Dr. Jonathan Caudill: Welcome, thank you for joining us today. We are here today as part of the events surrounding the book in common Just Mercy by Bryan Stevenson. Just Mercy is based on Mr. Stevenson’s experience as an attorney representing individuals convicted and sentenced for very serious crimes in the South. If you have yet to read it I strongly encourage you to do so. No doubt this is important work. It is just as important as Kerry Max Cook's plight in Texas. Mr. Cook spent years in the country’s most active death row. Where he was sexually assaulted by other death row inmates only to be exonerated too many years late. His story Chasing Justice is a first person account of the trials Mr. Stevenson explores in Just mercy.

Before I introduce the panelist, just a few notes of order. Each panelist will have 10 minutes for the presentation. Luke, right here in the front, will have a timer and he's in charge of time. He will let us know when we have two minutes left and then when our time is up. Please hold your questions for each panelist until the end to ensure that everyone has an opportunity to present their material after the final presentation will have approximately 20 minutes for questions and answers.
So to our panelist, joining me today on the panel is Dr. Darin Haerle. Dr. Haerle will present on adultification, sentencing youth into adulthood. Her presentation will discuss what it means when we sentence juvenile offenders as adults.

Also joining us today is Dr. Sara Smith. Dr. Smith will present on patriarchy, paternalism or just plain punishment. She will provide you a gendered perspective on sentencing. Next is Dr. Michael Coyle. Dr. Coyle's presentation is titled Sentencing in the Age of Prison Industrial Complex. Dr. Coyle is known for his interest in language as it relates to justice and I look forward to hearing his linguistic complexities as they relate to sentencing in the US.

Next we have Dr. Doris Schartmuller. Dr. Schartmuller's presentation will, she's presenting on the US Supreme Court in major sentencing decisions. Her presentation will cover how the Supreme Court has decided on the sentencing outcomes.

And round in our panel is Dr. Alan Gibson. Dr. Gibson's presentation is titled, The Constitutionality of the Death Penalty, and he will focus on the evolving standards of decency as it relates to the death penalty in the United States. Please join me in welcoming our panelist.

[Audience applause]
So moving on to my talk. My talk focuses on the motivation for sentencing for the focus on criminal continuity among homicide offenders. While my focus is on the most serious of crimes, the take away has implications for sentencing reform such as those associated with California’s AB 109 and Prop 47.

Criminal sentencing is a complex social phenomenon. As scholars have attempted to understand and in general, it presents difficult questions and these questions hinge in many respects on the foundations of punishment. For example, what is the goal of punishment? The academic literature on the application of laws has many threads and caveats. But in general, scholars have observed the goals of punishment through incapacitation, deterrence, retribution, and rehabilitation. Where incapacitation refers to the ability to restrict one’s physical movement. Deterrence is ability for society to discourage behavior that it deems inappropriate. Rehabilitation most commonly captures the medical model in criminal justice where people receive therapy and programs and treatments to change the way that they think or the things that they experience in the hopes of reducing individual level recidivism. And finally, retribution is a motivation for just desserts. A pound of flesh if you will. You have committed this offense and therefore here are the sanctions that you deserve.
So in previous scholarly work along with some of my colleagues I’ve explored the legal and extralegal factors associated with prosecutorial decisions as a proxy for sentencing decisions. Our findings as presented on the slide, in very numerical format, suggested prosecutors are most interested in moving forward with more serious offenses. In other words, the criminal justice system is more focused on the legal factors of the crime of record, whether it be a felony over a misdemeanor or if the defendant was detained after arrests or not. Then the risk factors, such as gang affiliation for example. While the legal factors predicted prosecutorial action, those on the bottom of the screen, after controlling for the extralegal factors, those on the top of the screen, such as race and gender. What remained unknown was the risk these offenders posed to the community. After all three of the four reasons for punishment, Luke, I think you got a text message, three of the four reasons for punishment involve forward thinking utility. Incapacitation is a restriction of an individual’s movement, to restrict their ability to harm others. Deterrence as a way to change society’s behavior through the threat of sanctions, if we think about deterrence and general form, and rehabilitation is a change individual’s behavior through treatment.

The other, retribution, is the opportunity for society to get its plant, its pound of flesh for the offense of record. While studies have suggested the court of public opinion finds value in retribution, it is unclear how much of the offense of record contributes to the risk. To answer this question does the offense of record contribute to the risk of criminal continuity in the same fashion that other risk factors, such as for homicide offenders, sentence centered to Texas Determinate Sentencing Act. We wanted to look at this.
This line of research follows, were presented in our book, Lost Causes, which is due out in March of 2016. In this book we explore Texas' Determinate Sentencing Act outcomes including, what factors influence institutional misconduct or committing crime while they are incarcerated. The factors associated with the course decision to allow these offenders to be a second chance by releasing them after they have completed their juvenile sanction. And then finally we want to look at the recidivism outcomes of those offenders that were released after completing their juvenile sentence.
We found that even after controlling, for other factors, the offense of record was a significant predictor of the decision to release. In other words, it appears the court found justification for invoking the adult prison portion of these sentences through retribution or just desserts. Based on these findings, we were interested to see how varying assaultive behavioral trajectories while incarcerated impact the likelihood of release, as well as a criminal continuity once these offenders return to the community. As presented the statistical procedures identify four trajectories of peer assaultive behavior over the course of incarceration.

