

Telling History in Public: Loyola Project for the Innocent Oral History Project

Charlie Nelson Keever

December 11, 2020 (interview conducted on Zoom)

Interviewed by Natalie Riddick

SUMMARY:

This interview is with Charlie Nelson Keever, a lawyer and former student of the Loyola Project for the Innocent Clinic, for the Telling History in Public Loyola Project for the Innocent Oral History Project. In this interview, Natalie Riddick and Charlie Nelson Keever discuss Ms. Nelson Keever's background and how she became the lawyer she is today, as well as her thoughts on our criminal justice system from the perspective as a lawyer who works with wrongful conviction cases.

TRANSCRIPT

Natalie Riddick (NR): Today we are interviewing Charlie Nelson Keever, a student of the Loyola Project for the Innocent Clinic, who's doing amazing justice work as a lawyer in the Bay Area, for the Telling History in Public Loyola Project for the Innocent Oral History Project. It's December 11, 2020, and we are conducting the interview using Zoom. I'm Natalie Riddick, one of the project interviewers. All right, so can you describe your general background for me?

Charlie Nelson Keever (CNK); Yeah, like, like my, like personal history, like where I, you know, how I got to law school or?

NR: Yeah.

CNK: Yeah, um, so I grew up in Southern California, in the South Bay. And I, I guess the important parts are? Well, so my, I guess, it starts with my parents, my parents are sort of like hippies, they're products of the 70s, they met at UC Santa Cruz in the early 1970s, and I think that really influenced them and how they brought me up. They were total social justice warriors and environmental advocates, and, um, that was sort of ingrained in me that it's really important to be mindful of, like, how you move about the world and being, what it means to like, be a, be civically engaged and to be an active citizen. So that was sort of like the foundation. And then, um, I think it was, I think, in college, I, I went to UC Santa Cruz for my first year of undergrad, and they have a really strong core course, their like, foundational course that all freshmen have to take with a lot of, like. You, each, each college within UC Santa Cruz has a separate, has its own core course that's sort of geared towards that college's, like, mission statement and the one for Stevenson college was Self and Society. And it was reading

a lot of original texts that basically were that, they were about, like, how, what your responsibilities are and what, you know, what it means to be human, what our responsibilities are to each other. Um, that were super impactful to me, and I think, I really think that was like the foundation of my like my own, like coming into my own as like a social justice advocate. Um, it was definitely the start of my own racial identity development, I think, in a meaningful way. Growing up in the South Bay, it was super homogenous, very white, very affluent. Um, and so I ended up transferring to UCLA, but when I graduated, I knew, I didn't know what I wanted to do precisely, but I'd heard about Teach for America from a friend, and I was sort of interested in education reform and thought like, this is going to be a great way to get some, like in the trenches experience about like, what's going on there. Um, and I felt like education was sort of at the crossroads of a lot of different social justice issues, or the root of a lot of different social justice issues. So I was like, that's, I think I'll do that. I always thought I might be interested in going to law school, but I knew I didn't want to do it immediately after undergrad. I think I thought I wanted to get some real world experience, kind of like figure out what it was I might want to do with a law degree. So I did Teach for America, and part of the training is continuing the sort of racial identity development that I had already started, like they're very conscious of, the corps is very diverse, but it's, it's intended to serve, and to teach in a low-income community where there's a deficit in educational opportunity. And so to make sure that you know, you're not going in with a savior complex, you're not going in without an understanding of the type of communities and the students and families that you're working with. They had really strong professional development around this. And that was kind of when I started to learn more about mass incarceration and the prison industrial complex and it like, totally blew my mind. I read "Just Mercy" by Bryan Stevenson, I read "The New Jim Crow" by Michelle Alexander, and I was like, *What are we doing? What, what are we doing?* So I think that really made me, it bolstered my desire to go to law school and to do something social justice related in the law and related to, to promote criminal justice reform. So I taught for three years, and at that point, I was like, okay, I'm either going to stay here and be a lifer, or I need to, I think I need to do my dream and go to law school. So that's what I did. I knew I wanted to come back. I taught in New York. I knew I wanted to come back to L.A. and so I was looking at L.A. law schools. And truly one of the things that drew me to Loyola, I would say two main things. One was, I had been teaching, I had this mini career teaching with this really very steep learning curve. Teaching is the hardest job in the world. No matter what level you're at, this is just. I can say it after doing law school, my first year of teaching harder than my first year of law school, harder than my first year practicing, it is, it's just totally wild. But so that steep learning curve, you kind of like, it's hard, but then you get a lot of experience and you kind of like get on your feet. And so I, if I was going to like go back to school and kind of start at square one, I was like, I want to go to a place where I'm going to walk out of law school with a

lot of practical skills ready to practice. And that is something that Loyola has a reputation for in L.A. and in California. And the other thing was the reason why it has that reputation is because of the clinic work, all of its clinics and the experiential learning opportunities that it provides for students. The one that I was interested [in] being the Project for the Innocent. I don't even remember how I heard about it. I think, like literally my, my bubbe, my Jewish grandma is, like, would hear Professor Levenson on the radio and she, so when I told her I was going to Loyola, she was like, oh, you need to you know, you need to find Professor Levenson. That might have been like, I feel all these things were like kind of happening around the same time. Maybe it was when I told her I was applying to Loyola, because I don't know how I first heard about Project for the Innocent, but it was a huge reason why I chose Loyola for, for law school. Um, so yeah, so I, what I, you know, your first year of law school, everyone kind of, you don't have that much autonomy, everyone takes the same courses. But by your second year, you get to decide what to do, and I applied for Project for the Innocent, and I got in I worked there for two years. I was a clinical law student for a year, and then returned as a research assistant, um, my third year of law school. So that's it.

NR: Yeah. Sorry, what, did I cut you off?

CNK: No, no, you didn't. Clearly, I could talk for a million years. So cut me off...

NR: This is what interviews are about, where it's a space to talk. Do you remember, specifically, anything that drew you to the Loyola Project for the Innocent specifically when choosing a project you want to get involved with?

CNK: Yeah, I mean. So I think that like, like, the reason I went into teaching was because at the time, I could sort of see all the reasons why education reform connected a lot of issues I cared deeply about. I think that, and I think that I like evolved to a place where I felt like, I felt like mass incarceration and the criminal justice system felt like that, for me, it felt like it, it was also connected all these like social justice issues that I cared really deeply about. Um, you know, I think, I think what's so interesting about wrongful conviction cases, and I guess I didn't know this before, before working at Project for the Innocent, but I have to believe this is part of what drew me to that work from reading books like "Just Mercy," I'm pointing because it's on my bookshelf. Um, they kind of bring together all of the many issues, all the many failings of the criminal justice system, you kind of see them highlighted in this particular way in wrongful conviction cases. Because you're, you're taking, you're investigating cases, often, they're like 10 or, you know, 20 years old, and looking backward at everything that went wrong, assuming that the person who's a clinic client or somebody who's applying for support is innocent. If you,

you know, when you start looking into these cases, you're looking at, I mean, the causes of wrongful conviction are false eyewitness or yeah bad eyewitness ID, which is often and has like racial implications, even worse when it's cross-racial ID. Um, there's prosecutorial misconduct, which isn't usually because prosecutors are bad people, it's because they're part of a system that is adversarial where they, you know, both sides get really entrenched in their own beliefs about, like, what they know and what, you know, what they can reasonably know. The same thing is true of police, and it starts with who they stop on the street, who they, who they decide is their suspect, and then they get tunnel vision. Um, there's like bad forensic science, like, all these things come together. And I think the thing that was really compelling for me is seeing the way that the criminal justice system is, like, all these failings have racial undertones and like racial implications and kind of highlight and call out systemic racism and how it how it plays out in our culture. Um, and, and that that reality is borne out by the fact that, you know, the makeup of our prison population, the, the racial, I mean, the racial and ethnic makeup of our prison population, the racial and ethnic makeup of the people who've been exonerated in the United States, in California. Um, so I think all of those things, I think knowing that made me feel like this is really important work to do. And it's this really, it's a really interesting opportunity that I think is becoming more and more, like people are hearing about it more, like I think when I was entering law school is like, when like Serial the podcast like came out and was like, really, like people were becoming more aware, like that is around the time, maybe the years following like, when "Just Mercy" came out and then like, the film obviously came out several years later. But the cultural awareness is shifting, and it seemed to me like such an important opportunity for connecting this conversation about systemic racism, to how it plays out in the criminal justice system, and wrongful conviction work again, because it brings together all of these many problems with the criminal justice system in this really compelling way where it's like, this is an innocent person. That was like, I was like that, *this is what I this is why I have to, like, be a part of this.*

NR: Yeah, and how would you say these experiences like in the Project influenced the work you did? After your Loyola Law School career?

