

1 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

2  
3 NACDL TASK FORCE ON RESTORATION OF RIGHTS

4 AND STATUS AFTER CONVICTION

5 NEW YORK, NY WITNESS SCHEDULE

6  
7 Day 1

8 Wednesday, May 15, 2013

9 Cravath, Swaine & Moore LLP

10 825 Eighth Avenue

11 New York, NY 10019

12  
13 The hearing convened, pursuant to notice, at 1:00 p.m.

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15  
16 BEFORE:

17 RICK JONES, Task Force Chairman

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21  
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8 VICKI YOUNG

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1 P R O C E E D I N G S

2 MR. JONES: Welcome to New York. We are  
3 pleased to be here. This is our seventh and final stop  
4 on our tour across the country. This is the NACDL Task  
5 Force on Restoration of Rights and Status After  
6 Conviction. We have literally gone to every region of  
7 the country and had listening sessions and discussions  
8 with folks of all stripes and all types of stakeholders  
9 about the challenges that the affected community faces  
10 on their road to restoring their rights and status as  
11 they try to rejoin society.

12 We are pleased to be here in New York and to  
13 finish this portion of our work here in New York.  
14 We've got two and a half days of really phenomenal  
15 folks who are going to come and discuss with us, and  
16 we're starting off with you folks. My name is Rick  
17 Jones. I'm actually from New York. I work at a place  
18 called Neighborhood Defender Service of Harlem.

19 Before we go any further, I'm going to give  
20 you some sense of how we work, but before we go any  
21 further, I want to have my colleagues have an  
22 opportunity to introduce themselves. And I've been  
23 told that even though you don't see microphones in  
24 front of you, that the mikes are hypersensitive, and so  
25 they're picking up everything that is said throughout

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2 the room. So just be on your best behavior as we  
3 continue through the day.

4 MR. ZEIDMAN: That's for the members of the  
5 Task Force.

6 MR. JONES: That's for the members of the  
7 Task Force and the folks in the spectator's gallery as  
8 well, but let me turn to Jenny and have her introduce  
9 herself.

10 MS. ROBERTS: I'm Jenny Roberts. I'm a  
11 professor at the American University, Washington  
12 College of Law, and reporter for the Task Force.

13 MR. GOLDMAN: I'm Larry Goldman. I'm a  
14 criminal defense lawyer in New York, and I'm a former  
15 president of this organization, NACDL.

16 MR. WELLBORN: I'm Chris Wellborn, and I'm  
17 a sole practitioner and criminal defense lawyer from  
18 Rock Hill, South Carolina.

19 MS. HEINRICHS: Hi, I'm Elissa Heinrichs.  
20 I'm a criminal defense attorney from Newtown,  
21 Pennsylvania, which is in the Philadelphia area.

22 MS. LOVE: Margaret Love, I'm a  
23 post-conviction, post-post-conviction lawyer from  
24 Washington, DC.

25 MS. YOUNG: Vicki Young, I'm a criminal

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2 defense lawyer from San Francisco.

3 MS. VANDERHORST: I'm Geneva Vanderhorst.  
4 I'm a defense attorney from Washington, DC.

5 MR. JONES: Folks in the back, why don't you  
6 just introduce yourselves real quick.

7 MS. FRAZER: Angelyn Frazer, staff of the  
8 Task Force at NACDL.

9 MR. REIMER: I'm Norman Reimer, executive  
10 director of NACDL.

11 MS. WINSTON: I'm Lauren Winston. I'm the  
12 executive assistant at the Neighborhood Defender  
13 Service of Harlem.

14 MS. OHMAN: I'm Elsa Ohman, national affairs  
15 assistant at NACDL.

16 MR. JONES: All right. Not only are we  
17 being videotaped, but this is also being transcribed  
18 just so you know. Before we go any further, I should  
19 take this opportunity to really thank a number of  
20 people who have really brought all this together, and  
21 when I say all this, I don't just mean New York. I  
22 mean our travels across the country. Certainly, the  
23 folks from NACDL and the ones who are here, Norm  
24 Reimer, who just introduced himself, Angelyn Frazer and  
25 Elsa Ohman, who have really gone above and beyond to

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2 help us put this all together. These next two and a  
3 half days just don't happen by themselves. There's a  
4 lot of work that goes into making this happen, and also  
5 just particularly for New York, really making sure that  
6 I get where I'm supposed to go, also Lauren Winston has  
7 done some phenomenal stuff.

8 We should thank the Cravath law firm for  
9 hosting us for these days and making themselves  
10 available, particularly Rowan Wilson, who is a partner  
11 here, who has facilitated all of this, as well as  
12 Janice Singh and the folks from the tech group at  
13 Cravath. So we're very appreciative of them providing  
14 these facilities for us to do this important work.

15 We have been now to Chicago, Miami,  
16 Cleveland, San Francisco, D.C., and here we are in New  
17 York. We are pleased to have you folks here to start  
18 this discussion off, and we're very interested in  
19 having a discussion with you, but also in giving you an  
20 opportunity to share with us the work that you do, the  
21 thoughts that you have, a little bit about yourselves.

22 So the way that we operate and the way that  
23 we conduct these hearings is that we're going to give  
24 each of you five or ten minutes at the outset to tell  
25 us a little bit about yourselves, your work, and

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2 whatever you want, whatever you might have to  
3 contribute to sort of the overall discussion, and then  
4 we've got lots of questions for you. We've been  
5 anxiously awaiting to coming, and we are really  
6 interested in sort of picking your brains and getting  
7 the benefit of your expertise.

8 The way that we conduct these hearings is  
9 that one of our members will lead the discussion, and  
10 for the purposes of this discussion, that will be  
11 Elissa Heinrichs who will do the lion's share really of  
12 the questioning. To the extent that there is time once  
13 she's finished her questioning, the rest of us are also  
14 interested in engaging with you and speaking with you.  
15 And so we will do that until time runs out, and time  
16 always runs out too quickly in these things. There's  
17 always more to learn, and there's always more to talk  
18 about.

19 But having said all of that and anxious to  
20 get started with what I know is going to be a couple of  
21 days of really interesting conversation and a real  
22 learning opportunity for us, I'm going to be quiet, and  
23 I'm going to turn the floor over to you. One of you  
24 can start, Ms. Meyers.

25 MS. MEYERS: Thank you. Good afternoon.

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2 I'm Roberta Meyers, Director of Legal Action Center's  
3 National Helping Individuals With Criminal Records  
4 Reenter Through Employment Network, and we're also  
5 known as HIRE around the country. We are a project of  
6 the Legal Action Center. The Legal Action Center is  
7 the only nonprofit law and policy organization whose  
8 sole mission is to fight discrimination against people  
9 with a criminal record, histories of addiction or HIV  
10 and AIDS.

11 LAC conducts national and federal policy  
12 advocacy on behalf of these populations, but HIRE  
13 focuses exclusively on criminal justice and reentry  
14 policies. My colleague, Sally, can tell you more about  
15 our direct legal services and litigation work. So  
16 you'll hear more about that.

17 I wanted to talk briefly about the legal and  
18 policy challenges faced by people with criminal  
19 records, and some of the policy responses that have  
20 been undertaken across the country to address  
21 employment and housing barriers specifically.

22 I'm sure throughout the duration of the  
23 listening session as you will likely hear and have  
24 heard about some of the legal and policy restrictions  
25 and challenges that relate to the wide accessibility



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2 and inaccuracy of criminal records, employer biases,  
3 discrimination, stigma and unfair hiring practices,  
4 about statutory and regulatory restrictions to  
5 employment and occupational licensing, and personal  
6 issues faced by individuals based on their life  
7 experiences and personal attributes. And these types  
8 of restrictions and challenges are pretty much  
9 applicable in the housing arena as well as I go forward  
10 to talk about some of these policies.

11 Some of the policy models that we've been  
12 promoting over the past ten years along with many of  
13 our allies, some of whom you've probably heard from  
14 over the course of these listening sessions and, of  
15 course, the roster of folks that you'll be listening to  
16 over the next couple of days include issues around  
17 access to criminal records.

18 Many advocates across the country have been  
19 advocating for expungement and sealing provisions that  
20 will allow for the destruction of or limited  
21 discrimination of criminal records, such as arrests  
22 that lead to conviction, non-criminal offenses, and  
23 misdemeanors or felonies after a period of time.  
24 Also, I'm working on limited public access to criminal  
25 records through online sources, such as inmate lookup

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2 websites and court system databases.

3 Another area that advocates have really been  
4 pursuing state legislation is around strengthening  
5 state fair credit reporting standards for criminal  
6 record dissemination. That's another big area that  
7 advocates are considering and really doing some work  
8 on.

9 Another issue that comes up is rap sheet  
10 cleanup. As some of you may know, they're usually  
11 riddled with many errors. So a lot of advocates and  
12 including our organization here in New York have been  
13 working for many years to get state repositories and  
14 more advocacy has been done on the federal level to get  
15 the FBI to maintain complete and accurate criminal  
16 records, and to ensure that the information is free of  
17 errors before dissemination. So errors such as missing  
18 dispositions, inactive bench warrants, duplicate  
19 records and all of these things often will cost people  
20 an opportunity or a chance to lose a job if this  
21 information is out.

22 Another thing is looking at limited  
23 dissemination of old records with missing dispositions,  
24 and I think Sally may talk about some of the  
25 experiences that our clients have had here in New York.

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2 Another area that advocates have been  
3 working on are fair hiring standards. Many of you, I'm  
4 sure, have heard about Ban the Box, which is an  
5 initiative where advocates look to pass a policy of  
6 removing criminal history questions from initial job  
7 applications and delaying criminal record inquiries and  
8 background checks to later in the hiring process. So  
9 as of last week, there's now like eight states that  
10 have passed state legislation. There are about 50  
11 localities that have passed ordinances to also remove  
12 the box.

13 The other area is requiring employers to  
14 consider and weigh evidence of rehabilitation and other  
15 factors against conviction record information, which is  
16 very relative to New York State's Article 23-A and  
17 following the EEOC's guidance, advocating for  
18 anti-discrimination protection for applicants with  
19 criminal records, limiting the kinds of information an  
20 employer can consider, such as not considering arrest  
21 without convictions and/or having a limited lookback  
22 period.