The first is a low group, group 1, it runs along the bottom. Our second group is a medium risk, group 2. To the late onset risk group is group 3 and the high risk group is group. The solid line that goes up to the top and comes back down. Our findings reveal that homicide offenders were more likely to be in the low risk for peer assault group compared to other offense classifications. In fact, using the offense of record as a predictor of risk group membership, found robbers, those that commit robbery, to be more risky than homicide offenders when it came to their institutional conduct.
As we move through the beginning of the 21st century, there is a push to incorporate a more utilitarian approach to sentencing. A push for risk-based sentencing means that sanctions should be based on one's risk of criminal continuity and based on our findings we see that risk-based trajectories of peer assaults, while incarcerated, was significantly correlated with the risk of recidivism once an offender was released. This relationship held true even after we included the office of record, even for homicide offenders. Ultimately behavioral continuity is not captured in the offense of record for the most serious of offenders, at least in legalistic terms.
The implications of this research suggest there may be a benefit in considering decision sentencing, sorry, benefits in considering criminal continuity and criminal risk in the sentencing decisions and this approach may prove more fruitful than heavy focus on offense of record. At the end of the day our findings suggest retribution, although with little forward utility, captures the court’s attention. With that I will turn it over to our next presenter.
Dr. Darin Hearle: Thanks for coming, this is a great turnout. I'm excited to share the stage with these talented colleagues and today I'm going to talk to you about adultification. This is one of those great words that academic get to make up just because we can. I saw word 'pop-up' in an article years back, written by one of my favorite people and it ended up being the focus of my dissertation. I look at how the criminal justice system propels youth into adulthood. Often, years prior to what we consider the age of adulthood in many respects, right?
So what do I mean by adultification? When we talk about sentencing, we talk about number of years, we talk about maybe 23 to life. We talk about life without parole or LWOP, which is a huge buzzword within juvenile justice currently. We also discuss the type of sentence, right?
We discuss determinant sentences, blended sentences, like that which Dr. Caudill was just talking about in Texas, We all discuss indeterminate sentences or maybe you have a little more wiggle room to get time added on to a sentence or maybe to work toward early release.
I kind of want to swing the conversation in a different direction and I want to talk about the type of status of these sentences produce, specifically for youth. Here the system provides you with an adult status by waiving juveniles to adult criminal court. It's also important when we talk about status, to then appreciate that these sentences and the resulting status has the ability to impact correctional environments.
Write the ability to shape say, the culture, the institutional culture of a juvenile correctional facility. For my work then, I operationalized adultification as this waiver in to adult court and the resulting adult status, following that conviction of adult criminal charges. Word came out recently stating that approximately 250,000 juveniles a year, American youth, are waived to adult courts. Many recent legislative efforts to raise the age of criminal responsibility. Efforts in Texas, Wisconsin, New York have failed, making it that much easier for the system to waive 15 and 16-year-olds, even 11 or 12-year-old to be charged within an adult criminal court. Now research shows, some of which Dr. Caudill discussed, right, that those waived to adult court are more likely to not only be rearrested, are more likely to be reincarcerated and as told by Stevenson in the heart wrenching pages of Just Mercy, we also see that they are very likely to be severely victimized within adult prisons. When we are incarcerating juveniles in that adult environment.
So much of this research, right, focuses on official data to look at these outcomes. Focuses on larger samples. Today, however, I'm going to narrow our lens a bit and focus on a qualitative sample, some qualitative data from youth that I interviewed who are incarcerated at the state level in California.

Back in 2010 I was part of a research team that gained access to interview over 300 youth, but of those 124 youth, within at the time,5 remaining DJJ, Division of Juvenile Justice facilities. 124 youth were under the age of 18. Half, roughly half of those are processed through the Juvenile Court. The other half were adultified, right, waived to and convicted within an adult criminal court. I'm only going to be discussing responses of the adult court youth, but it's important for you to know two things about how these groups match up or don't. First of all these groups are very similar right? Common knowledge or sensibility might suggest that while they are waived to adult court because they were more violent. They committed more violent crimes. They have more sense of criminal history. For these groups, they're actually very, very similar on individual characteristics, on age, race, age when they committed their crime. They're also very similar on sentence length and similar with regard to their commitment offense category in fact there is a slightly higher portion of homicide related offenders in the juvenile court group than in the adult court group, which is a little counterintuitive but true for the sample. Now the difference. The difference is that these groups are incarcerated within the same facility, the same units, right, but they're facing very different trajectories of incarceration. In California, juvenile court youth are protected by juvenile jurisdiction until the age of 25. This mean that they can be released to juvenile parole supervision at 20, 21, or, 16 or 17 let's say, violate their parole when they are 20 or 21 and then be recommitted to a juvenile facility and protected there until the age of 25.
Adult Court youth on the other hand, happy birthday your 18, you're automatically transferred at the age of 18 to often a level four maximum security prison in the state of California. This means that when we think about their sentences, a three-year sentence, right, for an adult court youth might have an entirely different meaning than the three year sentence for a juvenile court youth. Given the different environment and the different destination that they're facing. Which brings us to their perspectives. We interviewed youth on a variety of topics their background, their perceptions of safety in the environment. I focused my work on discussing issues with the adult court youth.
Today I'll focus and share findings from one question that we asked them. What do you do here, within DJJ, to prepare for adult prison? This question came at the end of the interview, to the extent we could build enough rapport and often times we did after an hour, hour and a half, two hour interview with a juvenile offender. It's a really sensitive question, right? But we're trying to give them a chance to tell their story provide a voice to their experiences, to their lived experience of adultification. And a few prominent themes arose from this qualitative data. Today I will share findings from one of those themes being survivalism.
Over 30 of these 57 youth articulated strategies for survival as a way to prepare for this transfer to adult prison. They either describe strategies associated with the new mindset or the cognitive shifts and how they approach their incarceration, or they very plainly stated the desire or perceived need to become physically stronger in order to survive that sentence on the adult side.
I will give you a couple examples of each quotes from the youth. One physical survivalist when asked, how do you prepare, he said, 'I get big. People die in the pen, people get stabbed in there.' Another youth said, 'I work out. Out there, in adult prison, there's not no little kids no more. They're all grown men.' Acknowledging the difference in environments and that fear, right, that inherent fear and need to prepare physically for the next destination. The mental survivals quote that I'm going to share, sadly I don't have time to tell the story, but this, this juvenile offender was sort of the catalyst for my entire dissertation. I interviewed him the very first day, by luck of the draw, I interviewed 3 Adult Court youth that very first day of interviewing and we got to the end of the interview and when I asked him the question he kind of laughed and I asked, 'why are you laughing?' and he said, 'well, no one has ever asked me that and I do a lot' and he
said this word for word, 'I'm more mature because I know where I'm going. I don't play into this; it's just a temporary stay. I'm learning how to be quiet, not talk a lot, analyze and watch people observe how they move. Observe your surroundings. Pay attention.' Right. So this youth is clearly expressing sort of a hypervigilance, right?
A need to sort of pay that much more attention mentally to his surroundings as a way to defend himself. So this begs the question. Are these self-fulfilling prophecies? Are these youth speaking in one way and then behaving in another? So I was able to do a little bit of mixed methods and use official data from the facilities on their violent misconduct. Does this conceptualization, right, then predict involving violence or withdrawal from violence? I thought that maybe the mental survivalist would withdraw and maybe more isolated, right, as the physical survivalist, one of whom said when asked what he does to prepare, practice. Practice what? Fighting. I expected, okay, maybe that’s just one youth, or maybe it’s going to be a pattern and I found that, regardless of the camp, regardless of which survivalist camp they fell into either strategy predicted a higher level of involvement in violence within DJJ as measured by official data on violent incidents. And for all my method students out there, we're measuring this outcome, right, following the interviews. We're asking about their perspective and then measuring the violence following that, proper time order.
And the bottom line of all of this is, is that this theory started to emerge. This theory of prison panic. As most inmates approach release, we see evidence that they display prosocial behaviors. They behave well, they follow rules right? Release means something different for these youths. Release means that they're going to a worse destination. They start to display worse behavior as a role, result of this panic approaching this 18-year-old transfer.
Another mental survivalist said, 'you got to have your mind set, gotta know what to do, what not to do, not look like a gang member, look like a man,' right. Here he's distinguishing the need for more maturity to disassociate himself from what he perceives to be sort of a juvenile gang member that he's been to an adult man, who can function in this type of environment.
So what now? For California, specifically, this evidence points to the need to maybe provide equal treatment. Maybe we should extend juvenile jurisdiction for all youth, right, for all juveniles. For the juvenile juveniles and the adult juveniles. Provide them with more rehabilitation opportunities, more educational opportunities, which we know there are many more on the juvenile side, than on the adult side.
This also slows that revolving door mass incarceration that many of you have heard about in courses, right. That will slow the door of them going seamlessly into adult incarceration from a juvenile facility extending that jurisdiction will not only slow that revolving door but will eliminate this prison panic.
If these adultified youth, right, are becoming more violent while incarcerated next to juvenile court counterparts, that's impacting that culture in a negative way. So extending that jurisdiction is the clearest implication of how we might improve this for adultified youth. Thank you.
[Audience Applause]
Dr. Sarah Smith: So I'm bucking the trend in a couple of ways. I'm going to sit up here because I'm comfortable. And secondly even though I've done a lot of interviews with women prisoners and men prisoners, I'm going to talk a little bit more about historical information and sort of recent sentencing data and make an argument for you. So, I argue that the history of criminal sentencing and incarceration in the United States has been a project marked by basically sexism and racism and that those messages are still with us today. So particularly within the context of incarcerated women, I believe the punishment itself is neither a practical response nor one that really adequately needs are justice ideals and demands. So, although the majority of prisoners and our men and men commit the majority of our crimes, women incarceration rates have increased exponentially following policy changes in the 80's and 90's and even in the 70's as well. Some of those changes have to do with determinant sentencing changes. It starts to equalize the small differences between men and women sentences. But, really most of those changes were really due to drug offenses and so drug offenses were policies regarding those offenses were changed for both men and women and those really shot up our incarceration rates but particularly for women.

