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INTRO

**Asahi Pompey:** Hi everyone. And welcome to Talks at GS. It is my distinct honor to be joined by Christina Swarns, the Executive Director of the Innocence Project, an organization that we're proud to partner with through the Goldman Sachs Fund for Racial Equity. We are especially grateful to be joined by Huwe Burton. Huwe was wrongfully convicted of murder and spent 19 years in prison for a crime that he did not commit. I want to say Christina and Huwe, thank you so much for joining us today.

**Christina Swarns:** Thank you for having us.

**Huwe Burton:** Thank you.

**Asahi Pompey:** Christina, let's start with your personal journey. You've dedicated your career to criminal justice reform. You've spent a decade as a litigation director and criminal justice project director at the NAACP Legal Defense and Education Fund, another Goldman Sachs Fund for Racial Equity partner. You're of course now the Director of the Innocence Project. What inspired you to pursue this career?

**Christina Swarns:** You know, I tell my new attorneys that I would not have hired myself graduating from law school because I was not the kind of kid that sort of started out with a really clear vision of where I was going to go. I knew I wanted to do something good. I knew I wanted to do public interest law. But what that meant was elusive to me, literally, all the way through law school. I graduated from the University of Pennsylvania Law School, and I wasn't clear still on what I wanted to do.

So, when I came home my parents were very indulgent, but they said, "But you need to go find something to do with yourself." And so, what I did was I literally just picked up the phone and called the NAACP Legal Defense Fund and said, "Listen, I have-- I'm not, you know, a stupid girl. I got a great degree. And I've

got time on my hands. Can I come and volunteer?" Elaine Jones was then the Director Counsel of the Legal Defense Fund. And she said, "What do you want to do?" And I said, "I'll do anything." And so, she sent me to work in the capital punishment project. And that day, at the time I was there, they were fighting an execution of a Black man in Arkansas named Barry Lee Fairchild. Mr. Fairchild had been arrested for a rape and a murder. He had been picked up in a sweep of Black men who were beaten, who were called racial epithets, who were all presented with prewritten confessions. And Mr. Fairchild signed the confession. And that false confession became-- there's no physical evidence that tied him to the case-- became the cornerstone of the conviction against him and the death sentence.

And so, it was-- that was the light bulb. I went in and I could not believe, you know, that this was happening. I was astonished. And I knew right then that I needed to be part of this fight.

And I, you know, wanted-- and I provided as much help as I could during that time. And LDF litigated that case for another two years until Mr. Fairchild was unfortunately executed after getting-- coming one vote short of a clemency grant. And that really just changed my life. I was engaged by the questions of-- the importance of the questions, you know, the urgency, right, of the issues that we confronted. And I jumped in with two feet. And the rest is history as the story goes.

**Asahi Pompey:** I am particularly interested in your Supreme Court argument of the case Buck v. Davis. It challenged the introduction of explicitly racially biased evidence in the Texas death penalty case of Duane Buck.

Christina, as one of the few Black women who have argued before the nation's highest court, what did that case and that meaning, that moment, mean to you?

**Christina Swarns:** It was and is one of the, you know, high points of my career. Just by way of background, you know, Duane Buck was convicted of murder. And then in Texas and in all jurisdictions, right, there's a separate proceeding to decide whether a person's going to get the death penalty or not. And in his case, his own lawyers hired an expert to testify in Texas. The question is-- the question that the jury have to decide is, is a person on trial likely to be a future danger. And so, the defense counsel hired experts to say, "Is he going to be dangerous or not?" And unfortunately, the expert they hired

said, and wrote a report, that said, "Mr. Buck is-- the fact that Mr. Buck is Black made him more likely to be dangerous in the future." Period. End of sentence. So that's it. So, the fact that Mr. Buck was Black made him likely to be dangerous in the future.

This, obviously, is false. Right? That's a false fact. Right? Race does not tie to dangerousness. A. It's unconstitutional to, you know, basically say race is the thing upon which a jury can sentence someone to death. So, it was literally his expert's testimony that condemned him to death. His own experts.