23 So these are again other areas that folks  
24 have been advocating for across the country, some  
25 successful, many not, and also strengthening

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2 enforcement of anti-discrimination provisions, if there  
3 are any on the city and local levels, but there's a lot  
4 of activity around federal anti-discrimination  
5 protections using Title VII and also Title VI.

6 Another huge area and another challenge that  
7 people face regularly is access to identification. So  
8 in some jurisdictions, they've found a way to make sure  
9 that folks who are incarcerated, that they get copies  
10 of their birth certificates, that they get their Social  
11 Security cards, and in some jurisdictions, they've even  
12 gone further to work with the Department of Motor  
13 Vehicles to allow certain documentation from the  
14 Department of Corrections to count as a point or  
15 whatever the scoring is to get state identification,  
16 and this is a huge issue. We're in 2013, and there are  
17 still people coming out without identification, and you  
18 cannot do anything without ID.

19 We're here to talk about restoration of  
20 rights, which is huge. This is another area where  
21 folks have been working to develop some sort of process  
22 or procedure for folks to have their civil rights  
23 restored that have been lost as a result of their  
24 convictions, and as some of you know and definitely  
25 from Margie's work, Margie Love's work, most states

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2 only have pardon authority through the governor, but  
3 there are some administrative procedures that can be  
4 set up.

5 So a number of states and advocates have  
6 been working to set up systems for folks to get  
7 certificates of rehabilitation, and the terminology  
8 differs across jurisdictions, the effect differs across  
9 jurisdictions, but a lot of advocates have been looking  
10 for ways to get people's rights restored, particularly  
11 around employment and occupational licensing and  
12 voting.

13 North Carolina actually expanded it further  
14 to try to get at some of the other areas where folks  
15 need help when criminal records can have an impact,  
16 such as with housing or any situation where a criminal  
17 background check may impede a person's chance of  
18 getting that service.

19 Another area -- and I know I'm running down  
20 a quick, long list, and I apologize -- is negligent  
21 hiring. For years and years, employers have been  
22 expressing the concern about negligent hiring  
23 liability, and their concerns about hiring people with  
24 a past criminal conviction and exposing themselves to  
25 increased risk or perceived increased risk by hiring an

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2 individual with a criminal history.

3 So advocates across the country have been  
4 looking to strengthen state laws to create and  
5 strengthen state laws around negligent hiring to offer  
6 some protection to employers who attempt to do the  
7 right thing. It's come up in ways of restricting  
8 information at trial, offering a presumption against  
9 negligent hiring with adequate background investigation  
10 if the employer follows that procedure, safe harbor  
11 protection for an employer, rebuttable presumption,  
12 which is what New York's law offers, limited liability  
13 attached to certificates.

14 So in North Carolina, if a person has been  
15 issued a certificate of relief, the employer is  
16 shielded from a liability claim if something happens,  
17 and immunity from negligent hiring for individuals who  
18 hold a certificate of employability, and that's in  
19 Ohio. These are some states that have recently over  
20 the last few years have really taken up this issue and  
21 included it in legislation, where they're attempting to  
22 look at employment and trying to create opportunities.

23 On the housing front, the goal has pretty  
24 much been to give public housing authorities to conduct  
25 individualized assessments and to not have blanket

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2 criminal record bars to admission, but we also want  
3 them to follow some standards that will guide them on  
4 weighing evidence of rehabilitation against criminal  
5 histories. It's haphazard. The policies differ all  
6 across the country. You can go housing authority by  
7 housing authority, and you'll have a different policy  
8 across the country.

9 So we've been working on a federal level to  
10 get HUD to issue some guidance and haven't gotten far.  
11 We're still working on it, but to get HUD to issue some  
12 guidance to show housing authorities how to do this  
13 process of weighing evidence of rehabilitation and just  
14 to promote some standards that can be uniform across  
15 the country, and in other areas, there's a lot of work  
16 that needs to be done with regulation on housing with  
17 HUD.

18 They have some regulations that -- one, I'll  
19 give an example, where they have a definition of  
20 homeless that excludes people who are recently released  
21 from prison, which doesn't make any sense whatsoever.  
22 So we're working to hopefully get them to change that  
23 definition, and there are a number of other areas  
24 within regulations that we think that some of the  
25 federal agencies can make some administrative changes.

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2 But I just wanted to give you a breadth of  
3 some of the advocacy that's being done across the  
4 country and pretty much every region of the country.  
5 Many of the states are at different stages of  
6 addressing a number of these policies, and employment,  
7 housing and higher education are three primary issues  
8 that advocates are taking up to make sure that people  
9 have a way out and have a good chance at successfully  
10 reintegrating. I'll stop there.

11 MR. JONES: Thank you very much.

12 Ms. Friedman.

13 MS. FRIEDMAN: Again, I'm Sally Friedman.  
14 I'm the Legal Director of the Legal Action Center,  
15 which I do not have to tell you what we are, but part  
16 of our work you didn't hear about is we serve  
17 approximately 2,000 individuals in New York each year,  
18 who have a criminal conviction or criminal record,  
19 maybe not even a conviction, and are finding that it's  
20 getting in the way of their finding a job or housing.  
21 We tend to do more work on employment discrimination  
22 because there are very few rights with respect to  
23 housing discrimination and criminal records. There's  
24 not much we can generally do.

25 But seeing as this is your first stop in



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2 New York, and maybe no one has explained New York's  
3 law, but New York is one of the few states in the  
4 country that has a fairly protective  
5 anti-discrimination law, Article 23 of the Correction  
6 Law.

7 So it prohibits employers and occupational  
8 licensing authorities from denying people a job or  
9 license based on a criminal record or criminal  
10 conviction, unless it's directly job-related or the  
11 person's employment would pose an unreasonable risk,  
12 and there are eight factors employers must consider in  
13 reaching that determination.

14 It includes things like evidence of  
15 rehabilitation, whether they have a certificate of  
16 relief or good conduct from the state, how old they  
17 were at the time of the conviction, how long ago it's  
18 been and a few other factors, including the policy of  
19 the State of New York to encourage employment of the  
20 people with criminal records.

21 That law is incorporated into the state's  
22 Human Rights Law and the city's Human Rights Law, and  
23 New York also has its own Fair Credit Reporting Act,  
24 which is very similar to the federal one. Although, it  
25 has a few additional protections. New York's Human

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2 Rights Law also prohibits employers from even asking  
3 about or relying upon information pertaining to arrests  
4 that were terminated in favor of the accused, youthful  
5 offender adjudications, violations that were sealed and  
6 other convictions that were sealed under our recent  
7 drug reform law. There are very few convictions in  
8 New York that can be sealed. So that's rarely  
9 applicable.

10 So we're fortunate to be in a state that has  
11 these protections that most states do not enjoy. The  
12 challenge, of course, is in the enforcement, and I  
13 think that employer awareness of the laws has improved  
14 in the last few years, especially since a law was  
15 created to require employers to give employees copies  
16 of the law. But the law is routinely violated, and  
17 employers sometimes have explicit policies about not  
18 hiring people with felony convictions or other types of  
19 convictions.

20 More typically, as for the rest of the  
21 country, employers use a matrix that they either apply  
22 themselves or that they have a consumer reporting  
23 agency apply, where they list various types of criminal  
24 convictions, and then depending how long ago it was,  
25 you're either disqualified or not from employment.

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2 There's no room for considering the eight factors  
3 required under New York State Law, but we believe that  
4 employers use these matrices left and right despite  
5 their illegality. But often, this is done behind  
6 closed doors. So the individual does not know.

7 There's also the problem that consumer  
8 reports are inaccurate, and I'm sure you've heard about  
9 this from the whole country. So I don't need to spend  
10 time discussing that, but that affects folks here. And  
11 that consumer reporting agencies, even though they're  
12 required by law to investigate complaints about  
13 inaccuracy, often don't. You can't get through on the  
14 telephone, and then the duty is really on you, as the  
15 individual, to fix it, and the consumer reporting  
16 agency just says -- basically, puts all the onus on the  
17 individual.

18 Meanwhile, the job is gone by the time the  
19 person has corrected the error, if they have succeeded,  
20 which is very hard to do at all if you do not have a  
21 lawyer so, and that, of course, is compounded by the  
22 inaccuracy of the underlying court records and the rap  
23 sheets that the consumer reporting agencies use in  
24 their reports. So there are some inaccuracies at every  
25 step of the way.

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2 And, you know, another problem that people  
3 have is that, of course, they don't know what to do  
4 when their rights are violated, where to turn. There  
5 are very few resources for people. The Legal Action  
6 Center can't possibly meet the demand that is at our  
7 doorstep on a daily basis, and there are very few  
8 places around the state that even do the work we do.

9 And then, of course, there are these various  
10 bars in the law. Like if you want to work in the  
11 healthcare industry, you have to get vetted by a  
12 government agency, and it's similar in many industries.  
13 The employer is ready to hire you, but you have to be  
14 approved by some type of government agency. And if  
15 they don't approve you, even on a preliminary basis,  
16 even if you have a chance to do some kind of  
17 administrative appeal, the odds are you won't be very  
18 good at representing yourself. You won't know how to  
19 marshal the type of evidence you need, and even if you  
20 are one of the lucky few who has those skills, by the  
21 time the government agency decides your appeal, the job  
22 is gone. So that happens a lot, too.

23 And my final kind of major obstacle I think  
24 that our clients face is that because almost all  
25 employers do a background check and ask on an

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2 application for you to list your convictions, most  
3 people cannot accurately describe their criminal  
4 convictions. Some people, of course, don't want to  
5 accurately describe their criminal convictions, but  
6 many people who do want to cannot do that.

7 We know this because hundreds of people come  
8 to us each year to get copies of their rap sheets,  
9 which we get from the state, and we ask them when they  
10 come in, how many felonies and misdemeanors do they  
11 think they have. We ask them to list it, and then we  
12 get the rap sheet to compare. For several years that  
13 we entered the data into the database and discovered  
14 that roughly 90 percent of our clients are wrong about  
15 what is on their record.