So the rate of incarceration for African-American women in the US, increased 828% from 1986 to 1991. And since 1980 the number of women incarcerated for drug offenses has increased by almost double the rate of men. So those changes should kind of be put into a context of the feminization of poverty in the United States. And sort of different social circumstances that make women's criminal backgrounds and trajectories different from men's. So in the United States you may know women are poorer than men. There are households who are headed by single women especially Black feminist women that have the highest poverty rates. And prison women are
probably the most deprived and abused populations in the United States. Women were 20% less likely to been employed at the time of arrest, they use more drugs and use those drugs more frequently when they're arrested. And over half of them grew up in a household without one or both parents. They also have incredibly high rates of physical abuse, experiences of sexual abuse, and almost 2/3 of them have children.

So now I want to a little bit about the historical records of sentencing that do show those that clear evidence of racism and sexism. In the colonial period in the US social control of women was really used to enforce their social value as essentially sexual property and reproductive property. They could be burned at the stake for adultery and for murder while men really didn’t face punishment for those crimes. They were also incarcerated for some dubious offenses such as waywardness, and promiscuity, and saloon visiting. Other acts that they could be put to death for include witchcraft, arson, robbery, slave revolt, and concealing birth. So because of these facts these offenders were essentially ignored by correctional practitioners and theorists until recent decades because of both their limited social capital and because they were less often criminals. So this essentially resulted in housing women in substandard conditions. Conditions weren’t good for men certainly in the colonial period and they were worse for women. They were basically housed in kitchens and attics of male jails and prisons and they were used for forced labor and sex. They were basically raped by inmates and guards with impunity and then they were made responsible for those crimes and for those pregnancies that resulted. Minority women were particularly disadvantaged and abused more severely than their white counterparts.

And so some people have tried to talk about where this criminal woman came from.
One of the folks who theorized about this was Lombroso and he was considered progressive in his time. And he claimed to have discovered this new human subspecies to criminal. So to criminal man and to criminal woman were determined by these different body parts and measurements that they had. So he said that normal women were naturally good mothers, sexually passive, dependent on the father of their children, and naturally monogamous and frigid. Naturally inferior intelligence criminal women were sort of the antithesis of normal women. They had an excess of biological characteristics like men. So psychological and biological comparisons were made between men and women there. And even though he was quite popular during this time there were reformers who came about in the late 1800s and early 1900s, mostly middle-class women who changed both the discourse surrounding female criminality and the conditions in which women criminals were incarcerated. So they did two main things. One they separated women from men's institutions and built separate facilities altogether reducing the violence that women were exposed to. And secondly they changed the notion of women criminals from these genetically abnormal sort of she-males that didn't fit the gender roles. And basically explained that they were essentially people who turn to crime to meet their basic needs which was a much more accurate representation at least at the time. Most of their crimes that they could be even considered crimes given discriminatory laws keeping them from voting and working outside the home were essentially crimes of desperation. They were prostitution, petty theft, those kinds of crimes, low level economic based crimes.

So although they made these great changes while women were in these reformatories they had to basically reform according to middle-class white standards. And so if they didn't change to fit those norms of middle-class femininity
they were essentially not released. In addition those benefits to those reforms were originally only offered to white women. Blacks, Native Americans, and immigrant women were left in male facilities and basically considered irredeemable or not even women. So this demand to conform to white middle class gender norms at the time in order to secure eventual release is an early example of the types of problems that we have with indeterminate sentencing that cropped up later.

So both conservatives and liberals argue the indeterminate sentencing was not the way to go for quite different reasoning's. Basically as Dr. Haerle discussed indeterminate sentencing means that you have indefinite period of confinement. So you can essentially earn your way towards parole by rehabilitating yourself. So prosecutors, judges, and paroles had wide discretion under those types of sentencing schemes. And a lot of folks were concerned that these were leading to discriminatory outcomes in terms of sentencing. Conservatives were also opposed to indeterminate sentencing, concerned that offenders were really not serving enough time. Why would you give someone a 20 year sentence only to have them serve 10? Although those concerns were very different the groups came together to change a lot of sentencing in different states and to move to determinant sentencing models. Under those schemes you are imprisoned for a certain amount of time and the offenders basically released regardless of whether they have rehabilitated or regardless of their risks.