**Asahi Pompey:** His own expert.

**Christina Swarns:** His own lawyers. His own lawyers. His own expert presents the evidence that condemns him to death.

And of course, you can imagine, the prosecutor in her closing says, "You can rely on the defense expert to reach this." Right? Of course. So, you know, when I argued, right, on the morning of October 5th, 2016, you know, it was-- it was incredibly important, A, because Mr. Buck's life was on the line. But also, because I deeply understood that for the court to allow this execution to go forward, right, with that background, to allow, to condone, to allow the courts to condone, right, the use of this false link between race and criminality, would have a profound affect on, right, jurisprudence and the [UNINTEL] of color--

**Asahi Pompey:** Absolutely. Profoundly.

**Christina Swarns** are treated, you know, in the country's court system. And so, it was important to me for Mr. Buck, but ultimately, let's be real, right? I am arguing as much for myself, right, and people that look like me. Right? My nephews. My cousins. My father. My best friend. As I was for Mr. Buck.

**Asahi Pompey:** You're now, of course, leading the Innocence Project which has been driving groundbreaking work since its founding in 1992. As executive director, how do you think about balancing the ongoing work of exonerating wrongfully convicted individuals with reforming the larger system?

**Christina Swarns:** I am 100 percent clear, and I wouldn't have taken the job if I weren't 100 percent clear, that, you know, the work of representing the innocent-- absolutely enormous to the benefit of the entire system. Because what we show, right,

are structural problems with a system. It's not just, you know, for the individuals that we are representing. What we are doing is shining a light on the way that the system is not-- is failing, you know, large categories of people. And I know Huwe will tell you more about his personal experiences. But so many of the clients that we have represented, we have an exoneree council, go on to do work beyond just Innocence work. Right? Fighting for the people that they know that are in prison fighting for justice. You know? Fighting against the conditions that people are experiencing behind bars. Right?

But because so many more people in the country, right, are drawn to the idea and the cause of innocence, it's really an important and powerful platform from which I think we can educate, right, people about sort of the broader injustices in the system. And I think it's really important that we use the platform that we have to sort of shine a light on the entire system.

**Asahi Pompey:** On that very point on, you know, broader injustices in the system, I'm struck by what reforms you think will help ensure wrongfully-- wrongful convictions really don't happen in the first place. And from your perspective, where is our current system, you know, failing? Whether it's eyewitness, misidentification, or the expert witnesses you just described, or false confessions? What could reform really look like, Christina?

**Christina Swarns:** I think the pivotal reform that we need, I think, that underscores all of it is 100 percent it's accountability, accountability, accountability. You know? Right now, we have a system where, you know, police officers who are involved in procuring a false confession, like in Huwe's case as you will hear about, there aren't repercussions. A defense lawyer involved in my case, right, who presented this racially biased testimony, right, in Mr. Buck's case, there are no repercussions. The prosecutors, you know, who present false evidence that wind up with people being incarcerated for decades of their lives who didn't-- innocent people, right, who lose decades of their lives to a prison system that is, you know, horrendous, there are no repercussions. Right?

And so, for me, unless and until we create incentive structures that give people a reason to do the work to make sure, right, that we are identifying and prosecuting and convicting and incarcerating the right people, right, we're going to be back in this situation.

**Asahi Pompey:** I want to focus on a couple of statistics because you and I and Huwe know that a key part of system reform is, of course, addressing the racial disparities within the system. So, here's what the data shows. Black people are 7x more likely to be wrongfully convicted of murder than white people. More than half of death row exonerees are Black. And lastly, nearly half of those currently on death row are Black. So, these racial disparities are really staggering. How do we begin to address the disparities that are so, really, ingrained in our system?

**Christina Swarns:** It's so hard for us as a country to say, you know, "We may really be doing something very wrong here" because, right, we are so tied to this idea of ourselves as, right, the shining-- you know, the shining city on the-- city in the sea, whatever it's called, right? The shining light of democracy. So, I think the first thing we have to do is admit that what we are seeing is real, right? And not look for excuses and ways around it, right?

I've litigated in courtrooms across the country, you know, in New York, and Philadelphia, in Texas, and Arkansas, in Louisiana, so many different jurisdictions. And I can tell you that apropos of the statistics that you have discussed, every courtroom I've ever litigated in looks exactly the same, which is to say that the people on the inside of the bar of the court, right, the legal folks, the lawyers and the judges are overwhelmingly white. And then the people on the outside of the bar, those who are being prosecuted and brought through the system are overwhelmingly Black and brown. And that holds in jurisdictions with 3 percent Black and brown population. And in jurisdictions with a 60 percent Black and brown population. And you have to call those things into question, I think, all of us, you know, when you see things like that, you have to ask why that's happening.