CNK: Yeah. Well, so all my experience, including, up to and including Project for the Innocent, and was very, you know, sort of public interest oriented. I, I, you can choose a concentration at Loyola Law School, and I chose a public interest concentration. Um, so, in the middle of my law school career, I was like, I should, you know, I want to make sure I'm getting a well-rounded experience, and I should diversify a little bit. So I applied to just like work at a civil firm for a summer, and you get paid, it's like, nice as a law student, you're like, finally making money again. Um, and so I was like, *you know, this will be good, I'll get some experience.* Um, and

then I'll be able to say, from an informed firsthand perspective, like, "Thank you, no, thank you, working at a law firm isn't for me, and I'm gonna go back to my wrongful conviction work and call it a day." And I really liked working at the firm that I worked at. I got a lot of experience that is not typical of summer associates. They really gave me meaningful work to do. Or maybe it's not typical of a summer associate in, like, Big Law world, and so I got a lot of meaningful experience. I really liked my coworkers, um, and I got an offer to come back. And so I thought, you know, maybe I could do this for a little bit, I can save up some money, I can, you know, get some experience. And the other part of it is, there's a challenge to like, getting a public interest job straight out of law school. Um, there are a lot of opportunities, but, um, in some cases, like, you know, if you want to work for the ACLU, you want to be a staff attorney, um, they don't have all the money and resources in the world. So when they have the funds to hire a staff attorney, they need somebody who has a little bit of experience, maybe two or three years, not somebody who's like just starting out. And so for a lot of folks, I saw, you know, friends who were also interested in public interest work, they were basically having to, like, intern, work for free, or like, hang out, or work multiple jobs in some cases, to then, like, get enough experience and build up enough goodwill to actually get hired at these places they wanted to work at. So I thought, well, maybe I'll skip that, I'll work, you know, I'll do this other thing for a little bit, um, knowing that I would eventually want to head back to something that was more criminal justice, or that, not more, was at all criminal justice oriented. So I worked at a civil firm for almost two years. And I, this spring, I think between like COVID and, um, and truly like, following the murder of George Floyd and the BLM movement gaining so much momentum and, and the conversation about, again, like the conversation about systemic racism in our country, just really galvanized and, like, it reaffirmed and galvanized my own sense of, like, I think, responsibility, but also my desire to return to social justice work. I was like, you know, I had this plan of like, I do this for a little bit, and then I go, you know, and then I'll do this. And it was all sort of like, yeah, cuz that's a, it was like, we love having a plan. But it was also like, "This will be convenient for me." And I was like, "Life's too short. This is not the work that like makes me want to jump out of bed in the morning." Like it's nice to help people even with their civil claims, but like, that working with like law firm clients was like, compared to the work that I did at LPI, like, night and day, and I was like, "I want to feel like I'm doing something meaningful. Again, why am I waiting?" So I left my firm, um, and I actually, and the reason I was able to leave was because of a connection with the former Legal Director of Loyola's Project for the Innocent, Lara Bazelon, who, she was the Legal Director of the program before I was at Loyola, so we didn't overlap at all. But the folks at LPI now, Adam Grant and Paula Mitchell, spoke so highly of her, she was like a celebrity to me. So, and I knew she was up here in the Bay Area, I'm in San Francisco now. And so I, like, happened to talk to Adam when I was like, and he was like, how's, you know, "How's law firm life," and I was like, "You're right, I

hate it," you know, "you can give me an I told you, so you've earned it." And so he put me in touch with Lara. And she was working on a project, or on a case where they needed a little bit of support. And she was like, you know, we, "If you need a vehicle to leave your firm, why don't you come do this?" So I was like, "That sounds great, let's do that." But that, what that evolved into is the work that I'm doing now, which is directly connected to the work that I did at LPI. So as I was working with Lara over the summer, she has a very close working relationship with San Francisco's new district attorney, Chesa Boudin, who is a very progressive, he was a former public defender, and is a progressive prosecutor. He's like part of this sort of fledgling progressive prosecutor movement, where people who are advocates for criminal justice reform are moving into the prosecutor role, because that is the person, that's the role that has the most power. They decide what crimes to charge, who gets, you know, who gets charged, they decide the policies of the office, they have the most power, I think, when it comes to criminal justice reform. And so part of what he ran on was a promise to have a meaningful conviction integrity unit. A lot of these because of this, like, growing movement, um, you know, even before the like progressive prosecutor movement, because of this like growing awareness of the problem of wrongful conviction, a lot of district attorney's offices have added a conviction review unit or conviction integrity unit, or like a hate, you know, basically, outside of the unit that would ordinarily handle petitions for writs of habeas corpus, which is, that's the work that a Project for the Innocent does. Um, a separate unit that's supposed to on its own look into cases is basically supposed to be an internal Innocence Project, it's supposed to look at cases where there's a claim of actual innocence or a claim that a conviction was obtained in a manner that is unconstitutional, where the conviction can't be upheld. But the problem is, it's really hard for a district attorney, err, it's hard for the prosecutors to basically check their own work. Which I get, it's not because they're bad people. It is, it is, the problems are systemic. They also don't have the resources that they need, tough all around, fine. So DA Boudin was like, I want to have a Conviction Integrity Unit that actually does something. There had been a Conviction Integrity Unit in this office before he got there, it had been around for three years, hasn't exonerated a single person. So his idea was to create an independent body outside of the DA's office that would advise him. It's called the Innocence Commission, and it would be a panel of volunteers all appointed by him, who are experts in criminal justice reform. So there is an academic, which is Lara Bazelon, she's the chair of the commission. There is a representative from the public defender's office, there's representative from the DA's office, there is a representative from an Innocence Project, and there is a representative, there's a retired judge, and then there's somebody with a background in criminal psychology. So all, all volunteer, all appointed by the DA but all experts in all these, all the different facets, like these key stakeholders in the, in the criminal justice process, who would then independently review cases, make a recommendation to the DA, and then the DA, it would, you know, hopefully exonerate that person. It would be

something to expedite the process, because the traditional habeas route can take forever, and it's really challenging. So Lara's idea was, you know, this is a volunteer commission, all these people have their own jobs in our lives, we need somebody else to do the work. So Lara runs the Racial Justice Clinic out at USF Law school, and her idea was to get grant funding to hire a staff attorney to help work with the students, to do kind of the grunt work of investigating cases, presenting them to the commission. And then ultimately creating whatever it is, whatever filing it is that the DA's office would, would present to the court to get somebody exonerated in a case where we believe there's been a wrongful conviction. So I helped her write the grant. And we got the funding for that role. I applied and interviewed for that role. And I got it and just started in November. So we're kind of, we're doing something new, it's a lot like the work that I did with Project for the Innocent, but this is like a totally different framework. Um, and it's kind of like working with the DA's office, but not for the DA's office, which is like definitely new for me. But I 100% got this opportunity, which is like a dream job for me – it's a combination of doing wrongful conviction work and working with students – because of the experience that I had at Project for the Innocent. It is, I mean, I'm like, I'm thrilled, I like couldn't be happier to be doing this job now, and it is it's completely because of LPI.

NR: Well, that's really cool to hear. Yeah, it's very interesting about all the different aspects you need to, like, put all this stuff together for the problems in our criminal justice system. It's, there's so much that goes into it and so many different moving pieces. That, that's really cool. And speaking of the criminal justice system, and like going deeper into that, what are some of the ways that you would judge the guilt or innocence of clients?