So many states also impose mandatory minimums, truth in sentencing laws, and limited the amount of time that offenders could shave off their sentences, and limited judicial discretion. Some judges frustrated with this inflexibility actually quit in protest over the fact that they couldn't use mitigating circumstances to incorporate
that into someone's sentence. There were a number of extreme sentences that were kind of given quite a bit of public attention. But most of the people who are serving extreme sentences were those who are drug offenders. Both women and men who are caught in this king pen strategy that didn't quite work out. Most of these folks were essentially caught up in federal drug offense laws that were new. That basically said if you knew of anyone who is participating in drug distribution then you could be considered liable for the same amount of drugs that were seized when that person was arrested.

So regardless of these sort of extreme examples, Americans might think that women are generally shielded from arrest or long sentences due to paternalistic bias in the system that help people, help women and protect them. That's basically what we call the chivalry hypothesis some of you might know this from my class. And there's a lot of, there's really not much data that supports that. Basically those who are considered worthy of that kind of treatment are usually middle-class white women. However there is one area in which women have been given a bit of leeway and that's sort of what we call familial paternalism where women are given shorter sentences because of the interests of the state in securing the stability of the nuclear family. So most of these women have to be sort of perceived as good homemakers, good mothers and they can be given short sentences. The theoretical inverse of the chivalry theory is the evil woman hypothesis. Which contends that women offenders are considered more monstrous because they rejected gender norms by virtue of their offense. There's really not a lot of historical evidence that women's offenses in this area get longer sentences.

So there's not a whole lot of data that support these different theories about gender
discrimination. Although there are definitely historical accounts that do support those basis. Like I said before women and men who get these incredibly long sentences that don't seem commensurate with the crime they committed are usually those who have been sort of victims of the war on drugs. And although a lot of the differences between men and women in terms of sentencing have been minimized. And races also, the differences in race have also been minimized. There seems to be sort of a lack of concern of the overall push for the criminal justice system. And so I argue that essentially calls for justice aren't met through our current responses to most of women's criminality and much of men's criminality as well. Within prisons targeting substance abuse and improving educational and vocational programming for women are practical and achievable changes that have proven results. The legalities of standard programming in women's prisons should be challenged in particular. And outside of prison rehabilitative options rather than prison sentences for drug abuse. And policies and cultural changes that improve the socioeconomic status of women such as wage equality, access to affordable healthcare, and domestic violence prevention can minimize the types of crimes that comprise the vast majority of women's offenses. Not only are those changes more effective and offer more positive long-term effects with regard to recidivism reduction. But there more in line with the ideals of justice and equality that we hold out to our citizens as founding national principles and rights.

And that is all for me.

[Audience Applause]

Dr. Michael Coyle: Good afternoon everybody it's great to be here. Good to see you
all, colleagues, students, welcome one in all. Great to be here to talk to you today. Essentially we are here to reflect upon individually all these faculty from the criminal justice program and political science department to reflect upon the idea of sentencing as we think of it as we use it in our own research. What I have always been extremely interested in is language it’s just shaken up my world. Probably has something to do with the fact that I grew up as a bilingual person. I grew up speaking two languages at the same time, Greek and English. I grew up in Greece. The impact of growing up in two languages is the impact of growing up in two worlds especially when there are vast cultural differences. Which there certainly were between my Irish father and American mother and my Greek community on the other hand. There were really two completely different perceptions of the world. And I grew up in two languages and this really had a profound impact. As I hoped it will be a little bit more clear by the time my 10 minutes are up.

When I found myself in college as a major in comparative religious studies I found myself again very much interested in language. Because I saw how the brightest of people scholars, researchers committed trained grand detail can actually make some of the most basic and fundamental mistakes. It seems shocking to the observing eye. For example, western scholars coming from a Judeo-Christian bias have in the plurality to this day study the topic of religion through dimensions that are determined by the English language. One example I will give you is when western scholar’s mostly European, American scholars approach Native American religious traditions. How they interpreted what they spoke about was a universal of gods, and spirits, and saints, and such. And only some scholars paid close attention to the language and argued, and still argue things like actually they don’t have a natural and supernatural order. Actually they’re always talking about persons, they talk about
stoned persons and we don't want to make all Native American the same. This example is from [Inaudible]. They talk about stones as persons, they talk about mountains as persons, they talk about rivers as persons, they talk about human beings as persons etc.

As I continued my studies I only found that this reality about language impacts other fields as well. I'll fast-forward to my PhD which was a justice studies program where I became enamored by the impact of the words that we use to talk criminal justice. I have a book called Talking Criminal Justice: Language and the Just Society. In which I exactly explore this interesting relationship and the profound implications that it has for us as speakers of a language. I'm going to show you a quick little clip, clip here from one of the most important [Inaudible] figures of the last century in America, in this country, James Baldwin. I want you to hear what he has to say about language.

[Video Clip]
“Nevertheless when a writer is obliged to some point to realize is what is involved he is involved in a language which he has to change. For example to a black writer especially in this country, to be born into the English language is to realize the assumptions of the language of which the language operates on his enemy. When a fellow kills Desdemona as an example he says “I threw away a Pearl richer than all of my tribe.” I was very young when I read that and I wondered about that. Richer than all of ‘my’ tribe? [Audience laughter] I really had to think about that. “Being as black as sin?” [More audience laughter] As black as night. Black hearted. In order, this is another story which I will not go into,”

**Dr. Michael Coyle:** Alright so this is another example of how one can find oneself
living in a language, thinking in a language as Baldwin says and discovering that the language itself actually that you have is actually prohibiting you from thinking clearly. Or at least it has that potential within it. Here Baldwin discovers or communicates what it was like for him to discover what it was like to be a black male in 1960s USA.

What I want to say to you today about sentencing is that I can’t think any more about criminal justice words and problems without seeing them as profoundly problematic. Because what I have, and I have gone kicking and screaming and resisting the whole way, trust me. What I have concluded looking at empirical research and looking at the language that we use is that all of the assumptions that we are functioning under fundamentally are producing a frame of analysis about what we call. And all criminal justice words are in quotation marks for me, are profoundly problematic. The basic distinctions that we have, that we used in language, the language that we used to talk about in the criminal justice industry, major, academy etc. are profoundly assumptive. They are so packed with assumptions and do not get discussed enough I would argue with you. Time does not permit me to analyze word for word. I have to save a little bit for sentencing. But when I say the basic words I mean the word crime, I mean the word criminal, I mean the word offender, I mean the word victim. And I’d like you to recognize how these words are so assumptive. That if somebody were to take them out of your dictionary and you were invited to speak about criminal justice matters without those words you wouldn't know how to talk. That's how important they are. And yet in the chain Baldwin fashion, we need to ask what lays behind it. And what lays behind it are a series of assumptions that don't exactly pan out. What is the meaning of the distinction crime? And the vast majority of people within their lifetime commit multiple violent crimes and multiple nonviolent crimes. What is the meaning of the term offender in that setting? What is the meaning of the term
victim? If it includes almost everybody what does it mean? What is the meaning of the term sentencing in a context? Here comes my other thing I want to show you. What is the meaning of the term sentencing in the context of the prison industrial complex?
There it is. Oh good it's very visible. What does it mean to live in a society that has constructed a social situation under these huge paradigms of law, of policing, of prisons that end up feeding results of inequality essentially into a system of incarceration? Which by definition is a selection process. It's by definition a selection process and we all know who gets selected. It's strictly around the counts of results of inequality. It actually doesn't take more than going to any state Department of Corrections website and looking at things like what was the income of the people there, how much education do they have. Last one I looked at was Arizona. They had less than 100 people and 30,000+ people in prison, who have college education. And the poverty, and the profound races, and the profound sexism. And how all of that especially that it's a complex graph, but this is what the prison industrial complex is pointing to. How all of these issues feed into the incarceration complex which unfortunately is very much about profiteering. About very much, things that are very much beyond managing harms in our society.

