccessfully for Council chairman in 2006. She chaired the committees on Government Operations, Judiciary, and Education, Recreation and Libraries. She was part of the leadership that brought the District out of financial crisis in the mid-90s and earned a reputation for effective oversight of executive branch agencies. Her major legislation included smoke-free D.C., the First Amendment Rights and Police Standards Act of 2004 governing policy practices handling demonstrations, school modernization, personnel reform, and authorization for public charter schools. Council reforms she initiated included the legislature's annual performance hearings, authorization for special investigations, and a separate Council budget office.

Patterson is a former newspaper reporter including serving as a Washington correspondent for the Kansas City Star, and former communications director for the American Public Welfare Association. She holds a bachelor's degree in journalism from Northwestern University and a master's in English from Georgetown University.



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