CNK: That's a great question. Well, so I think, you know, when cases come in, I think this is true, both the way that we review cases at Project for the Innocent and the way that I'm reviewing cases now in the Innocence Commission. Um, I mean, we really try to take a holistic view. I think the fact that somebody, like at least to LPI, we got hundreds of letters, we got so many. Um, and so one of the first things that we think we would look at when we were like screening letters would be, um. we're kind of thinking about the legal framework of what we have to, what, what you have to do to have standing to bring a habeas petition. And so one of the biggest things you have to have is you have to have new evidence, if there's something that wasn't presented before, that wasn't presented at trial, that you're saying this would change the outcome if a jury heard it today. And it can be new evidence of actual innocence, it can be evidence that there was police or prosecutorial misconduct. It can be, I mean, yeah, it could be that, you know, they were convicted based on science that, um, that we know no longer holds up, because there's like, a lot of developments with that. Um, so often, these are

folks who are viewing, they're writing us letters from prison, and they're kind of trying to tell us their story, um, to the extent that they can. And so we're kind of looking for, we're looking for those types of claims in their letters, kind of like, those are the things that would spark like, okay, there's, there might be something here for us to dig into. Because that's one of the hard things is that the legal framework means that, you know, let's say they had they, maybe they had a really, really strong case at trial. Um, and for whatever reason, the jury, you know, didn't come out in their favor. Sometimes you can tell from a letter that what they're, you know, they're just sort of reiterating, like, "Here's what happened, it was super unfair, it shouldn't have happened." And we can be like, "Yep, that's exactly, you are right, that shouldn't have happened." And if there's nothing new, we can't bring a habeas claim based on that. And it doesn't mean that we won't look into the case if there's like a really compelling story, or we think it's really sympathetic, or sometimes if the client's been in prison for a really long time. That is an indication, and the law is actually changing so that there are more opportunities for relief. Um, but yeah, so so that's one of the first things is just like, is there, are there, is there new evidence here? Um, the other thing is, like, if it's, as I said earlier, a lot of these cases are 10, 20, 30 years old, and so you're kind of looking backwards and trying to do the investigation that in sometimes, you know, times wasn't done at all or wasn't done very well, um, or was impeded by, you know, any number of things. And so you're looking also for like, how are we actually going to, how are we going to prove up this case. So if in their letter, they're saying, you know, talk to this person, this person is willing to come forward, now this person's willing to sign a declaration, that's a great place to start. And it kind of, you know, in terms of evaluating their like, innocence claim, they're kind of saying, don't just take my word for it. Because I think there's a perception that, like, everyone says, they're innocent, which I will come back to in a moment, because it's not true. Um, but they're saying, here are these, you know, independent ways to verify this. And that's often like, we'll start with that, and then when we start digging into a case, it's like, as I said, like these cases, it's, it's never just one thing that went wrong, it's almost always a combination of things. So maybe the original letter that the client writes, and it sparks one thing, and then we start, you know, pulling at that thread, and then everything starts to unravel. And you find all this evidence wasn't turned over, or their attorney failed to even talk to this alibi witness or, you know, whatever the case may be. Um, but the other thing is, as I said, there's a perception that, well, everyone says they're innocent, um, and what, what we've learned is that in, in prison culture, that's actually not true, that there's like, the, the cultural dynamic, the social-cultural dynamic that happens in prison is like, you don't really talk about, no one wants, no one in prison wants to hear that you're innocent. Um, it is kind of frowned upon to like, maintain your, like, openly maintain your innocence. And so, we often would hear, like, one of the biggest ways that we've gotten, or one of the ways that we've gotten some of our very, like, compelling and ultimately successful cases, at least for

LPI—and this is actually it's happening right now for the Innocence Commission—is other exonerees, who were, you know, they were in prison, and they were like, “This was my cellmate for five years, I know their whole life story, they're known, you know, they were they've maintained their innocence since day one, they were in the law library every day, everybody knew their story, everybody knew that they had always said they were innocent.” That is kind of, you know, I think that to a lay person, you hear that you're like, “Well, I'm sure everybody in prison is saying that,” and it's just not the case. And so for an exon, another exoneree to be like, “Hey, I know this guy, and like, and, and, you know, my, my experience of this person is like, they're credible, and they've been saying they were innocent since day one,” you look at their case. Um, that's, that's happened in multiple cases that we've had. And at least one, if not two, of the exonerees that LPI has had have been clients that were referred from other exonerees that either LPI, um, I think these are other exonerees that LPI worked with, not other LPI exonerees.

NR: Mm hmm. And how does one go about reopening a case once you have decided to take it on?

CNK: Yeah. So I guess, are you more interested in, like, and I can answer both, but like the investigative process, or like, the legal part of it, or?

NR: Um, both, whatever you feel like sharing.

CNK: So. So I think, I mean, the first piece that we often start is trying to, I mean, trying to collect all the relevant materials. So, um, that can be things that the client has. In some cases, they, like, they or a family member on their behalf has like held on to files from the case, so like, getting physical files. We can make discovery requests or in some cases, file discovery motions to get information from the district attorney's office. But often, and the, the sort of most fruitful source of information are like the people and things that the client themselves is pointing us to. So additional witnesses that have come forward. Um, I mean, basically, like, you just have to try everything, especially when these are, these are like old cases. So like, I'm thinking about one of the cases that I worked on, um, what, for LPI, was Janet Dixon's case, and she's, she's now has been released from prison. Um, her case was, yeah, it was like over 20 years old. And one of the important things that we needed to kind of establish was this relationship from her childhood. Um, and she grew up in Louisiana, with a bunch of siblings that [now] live like all over the country. And we just started reaching out to, like, every single person to be like, “Hey,” like, “We just kind of needed corroboration for like, was this, there's a particular person involved in her case,” um, and we needed to know like, “was this person

around? What did you remember about this person? Like do you remember her relationship with Janet?" Um, and from like asking like one other sibling and one other friend, we ended up getting in touch with Janet's like childhood best friend who she hadn't talked to, you know, in 40 years or more, who was like, "Oh, yeah, I remember she was over at her house all the time, they were always on the front porch;" "Oh, yeah, we knew, all the moms in the neighborhood knew, like, don't go to that lady's house, you know, she was trouble." It was like a goldmine of, like, all this information that we needed, and you just kind of never know where it's gonna come from. So you have to follow up every lead. Um, absolutely. I think in addition to gathering material, you also like, you to have to be sort of practical about the case that you have to make and, um, you know, from our standpoint, like, the important thing is like, who is, like, who's innocent? And honestly, there were times when like, we would have a case where I'm like, I believe the client when they say they're innocent, there's all this evidence that leads me to believe that, like, I don't think there's a way they could have done it. But then in some cases, there'd be like, evidence that was like, *this is really confusing*. Like, *I don't know how to reconcile this with your story*. But, but I, like, even in the moments where, even if I had any, like, shred of doubt about the client's like, ultimate innocence, in that case, for example, there was like, so much evidence of prosecutorial misconduct or police misconduct, there had been evidence tampering, there was bad forensic science, like blood spatter evidence that was totally bogus and made no sense. So at a minimum, I know that her conviction can't stand because it was achieved using, it was, it was basically, there are too many errors with it, that it rises to the level, in my view, of being unconstitutional. So there are some times when like, you know, even if you're, like, maybe, maybe like today, I don't know if I can prove this person's innocence, at a minimum, I know, this conviction can't stand. Um, and so you're looking for that too. But from a political and practical standpoint, the DA wants to release somebody who's innocent, they want to be confident that they're releasing somebody who's not going to be a public safety risk. So the other thing that you look at, and we go about developing cases, looking at their record in prison, so their prison records called their "C file." And it's, you get it from the Department of Corrections, and it just kind of, like, tells you about their life in prison. And it often tells you about sort of like their, um, it can help bolster the argument that this person, you know, isn't a murderer, or it can help bolster the argument that like, regardless of what you think they may have done 30 years ago, this is what they've done with their life since then. And that's a big part of the case, too. Um, like for Janet, who I was talking about earlier, she had, like a spotless C file, her infractions were like, like having chewing gum or something, I mean, like, or like playing like a practical joke on a friend. And they put they, they're so horrible – in the Department of Corrections, they put all that stuff in your, they put that stuff in your file like it's a federal offense when she was like playing a trick on a friend. But in any event, that stuff's important too. And it, you know, she was really involved in, she did a lot of therapy,

and she was involved with like, a praise dance group. Um, and all of those things helped build her case too, to like show who she is and why she deserves to be free.

NR: And what is the common type of new evidence that, well, you kind of already explained type of evidence, like, brought forth from, like, other exonerees and their records and stuff. So what would you say are the biggest challenges in these kinds of cases?