To wrap up I will say this, rather I will say this. The minimal time, I know I threw a lot at you and didn't really have time to explain it too deeply. But I will say this to you. To question our language that we use to have this entire conversation and the body of assumptions that we make in this entire conversation's in the study of crime and the criminal justice major, and the academy, and the politics of it. To question it profoundly is not to say, obviously given that most of us are committing harms, the people are not committing harms and that we don't need to respond to it. Of course we need to respond to it. I'm not even against the fact the American criminal justice system is the third most expensive government program in the history of the planet. That's probably money well spent in general when you're trying to create public safety, and respond to harms. I'll stop there. Thank you very much.
**Dr. Doris Schartmueller:** The book *Just Mercy* tells a story of an African-American man in Alabama. The book *Just Mercy* tells the story of an African-American man in Alabama who spent years on death row without having committed the crimes that he has been convicted of. It also tells stories of several other individuals. Juveniles, mentally ill, females, whose excessive sentences appear to have moved far from achieving justice for anybody involved. The author Bryan Stevenson worked with many who society had long been given up on and for whom it was believed that justice had been served.

The year 2015 has seen a new political debate revolving around issues such as mass incarceration and extreme forms of punishments. Just about a year before the next presidential elections, that's where we are at right now, criminal justice reform has become a buzzword across the political spectrum. Instead of talking tough on crime the political discourse has shifted a little bit and has become filled with new innovative ideas to curtail mass incarceration. And finding a crime control policy that does not aim at locking up as many individuals as possible but only the right kind of people. When we talk about theories of punishment and my students in the correctional class will know I like to clearly distinguish between gross and selective incapacitation. And we can say that maybe the discourse has moved a little bit from the former to the latter. On the federal level this trend has revolved around the nonviolent drug offender. So far the focus has been on diverting this type of offender from jails and prisons into alternatives to incarceration and to expand programming opportunities for them. In an unprecedented move the Justice Department just recently granted the release of 6000 nonviolent drug offenders from federal prisons. Yet focusing on nonviolent drug offenders alone won't solve the issue of mass incarceration and injustice.
While many of these offenders are doing time in federal prisons the state prisons are filled with 85% of offenders who are not in for drug offenses but primarily in for violent offenses. Important yet not so politically popular will also be to find ways to deal with the large populations of violent offenders serving these excessive sentences. They occupy prisons without any specific purposes other than keeping them removed from society. They occupy very expensive space and have been removed from any societal responsibilities for years if not even for life. Many of them have grown old in prison and have contributed to the overall aging of the US prison population. To just give you one example, in California the 50+ age group of inmates and that's typically what we consider elderly inmates in research has grown from 4% in 1991 to 18% in 2010. It is very likely that with recent reforms and AB-109 that this group of inmates has grown even further.

More so than politicians and lawmakers courts have become increasingly important for challenging some of the [Inaudible] sentencing laws. The nation's highest court, the US Supreme Court recently dealt with a couple of these cases and I want to briefly introduce these cases to you. First, few legal questions have appeared before the Supreme Court so frequently in recent years as the case raised by Johnson versus United States. This was decided earlier this year. Whether certain criminal acts pose as serious potential risk of physical injury to another and therefore are to be considered violent felonies and whether they would thereby count towards a federal three strikes law. So the law that was in question in this case was the so-called armed career criminal act or ACCA an act passed by Congress in 1984 around the time when the war on drugs was launched. According to this act, judges must sentence individual felons that are in possession of either a firearm or ammunition to a minimum of 15 years or even a life sentence if they had three prior either serious
drug or violent felony convictions. On several occasions already the Supreme Court has debated that issue on whether the violent felony definition of that law was too vague. And solving this question now for good earlier this year that justice is in the clear majority of 8 to 1 and the Johnson case struck down the clause as unconstitutional due to its vagueness. The decision although not retroactive yet, might affect some with multiple convictions under the federal law.

According to the US Sentencing Conviction about 7,000 individuals have been imprisoned for ACCA sentence enhancements, so sentence under this law. Although most are not sentenced under the same clause as Mr. Johnson was others may be eligible for resentencing. And more than half of the defendants who received such enhanced sentences in 2014 were African American. Second another recurring issue before the Supreme Court that addresses excessive sentences is the one that deals with life without parole for juvenile offenders. In the latest decision that was Miller vs Alabama in 2012 the Supreme Court ruled that mandatory life without parole for juveniles even those convicted of first-degree murder was unconstitutional. This case would not have reached the Supreme Court if it wasn’t for Bryan Stevenson the author of the book Just Mercy. Now in 2015 the court just heard another case that deals with the same issue. This time however it is the case of Mr. Henry Montgomery who was sentenced to life without parole as a 17-year-old more than 50 years ago in the state of Louisiana. Mr. Montgomery is still incarcerated and serving his life without parole sentence. He’s now almost 70 years old and argues that the Miller case should apply retroactively. In other words those juvenile life without parole sentences that were imposed prior to Miller in 2012 should also be declared unconstitutional. These juveniles he argues should become eligible for resentencing or for parole.
But before the court can decide whether Miller applies to Montgomery it must decide something else. Whether it even has the authority to hear the case in the first place or whether it is a state-by-state issue. The problem with the Montgomery case is that since Miller several states have already decided to apply Miller retroactively. Massachusetts, Illinois, and Florida are three of these states. Other state's Supreme Courts have explicitly ruled to not apply Miller retroactively. And Louisiana one of, the state where Mr. Montgomery is from is one of them. Regardless of how the Montgomery case will be ruled, it might such as the Miller ruling did in 2012 influence the political debate about the use of excessive sentences in some states. While the juvenile life without parole population constitutes a very small percentage of offenders serving life without parole in the United States it still is a population that eats up a substantial amount of correctional dollars. Similarly the Johnson case the one that I talked about previously although having challenged a federal law could have significance that goes beyond the federal habitual offender provisions.