16 So they either think their record is worse  
17 than it is because they were charged with a felony.  
18 They took a plea to a misdemeanor, and they don't  
19 realize that they don't have a felony conviction or  
20 they think because they took a plea and didn't do time  
21 in prison, they don't have a conviction. They think a  
22 plea is not a conviction.

23 They often tell us that their criminal  
24 defense lawyers said that if they just take the plea,  
25 it's going to be fine. This will never be a problem.

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2 They think there's also these myths out there that  
3 various misdemeanors don't get reported, only felonies  
4 do, that everything somehow magically disappears after  
5 seven or ten years.

6 The most common question we get from clients  
7 when they call is, how do I expunge my record? I give  
8 a very straight answer, you can't. There is no  
9 expungement in New York. So these kind of myths about  
10 which criminal convictions they have, which criminal  
11 convictions have to be disclosed. Some of our clients  
12 have disclosed youthful offender adjudications, even  
13 though they don't have to.

14 So people don't know what they have. They  
15 don't know what they have to disclose. They don't know  
16 what employers are allowed to ask. So they don't  
17 disclose accurately, and then the background check  
18 comes back. It doesn't match. They don't get hired.  
19 So just educating people about what's on their record  
20 is another significant barrier that we find.

21 MR. JONES: Thank you very much.

22 If I call Mr. Zeidman Steve, it's only  
23 because I've known him since like really the first day  
24 that I started practicing as a lawyer 26 years ago. So  
25 Steve.

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2 MR. ZEIDMAN: Thanks, Rick. Good afternoon,  
3 folks. My name is Steve Zeidman. I teach at CUNY  
4 School of Law, and I direct the criminal defense clinic  
5 there. Prior to that, many years ago, about 26 years  
6 ago, actually a little bit more, I was a staff and  
7 supervising attorney with the criminal defense division  
8 in the Legal Aid Society in Manhattan.

9 I just want to say too -- and you probably  
10 hear this, but I'm grateful to both the NACDL and to  
11 the members of the Task Force for taking this on. It  
12 seems like every day a client somewhere someone -- I  
13 don't know anyone who hasn't been impacted. So thank  
14 you.

15 Also, late last night, I looked at the  
16 agenda of people who you're going to hear from over the  
17 next couple of days, and it's a remarkable group. And  
18 given the expertise of those folks, including my  
19 co-panelists at the moment, who are much more expert in  
20 the precise issue of the day, restoring rights and  
21 status after conviction, I thought that I can spend my  
22 few minutes that I have addressing an issue not  
23 directly on today's agenda, but one that I think is  
24 very much at the heart of the discussion.

25 There are two different ones that I want to

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talk about. I'll give you part A and part B. To begin with -- and I'm not suggesting that the Task Force is doing this. However, we can't, we shouldn't discuss, think about, imagine remedies for convictions without first looking at, acknowledging, asking how the conviction came to be in the very first place.

I know I'm stating an obvious but often overlooked truth. If there were no conviction in the first place, there would be no problem with what to do after the conviction. If there had been no entry into jail or prison, there would be no concern about reentry into society at large. I say this because for reasons frankly that I have never fully understood, the crisis of the consequences of convictions on people's lives rarely seems to lead to discussions about the entry point of the problem, the underlying conviction itself, and that inquiry is the how and why of the underlying conviction.

I think it's especially appropriate for an organization of lawyers. It's especially appropriate on the 50th anniversary of Gideon versus Wainwright, and let me be very clear what I suggest people spend some time on. A lot of people have said the way to deal with the consequences of conviction is look at the



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2 policing decisions, especially when they relate to the  
3 new policies where massive amounts of people are  
4 arrested for minor offenses. I think we can all agree  
5 you're doing a heavy lift as it is, but affecting  
6 policing practices is that much harder for an  
7 organization of defense lawyers.

8 Others have suggested turning to the  
9 legislature to decriminalize certain offenses so they  
10 don't have the same power of impact with convictions;  
11 certainly, an important undertaking. Two thoughts  
12 about that. One again, it's a heavy lift. Also, it  
13 strikes me, at least in the New York experience, we're  
14 going in the opposite direction, where we seem to be  
15 criminalizing more and more minor behavior.

16 However, the adjudication of the arrest,  
17 that's what we do, the adjudication, and when I say  
18 "we," I'm referring to defense attorneys primarily and  
19 also prosecutors and judges. We are the ones, those of  
20 us in the room, who have some part in saddling people  
21 with convictions that lead to the very problem the Task  
22 Force seeks to address and remedy.

23 I also want to particularly underscore the  
24 problem with misdemeanors or so-called low-level  
25 convictions. The law school clinic that I've been

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2 teaching in for the last ten years and I taught in a  
3 similar clinic for ten years before that, we focus on  
4 providing misdemeanor representation. So I have spent  
5 most of the last 30 years in the Criminal Court, and I  
6 am very familiar with the way these cases are  
7 processed.

8 If you go back to 1972, apropos of just  
9 raising Gideon, and if you look again at Argersinger  
10 versus Hamlin, where the court bemoaned the assembly  
11 line of prosecution of misdemeanor cases. That  
12 description is not only more apt today. It's more  
13 pernicious today. We see the advent of quality of life  
14 policing, its metamorphosis into zero tolerance  
15 policing, and then Criminal Courts in the largest urban  
16 cities, especially here in New York, are defined and  
17 dominated by misdemeanor arrests. Just last year, 86  
18 percent of the cases that came into Criminal Court were  
19 non-felonies.

20 I know this Task Force knows well the  
21 consequences that flow from misdemeanor convictions,  
22 even from convictions on reduced charges, whether  
23 they're called violations or offenses, and yet half of  
24 those misdemeanors -- so again, 86 percent of the cases  
25 coming into New York City Criminal Court are

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2 misdemeanors or violations. Half of them end at the  
3 accused's initial appearance, half of them.

4 Stating the obvious, at that point in time,  
5 that disposition, virtually nothing is known about the  
6 case by any of the players involved; the defense  
7 lawyer, the prosecutor, the judge. They don't know  
8 about the facts underlying the arrest, the  
9 constitutionality, guilt or innocence, or anything  
10 that's more apropos to what we're talking about about  
11 the accused's personal life situation.

12 The numbers of convictions obtained in this  
13 ramped up assembly line processing of these minor cases  
14 is staggering. I don't suggest that you rank different  
15 pieces of the problem, but it seems to me it is the  
16 greatest problem concerning post-conviction rights and  
17 status. It's true the majority of these cases do not  
18 involve jail or prison. So you're not talking about  
19 reentry in that way, but they impact people's lives in  
20 ways that --

21 You know, I just want to give you three  
22 examples that I think are typical right here in New  
23 York. These are from the last couple of years that got  
24 a lot of attention. You may be familiar with all or  
25 some of them.

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2 One was a young man who was turned down for  
3 a job at Sears. It turned out he had pled guilty to  
4 disorderly conduct while, I believe, a teenager. He  
5 was told by his lawyer that it was sealed, and, of  
6 course, we do have some version of sealing in New York,  
7 but it popped up.

8 It turned out that the Office of Court  
9 Administration here in New York was willing to give out  
10 that information for a fee. They've since made some  
11 administrative or sort of an understanding about what  
12 they're doing, but I think the issue remains.

13 There's another case of a woman who was  
14 working at a bank and was urged to apply for a  
15 full-time job. She did. She was given the job. It  
16 turned out she had received an adjournment in  
17 contemplation of dismissal on a petty larceny charge,  
18 which rendered her ineligible for that particular bank  
19 job.

20 The last one I want to mention, to me, this  
21 might capture New York City, if you want to get a full  
22 flavor of what goes on here. Several years ago, the  
23 legislature thought it was wise to impose court fees on  
24 defendants when they pled guilty, even to non-criminal  
25 offenses like disorderly conduct. What happened was as

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2 people were pleading guilty right and left -- you know,  
3 just today, in the five boroughs of New York City, I'm  
4 guessing there are 500, 1,000 non-criminal pleas. The  
5 number is staggering. You plead guilty to a violation.  
6 You're told the record is semi-sealed, but then the  
7 judge says there are also these court fees.

8 When the legislation first came out, the  
9 defense lawyers and the judge were all less than  
10 thrilled with this, and the judges said your client is  
11 represented by the public defender. I'm waiving those  
12 court fees. They're presumptively too poor, but the  
13 legislature went back and made this non-waivable, which  
14 again that's another discussion about the narrative and  
15 how you frame the issue. This is the context. We're  
16 thinking what to do about these things, and we have  
17 legislatures actually moving in the opposite direction.

18 But the story actually gets worse because  
19 once it became a non-waivable fee, defense lawyers and  
20 judges put their heads together and thought what's the  
21 best solution to someone who's poor. If we were to go  
22 into Criminal Court right now, you see these handed out  
23 like candy right and left. I see Rick nodding. The  
24 judge says I'm imposing -- Counselor, there are court  
25 fees. Is your client in a position to pay? No, Judge,

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2 my client is unable to pay the \$295 and whatever it is.  
3 Fine, enter a civil judgment.

4 My guess is -- I looked at this a few years  
5 ago. I don't think this is a hyperbole. I think we  
6 have probably a million people in New York City who  
7 have civil judgments entered against them after  
8 pleading to these non-criminal offenses. These  
9 problems can, I think, and must be addressed in any  
10 analysis of the impact of the criminal conviction on a  
11 person's life, that being the front end, the plea, and  
12 especially because this is something that NACDL and  
13 other lawyers' organizations can more readily and  
14 immediately impact.

15 The American Bar Association standards,  
16 NACDL standards can directly and affirmatively prohibit  
17 the practice to meet and greet them and plead them,  
18 these arraignment pleas that dominate the Criminal  
19 Court. Lawyers can be trained to view this kind of  
20 representation as unethical, if not unconstitutional,  
21 and resulting in decrease of convictions, which I think  
22 is within our grasp, reducing convictions dramatically  
23 is I believe a necessary first step towards addressing  
24 rights and status after conviction, and I will leave it  
25 there.

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2 MR. JONES: Thank you.