CNK: Yeah. Well, one, I mean, one of the challenges is, as I said, these cases, um, sometimes the evidence, or like the incident that we're trying to investigate is 10, 20, 30 years old. So you know, finding the people who were involved, getting them to be willing to talk about it, um, finding evidence that's very, very old. You know, sometimes like, there have been so many changes and developments in, in forensic science and technology that like, you know, for example, a kind of newer development in the last maybe 10 years is touch DNA, which is like, you can extract DNA from, like, it's literally, you know, from like touching a desk, like we're shedding a little bit of our cells all the time. And previously, like we didn't have the means for collecting and testing that type of DNA, and they have developed that now. So, um, you know, maybe 30 years ago, it wouldn't have made sense to save a particular piece of evidence or type of evidence, because, you know, there's not like a bodily fluid on, like even when they did have DNA, there's not like saliva or like any other type of bodily fluid, which was the way that they would test DNA, right. Um, you know, now we're like, well, didn't you save that rock, because like we, maybe we get touch DNA off of it. Um, so evidence preservation, like sometimes the way that it was stored, that can be a problem. Even just getting access to it, and being allowed to retest it, like a lot of there are a lot of legal barriers, you have to, like, make a motion for retesting, in most cases, if you don't have the evidence, um, you know, in hand. And I think the other big hurdle, and this isn't to investigating, it's like the litigating piece. The, so there's kind of, there was, there's been an exciting development, or I guess, it's still exciting, it's a couple years old, but the state of California changed the standard for what new evidence means in the context of a habeas petition. And this happened like right before I joined LPI, so I've only ever known this standard, so I don't know the old one super well, but basically, it was like a much higher hurdle in terms of what "new" means. Now, what it means is like, um, you know, if you couldn't, if you didn't have it at trial, and you couldn't reasonably have, have found it, or presented it at trial, it's new, and we're still kind of, like, developing the contours of what new evidence means. Um, you know, for example, we're having a conversation with the Innocence Commission, or within the Innocence Commission right now about whether, um, you know, whether it would be appropriate to characterize, for example, there's been like a lot of research and development in understanding the pitfalls of not only eyewitness identification, but cross-racial identification. It's something that, like, even though that, that term, like the

idea of it being a thing, or maybe a problem, was like around in 1989, when this case that we're investigating happened, it wasn't understood the way it is today, I think it wasn't the idea that like somebody of one race trying to identify somebody of another race, like, that being an issue at all, like, is, is much more widely accepted today than it would have been then. So we're having a conversation about whether, whether like that, in itself, the way that like that information can not only be like, presented to a jury with a lot of like data and research behind it today, but also, like, I think you'd probably be entitled to a jury instruction, like, about the problem with the cross-racial identification today, like that would totally change, or could totally change the outcome of a case today. So we're having a conversation about whether those changes and like, the way that this evidence would be presented today could constitute new evidence under the standard. Um, but the, the barrier that I'm really getting at is that even when you think you have a slam dunk case, you have a really strong case, there is a lot of, there's still a lot of resistance. And I'm finding that now even in my my work on the Innocence Commission, which is sort of like designed, it's designed to be a non-adversarial review process. It's designed to be, to expedite the process of reviewing these cases. And still, we're like having tough conversations about whether this, you know, the case we're looking at meets the standard. And like to be candid, from my perspective, one of the cases we're looking at is, like, it's a slam dunk. Like in normal, in a normal, adversarial, habeas world, we have so many claims, all very strong, that would kind of get the ball rolling, and the legal process it would result in, like, I have no doubt that if this case were filed today, the judge would issue an order to show cause, which is basically, like that's the first best result in a habeas case. So when the court says, "If everything you're, that says in this petition is true, well, Mr. Prosecutor DA, you have a problem, because if everything in here is true," and the court has to assume that it is, "this conviction can't stand." And then the DA has, so the order to show cause is an order to the DA to show, okay, like, it's like, you, "Okay, you show why this isn't right. Because if it's right, we have a problem." And that's what kicks off. Like, that's what really gets the ball rolling the order to show cause and then often it will result in an evidentiary hearing where you actually get to put forward your evidence and show see everything we did say in the petition is true. And then the judge will now make a ruling, or in some cases, that point the DA will like make a deal. Um, so yeah, we have this case where I'm like, if we followed this to you know, if the petitioner's attorneys filed this today, it would I have no doubt in my mind, I would bet I would bet a million dollars that this case would result in order to show cause, I think it would at least result in evidentiary hearing. And I think it's like, I think this case, we go all the way through, which is like, that's what we're supposed to be doing is saying, we don't have to do all that, because we have done the investigation, we looked at it as the panel of experts, they looked at it, they're the panel of experts, and can say like, "We think this is how it was, would come out. Let's just get, you know, let's let's speed up this process." And they're still hesitant.

And I think that it comes, I think that something happens. I think there's like a fundamental misunderstanding of our justice system. And I think that like, I think our, like brains play tricks on us when someone is in custody. It just, it's like every part of the process affirms that, like this person belongs in custody, or that or that the burden is on the petitioner, which it is and it may be a setting the burden is on the petitioner to say why they should get out. But the problem is, what the law says is that if there's like reasonable doubt, so basically, like if, if we go if we take all this new evidence that we have, and say if a jury saw this today, is there one juror that would have like reasonable doubt about convicting this person? And the answer is yes, then I think what has to happen, is we go back, as soon as that as soon as that happens, we go back to the presumption of innocence. And we have to presume this person is innocent until proven guilty. And think about, like, you know, all the problems that that we're seeing with their conviction. I mean, that's just like, that should be it. Right. But, um, you know, I think the the hurdle is, and one of the biggest hurdles actually is, is public perception. Because what I think the real fear is, is like the fear of, I don't even know if it's letting someone out of prison, and the fear that they're going to do something that hurts themselves, or others. Because like, in a lot of these cases, we're talking about people who are in their 60s or 70s, who had a spotless record in... since they've been incarcerated have demonstrated that they, you know, are ready and willing to be like positive, contributing members of society, I don't even think it's the like, fear that they're going to re-offend. I think it's like, the fear about the stories that we tell ourselves, like the fear about I don't, like the public responding and saying, you know, why did you let this person out of prison? Why are we letting murderers out? Or, you know, how do we know? And in a lot of cases, the biggest hurdle is figuring out like, how are we going to tell the, how are we going to, like, package this, it's like a PR problem? How are we going to tell the story of this, so that we can get the, get to the outcome that's right and that's just? Um, and it, that's really, it's kind of a hard pill to swallow, because that's a totally separate conversation, you know, not only from what's right and wrong, but it's a totally separate conversation, even from what the law asks for, because of like, the legal framework that I just described, about like how it's supposed to be and what, what we're... the hurdle we're supposed to clear, but it's like there's this additional public perception hurdle. Um, that makes things really tough.

NR: Yeah. And in that public perception hurdle, isn't it also how the public would view the DA and the prosecutors themselves who wrongfully convicted the person? That's another tough pill to swallow.

CNK: 100%. Um, it takes it takes a lot of courage. Um, yeah, I mean, you know, they, they want to get it right for the right reasons, but they also want to get it right for political reasons and and public perception reasons. 100%.

NR: Yeah. And as you've worked on these cases, have you noticed any common factors or themes present in the cases you've done?