Criminal justice reform encompasses a wide array of issues. Diverting nonviolent drug offenders from prison and jail to alternatives to incarceration. And reducing disproportionately long sentences for habitual offenders and juveniles are steps going to the right direction. But they won’t end injustice. Rather than simply releasing offenders early or reducing sentences the overarching goal of a wide-ranging criminal justice reform however must be more far-reaching and must involve communities at large. Offenders and not only the nonviolent drug offenders must be given feelings of self-worth and responsibility. Dealing with poverty, substance abuse, and mental illness in jails and prisons rather than on the streets must end. Those who were or are incarcerated must be held accountable and responsible within their communities rather than in state run institutions then remove them from any feeling of
responsibility to themselves and their communities. As president Obama said earlier this year, "Any system that allows us to turn a blind eye to hopelessness and despair, that's not a justice system, that's an injustice system. And justice is not only the absence of oppression, it is also the presence of opportunities". And this is one of the main messages that stuck with me when I read Bryan Stevenson's book. He wrote that justice cannot be measured by how we treat the rich, the privileged, and the respected among us but by how we treat the disfavored, the incarcerated, and the condemned. Instead of focusing on justice we should seek compassion and mercy within our own communities.

[Audience Applause]
Dr. Alan Gibson: I've changed the title of this to The Constitutional Roadblock to a Moratorium on the Death Penalty. So I'm still going to argue for the constitutionality of the death penalty. But the argument I'm pursuing here is two-fold and I hope that I can make everybody here angry and upset with me. The first part of this is that the death penalty is constitutional.
So if you are against the death penalty then you're going to find that irritating. But the other part of this is that we should have a moratorium on the death penalty. So if you're for the death penalty you'll find that part irritating as well. So I'm really good at being irritated as my students know who are in here, and I'm planning on being that tonight as well. So anyway the primary argument I'm going to argue against.
The primary thing I’m going to argue against starting out is that, is what is called an eighth amendment interpretation of the unconstitutionality of the death penalty. This is the most familiar thing that I face. I’ve taught at Chico State now for about 15 years and every time I talk about the death penalty in my classes I get this argument.
The argument points to the language of the eight amendment to the Constitution, it isolates that amendment from the other parts of the Constitution. That's a really important part of what I'm arguing here. So the eighth amendment says "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". And obviously it's the last part of this that is the central one. It's the cruel and unusual punishment thing.
So basically what's been done is that people construct this argument, they look at the phrase cruel and unusual punishment. They say what could be more cruel and unusual than the death penalty. We tell someone the time in which they are going to die. None of us know when we're going to die okay but these people do, at least if they're not retrieved. So at some point along the line if they are executed they can sit down the minutes, the seconds, they can watch the sands of their life go out. Then them or also we sometimes hang them. We don't hang them very much anymore but that is one of four methods that are still on the books for engaging in capital punishment. So the argument is this is obviously going to inflict pain, this is obviously going to inflict anxiety, it must be unconstitutional. This is constructed with what is called a living Constitution argument or a moral reading of the Constitution. So you look at the broad clauses of the Constitution and then you extrapolate them from their time.
I am a scholar of the 18th century. I do an 18th century constitutional thought with James Mess. I can tell you that society, 18th century American society was brutal, it was absolutely cruel to most of the people in it. So I'm actually for the living Constitutional or the moral reading of the Constitution but there are limitations on it and I'll get to that in a minute. But these people, this is the, the kind of argument that I'm talking about is the moral reading on steroids. I mean it is the moral reading disconnected from any other parts of the United States Constitution. Where was that set forth? Well the leading example of that
is in a 1972 case called Furman v. Georgia. Furman v. Georgia is the only case in United States history in which the Supreme Court held the death penalty to be unconstitutional. There was a 10 year window in which no one was executed in the United States. And it was during this time that Furman v. Georgia was decided. Furman v. Georgia was created, this ruling was created out of a coalition of two justices who said that the death penalty is per se unconstitutional. It is unconstitutional at all times all places, we need to eliminate from the universe of thought. But three other justices said
that no it is wantonly and freakishly imposed, that's what's wrong with it. It's like being hit by lightning is what they said. You can be charged with the same crime as somebody else, you could have done the same crime as somebody else, one of you gets hit by lightning the other one does not. Therefore it's unconstitutional for that reason. The second argument does not say that the Constitution is at all times in all places unconstitutional, the first one does. That's the living Constitution on steroids.
And so that was the argument of Thurgood Marshall and William Brennan. Thurgood Marshall said that, he said famously that the prohibition against "cruel and unusual punishments must draw its meaning from the evolving standards of decency that mark the progress of a maturing society". Well one of the things that is wrong with that is
it's not clear that our standards of decency are evolving, maybe devolving. But the support or opposition to the death penalty has gone up and down. And I'll point to this in some public opinion polls in just a few minutes. Brennan in his argument basically said that this punishment does not comport with human dignity. And he gave four principles of laws that comport with human dignity and he said the death penalty can't meet any of those standards. I had this on PowerPoint, if you want it I'll bring it to you but I'm going to move through this because I'm sure that you guys want to get to some questions.
So only four years after Furman though the Supreme Court in Gregg v. Georgia reversed itself. The three justices who had, who said we really have to reform the way the death penalty is imposed broke away from the two that said that the death penalty is in all cases at all times in all places immoral based on evolving standards of human decency.
And so then the death penalty was re-imposed. It was re-imposed with the standard kinds of things that we know today. You have the two-tier system, you have a one stage of the trial in which you determine the innocence.
or guilt to somebody. And then the next stage in which you consider the Senate. And during the sentencing phase with the other big finding Gregg v. George you consider aggregating and mitigating consequences, you consider those kinds of things.
But go back to the argument that Brennan and Marshall made because that's the one I see at Chico State all the time. And let me point out something to you which you never hear about the United States Constitution.
And it is that the eighth amendment itself actually doesn't say anything specifically about the death penalty. But there are three other provisions in the United States Constitution
What is Not Said by Brennan and Marshall

- All of this should be familiar to you from your classes. What is never said is that Brennan and Marshall cannot be correct about the 8th amendment and the constitutionality of the death penalty because of what else is said about capital crimes in the body of the Constitution. The 8th amendment is not the only part of the Constitution that implicates the death penalty. Indeed, the eighth amendment only implicates the death penalty if you read it in light of contemporary moral standards of decency.

that do talk exactly about the death penalty. Those are the grand jury presentment clause, the grand jury presentment clause