3 Elissa.

4 MS. HEINRICHS: I'm going to just pick up  
5 with what you were saying about civil judgments. I  
6 guess it's a jurisdictional thing. I'm coming from a  
7 county where they're doing the same thing, but it's  
8 after a period of time, and I don't know exactly when  
9 it rolls into a civil judgment.

10 But in the event that the individual is able  
11 to pay on that day or within, I would say, a year, it's  
12 not going to go to civil judgment. What's the practice  
13 here? I'm specifically asking -- I'm curious to know  
14 if there's a notice piece to the individual when  
15 they're pleading.

16 I'd like to know again whether it's  
17 automatic or if there's a time period, and if you could  
18 discuss the effect, what you're seeing the effect on  
19 the individual. I mean, it seems like almost an  
20 obvious question, but what are the reaching effects of  
21 having the civil judgment?

22 MR. ZEIDMAN: At the outset, you're given  
23 the opportunity to pay. The judges will give you  
24 months and months to come back, but at some point,  
25 they'll say all right, enough. Are you going to pay?

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2 If you're unable to pay, we will enter a civil  
3 judgment. So typically, there will be two, three or  
4 four adjournments if somebody wants to try to pay.

5 I should say part of the issue is, I think,  
6 the defense lawyers by and large don't fully appreciate  
7 the impact of the civil judgment. So in many ways,  
8 people feel like they're doing their client a favor.  
9 Number one, you don't have to come back to court over  
10 and over and over again. You might not be able to pay  
11 this anyway. So why don't we just enter a civil  
12 judgment?

13 Strangely, bizarrely, and I will also have  
14 to plead guilty to this fact. When you see a civil  
15 judgment entered, it's just words spoken on the word.  
16 I don't think any paperwork is given to the person, to  
17 the lawyer. If you ask lawyers, who even with the best  
18 of intentions have said this is appropriate for this  
19 particular client, what does it mean? What actually  
20 does this mean? Do you know is your client going to be  
21 able get a loan for a car, a loan for a mortgage?

22 I don't think people can tell you that they  
23 have any idea whatsoever, and I can't either. I  
24 couldn't tell you. I imagine these folks probably have  
25 a pretty good idea what it means, but I'm guessing that



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2 the lawyers and the judges that impose this are  
3 clueless.

4 MS. HEINRICHS: Well, as far as the  
5 legislature, you also mentioned that in some of what  
6 we're looking at here -- you didn't put it this way,  
7 but we're butting heads with legislature in how on a  
8 state, federal level, the laws that are being imposed  
9 are making our jobs more difficult.

10 Do you have any suggestions? What are your  
11 thoughts on who do we partner with, who do we work with  
12 to change some of that? What efforts have been made in  
13 this state? I know this could be a question for  
14 anybody on the panel. What are your discussions for  
15 counteracting what's going on as far as the laws are  
16 concerned?

17 MR. ZEIDMAN: Before getting to the  
18 collaborations because I know my colleagues, that's  
19 exactly what they've been doing. I just want to give  
20 you two other discrete examples. A lot of it is how to  
21 frame a narrative once you figure out who it is you're  
22 going to, but in the criminal defense clinic that I  
23 teach, we go into Criminal Court once or twice a year.  
24 So I can see changes, and the changes are again butting  
25 heads.

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2 So, for example, the criminal history, the  
3 rap sheets, we went in recently for the first time, and  
4 we saw more information on the rap sheet. A lot of it  
5 extraneous, a lot of it irrelevant, a lot of it wasn't  
6 our client, but it's now from various federal agencies  
7 that says terrorist alerts. It's all these things that  
8 are popping up because in the criminal justice circles,  
9 the idea is we want to share information. This  
10 post-9/11, we want to make sure that we have every  
11 tidbit, everything without any sort of screening about  
12 the accuracies. So that's another example.

13 The other thing we found out recently is a  
14 client of ours was arrested, and a student ventured  
15 into the world of mandatory reporting, which seems to  
16 explode every year; now, a whole variety of arrests.  
17 If you're a cab driver, you lose your license. If  
18 you're a teacher, if you work in a nursing home, just  
19 the mere fact of the arrest.

20 So those are the things that are, I think,  
21 that's what we're getting from the legislature. How to  
22 reframe the narrative, who to work with, I'm going to  
23 turn to my colleagues here, who do this on a daily  
24 basis.

25 MS. MEYERS: Yeah. I think developing the

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2 narrative, a lot of legislators, they need to hear what  
3 the full impact of these laws are because many of them  
4 are operating based on how it's written and not the way  
5 that it's effectively in operation and the direct  
6 impact it's having on people in the community and how  
7 the law is being used.

8 So we believe that developing reports, and  
9 I'm hoping just from the listening sessions that you  
10 all are holding, collecting this information, and  
11 making it readily available, and sharing the stories  
12 about your experiences as professionals within the  
13 criminal justice system to give the true picture of  
14 what's happening is what's necessary.

15 And then in terms of partnerships, making  
16 sure that these documents get in the hands of folks  
17 that are meeting with legislators every day and  
18 organizations like ours. There are coalitions all  
19 across the country that do this work every day trying  
20 to get this information to the legislators.

21 We think also talking to some of the federal  
22 agencies who have reach within communities with  
23 regional offices and things like that, and getting to  
24 those folks and asking them to take part in  
25 disseminating this information. And we're fortunate

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2 that over the last few years with the development of  
3 the Federal Interagency Council out of the Department  
4 of Justice, we actually have a place to take this  
5 information, and to ask them, and to share, and  
6 disseminate information within local communities across  
7 the country, so utilizing all those different vehicles.

8 But I think really taking the time to  
9 catalog and document what's happening, referencing the  
10 various laws and policies that are changing every day.  
11 They are changing every day, but also, collecting real  
12 stories from organizations like ours that are providing  
13 the direct services, and in the work that you all do as  
14 defense lawyers, what you're seeing happening.

15 And the training, I think what Sally had  
16 talked about and even Steve about the lack of knowledge  
17 about the full impact of some of the outcomes, you  
18 know, such as civil judgments, the full impact of what  
19 can happen, the training has to continue, standards and  
20 professional development in defense lawyering I think  
21 is critical keeping that up, and keeping this issue out  
22 in the open, and talking to defense lawyers across the  
23 country about paying attention to the collateral effect  
24 of all the different outcomes that can happen in a  
25 disposition. I think it's really necessary.

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MS. HEINRICHS: I'm going to stay with you, and I want to ask you. You had mentioned negligent hiring, and you had mentioned some of the state law protection. I think you were saying on a national -- this is one of the areas you're looking at nationally.

I wanted to ask you generally, but I also had a question that was passed to me. That's the same topic, right? We'll make sense of that in a moment. I'm just going to just go back to the more general question.

I guess part of what I'm thinking is when we're talking about collaboration and working with those who may not be on the same page as us, I think of the employers, and we think of the arguments that we're met with, the initial arguments.

If you're looking at negligent hiring, I'm interested in hearing how have you successfully come to the table with employers, listened to what their concerns are, and how have you been able to make changes on a state level so that employers feel protected, and you're able to explain, you know, the incentives, the reasons they should hire people with records. Could you explain how that's come about?

MS. MEYERS: Absolutely. Some of the ways

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2 that we've done it over the years is working directly  
3 with workforce development practitioners who have the  
4 direct relationships with the business communities.

5 They're doing job placements all the time, and their  
6 work is not just for the jobseeker but for employers.

7 So earlier on, a lot of the information we  
8 were getting was through the workforce development  
9 community, but a lot of the education work we've done  
10 with workforce practitioners has been to get them to  
11 bring more employers to the table to have direct  
12 conversations.

13 And even the American Bar Association had  
14 held some sessions bringing in attorneys that represent  
15 employers and different businesses, bringing those  
16 folks to the table and talking to them about what their  
17 clients care about and are concerned about, and then  
18 advocates across the country just started putting their  
19 heads together and saying, okay, well, now that we  
20 know, we're hearing directly from them. What are some  
21 of the ways that we can deal with that?

22 So the negligent hiring piece really, I  
23 think, came from attorneys that work on behalf of  
24 businesses and employers, and we all just got our heads  
25 together. So it's showing up -- in some places, it's

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2 standalone legislation, but in most of the places where  
3 there's been recent activity, it's been coupled with  
4 other pieces of legislation, like certificates of  
5 rehabilitation as part of the Uniform Collateral  
6 Consequences of Conviction Act within states across the  
7 country. It's been packaged with other areas of policy  
8 that affect employment directly, but it's not  
9 something, you know, that we made up.

10 There was a lot of conversations over the  
11 years and talking specifically to workforce  
12 practitioners that have that direct contact but also  
13 some employers as well, and there is still a lot of  
14 work that has to be done.

15 I have to tell you one of my struggles over  
16 the years with working on policy, as I looked at the  
17 ways that jurisdictions was trying to figure out ways  
18 to address the employment challenges that people faced,  
19 the focus was so much on the individual, fixing the  
20 individual, you know, and it's beyond that.

21 It's not just the individual making the  
22 decision that they want to change their lives, and  
23 people, once they make that decision, they do what they  
24 have to do. They know that they need more education.  
25 They'll go get that. If they know that they need

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2 skills, they'll go get that.

3 However, the community has a responsibility  
4 too, and if the opportunities aren't there, then all of  
5 that work could be for naught. You know, it doesn't  
6 matter. So I think now we're finally at a place where  
7 communities are understanding that they have a role and  
8 responsibility to play in addressing this issue, and  
9 that clearly and obviously means that the employers  
10 need to be at the table and leading the effort.

11 So we have to focus on the concerns that  
12 they have and figure out a way to address those issues  
13 and those challenges, and actually, my project, HIRE,  
14 is really focusing over the next few years on that  
15 specifically, providing education to the business  
16 community.

17 One of the main issues over the last year  
18 that we've been hearing, and just recently back in  
19 December, the Commission on Civil Rights held a hearing  
20 about EEOC's guidance that was updated and released in  
21 2012, and the pushback from the business community is  
22 you're telling us what to do, and we don't know how to  
23 do this, and we don't know how to use this information.  
24 No one is telling us how to really use this  
25 information. We want to do what's right.