CNK: Yeah, trying to think of what the biggest ones are, trying to narrow it to like three. There, because there's there, so, there's a lot that we see. Okay, so one of the biggest ones, I think, is tunnel vision. Um, and that, that happens, um, it starts with the police. It starts with, like, who they stop, um, who they investigate. And there's a lot of like, there's a lot of, um, a sense of like knowingness, like the police have an attitude of like, it's kind of like the law, and, I think, I don't think Adam coined this term, Adam Grant, but I think that I maybe heard it from him first, but like "the Law and Order effect." So we talked about, there's like, a coined expression is like the "CSI effect." And it's the, the effect on a jury of having like forensic evidence, and it's sort of like an overconfidence and an overreliance on the presence of forensic evidence, because of the way it's presented in like TV and movies. Or it's like, "Oh, if there's a fingerprint, then like that's conclusive evidence." But when you like dig into it a little bit more, you find out that like, well, actually, like, you know, comparing fingerprints is more of like an art than a science, it's just a person with, with eyes, who has some experience in what's, I think, called pattern evidence, just comparing one to another, and if a certain number of points in the little fingerprint match, then they'll call it a match. And in California, maybe four points matching means, is a match. And in Louisiana, two points is a match. And where there's an arbitrary distinction like that, it kind of shows you how it's like, oh, you think that fingerprint match is just a match? And then, you know, you dig into it a little bit and find out like, oh, that's not quite right. So, like, that's, that's what we call like, "the CSI effect." The "Law and Order effect," um, it's kind of the sense of like, what happens on Law and Order all the time, if you watch, if you're a fan, is the DA is kind of like almost always get it right. And the narrative is almost always like, "We know this is the guy, we just have to figure out how to prove it's the guy." Um, and again, they're almost always right and they, sometimes they, like, the drama in an episode is that they like, they skirt the rules. They like do something out of line, they use like an, whether it's like in like the police or prosecutors, the police use an interrogation technique that's, like, not allowed. But, but in the episode, but as you're watching, you're like rooting for them, because you're like, "No, but they know like, they know it's the guy and they just have to get the guy." Well, the problem is, this 100% is what happens in real life is that the police really feel like like, most, most police officers aren't like, "I know this isn't the guy and I'm going to pin it on him." There are cases like that, where there was like, where there's like animus and it's like a total

cartoon villain situation. For the most part, it's not that they know they don't have the guy, it's that they really think they do, but the reason they think they have the guy is like all, it's, it's racial bias, it is socio-economic bias, it is, um, you know, maybe the very first piece of evidence like a tip or, you know, whoever's on the scene or or, or a bad ID like the very first piece of evidence points to this person. And then they like confirmation bias kind of kicks in and then they start seeing the whole case and putting, you know, artificially putting together the pieces and only looking at the pieces that support the idea that it's this person. Um, you know, rather than keeping an open mind and really like objectively looking at the evidence as it comes in and continuing to like probe and continuing to investigate other leads and sometimes, because, you know, like maybe, like the first 24 hours like these, they only have like, they have a limited set of evidence and then, like, as you investigate, more evidence is revealed, but kind of what happens at the very beginning absolutely influences like what happens next. And so in a lot of cases we see like, what in retrospect seems like really obvious, you'll be like, well, why wouldn't you at least, so they never talk to that witness that like said they did see what happened or like they never called the, you know, they thought they had this guy, and they just and the guy said, well, I haven't, you know, I have a really solid alibi, talk to my, you know, boss or whoever, and they just never called them. Like, that's the part, like the stuff that you're like, when it's kind of shocking that you're like, it just seems, it seems basic, it seems like this is at a minimum what you would do to just be, even if you think you're right, like, why wouldn't you check, this is really important to get it right. Um, and that sort of like the evidence that there's been that tunnel vision and that, that police and prosecutors are operating with confirmation bias. And sometimes it can be so extreme, like they so believe they have the guy that they, they, they're not only only looking at the evidence in a certain way, but they're creating the evidence in a certain way, they're pressuring witnesses, either in some cases inadvertently, in some cases intentionally, because they're like, I just know, that's the guy. Um, that's huge. That's like, just like ignoring stuff that's, like, really obviously important. Um, one of the, you know, talk about like Janet's case, um, and that that woman who we were investigating from her childhood, there was some really compelling...Janet told us about the relationship with this woman, it was an abusive relationship, this woman essentially kidnapped her from her childhood home. Shocking, huge. And this, this woman is involved in, ultimately involved with a crime that, that Janet was convicted of. And, um, at the time, what was like right in front of police and prosecutors, based on the things that both Janet and this woman were saying was, like, they basically admitted that they had had, been like...that they were like, it was clear that there had been like an inappropriate sexual relationship between Janet and this woman, when Janet was a minor. Right in front of them, but the year was, you know, 1980, and there are two women, and there are two Black women, and they are like, you know, sort of low income. All of these things, I think, I mean, because I'm, because we're sitting there, and we're like, these

people are mandated reporters. Like, I used to be a teacher, if, if, if they hear, the police, the prosecutors, hear what these two women are saying about their relationship, and, and un, like the undisputed facts about this relationship, that's a huge red flag, like this is a problem, and I need, like, we should we need to look at this, this is, there's something going on here. Um, and no one did. And so like, you know, that's me really thinking about all the reasons why and you're like, yeah, I mean, they like, they're operating from, like, their understanding of the world, their understanding as like, which is totally influenced by their age, gender, race, socio-economic position, and then where they are in time, you know, in terms of like, the cultural and social awareness about these things. Um, you know, so in some cases, it's like, really obvious why something's been overlooked. And other cases, it's like, "How?" um, but all those things, like some level of tunnel vision, and some level of confirmation bias is present in almost every case that I've seen. Um, and then honestly, bad eyewitness ID is a huge one, it's like one of the main causes of wrongful conviction. We are just not, we think that we have any level of like photographic memory, we don't, our memories are not good in that way. Um, there have been like really dramatic cases where, like, in the most extreme version, like a rape victim is like, she'll say, after like, "I was focused on surviving, I, the only thing that got me through was memorizing every feature of my attackers face, so that I could identify him later, that's all I was focused on, I got a good, he was, you know, five inches from my face for an extended period of time, I can remember this person." And then they, and then like DNA evidence shows that they've identified the wrong person later. Like, we are not good identifying people's faces. It's, as I've said, you know, I could say it 100 more times, but it's even worse when it comes to cross-racial ID. We're just not as good at recognizing the facial features of somebody who does not share our race. That, a bad eyewitness ID where someone's like, you know, they're like, "Oh, no, I'm 100% confident that's the person," and then like later, there's DNA evidence or some other like, really, you know, ironclad alibi that shows they were wrong. Um, happens all the time, and we've seen it in a lot of our cases.

NR: That's really interesting what you brought up about, you know, these crime TV shows and what we see in those shows as like an aha moment is really not as big as you think it is. And that confirmation bias, very interesting to think about how that can affect what gets looked over. And when these cases come back, that innocent until proven guilty mentality is lacking, which makes even more of a tunnel vision.

CNK: Yeah.

NK: Yeah. So most do most wrongfully imprisoned individuals that you've worked with, or prisoners on death row that you've worked with have had a prior criminal records, and has affected how their cases are looked at?

CNK: I don't think I've worked with any death row clients. I've worked with clients who are serving life sentences without the possibility of parole. I haven't worked with death row clients. Um, but your question about their prior criminal history, it's hard to generalize, like, in some, I'm trying to think. Like, in most cases, yes. But it's often not, um, like a violent history. So like, a lot, most of the, you know, most of the people who are in prison for life, or, you know, life without parole, it's because of murder, or prior to whatever year this was changed, in California, we also had felony murder rule, which is, if you are involved in the commission of a felony where someone dies, even if you didn't pull the trigger, for example, if you are involved in the felony, you can be charged with murder as if you pulled the trigger. The idea being to dissuade people from being engaged in felonies, but unfortunately, research has shown that that's not how crime works, that crime is not rational and that people don't usually aren't really in a position to do like a weighing of the risk benefit analysis when deciding whether to commit a crime, that's not that's not really how it works. Um, but yes, they will often have a criminal history or something that is characterized as a criminal history. Um, but it's often like, so like, one of the cases we're working on now, um, you know, this guy is, was convicted of murder, and he, I don't think he had any prior violent convictions, um, before that. He was kind of like, involved in drugs, he, like, he was like, selling drugs, using drugs. And so what he was doing was probably characterized as, like, gang-related activity at the time. And so that happens a lot, and that, that leads to that, like, tunnel vision and confirmation bias is the cops go, "Oh, well I know this guy, and he's involved in all kinds of bad stuff, so he probably just, like, committed a murder." When it's like, well, these are totally separate crimes. Um, you know, a kind of funny aside about that is we're go-...we're looking into this case, um, and one of, there's an important witness that's come forward, and that witness has, that witness served time in prison for a different murder. And one of the Commission members, you know, sort of commenting, we were, we were having a conversation about, like, the credibility of this witness, and someone brought up the fact that he had committed this murder. And to me, you know, obviously murder is, I, it's deadly serious. Pun absolutely intended. Um, it's totally serious. And, you know, this is, this is someone who, this witness, you know, this happened many, many years ago, his life looks totally different now, he spent a lot of time in prison. But to me, his, like, I don't know that his having committed a murder actually has anything to do with his credibility, and in the eyes of the law, it doesn't really like. When you're, when, from a legal perspective, when you're thinking about like, whether evidence of somebody's past convictions can come in, one of the questions is whether it has anything to do with their