And to the extent that we don't, right, you're sort of slipping in the Duane Buck theory of, right, a belief that there is some connection between race and criminality that explains what are otherwise inexplicable disparities.

**Asahi Pompey:** Christina, I want to now take this moment to welcome Huwe Burton. Huwe is a former client of the Innocence Project. And he was exonerated in 2019 after spending nearly 20 years in prison. And ten years on parole after being wrongfully convicted of the murder of his mother when he was just 16 years old. Huwe, I want to thank you so much for joining us today.

At the heart of your conviction you said, you know, whatever they needed me to say to get out of that room, you know, I did it, I said it. Having lived through that whole process, what would you say needs to be changed in our society around the questioning and the examination of individuals suspected of crime?

**Huwe Burton:** That whole process needs to be videotaped. From the time they brought me into the precinct, from the time they started questioning me about that day, what they said to me. If they would have videotaped that, they would have saw that it was a 16-year-old child that did not know left from right, up from down. He didn't know what was going on and he was alone.

He left his mom sitting on the couch and came back and found the police [UNINTEL]. These were seasoned detectives. They knew what they were doing. And they knew that this is what they wanted.

All of that should have been videotaped because had it been videotaped, then anyone in their right mind would have seen it and said that you forced this child into making that statement. This is not our free will. So.

**Asahi Pompey:** You've cleared your name. You're free to do activities. In fact, you shared with us that you ran the New York City Marathon three years ago. And you've done any number of other things. Tell us about really the adjustment process for exonerated individuals. What's that like? And what justice ultimately means, now, to you?

**Huwe Burton:** Yeah, so, it's very hard. Thankfully, there are organizations like the Innocence Project that also assist in that transition. By the time I was exonerated, I had been home ten years. So, I kind of went through all of the things of, you know, getting reacclimated with everything that's going on. I went through that. But for people who are just coming out and you're thrust into this, it can be very overwhelming. And this is why there has to be support groups from exonerees, those of us who went through it, those of us who had, you know, different stumbles along the way to ensure that those who are coming after don't have the same things, same missteps that we may have had.

So, it's very, very important and it, you know, to do so. But it's hard for a lot of times when guys, you first come home. The transition is very hard.

**Asahi Pompey:** As a lawyer, as a mother of two Black sons, as an

American, watching what's happened in our country post the death of George Floyd really sort of a multiracial and group of people sort of coming together, sort of talking about racial equality, frankly, in a way that I'd never seen before. As you look into the future, what's your assessment in terms of what it will take to move this country forward? You've mentioned a number of them, like believe the data. It's real, sort of, what's happening. But I'd like to sort of get your take on, you know, as you look towards the future, how you think about your criminal justice system.

**Christina Swarns:** You know, I have enormous hope, right? I think we are in a moment of reckoning around issues of race. Right? I do think that George Floyd's horrendous murder opened people's eyes. So, I am inspired by the outpourings of support and the outpouring of interest in the issues over the last several months. I'm also, you know, frankly, inspired by the next generation. You know? These are some young people that are not here for incremental change, right? And I love every bit of it. Right? They are out here asking for a whole system change. And that's what we need. And that's what every generation needs, right? There's a period of time where every generation, there's a new-- you know, a new group comes up and pushes us forward. And we are now, you know, experiencing that push.

**Asahi Pompey:** Huwe, your perspective as you think about the future?

**Huwe Burton:** To echo Christina's sentiments, I feel hopeful. I'm-- that's just who I am. I'm just a person that's always full with a lot of hope and a lot of optimism. But just to echo something you said as a mother of two Black sons, it's not for government to ensure their safety. It's for us. I think things have to be done on a more local level. I think that when things are done in a more local level, there's more responsibility taking by us.

**Asahi Pompey:** Christina, I want to thank you. Huwe, thank you so much. I want to thank you both. It has been an honor to be in your presence and to be part of this really moving discussion.

**Christina Swarns:** Thank you.

**Huwe Burton:** Take care. Thank you.

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