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2 So providing that information and really  
3 working with the businesses, alliances, the Department  
4 of Labor, whatever vehicle we have can find to get that  
5 information to them, and that is going to take  
6 collaboration across the board. And what that will  
7 look like in every community may be different based on  
8 the resources that are available.

9 MS. HEINRICHS: Have you made inroads with  
10 larger corporate entities or are you finding that it's  
11 more successful or at least at this point that there's  
12 been more success working with smaller companies, you  
13 know, local businesses?

14 MS. MEYERS: Workforce practitioners will  
15 tell you that it's the small to medium-size businesses  
16 in their communities that they can get their folks who  
17 have histories, and mainly because of the direct  
18 relationships they can make with the hiring managers.

19 It's not so much about the people they  
20 bring, but the relationship and the trust that's  
21 established between the employer and the workforce  
22 organization. You know, that the workforce  
23 organization knows what the employer needs, wants, what  
24 their bottom line is, and all of that, and can meet  
25 that demand.

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2 I think the big-box stores are coming to the  
3 table now maybe because they're getting sued, but I do  
4 think that there's a lot more that's going to be  
5 happening. A lot more HR agencies and media outlets  
6 are paying close attention to this issue and are  
7 writing about this issue a lot more, and I think  
8 because of the EEOC standing up and saying we are going  
9 to be looking for more cases. We will be bringing more  
10 actions.

11 There's been a movement across the legal  
12 advocacy community for the last few years, where  
13 they're joining forces and supporting each other and  
14 bringing actions across the country. So this  
15 information is getting out there. So I think not just  
16 the small to medium size, but the big corporations are  
17 also going to come on board as well.

18 MS. HEINRICHS: Ms. Friedman, I have a  
19 question for you. You mentioned the matrices that are  
20 being used by, I guess, the private agencies, the  
21 reporting agencies.

22 MS. FRIEDMAN: Yeah. Basically, they're  
23 commercial background companies that are hired by the  
24 large employers, mainly the large employers.

25 MS. HEINRICHS: I looked just briefly at

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2 some of the cases in the last few years that the  
3 Attorney General has brought here in the state, and I  
4 know there are some that look at the reporting agencies  
5 and the matrix that they were using for their clients.

6 Are you involved in anything on that level?  
7 Can you talk about the work that's been done either  
8 in -- I'm curious how you would come about -- how would  
9 you find that information out. I know that if I were  
10 to apply somewhere and I was denied the position, maybe  
11 depending on what state I'm in, depending on the  
12 employer, I might get a letter saying you were denied  
13 based on this reason. I may be able to access my  
14 criminal record, again state by state, because of the  
15 denial of that job.

16 But how does a person find out what matrix  
17 was applied? I mean, if you get to the discriminatory  
18 aspect of hiring, how are advocates discovering that?  
19 Who are they using? When does it become an AG case?  
20 When is it something that you're pursuing civilly  
21 exclusively?

22 MS. FRIEDMAN: Usually, you don't find out.  
23 So the last AG in New York had brought cases against  
24 ChoicePoint and RadioShack, and that was a case where  
25 ChoicePoint was doing the employment screening for

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2 RadioShack and was using a matrix to screen out people  
3 with -- I can't recall whether it was violations or  
4 convictions. It's a type of conviction that you're not  
5 allowed to use in employment decisions in New York. So  
6 it wasn't a type of issue that I was talking about,  
7 where it's illegal simply that you're not considering  
8 any of the other factors.

9 So that was that one case, and, you know,  
10 the Attorney General in New York just settled another  
11 case last week against Quest Labs. The press release  
12 actually didn't contain details. So I'm not quite sure  
13 what the details were of that case, but we find out  
14 about them when we brought actions against employers,  
15 and in their answering papers, they provide you with a  
16 copy of it. So that's one of the ways we've seen them.

17 I mean, we know through other attorneys who  
18 have done discovery of consumer reporting agencies that  
19 they're applying an employer's matrix. So that's  
20 basically how we've seen them, but one of the reasons  
21 why it is hard to find them out is that because they  
22 don't disclose them, unless they're generally involved  
23 in some kind of litigation or investigation. I think  
24 there are ways that you can figure out that it  
25 happened.

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2 For example, under the Fair Credit Reporting  
3 Act, before taking adverse action based on a consumer  
4 report, a background check, an employer is required to  
5 send the applicant with notice that you're about to be  
6 denied a job based on your consumer background report,  
7 and you have an opportunity to correct us. Maybe the  
8 consumer report was wrong.

9 So sometimes you could tell -- what happens  
10 is that provision is routinely violated, and what goes  
11 on is that it's actually the consumer reporting agency  
12 that's doing the screening, and they send based on the  
13 letter -- although it's on employer letterhead, but  
14 it's sent out by the consumer reporting agency, and it  
15 says you weren't hired or you're terminated -- because  
16 sometimes these background checks happen after you've  
17 been on the job two weeks. So you're suspended, you're  
18 terminated because of your background check, and you  
19 can tell.

20 I mean, if the letter was issued by the  
21 consumer reporting agency and they didn't have any  
22 information about the person's age at the time of  
23 conviction, evidence of rehabilitation, whether or not  
24 they have a certificate of relief, you know that  
25 information has not been elicited yet. So you pretty

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2 much can be sure that the consumer reporting agency is  
3 just applying that employer matrix. So there are ways  
4 that figure out that's happened, but it's not something  
5 that's transparent.

6 And the EEOC guidance certainly casts doubt  
7 on the legality of using those matrices. They didn't  
8 say outright that these are per se violations of Title  
9 VII, but the EEOC made it clear that there needed to be  
10 some type of individualized analysis that was  
11 available. We think it's always been clear under New  
12 York law, but it has been hard to challenge it because  
13 it's not out there, that information.

14 MS. HEINRICHS: I have another question  
15 about certificates and how they're applied. I know  
16 that if you have a certificate in New York, I guess the  
17 licensing agency still has discretion; is that right?

18 MS. FRIEDMAN: Yeah.

19 MS. HEINRICHS: A discretion to consider --  
20 I guess it's to deny or revoke a license based upon a  
21 conviction. So I'm wondering are there agencies that  
22 are better than others? How do you find the discretion  
23 is being applied? Could you talk about some of the  
24 obstacles that you're seeing that's being applied?

25 MS. FRIEDMAN: What's happening in New York,

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2 which is different from the rest of the country, there  
3 are very few licenses where you automatically are  
4 barred if you have a particular type of conviction. If  
5 there is such a bar in New York, like for a security  
6 guard, for example, which a lot of our constituency is  
7 interested in that position, that security guard  
8 licensure.

9 If you have a certain type of felony  
10 conviction, you cannot be considered, unless you have a  
11 certificate of relief from disabilities. So the  
12 certificate essentially lifts the automatic bar, and  
13 then they can look at you under New York law and decide  
14 whether your convictions are job-related or you pose an  
15 unreasonable risk. So the certificate lifts the bar,  
16 and it works insofar as you get in the door. If you  
17 don't have a certificate, you'll lose your application  
18 fee, but you'll just get a letter back, sorry.

19 So it functions on that level, but in  
20 general, they're one piece of evidence or one piece of  
21 information the employer or the licensing agency has to  
22 consider. And as they also must consider everything  
23 else, you know, the evidence of rehabilitation, the age  
24 at the time of the crime, et cetera.

25 Are some agencies better than others? I'd

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2 say, in our view, yes. I think that some state  
3 agencies are more willing to issue licenses or to  
4 approve employment for people who have conviction  
5 histories than others.

6 But also in New York, it's changing because  
7 by legislation there's -- legislation last year created  
8 something called the Justice Center that's going to  
9 basically do the employment screening on this issue for  
10 people who work in facilities regulated by the  
11 Department of Health, Office of Mental Health, the  
12 Office For People With Developmental Disabilities. So  
13 there are going to be some changes in how that's  
14 handled in New York, and we're very eager to see how  
15 they do it. So yes, like any discretion, it's used  
16 differently by different agencies.

17 MS. HEINRICHS: So it's called the Justice  
18 Center, and that was created by law last year?

19 MS. FRIEDMAN: Yes, but it hasn't opened  
20 yet. It's supposed to start in June.

21 MS. HEINRICHS: Do you want me to take a  
22 crack at this question? Let me take a crack at this.  
23 I think it's a good question if I can understand what  
24 I'm being asked, and I guess this is for anyone on the  
25 panel. Is anyone aware of any composite study of state



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2 laws that protect employers from liability for neglect  
3 in hiring?

4 MS. MEYERS: Negligent hiring?

5 MS. HEINRICHS: Yeah.

6 MS. MEYERS: Nationally, no, but we've  
7 gotten wind that there's a possibility that a study  
8 will be done. There have been some done in different  
9 states, and we did a little bit early on, but I'm sure  
10 there's been some changes across the country.

11 Actually, someone who's testifying, Esta Bigler from  
12 Cornell, may talk about that. I'm not sure, but I  
13 think they're looking at this particular issue and  
14 doing a composite study.

15 But I know a woman in Texas actually did --  
16 for the State of Texas did a legal analysis of cases.  
17 There's been some work done in Maryland and pockets of  
18 states, but nothing nationally, not a national  
19 composite analysis on that issue.

20 MS. HEINRICHS: Are the state composites  
21 that you mentioned, Texas and Maryland, do you know if  
22 they're online?

23 MS. MEYERS: I don't know. I don't know.  
24 It may be. I know the Texas report was just released.  
25 It may be, but I'm not 100 percent sure.

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2 MS. HEINRICHS: Do you know the organization  
3 that released it?

4 MS. MEYERS: I'm so bad.

5 MS. HEINRICHS: I'll follow up with you on  
6 that. I'm putting you on the spot. I'll follow up.

7 MS. MEYERS: I forget the name of the  
8 professor that led the analysis.

9 MS. HEINRICHS: Then the next question on  
10 that, you said there's some discussion about a  
11 national -- there may be a national composite that's  
12 going to be worked on.