credibility. So like, if it's just like, they were convicted of something else, and we just want to bring it in to, you know, show the jury like see they're bad, that's not generally allowed. But if you want to bring in evidence to say, um, you know, evidence of, that they've committed, been, committed perjury before or they've committed fraud or something else that has to do with lying with deceit, with like something that, you know, ostensibly goes to their truth telling, that's relevant, you can bring it in. Um, so anyway, I mean, that was just something we were thinking, I was, I was thinking about recently, like, I don't know about their credibility. Sorry for the noise, there's construction. Um, but I was going to. Oh, oh, the other thing about, so about like someone's prior criminal history, sometimes because of, again, a lot of these factors that we've already talked about, they are targets and their, their history is characterized in a certain way. So like for Janet, um, she, when she was young, like she was essentially kidnapped by this woman, like she was a minor child being, like, taken away from her home and taken out of state by an adult woman. But when her parents reported it to the police, it was reported as like a runaway and kind of characterized as like, she was basically characterized as like a juvenile delinquent. They're like, "Oh, she's just a runaway." And, you know, you kind of can't help but think like, okay, let's change this, you know, what, call it a, a white 10-year-old girl being taken out of state by an adult anybody. I think nine out of 10 people would call that kidnapping. Um, they would not characterize that child as being a runaway. Um, you know, they wouldn't, they, it would just be, you know, be totally different. But so in any event, part of like, what Janet's juvenile history looks like is there's like, you know, these little notes on her record about her being a runaway, which that sounds like, you know, that sounds like one thing, it sounds a little bit like, "Oh, did she have a rough childhood, was she making, you know, what was going on with her?" And then when you find out the whole story, you're like, "Who would call that a runaway?" Um, so, so yes, the answer, the short answer, your question is, in most cases, that I've seen, yes, there is some kind of criminal history, it is often not a violent criminal history, or not a criminal history that has anything to do with the conviction that ultimately like lands them in jail for life. And in some cases, their, it's that their past has been characterized a certain way, because of racial, socio-economic, other social factors.

NR: Mm hmm. And thinking more about some of, like, the structure and philosophical issues of our criminal justice system. How do you motivate wrongfully accused individuals to go to trial even when they risk a harsher sentence? Or refusing to make a plea deal if they lose the case?

CNK: So, that's a great question. So I feel like it's a little bit separate from the work that like an Innocence Project does, because there's sort of, there's low risk to, like, that isn't really the calculus that you're thinking about in the innocent or like in the habeas stage, because like, they're convicted, they're in prison, you could raise if you were like. The only risk is like, if you

re-raise a habeas issue before it is, like, investigated thoroughly, like maybe you don't have all the information you need, you don't get multiple bites at the apple. So if you file your petition, you're like, "Well, this is the best evidence we have, you know, now," and then like, the next day, and like, unless it's a really, really new evidence, like, you may have. Like, in some cases, if a petitioner comes to us, and they've already, like, put all the issues that they were telling us about in a habeas petition, it's hard for us to bring it, bring those issues in again as if they're new unless we really have new information about it. So there's a risk that they've like exhausted their claims by raising them already, like that's kind of the only risk. It's also, it's possible for someone to have their conviction, um, you know, for there to be like, have a conviction reversed, but the DA could possibly retry the case, there's a risk there. It's usually fairly low, because like, the DA has, would have the same challenges that we had in investigating it, which is this case happened 30 years ago. And, and often, you know, the habeas, the process of the habeas petition has revealed all these weaknesses in the case. So there is a risk, but it's low. That aside, that is a phenomenal question, and I can speak to it a little bit, not because of my experience with Project for the Innocent, but because I have actually been volunteering at the San Francisco Public Defender's Office for the last couple of months. Um, and they are all about this question, um, when to like take cases to trial when there's a risk? I think, so I think, I can only, I can only talk about like my, my experience and what I've seen, and specifically what I've seen in San Francisco, and hopefully, and I'm hoping that this experience will be reflected in the changes that are happening in LA right now, because you guys have been new DA. Um, the mindset of the Public Defender's office in San Francisco is absolutely go to trial and empower clients to go to trial. Part of the reason why they can do that is, you know, is, is because as you say there's, there's often, there's a risk of what's typically referred to as a trial tax, which is like, if you don't take the deal, it's going to be worse after trial. In most cases, especially for and I'm talking about like my experience has been the misdemeanor unit. In most cases in San Francisco, there isn't, the way that judges issue sentences here, the way that the DAs have typically asked for sentences, even the way that, like, even the typical makeup of a jury here, there really isn't a trial tax. Um, the offers you will get after trial are usually, or the sentence that you will receive at trial is often not materially worse than the offer that you're being given before trial. That said, that's for cases that actually need to go to trial. Um, so if there's enough dispute about a case, where the DA has really dug their heels in, and the PD has really dug their heels in, usually, like, still the offer the DA is giving is not worse than what's going to be within the outcome of trial. Again, this is like in the misdemeanor setting. So I think that's like the number one way that we, in San Francisco, empower clients to go to trial is saying, look, this is the reality in this city, in this county, but this is, you know, we've never seen a DUI be charged with, you know, that goes to trial and is and where a conviction is obtained, be charged as more than XYZ. Um, you know, we've never seen it worse than this. So this is the

offer like that, like, that's kind of how you make the comparison. Um, the other thing is like, to be really frank, um, my experience has been that DAs don't want to go to trial. Um, for a number of reasons. I think it's hard. Like, you know, they got it's, it's a lot of work. Um, I mean, that's probably the number one reason. Yeah, it's hard. And so if you just as a PD, are like, "No, I'm willing, like, I'm, I'm getting, I'm ready to go to trial on this," you can often like, get to, get to the point where you're saying, calling ready for trial, you're saying, "Yep, judge, send us out, let's go," and at that point, the DA will come back with a much better offer. And that happens enough times that the attorneys here can speak with, from experience to their clients about that and say, like, "I, you know, I think you have a strong case, for these reasons; I don't want to, you know, I don't think we should take this offer for these reasons; um, I think that we either go to trial on this, or I think that if we, I think if we show we're willing to go to trial, we're going to get a better offer." Um, and yeah, I mean, the other, I think they had, the other, like, in making that comparison, or, like, in helping clients to think about the risk, um, a lot of offers, like, if it's a bad offer, what we would consider a bad offer is something like, something that where, like, the court is going to be like, looming over their shoulder for a long period of time. And they and there's a lot of things they have to do or not do in order to, like, stay compliant. Um, like, what we see is like, well, that's just a lot of opportunity for, like that's how these cases escalate. And how people get stuck in the system for like, what are relatively minor charges. It's when they violate their, um, you know, probation, because they, like, violated a stay-away order, or they like, you know, they pick up another minor case, totally separate, but because they picked up any cases at all, it's, it's a violation. Um, and if it keeps happening, and usually, usually it keeps happening because the clients are indigent, they have unstable housing, um, you know, they're not recommitting crimes just for fun. It's because of the situation that they're in. But we just see it as like, oh, they're gonna be like, just more and more entrenched, more and more entangled in the criminal justice system. And we just like, don't want, you know, don't want that at all. That could be a reason to say like, look, right now, this offer is for like a probation term that's really long, and you know, and you have to take all these classes and you've just, you know, spend a couple days in jail or something, and we don't, we don't want that. We want an offer that, you know, with a reasonable amount of probation time, you stay out of trouble for this amount of time and, and then the court stops looking over your shoulder. Um, I mean, talking about like the practical realities of like what those deals mean, um, can help motivate a client to like stick with you as you try to get a better offer or or, you know, potentially go to trial.

NR: Mm hmm. And are there conditions in which you would advise them to take a plea deal?