- The 5th amendment states that "no person shall be asked to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury."
- By inference, though not logical necessity, you can be made answer for a capital crime if there is a presentation or indictment by a Grand Jury.

says that no one can be called to answer, asked to answer for a capital, or otherwise infamous crime, unless on presentation or indictment of a Grand Jury. So presentation is when the Grand Jury gives this ruling itself. Indictment is when they are directed by a DA or an attorney of some kind. But either, that's the only way that that this can be, that you can go through the death penalty if this is presented or comes out of a grand jury. There's no doubt about what the word capital means in that. The word capital means a crime for which you can be punished by death. There is no ambiguity in that any more than there's ambiguity in the provision that says you have to be 35 years old to be president of the United States. We don't say that evolving standards of maturity mean that the president United States can now be 25 years old do we? We shouldn't say that this word capital means something different now than what the word capital means. Again I'm not against the moral reading of the Constitution but the moral reading of the Constitution itself has to be structured, disciplined, and brought to life by the other parts of the United States Constitution. So that's one provision of the Constitution that does this. The double jeopardy clause of the Constitution does the same thing.
The double jeopardy clause in the Constitution says that a person cannot be subject for the same offense twice to be put in jeopardy of life or limb. Well guess what, if you can't be put in jeopardy twice of life or limb, you can be put once in jeopardy of life and limb. And if you're going there in your mind I'm going there too, guess what it's constitutional to lop off a limb. Believe it or not okay. This tells you how imperfect our Constitution is in some ways.
Okay so there's the double jeopardy clause. Then in the 5th and the 14th amendment to the Constitution there's something called the due process clause which all of you know studied the constitutional law at all. And this says that no one can be deprived of their life, liberty, or property without due process of law. Once again the direct inference from that is you can be deprived of life if the requirements of due process are met. So the Constitution, so the death penalty is unconstitutional, is constitutional I'm sorry. And it is a terrible public policy
These provisions constitutionalize the death penalty. They are as determinative, I would suggest, as the requirement that the President be 35 years old. A capital crime is one in which the possible penalty is death. It is as silly to say that evolving standards of decency eviscerate these provisions and make the death penalty unconstitutional as it is to say that evolving standards of maturity eviscerate the requirement that a President be 35 years old.

and I've got a no time whatsoever to know that part of the argument. It's horrific, wrong, unfair, wanton, everything bad you can think about it I agree with. So what do you do? Well what progressives need to do in order to protect
progressivism from progressives is that they need to go to the state legislatures and have those 31 states
that continue to hold the death penalty. We need to argue this out piece by piece, point by point and win it as an argument of policy. That's what it is, it's a policy argument because
the constitutionality argument is closed by the language of the United States Constitution. And progressives
have an interest in not having the Constitution as all sail and no anchor. They have an interest in the Constitution meaning something that we can locate in its language. That answer is that those words can be turned around if we
simply say that the Constitution means whatever 5 justices say it means. Then they can turn to the 14th amendment of the constitution and they can look at the word life and they can say life begins at conception, let's abolish abortion, no one should have the right to an abortion. I can take you through numerous provisions in which if you simply allow the language however folded to result to be whatever 5 justices want it to believe. I can show you how it will work against your predicted political beliefs whether they are conservative or liberal. That's it.

[Audience Applause]
Dr. Jonathan Caudill: Thank you all for your perspectives and your presentations. We have about 20 minutes remaining for some questions and answers. And so what I’d like, Luke if you can give me a hand we have a wireless mic up there, I'll grab. If you want the mic to ask your question or if you just want to yell it out, you can do that too. But I prefer that we do it in an orderly fashion. So if you have a question for anybody please raise your hand.

Audience Member: I'm kind of confused about the process of a person getting out of prison when they have found out that his trial was in some way was unjust and yet the district attorneys or the district in which they are having a hard time saying yeah we didn't bring forth all the evidence. And so he's keep and go. They have a hard time doing that when if the trial has gone wrong because evidence wasn't brought forth.

Dr. Jonathan Caudill: So the question is when somebody has been convicted and evidence comes to light that the conviction was, should be null and they are exonerated. Is that what we are talking about?

Audience Member: Yeah.

Dr. Jonathan Caudill: And why is it that in some circumstances the district attorneys does not own up to the responsibility for that. Is that correct?

Audience Member: Right. [Inaudible]

Dr. Jonathan Caudill: Right. Yeah.
Dr. Michael Coye: Hello. Well I mean the simple straight forward answer to your question is because the process itself by design has absolutely very, very little to do with justice. It has to do with following the law. My favorite story of that is Supreme Court Justice Holmes I think it was, in a moment of explosion in listening the arguments by this young attorney in exasperation suddenly yelled out to him "This is not a court of justice young man this is a court of law!" It's not about justice it's about the rules, it's about following the rules that we've set up. And a careful, of course what that means inherently is that what is was profoundly important is the consideration of how did these rules get set up, how are they being enforced. Which of course gives us all the modern-day problems of our so-called criminal justice system. Profoundly racist, profoundly classist, and sexist. And so it's not, I mean there's almost a sense in which ongoing conversation about it through the justice metaphor is ignoring reality.

Dr. Alan Gibson: I'd like to say something. In my class if we look at a film from a 60 minute clip, and I would encourage all of you to go to this. It's about a guy named Alton Logan, Alton Logan was charged with a crime of murder. He missed being executed, being sentenced to execution by either one or two votes by the jury. It became known by defense attorneys for another, who had another client that their client had actually committed the murder not Alton Logan. They had to sit on the information because of the attorney crap client privilege believe it or not. And he rotted in jail for about 20 years. Once this other guy died then he was allowed to release information about this. Why didn't they just immediately run in and say here's an affidavit and we know that this guy didn't commit this crime, this other guy did. I would suggest to you that there is two reasons. One of them is if they did rush in immediately they sometimes get fooled. So if I'm in prison and I'm about ready to die
and I want my buddy or somebody I know or something like that to get off. I can try to take responsibility for his crime. That's far-fetched, it's more Hollywood than anything else. It's probably not going to happen. But there would be some attempts at it and you would have to do some investigations. So you want to do some investigation no matter what's going on. The other reason and the real reason that you can't do this is because of your reputation as a district attorney or as an attorney involved in these cases. You have to walk back slowly from that kind of charge because you did that person an incredible grievous harm. And if you just, you know you're going to have to take responsibility for that and you want to try to cushion that blow. Is that justifiable? Not in the least. Is it understandable? Yeah it's understandable. That's my explanation.

**Dr. Darin Haerle:** And I just want to add one thing to that. Popped up on my email right before I came, I haven't read the article yet. But a site called the Marshall Project just posted an article about a prosecutor who's going to serve time for one of the first times ever for wrongful convictions. You might actually look into that article as well as an example of a prosecutor maybe being held accountable.