13 MS. MEYERS: Yes.

14 MS. HEINRICHS: Are you able to say who is  
15 working on that or discussing it or is that premature?

16 MS. MEYERS: It's premature.

17 MS. HEINRICHS: I'll follow up with you on  
18 that, too.

19 MS. MEYERS: We're going to have a private  
20 discussion about that.

21 MS. HEINRICHS: I'm going to open it up to  
22 my colleagues because I know there are a lot more  
23 questions.

24 MR. JONES: We just have a few minutes left,  
25 but we are going to take some questions from the Task

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2 Force. Larry Goldman, do you have questions?

3 MR. GOLDMAN: Steve, I've known you as long  
4 as Rick because he's older than me. Steve, let me ask  
5 you, and let me say we are a criminal defense  
6 organization. I don't have great views that the state  
7 legislatures are going to be all that immediately  
8 affected by our views as to certain legislation. You  
9 people have done much more than we're going to do with  
10 whatever success you've had, and it's not as great as  
11 all of us would like. We can presume that they affect  
12 criminal defense lawyers.

13 Just a couple of specific questions, and  
14 then maybe if you go broader, the overall question,  
15 which I'll get to in a second, is what should -- given  
16 the limitations of time and money and the speed at  
17 which the courts push on us, what do criminal defense  
18 lawyers do? Let me just ask you one thing. You've  
19 written and you haven't spoken much about it, but on a  
20 committee we were on, you wrote very strongly about the  
21 initial appearance pleas.

22 One question is could we -- could the bar  
23 take the position that a lawyer should not on the  
24 initial appearance without doing A, B, C and D or maybe  
25 absolute plead a client guilty to anything? The bar

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2 has taken positions on case loads of public defenders  
3 saying it is unethical to have too many cases. Can we  
4 reasonably take an ethical position on that?

5 That's one question, and I would throw into  
6 that, frankly, the civil judgment area threw me off  
7 because I never thought of it obviously. You can get  
8 to tell everyone the record is sealed, and then  
9 somebody does a judgment check and finds you with a  
10 judgment on a criminal conviction and, you know, nice.  
11 But essentially, what can criminal defense lawyers do,  
12 what could we suggest to them within reason, and  
13 specifically, what you said, Steve, your thoughts on an  
14 ethics opinion on initial appearances?

15 MR. ZEIDMAN: Yes. In my view and I think  
16 I'm taking a pretty straightforward view of the ethical  
17 rules as they exist, but I think it's already very  
18 close to an ethical violation to take a plea at the  
19 initial appearance. I think with the latest Supreme  
20 Court case, it's ineffective assistance as well.

21 So I think the bar will be getting out in  
22 front on this saying we're interpreting recent Supreme  
23 Court case law. We're making a deeper analysis and  
24 expand rules that already exist that require an  
25 advocate, factual legal investigation before advising

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about a plea. That's already on the books. It's just being a little bit more explicit given the explosion of collateral consequences and everything that is attending to a conviction.

So there's a moment in time when it's exactly right to do this. To me, I don't see how anybody could ethically stand next to someone taking a plea when you don't know anything about their life situation and the impact of all these consequences. To me, it's an ethical violation. The bar should say so, and this organization should say so.

MR. GOLDMAN: Let me ask Ms. Friedman and Ms. Meyers something, and let me tell you in preparation for these hearings, I spoke to someone who's a very successful restaurateur, entrepreneur, and he or she said -- he or she doesn't always mean she. He or she said -- some people think it does -- I have paid no attention to whether or not people have criminal records. I don't think anyone who works for me -- and these are hundreds of people -- has a criminal record, but essentially, thanks for reminding me. I'll pay more attention next time.

Now, which led me to think that one of the major problems is we can slowly change people's minds,

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2 and we can slowly, but most business people probably  
3 start with a bias against hiring people with criminal  
4 records and maybe the solution is -- I mean, not that  
5 it worked on -- well, we've seen gay marriage and  
6 things like that. We've changed the American mindset  
7 in a decade, but maybe beyond trying to affect  
8 employers, it may be more effective to have a much  
9 broader sealing that, you know, expungement, sealing  
10 with a guarantee that a person can -- what I have said  
11 cynically -- lie about whether he or she has been  
12 arrested.

13 As New York law, you can say I have never  
14 been arrested. Even though in a practical sense, you  
15 have if the case is dismissed. I mean, it's the idea  
16 of much broader sealing, much broader expungement.  
17 Wouldn't that be much more effective, the direct way we  
18 should go?

19 MS. MEYERS: Yes, I've had that argument  
20 with many people. When you ask people who have these  
21 records and who are saddled with these conviction  
22 records for the rest of their lives in many cases to be  
23 given an opportunity of knowing that this record isn't  
24 going to be disseminated for the rest of your life, I  
25 think can be an incentive.

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2 Other countries have policies that do that  
3 in effect. I do think that it is a way to go, but we  
4 do run into the challenge of the Internet, the  
5 information highway, and thinking about websites like  
6 mugshots.com that puts people's mug shots from however  
7 many years ago, recently or years ago, no matter what  
8 the outcome of their case was, puts this information  
9 out there.

10 So I do think sealing and expungement is a  
11 way that we want to go, but it's very complex. And  
12 it's a lot more difficult now because we have to figure  
13 out effective ways of addressing the issue of mass  
14 media and how to deal with that, and so, you know, it's  
15 like it still doesn't take away the fact that a person  
16 wants to know that they aren't going to have to deal  
17 with this for the rest of lives. They changed after 20  
18 years. Something they did however long ago isn't going  
19 to be available, but it's a huge challenge. It's a  
20 huge challenge.

21 MR. JONES: Chris.

22 MR. WELLBORN: I have one question for  
23 Mr. Zeidman. Early on, you addressed the situation  
24 where, for instance, somebody might have an adjournment  
25 in contemplation of dismissal, which sounds fine and

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2 good but --

3 MR. JONES: Chris, even though these mikes  
4 are hypersensitive, I think you should keep your voice  
5 a little bit up.

6 MR. WELLBORN: What onus is there on the  
7 lawyer or perhaps from that, what is the practice in  
8 your experience of lawyers of actually following up?  
9 Because it seems to me that, okay, so there's an  
10 adjournment in contemplation of dismissal, but if there  
11 is a dismissal, that should then segue into something  
12 else, which cleans up the client's record. And if the  
13 only step is, okay, I've gotten this for you, it's an  
14 adjournment in contemplation of dismissal, good luck to  
15 you, who does the follow-up? Who does the cleanup?

16 Because I think in my jurisdiction, I  
17 routinely for my clients where the charges are  
18 dismissed or they're found not guilty just as a matter  
19 of course, we prepare the expungement forms, and then  
20 we follow up and make sure that they've been processed.  
21 We also give the client a copy. So if somebody screws  
22 up, they've got it with them. So what is happening  
23 with these adjournments in contemplation of dismissal  
24 to make sure that there is, in fact, that later  
25 dismissal, and there's a record of it?



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2 MR. ZEIDMAN: Virtually nothing.

3 MR. WELLBORN: Doesn't that seem like at  
4 best it's best practice --

5 MR. ZEIDMAN: Correct.

6 MR. WELLBORN: -- but arguably, it seems  
7 like that is something that should be sort of required.

8 MR. ZEIDMAN: Yes, but what happens is the  
9 case is put on court calendar for, say, a year later or  
10 six months later, depending on what type of adjournment  
11 in contemplation of dismissal it is. The case is on  
12 the calendar. The accused doesn't have to appear. The  
13 lawyer doesn't appear. And if all goes well, it's just  
14 dismissed, and nobody knows about it.

15 And what I know the Legal Action Center can  
16 tell you and certainly what every criminal defense  
17 lawyer practicing in New York can tell you is sometimes  
18 when someone is arrested, you see it on the rap sheet.  
19 And other times, it's not with every client says yes, I  
20 was arrested before. So there is no follow-up at all.

21 MR. WELLBORN: Well, the courts are not  
22 required to send notice to counsel of record that the  
23 charge has been dismissed?

24 MR. ZEIDMAN: There's another interesting --  
25 what is amazing is you can be a public defender in New

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York City, and every so often, you get something in the mail, which is your client's fingerprints, and when it comes in the mail, you realize that you were probably supposed to be getting it in thousands of other cases.

But the defender offices don't have the time or the resources to monitor that, and I'm assuming that's what they would say. So no one is minding that particular farm. So it is my understanding yes, this is supposed to be returned to you. It is supposed destroyed and/or returned. Whether it is or not is a whole other morass.

MR. WELLBORN: I mean, because that seems like absent the lawyer issues of not following up, if the court isn't sending out notice of a significant act, judicial act, in a case where somebody is represented, that seems like a judicial problem that needs to be addressed forthwith.

MR. ZEIDMAN: Indeed, and it makes the point that's made as well about your client not even knowing ultimately what happened when they go to apply for a job because there is no feedback. There is no form to have to show that it was dismissed.

MR. WELLBORN: Sure. If no one is telling them, how would they?

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2 MR. JONES: We have a couple of minutes  
3 left. The last question has to go to Geneva.

4 MS. VANDERHORST: Ms. Meyers, I just have a  
5 quick question regarding your comments on aiming at HUD  
6 to establish some formal standard against  
7 discrimination for people with prior records. Are you  
8 getting pushback from HUD or are you getting  
9 cooperation from HUD? Can you describe what that  
10 relationship has been like, how they've been  
11 responding?

12 MS. MEYERS: There's definitely cooperation  
13 from the representatives for HUD from the Interagency  
14 Task Force. I think it's some work that has to be done  
15 internally with the agency to get more folks, more  
16 staff on board about how this can happen, how it should  
17 happen, what kind of information, but I know that  
18 they're in constant discussion now through the work  
19 from the federal interagency, and they have people  
20 that's working on it, which is good. They have taken  
21 up this issue, but we don't know if there will be and,  
22 you know, how soon or if any standards.

23 But it's something that, as an organization,  
24 we're working on to try to get as many of the federal  
25 agencies to do akin to what the EEOC has done. The

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2 Department of Labor has issued guidance, and we're  
3 trying to work with the Department of Education. We've  
4 been talking to a lot of these federal agencies about  
5 doing that particular thing and putting these models  
6 out there. Not saying you have to do this, but  
7 encouraging and giving options.