CNK: Yeah, there are. Um, I'm trying to think about like, yeah, like I have, um, I mean, these are like, these are, again, these are misdemeanor cases, but like, I'm resolving some like DUI cases right now, where I think that, like, maybe I think the reason the basis for their stop was kind of bogus, like, they weren't driving badly, they were speeding, I think probably what happened is they were driving while being a Black or brown person. Um, you know, and if there's like evidence that the stop was really pretextual, there's some basis for pushing back on the charges here in San Francisco. But, um, you know, so I might think that that's a problem. I might think their blood alcohol content, like, maybe it's over the legal limit, but not super high. Um, there might be like, you know, good, so there is all that to say, like, there might be some stuff there for us to argue about, like, maybe, maybe there's stuff to argue about at trial. Um, but there are some facts that I'm like, I don't think a jury is gonna like that. You know, I think that like, I understand what happened here. I don't think this person's like a danger. I think, you know, they maybe made not a great choice, whatever, but I'm a little worried about this fact or I'm a little worried about that fact. And it's just not worth the, in some cases, it's not worth the risk, depending on the offer. So basically, like in that situation, I would never tell a client to like plead to a DUI in that situation, if it's like their first if it's their first one. Um, because like, it's sort of like why plead to like, you would never plead to something that's just going to be the possible outcome at trial. So it's like, some days, we'll be like, well, the offer is basically what happens if I went trial, and you're like, no, well, then we'll just go to trial. But in a lot of cases, the DA will offer to let the client plead to what we call "wet reckless," which is like a reckless driving charge. And it's a note, with a notation that "alcohol was involved," but it's not a DUI, and it doesn't have the implications of a DUI; the fines and fees are less, it doesn't go on your record as a DUI, if you got a future DUI, that would be a first DUI. Um, and if you get, and that's significant, because if there, if you get, if you're convicted of three DUIs, I think there's like some mandatory jail time and much more serious consequences. If anyone's immigration status or their citizenship status is an issue, that can be a huge reason to, like, figure out an appropriate plea deal, because you don't want to put them at risk of certain convictions, because that could lead to deportation or prevent them from gaining citizenship. Um, so it would be like, I mean, the other thing is thinking about, like, the situation of the client, like sometimes, um, you know, you can really like fight with the DA and get a good offer, like the other option in DUI land is like a "wet reckless," or what we call it "dry reckless," so it's just a reckless driving charge period, which is like, so there would be no, no notation whatsoever that alcohol is involved. But in order, but basically they have to, like, "earn it." So the DA might say you can plead, we'll let you plead to that, but you have to show proof of enrollment in a first offender program, a three month class, you have to show that you've been to like 10 AA meetings, you have to do some certain number of hours of community service. Um, you know, we don't want you getting you, you know, you're on probation for a year or something. Um, if

there's a client who, like, they are, they're like, housing isn't stable, or like, if their life is like really tumultuous, or, um, you know, they're never calling you back, or they're like having a really hard time with follow through, I don't want to make a deal where they have like this laundry list of things to do. So it might be like, better to, like, if it's between a dry or a wet reckless, like, it might be better to plead to the wet reckless with fewer terms, or, you know, I don't, like I'm making up hypotheticals, but basically, like being mindful about what the clients actually need to be able to do. Because you don't want to set them up for failure, and then like, as I said, before, setting them up for like, further entanglement with, with the criminal justice system. Like you just want to create a situation that like resolves their case, where like it addresses the harm if there was any, um, it makes the DA happy, um, if there's like a victim that needs to be restored in some way, like that can happen. Um, and that hopefully, you know, I guess in the eyes of the court, they want to see some, some kind of deterrent effect. Um, so, so that's the other thing you would think about is, like, what can, like what's realistic for this client to be able to do and like [inaudible].

NR: Yeah, do you think there are structures in the criminal justice system that set people up to be entangled in it for a long time?

CNK: Yeah

NR: And how does that affect these people? And like their convictions once they get in there? How, how do you get out of that situation?

CNK: Yeah, I mean, 100%. There have been some, like, exciting, like, it's a really exciting time for criminal justice reform. And these changes that seem kind of small, like I think will make a big difference to a lot of people, so. And a lot of them come from, like, they're not new laws, like it's not coming from the state, like it is just coming from, like, the policies of the DA's office. Um, your new DA in L.A. rolled out a ton of new policies this week, that are super exciting. And like, a lot of them, again, like as you read them, they'll seem kind of minor, um, but they really, a lot of them really go to your question. So like, one thing, a change that's happened recently up here is, I think this is just a DA policy level change, where they've just made it their policy that for, I think, for any misdemeanor, they're not going to impose a, if any misdemeanor that you are convicted or plead to, um, they're not going to impose a probation period of longer than a year. And that's huge. Because in the, in the past, they've been, you know, 18 months, two years, it can be up to three years, I think, for a misdemeanor. I'm probably getting that wrong, so it's really cool, this is being recorded, but hopefully, no one will fact check me. But, you know, in any event, they can be like, up to several years that you're

on probation. Um, and if you violate your probation, the DA can make a motion to revoke it. And basically, like, either, I mean, depending on the particular situation, either, like, impose the sent, like impose a sentence, or file new charges. And that obviously puts the client in a precarious situation. So, um, you know, my, my experience for the most part has been like, when there are probation violations, the DA will often, you know, they'll work with you to resolve it, but like for most of the clients. I mean, just last week, I had a client who, um, violated his, his, like, it's like, the initial case was something that was like kind of minor anyway, but they resolved it., and so there and there was a, there, he pled to something, and there was a probation period, I was not the attorney on that case. So he's in, you know, this is his probation period of time, he violated his probation by, like, trying to steal something from a BART station. Um, not great, but like, not super, you know, this isn't, this isn't the crime of the century. Um, and they picked him up, and they kept him in custody, I'm not sure why, I don't know why they felt the need to keep this person in custody. So when I, I know, I go see him or he's brought to court and I talked to him in in the tank, the holding cell attached to the court. I'm like, "Hey, you know, like, we're gonna try to get you out. Um, we're also going to try to resolve your case, we don't want them to charge a new case against you, we want to resolve, we don't want them to blow up the deal from your old case, because you were on probation. So like, let's figure out how to do this." And what ultimately ended up being the best solution for him, and what the court wanted to do, regardless of what I was going to advocate for, was the court wanted to keep him in custody for a couple days. Which is like, on the one hand, like, he is one of those clients where to me, to me based on like his history, I thought it was, it's going to be hard for him to complete programming, it's going to be hard, you know, sometimes the DA will offer some kind of diversion where if they complete like classes or, you know, don't pick up new cases for a while, then you can dismiss an old case. Um, but it means the client has to have a certain amount of stability and consistency. And like, this is a client with some mental health issues that I can't force him to get treated, and his life is kind of up in the air. So, and the court didn't want to let him out anyway, based on some of the things that I won't, you know, bring up, but in any event, like the best thing for him was to just stay in custody for several days. And at the end of it, we resolved both cases, and like that was the best outcome for him. But and then he had to sit like, I think that like, the, the risk of like, when like, we're all and I say we and I'm like barely, you know, entrenched in the system, I've only like, had a minimal amount of experience on the public defender side, but you can get kind of blasé about stuff like that, like, oh, he just had to stay in custody for like four days, he had to stay in prison. Like his his liberty was removed, he did not have any agency, he didn't have control, he can't like, I mean, every time I saw him, he would tell me he was like hungry and he was, I wanted like a double portion [of food], and could I talk to somebody about that? It's, it's really, I think, like, that's wild. It's wild, what we do, and what we think makes people safer,

what we think makes us, society, like our society safer, what we think the best thing for people is. Being in custody, like, exacerbated his mental health issues, but it was probably the best, like, ultimately, probably the best way to resolve his case. Um, you know, and he continues to be on probation, he will be on probation for this old case until 2022. And I don't know what's going to happen between now and then. And I think it's highly likely that he will interact with the criminal justice system again, and because of this old case looming over his head, it is likely that the powers that be will decide to keep him in custody for some, some amount of time again. It is likely that whoever his attorney on his next misdemeanor case is will have to, like, make some of the same tough decisions that I had to, about, like, what's the best way to resolve this case for him versus like, his liberty interest in this moment? Um, and that's, like, deeply disturbing. It is, um, you know, it's, it's, I think the system is broken, when, when, when the best thing is to, like, just leave somebody in a cage for a couple days. Like, that's the best thing? Because it's so obviously not.