**Dr. Jonathan Caudill:** There's also an example of the opposite where a district attorney embraced the Innocence Project and brought them in to look cases and to facilitate the exoneration process in Dallas County. Craig Watkins picked that up many years ago. He was not reelected this last term. I'm not sure if that's related to that or not. But according to Dr. Gibson's theory on the idea that they have to answer to those decisions, that might of contributed to it but I'm not sure. So there is along with Professor Haerle's discussion about some of these prosecutors facing consequences of that, there is, that's going to be a tipping point with that. And
change in the way that they're responding to those things, at least in some places.

Audience Member: [Inaudible]. How do we explain to them that one life is not more important than another?

Dr. Sarah Smith: What's the question again?

Audience Member: So how can you tell the victim’s family that the life of the “not criminal” because I don't want to use a loaded word, but the person who committed the crime his life is more valuable than the person's life he was taken away if he's being charged of capital murder.

Dr. Michael Coye: Are you directing your question to someone?

Audience Member: To any of you.

Dr. Alan Gibson: I didn't understand your question at first. I mean I'm the one that spoke on the death penalty. I mean I don't, you're challenging the idea of the death penalty itself with that question, right? You're saying that sometimes maybe this person really does deserve it. I think that's implemented in your comment. I would argue to you that as a matter of pure justice and I know this sounds contrary to what I said in the presentation. I agree with you but the unintended consequences of having the death penalty as a possible punishment are so gray for society that it should not have that death penalty. But one thing, one of the unintended consequences is the possible execution of an innocent person. That should always be upon our mind, okay. And so if you have the policy itself you can't put that one person to death to
reciprocate for the other person but at least you don't put innocent people to death. That's one argument that I would make against that. I mean I don't, I'm not sympathetic to people who simply say that punishment is not a real part of what should be going on in this kind of situation, it is. I would also say to you that what people who have those kinds of incidents happen to their lives realizes how tragically what they want from the death penalty it just can't give them, okay. And you heard this before, I know you all have but what they think is that when that person is finally executed there would be some kind of resolution. And what they really want is that person back. And I'm not going to lecture a person whose lost a loved one to violence about what policies they should have favor or not. I would never do that. I know I would have every feeling that your question implies if something happened to one of my loved ones. I would, I promise you. At the same time is it rational, am I the right person to ask in that kind of forum about what that punishment should be, no. And I wouldn't be getting back the loved one I lost either. That's my answer.

**Dr. Doris Schartmueller:** You can sometimes also see this question comes up when you have parole hearings for offenders who have been convicted of murder. And many states allow victim impact statements and sometimes at the parole hearings the relatives of a murder victim would come and meet the offender and give their input. And often times I have analyzed several of these decisions where the victim impact statements were made and where the victims’ families meet the offenders in the state of Massachusetts. And sometimes you can even say that these relatives of the victims that they would agree to grant to parole. So other times it's the opposite. So you can see both ways.

**Audience Member:** This is for Professor Gibson. You're talking about why the death
penalty is constitutional. So what do you think about, you're talking about the eighth amendment being cruel and unusual punishment? But what about when the death penalty goes wrong? What do you think about when people are then, it takes two hours later for them to die or the process goes wrong, I don't know. Does that make sense?

**Dr. Alan Gibson:** Yeah. There are several kinds of ways in which this can happen, right. I definitely think that the death penalty is imposed with racial bias. I think we have established that pretty firmly. But does that mean that the death penalty per se is unconstitutional or does that mean that the procedures that are in place which lead to that bias themselves are what we have to change. My argument would be given the clear language of the Constitution it currently commands that we engage in it. I would favor a constitutional amendment to abolish the death penalty that would be okay. But the language in this Constitution right now doesn’t afford us that possibility. And you know there is the crushing point, the really cool question that you’re raising right here. And when it becomes a really cool question too is when you, if you conclude that there are no procedures whatsoever that can eliminate racial bias. Or there is no way to put a person to death. And the cart incidentally is flirting with that very kind of reasoning right now. There’s no way that you can put a person to death without engaging in some kind of cruel and unusual punishment. What then does that tell you about your Constitution? It tells you that your Constitution is, has parts of it which are inconsistent, or incongruent, or incoherent with other parts of it. And I think the proper remedy there then is a constitutional amendment. But as long as that language is very specific I don't think that language can be ignored if you don't want to run into a lot of other problems in the other direction in ways that you cannot anticipate until you go there.
**Audience Member:** Would you agree that life without parole is more punishment than the death penalty like sentencing someone to death?

**Dr. Alan Gibson:** I'll be glad to answer all these questions but I'm getting tired too. I'll let my colleagues answer. I mean I'll just tell you, is that worse, I mean I don't know. Self-preservation is a pretty strong impulse, right. Life is what, it's like the foundational value from with other values follow. So I mean however despicable life in prison for life could it be, it doesn't beat death. If you can transmit me into death and tell me what is waiting for me and then come bring me back I can make a better judgement of that, but I don't know right at the top of my head now. Either one of them are pretty ridiculous.

**Dr. Darin Haerle:** I mean I think it is important when we are having this conversation right to remember the fact that we might have our views from the outside as spectators. But then in different clips we look at and data we look at from inmate's right, and appreciating the true conditions of 6 x 8 cell, 23 hours a day, right and what those conditions are like. We do know that coming from the voices of people subjected to these penalties, some of them then do say move up my execution day I'm living a slow death, this is worse. So I think you're raising a point that you do sort of have to appreciate the larger lens of what we're talking about. And I don't think there's an easy answer to your question. I think it's a subjective answer of those being put in that situation.

**Audience Member:** If a Marsden motion is denied on a murder charge and a person is convicted but not given the death penalty, [Inaudible]?
Dr. Alan Gibson: Well of course every death penalty conviction carries with it one mandatory appeal at least right. So you get one and then you have all kinds of ways that you begin to work the process after that. You know you do it primarily through a Court of Appeals, [Inaudible] through the miscellaneous document. A document of the supreme court primarily. But the court since it has become conservative has increasingly blunted those kinds of appeals. It has done everything it can to prevent that from happening. You're only guaranteed one appeal, you can try many. But then of course you can try the governor’s clemency that you don't, you're not likely to get that either because of their elected officials.

Dr. Jonathan Caudill: Alright well I want to thank you very much. Thank our panels very much for coming out and presenting.

[Audience Applause]

Dr. Jonathan Caudill: And please keep track of the upcoming events associated with a book in common. We will be running through the rest of this semester and into the spring semester and Mr. Stevenson will be here to present in April. Thank you very much.