8 HHS is issuing a lot of information about  
9 discretionary options that states and some of the  
10 agencies have with giving assistance to this particular  
11 population. So it's not a whole lot of pushback, but  
12 there's some work, I think, within these agencies in  
13 changing mindsets and, you know, just talking about  
14 this population and this issue.

15 MR. JONES: I see that I'm getting the high  
16 sign down there, but we do have one minute left. So  
17 this really is the last question, Margaret.

18 MS. LOVE: We talked a lot about whether  
19 forgiveness or forgetfulness is the best model for us  
20 to be looking at when we talk about the restoration of  
21 rights, and you certainly mentioned, Roberta, the  
22 problems of the forgetfulness given this massive  
23 backgrounding industry that we've created and the  
24 Internet.

25 The forgiveness route, we've also talked

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2 about institutionally who should do the forgiving if we  
3 go that route. Do you three have any thoughts about  
4 kind of a different type of restoration that would not  
5 be premised on hiding the record, but rather on a  
6 pardoning, forgiveness type of approach?

7 MS. MEYERS: Well, in terms of how we  
8 promote the idea of developing certificates legislation  
9 across the country, the buy-in that I think some of the  
10 newer, the more recent states that have taken up this  
11 issue is the fact that the record isn't expunged. The  
12 record is still there, but that it becomes this  
13 document that acknowledges that the state or the  
14 Department of Corrections, a judge, someone has looked  
15 at this person's history and determined that they've  
16 done whatever, you know, needed to be done to satisfy  
17 the state to show that this person is working towards  
18 remaining crime-free, changing their lives or what have  
19 you.

20 So I do think that that is one mechanism for  
21 doing that. I do think we need to make something  
22 available from the federal level that's a lot easier  
23 for folks to get. It doesn't require the president to  
24 sign off on it. I think that we have an opportunity of  
25 developing all kinds of different mechanisms, but in

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2 terms of employment, we have to continue to talk to the  
3 employer to figure out what suits them, what would be  
4 most effective, what can they feel comfortable looking  
5 at and considering.

6 And so as we talk to folks across the  
7 country, we're always telling them you need to sit with  
8 the business community in your jurisdiction and figure  
9 out what do they want. Would a letter of certificate  
10 or what have you from the Department of Corrections,  
11 Parole Board or what have you be sufficient? Do they  
12 trust it or should it come from a judge? Who should it  
13 come from?

14 So that has played out differently, I think,  
15 across the country. So I don't know if there's a  
16 one-size-fits-all model, but a lot of the work that's  
17 happened in those discussions has been about addressing  
18 the issues of forgiveness and redemption, and really  
19 looking at this population individual by individual and  
20 not lumping them into a category of ex-convicts or some  
21 of the negative labels that are out there and  
22 connotations. I hope I answered your question.

23 MS. LOVE: You did.

24 MR. ZEIDMAN: Can I get 30 seconds on that?

25 MR. JONES: Sure.

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2 MR. ZEIDMAN: Just, you know, obviously, I  
3 think some combination of both is ultimately going to  
4 be best, but the reason I would just suggest -- and I  
5 hear the concerns about expungement. It's just in the  
6 context of massive arrest for minor crime, the  
7 forgiveness almost seems comical. You know, he's been  
8 rehabilitated from taking up two seats on the subway,  
9 from riding a bike on the sidewalk, from whatever it  
10 is.

11 So to the extent there's some strengthened,  
12 more immediate expungement to try and limit what gets  
13 out there publicly, I think if we can kind of hold the  
14 line there and figure out ways to give it more teeth,  
15 that's a critical path.

16 MR. JONES: We are over time. This is  
17 probably the 50th or 60th panel that we have done, and  
18 they always go over. And there's always more that we  
19 would like to discuss with you, and this panel is no  
20 different.

21 Thank you very much for your time. Thank  
22 you for coming in and talking with us. You are welcome  
23 to stay for the next. We encourage you to, if you  
24 will. There's food at the end, but this has been very  
25 helpful, very insightful. We're very appreciative.

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2 Thank you.

3 (Whereupon, a short recess was taken.)

4 MR. JONES: All right. Let's reconvene.

5 I'm pleased to have with us for this second panel  
6 Jeremy Travis, who is the President of John Jay  
7 College. We are pleased to have you here and looking  
8 forward to having a very interesting discussion on  
9 restoration of rights and status after conviction.

10 The way that we operate, and this is -- I  
11 think I was telling someone in the last panel --  
12 probably the 50th or 60th panel that we've done. The  
13 way that we operate is that we're going to give you ten  
14 or 15 minutes to give us the benefit of your opening  
15 thoughts, and after that, we've got lots of questions  
16 for you.

17 The way that we do the questioning is that  
18 one of our members will lead the discussion, and to the  
19 extent that there is time, and there really rarely is  
20 time. We always go long, and we always wish there was  
21 more. But to the extent there's time, we'll open up  
22 the discussion to the other members of the Task Force  
23 who have questions. For the purposes of this  
24 discussion, Margie Love is going to lead the questions.

25 MR. TRAVIS: I can't back out now. She



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2 knows too much.

3 MR. JONES: And so without any further ado,  
4 I will be quiet, and I will turn the floor over to you.

5 MR. TRAVIS: Good afternoon, colleagues.  
6 It's nice to be with you today. Just a personal thanks  
7 to the Task Force for allowing me to bring two of our  
8 many spectacular graduating students. There are two  
9 here to sit with us.

10 John Cusick is on the left. These are both  
11 graduating seniors, graduates in less than two weeks.  
12 Humanities and justice major, Urban Fellow with the New  
13 York City government, and he'll have his pick of law  
14 schools, and he deferred all those admissions. On your  
15 right, to his left is Nayanny Bello, who is a public  
16 management BA and master's student at John Jay, who  
17 also has aspirations to go off to law school, here from  
18 the Dominican Republic.

19 Both of them got awards two days ago from  
20 our special awards ceremony. They're really  
21 spectacular students. So this is part of their  
22 learning experience, and they're here with Bettina  
23 Muenster, who I think most you know works on my staff  
24 and coordinates my research activities.

25 MR. JONES: Fantastic.

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2 MR. TRAVIS: Thank you for allowing them.  
3 Even if that is part of my ten minutes, it's worth it.

4 MR. JONES: Welcome, welcome. We're happy  
5 to have you here.

6 MR. TRAVIS: Rick and members of the  
7 committee, particularly Margie, it's really a treat to  
8 be here. This allows me to think about issues in the  
9 early part of my life I thought about pretty  
10 intensively, and it gives me a chance to get back to  
11 the topic that's of importance for me personally  
12 intellectually but also of great importance to the  
13 country.

14 I have looked at the other experts that are  
15 speaking to you. First of all, there's usually more of  
16 them per panel than there is me per panel. So I'm  
17 honored by that, but I also recognize that a lot of  
18 those people are deeply expert in what's going on in  
19 the most recent legislature proposals, what's working,  
20 what's not working. I'm not going to try to compete  
21 with them on that turf regarding their expertise.  
22 Instead, I'd rather spend my time, and if this is  
23 useful to you, we can spend your Q&A time to try and  
24 look at some of the bigger questions that pertain to  
25 the restoration of rights and status.

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2 So I think the way I thought about the  
3 challenge that you've taken on, which I commend you  
4 for, by the way. I know that you're doing this  
5 systematically with hearings around the country, which  
6 is a great way to do it. You really have organized the  
7 effort. I think that's what's needed.

8 The way I would frame the challenge that  
9 you're taking on goes something like this. Given  
10 today's realities of both mass incarceration and an  
11 unprecedented expansion of the criminal law into the  
12 lives of Americans, not all Americans but some  
13 Americans, particularly for poor male, undereducated  
14 men of color living in distressed neighborhoods.

15 Given that new reality, which is our  
16 reality, and maybe some day that will go away, and  
17 given the reality of the easy access to information  
18 about one's criminal convictions through the private  
19 search firms and the Internet generally, and the  
20 loosening of legislative limitations on access to those  
21 records, given those twin realities and the third  
22 reality that criminal convictions have a debilitating  
23 effect on one's life course, the question then  
24 becomes -- and I'm sure this is the way you're framing  
25 it -- are the ways that we, as lawyers, criminal

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2 justice professionals typically think about restoration  
3 of rights and status, are those ways adequate to the  
4 task? And I think they're not, and so I think there's  
5 an opportunity here to be a little more creative than  
6 maybe we, lawyers, typically are when we think about  
7 this issue.

8 So how do we typically think about it? And  
9 I don't mean to disparage our profession here, but we  
10 typically think about it as individual case-based  
11 legislative remedies, close records, seal them in a way  
12 so there's no access or more broadly to develop  
13 legislative solutions that deny access or limit access  
14 to those records such that those limitations overcome  
15 some of the hurdles that are placed in the way of an  
16 individual who has that record.

17 And it's just hard to imagine that that  
18 strategy, which I've defined somewhat pejoratively,  
19 that narrow strategy is adequate for the task. So I  
20 want to step back for a second from sort of the charge  
21 here and take a minute to describe what I see as the  
22 reality, which is the new American reality that we've  
23 never faced before in our country, and it's this  
24 reality that you're trying come to grips with, and I  
25 commend you for it because it's really tough.

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2 So that reality goes something like this.  
3 We have increased fivefold since 1972 the per capita --  
4 rates are always per something, but this is the per  
5 capita rate of incarceration in America. That's a  
6 number that the eyes glaze over. People say what does  
7 that really mean to increase fivefold the rates of  
8 incarceration?

9 So let me try another context that will help  
10 put some perspective on that. For the 50 years  
11 preceding 1972, we had a steady incarceration rate in  
12 this country at about 100, 110 per 100,000, and it  
13 actually dipped a little bit in the late '60s, early  
14 '70s. It reached about 94, 95 per 100,000. So it was  
15 fluctuating.

16 In that year, '72 was the last year before  
17 we had a string of year-to-year increases averaging  
18 four percent, five percent, sometimes six percent of  
19 incarceration numbers such that over the late,  
20 mid-2000s, we reached a peak of well over 500 per  
21 100,000. So we've quintupled the rate of  
22 incarceration.