NR: Yeah. And speaking of imprisoned individuals who have been shown to me guilty of their crimes, should they be able to make appeals even when guilty and sentenced, if they believe that there are other factors involved?

CNK: I mean, I think so. I think that there's just overwhelming evidence that keeping people in cages doesn't benefit anybody. It, um, it doesn't. It's sort of like if people are able to, like, rehabilitate themselves, in spite of how horrible prison is, you know, those are the best people, those are, you know, they deserve every good thing. But, you know, separate from them, I don't think anybody deserves to be kept in a cage. I think, and I think, I don't think that we're, I think in almost all cases, we're not safer. And our society isn't like better or healthier or benefited in any way by having those people, even who did make mistakes, who did in some cases, like really harmful things, stuck in a cage, because what we know is that, as you know, as I said earlier, crime isn't rational. Most people there, there's, like, you know, when we talk about, like, serial killers or psychopaths or people with severe mental health problems that, you know, really have rendered them remorseless, and have, like, they just, they're, they're not able to, like view other people in like a normal way. That is like, they're, that, that is this tiny, tiny sliver of people, where it's maybe true that it's safer for them, and everyone else, for them to be in some secure facility. Everyone else, for everyone else, and that is really, for the vast, vast majority of the prison population. no one is benefited by having them in cages. So, um, I think 100% that that we need meaningful. I mean, first of all, like, I think that San Francisco is a great example of like, just any, any kind of diversion or support programs to prevent people from getting to that point in the first place are huge. So diverting funds and resources away from policing, towards mental health services, um, even just that first interaction, like if it goes

poorly, then like if the police arrive to a mental health crisis, when it's like, they're not trained for that, we don't need them here, and then that person like "resists arrest" or "assaults police officer" because they're having a mental health crisis, then, you know, the police, then they're like, the DA is like, great, you know, file charges. But it's sort of like the police presence is what created that, like, "criminal event." Whereas if it had been a social worker or somebody trained to address mental health issues, there wouldn't have been any criminal event that happened because they would have been able to de-escalate it. And so in that way, we're like creating crime. So yeah, the like on the front end, 100% we just, like, we don't need to be in, funneling people into the criminal justice system. We need to be getting them the supports that they need. That's what actually prevents crime and prevents recidivism is getting people to support the need. Um, then, yeah, on the back end, when it like, even when there are more serious crimes that are committed, we know that the root of most crime are like structural and systemic problems or mental health issues. And it would be so much more humane and, and, and quite honestly, more cost effective, it would, better, it would benefit us all, to not be paying the insane amount of money that we spend to keep people locked up. Um, yeah, it's it's just, it's truly wild.

NR: Mm hmm. And thinking of these structural problems within our criminal justice system, what reforms do you see are needed and the most urgent in making the system better for everyone?

CNK: Yeah. It's hard to pick one. It's like, it's hard to see what's most important because like, I think to just, this is like a big system and to dismantle it, it's kind of gonna take, kind of like all ends. Um, and as I said, like, there's some exciting stuff that, developments that are happening, especially in California, um, you know, to like, to be able to attack it from from both ends. So I think that's what it takes. I think on the front end, it's like these diversion. It's like understanding the structural problems that lead to crime, and funneling more resources and funds and support into, um, housing, mental health resources. Um, it's everything's connected. So it's like when you start going you're like, and pay people a living wage and give them health care, like these are all these things are connected. But like just from the criminal justice perspective, yeah, like diversion programs that offer mental health services or programming or classes or, or, you know, therapies or whatever, hugely successful, absolutely worth it. And those are the things we should be doing especially like for minor crimes, especially for misdemeanors, like give people a chance at the beginning to, to not engage further with the criminal justice system. I think on the other end, and there are developments happening on the other hand too, um, when we make a change to the law, when we like recognize that we have been doing something that leads to mass incarceration or like

perpetuates the criminal or the prison industrial complex or, um, you know, or worse sentencing or charging crimes in a way we realize later has like deep racial implications, we need, it needs to be retroactive. Like everything, every change that we make, you know, whether it's like legalizing marijuana, it needs to be retroactive. Like we need to get rid of the mindset that like because it was a crime at the time, like it's wrong, and we're just like, stuck on principle and whatever. Um, you know, three strikes laws, what, the three strikes law was horrible, and it exploded the prison population in California. Um, and so like, looking backwards at like, like, it's, it's not easy. This is like a knot that's kind of hard to untangle and to figure out, like, what is what is like a sort of systematic and organized and thoughtful and effective and fair way to like, look backwards at people who are sitting in prison who like would not be sentenced this way today. One of the ways that we're doing that is through a new law 1170(d), or it's a reform to 11-- to Penal Code 1170(d), which basically gives the DA an opportunity to re-sentence people if they've had excessive sentences. So before, I think, it was just the court, who could, who could move to do that, or even the Department of Corrections could do that. Now, the DA themselves has power to be like, "You know what, this sentence was way too long, we would never sentence this crime like this today," or just in the interest of justice, you know, this person is now in their 70s, they're not, they've served a lot of time, they have a spotless record, and you can so it's sort of like another vehicle that, you know, like to your point, other than just talking about innocence for people who like did, you know, did commit their crimes, but they spent 30 or 40 years in prison, they're a totally different person now, they're not a risk to themselves or to others, and it just doesn't make sense to keep them in prison anymore. There's now a vehicle for doing that. And so we're just kind of like, that's something else that the Racial Justice Clinic is working on. In addition to the grant funding for my position, we also wrote and got a grant for another position, who is dedicated to reviewing those cases in San Francisco and, and helping the DA's office to file those cases and get those people out. Um, but like, she's just one person, she's going to be reviewing like 900 cases that are maybe eligible for resentencing under 1170(d). And even if she goes, I mean, she's going to be very dedicated, she's incredibly, you know, she's gonna, she's a great attorney, um, even if she works at the speed of light, it's going to take a while. Um, so we just need more, I think that like, it's going to be like chipping away at both ends. And I also think, I mean, this is a little bit harder, but I think that like, there are meaningful reforms we could make to what being in prison looks like, I think that there are a lot of other countries that have a better model for rehabilitation for like a prison environment that is more, that like preserves the dignity of human life in a more meaningful way. That like treats people like humans and, and gives them more opportunities to actually be rehab, rehabilitated, if that's what they need, or just like maintain their humanity while they're incarcerated, because it's an incredibly

dehumanizing experience. Um, and I think we're all better when our, you know, full humanity is, is recognized and respected. So, it's, um, it's gonna take all sorts.

NR: Yeah, sorry, my voice keeps going in and out. Coming up on our last question, what is a main takeaway for people who will watch this? From your experience with law, what is the one thing you would want people to take away from your experiences?

CMK: Yeah, well, I guess that, that there, like, if this is something that you care about, like, if anything that we've talked about resonates, um, there's a million ways to do something. Um, I think like, that's sort of what, like, part of why I went to law school was because I was, like, I know, I think that, I think law school will give me like the skills and tools they need to make the difference that I want to make, but I didn't know exactly what that was going to look like. And I was hoping that it would give me exposure to a wider array of, like, the different things that I could do. Um, I didn't know, you know, it's like, I didn't, I didn't know about the Innocence Project until like, just before law school, I didn't know about, like, what it looks like, or how post-conviction relief works. Um, I think most people are like, legal system is sort of opaque and feels inaccessible. And I think that, um, if you think you don't have to be a lawyer, but I think that like as a person in this world, I think you do have some responsibility to understand to the best of your ability how the system works and what's going on. Because that, that will help you see the many opportunities for being a part of changing it. Um, and I hope that truly any, anyone who is interested in doing this work, like, just, reach out to, cold, make the cold call, um, you know, ask whoever's cousin's friend that, you know, that's involved in this work, and if you wanted to ask me, um, because there's so much to do, and it's really rewarding and meaningful work, and it's going to take all of us, so it's gonna take all of us to do something. So whatever your part is, whatever you see, as your, whatever like you have to offer, we need it, so reach out and figure out what it is.

NR: Well, thank you so much for sharing your time, your experience and your thoughts with us. That is all the questions I have for you. So again, thank you so much, and it's been a pleasure talking to you.

CNK: Thank you, Natalie. It's been a pleasure talking to you too. I'm happy to do it. And thank you for this project. It's, I'm, I'm honored to be a part of it.