23 No other country has done this. It's  
24 ahistorical for the United States. We've never done it  
25 before. Although right after the end of slavery, our

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2 incarceration rates went up because for historical  
3 reasons that are important to know because it's part of  
4 our African history in America, but we've never had  
5 anything like this before.

6 So the reality that we sometimes express is  
7 2 point whatever, 3 million people in prisons and  
8 jails, and again, the eyes glaze over. So I want to  
9 give some other context to that reality of  
10 incarceration rates. So here's one context, and I want  
11 to quickly introduce what I think is an important  
12 dimension to this, which is the dimension of race,  
13 racial data, race-defined data to make my point.

14 So the incarceration, our prisons are filled  
15 more by men than women; 90 percent men, slightly more  
16 by men of color than men of European ancestry.  
17 Although, that's changed. The white proportion has  
18 gone up a bit, but they're all drawn basically from  
19 poor communities around the country, and in the urban  
20 context, those are communities of color.

21 So the national rate going up means that the  
22 concentrations in these communities have been  
23 unprecedented such that today we have serious -- one  
24 number that most people know is an African-American man  
25 today has a one in three lifetime chance of spending at

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2 least a year in prison. Stunning, stunning.

3 When I do my public speaking, I try to  
4 figure out how to convey this. So the image I leave  
5 with people is imagine you're in a hospital maternity  
6 ward, and two couples come to look at the kids in the  
7 bassinets. The black couple is looking at the  
8 African-American babies in the bassinets, and there are  
9 three boys there. And they know that one of them will  
10 spend at least a year in prison. That's just the  
11 reality of parenting, family structure and race in  
12 America.

13 So let me give you another statistic that I  
14 think brings this point home a little bit more because  
15 it's not all people. It's men more than women. It's  
16 not all ages. It's 18 to 40. So let's just focus on  
17 those. It's not people with different educational  
18 levels. So let's focus on individuals who are male  
19 between 18 and 40, and African-American, and have  
20 dropped out of high school.

21 So within that population, so you've  
22 disaggregated the numbers, the lifetime probability is  
23 70 percent. 70 percent lifetime probability if you've  
24 dropped out of school and you're a man, black, 18 to 40  
25 years old. You'll spend at least a year in prison.

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2 That's just at least a year. So it could be longer.

3 So if you look at that as a stock number,  
4 not as a rate, not as a probability, but as a stock  
5 number, today, as we sit here, one-third of all black  
6 men in that age group who have dropped out of high  
7 school are today in prison.

8 So the magnitude of what we've done in  
9 reaching what some call the era of mass incarceration,  
10 to me, dwarfs the remedies that we've adopted  
11 historically for the challenges that you face. So I  
12 don't know if I have an answer. I have some thoughts  
13 about that, which I want to share with you, but I just  
14 want to start by saying that this term penetration of  
15 the justice apparatus in the lives of communities of  
16 color in urban America is unprecedented. There are  
17 other permutations of this. You can talk about stop  
18 and frisk. You can talk about low-level enforcement.  
19 You can talk about supervision, strategies on  
20 probation, parole.

21 I've only talked about incarceration and  
22 prison. I haven't talked about jail much, but this  
23 whole apparatus that we, lawyers, have an understanding  
24 of and intend to work on, and some of us feel some sort  
25 of one step removed responsibility for having built it



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2 is unprecedented in our American history. So however  
3 we want to describe it, Michelle Alexander describes it  
4 in her own way in *The New Jim Crow*, it is a reality  
5 that dwarfs or casts a big shadow on any discussion of  
6 remedy.

7 So there's another way of thinking about  
8 this that I want to suggest to you as we get started,  
9 and that is to really borrow the -- let me do that  
10 next. So you can ask for why this has happened, and as  
11 you may know, Rick, I chair the National Academy of  
12 Sciences panel on high rates of incarceration, which  
13 will come out with a report on the causes and  
14 consequences of high rates. With any luck, it's coming  
15 out next year. So we're spending a lot of time asking  
16 ourselves how we got here, and we can have that  
17 conversation. I can't disclose what our discussions  
18 are, but my own view on that.

19 But what's clear and affects this discussion  
20 is that we have unleashed a robust spirit of  
21 retributivism in the country that's sort of permeated  
22 the different ways that our justice system operates  
23 from zero tolerance in schools to three strikes and  
24 even capital punishment. So the real question is a  
25 social policy question, a cultural question is what

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2 dials that back when we talk about restoration of  
3 rights and status.

4 Another way that sociologists talk about  
5 this phenomenon that sort of links to the criminal  
6 justice world but outside as well is -- and I use this  
7 as a subtitle. It's nice of you to bring my article  
8 there, Margie, but there's a subtitle in the Invisible  
9 Punishment chapter as An Instrument of Social  
10 Exclusion. We have unleashed a number instruments of  
11 social exclusion. The criminal justice system is one.  
12 People would argue that immigration policy is another,  
13 tracking in schools, residential segregation. We have  
14 a number of instruments of social exclusion, and the  
15 justice system has become a very powerful one. That's  
16 one of the historical forces that we have to fight  
17 against.

18 So I want to just take your title and use it  
19 as a way to frame some thoughts on the way forward  
20 here, some of the challenges and opportunities. So you  
21 have this wonderful title Restoration of Rights and  
22 Status. That's a nice distinction. Lawyers like to  
23 sort of use different types of words that speak to a  
24 different type of phenomenon. Rights has a meaning.  
25 It has sort of a legal construct meaning to it that

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2 there's something granted by a legal statute,  
3 constitutional provision. Sometimes we think of it as  
4 divine, but it's nice to think about rights because  
5 we're comfortable about playing in that sandbox.

6 How do you restore somebody's rights when  
7 their rights were taken away? It lends itself to a  
8 nice discussion about things like voting rights, things  
9 like parental rights, things like rights to adoption.  
10 So you can imagine a whole sort of legislative agenda  
11 similar to the work that Margie led on the ABA group I  
12 served on.

13 You would say you scrub your agenda, your  
14 legislative statutes that have this punitive effect to  
15 it. It's the Invisible Punishment agenda, and you say  
16 on what basis will we continue to justify them, and  
17 what would be the provisions under which those rights  
18 could be denied, and what would be the provisions under  
19 which they could be restored. Nice law school  
20 exercise, right? That's the rights space.

21 You can go one step further to say, well,  
22 there's a right to welfare. There's a right to TANF.  
23 You can sort of have another one step removed  
24 discussion about constitutional rights and statutory  
25 rights, but still all within the same sandbox.

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2 I was pleased to see in the title of your  
3 work that you talk about status because that's what I'm  
4 talking about is status. Mark Moore at the Kennedy  
5 School once said this wonderful phrase, how do we live  
6 with the ex-felons amongst us? What's the status of  
7 people? I don't mean just felons but anybody who's  
8 been convicted of a statute or somehow violated the  
9 law.

10 What are the status relationships that you  
11 want to affirmatively create knowing that rights might  
12 be part of it, but there's something else going on.  
13 There's something deeper going on than your rights.  
14 It's your relationship with your fellow citizens. It's  
15 your relationship with your family. It's your  
16 relationship with your community members. It's your  
17 relationship with your government.

18 So to me, that's always been the more  
19 interesting of the two challenges. So you triggered  
20 that in your title, and I'm going to talk about it  
21 here. I'm going to read -- so this is from another  
22 sort of bibliography. I'm reading from the text. I'm  
23 going to read from -- this is the Civic Identity  
24 chapter of my book.

25 So Kai Erikson, a noted psychologist, had

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2 this wonderful way of thinking about this. "The  
3 convicted offender is ushered into that special  
4 position by a decisive and dramatic ceremony." He's  
5 talking about it in theatrical terms. It's a ceremony  
6 of conviction or a plea of guilty, right? It's a  
7 public moment where something happens to you, where  
8 you're diminished in status. "Yet is retired from it,"  
9 that status, "without hardly a word of public notice.  
10 As a result, the deviant" -- a phrase we don't use  
11 much, but that's pretty common in this literature --  
12 "often returns home with no proper license to resume a  
13 normal life in the community. From a ritual point of  
14 view" -- look at the language he's using, "ritual point  
15 of view" -- "nothing has happened to cancel out the  
16 stigmas imposed on him by those earlier commitment  
17 ceremonies. The original verdict or diagnosis is still  
18 formally in effect."

19 MR JONES: Can you please give us the page  
20 that you're reading from for the record?

21 MR. TRAVIS: 269, But They All Come Back,  
22 available on Amazon. That's a book of mine. So I like  
23 to think of it in those terms. I think those terms  
24 become more important given the realities of mass  
25 incarceration because it's the status that we have to

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2 think about because I think that overwhelms the  
3 question of legal rights, not to diminish the  
4 importance of doing that work.

5 So in this chapter, I also talk about --  
6 this is just a personal privilege -- the idea of  
7 Reentry Courts, which I first proposed in 1999, which  
8 got some momentum behind it. There's the Harlem  
9 Reentry Court that we established when I was the NIJ  
10 Director. This system, I think, more than any other --  
11 I kept track of the literature here, but one of the  
12 reasons that I proposed the Reentry Courts was because  
13 I was so stunned by the role in Drugs Courts that the  
14 graduation ceremony plays in the life of the person  
15 who's graduating. The family is there. The police,  
16 the arresting officer -- I've seen Drug Court  
17 ceremonies where the arresting officer comes back  
18 saying congratulations to the guy he arrested. The  
19 judge is there. The prosecutor is there, shakes hands,  
20 well done. The treatment provider is there.

21 These ceremonies and the certificate you get  
22 saying congratulations, you graduated are what Kai  
23 Erikson is talking about, the public affirmation of a  
24 change of status. It's a restoration of status. The  
25 Reentry Courts that have been successful that I

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2 established some of them -- again, I haven't done this  
3 work for a long time -- have the same sort of ceremony  
4 at the end.

5 I always thought it would be appropriate for  
6 there to be end of parole ceremonies, where you say to  
7 the parolee congratulations, you finished your term of  
8 parole, three years, five years, whatever the  
9 jurisdiction allows. Here is your voting certificate,  
10 if you're in a jurisdiction where you can't vote while  
11 you're on parole. Here is something. Here's your  
12 family. Here's your applause. You did it. You're  
13 back. Treatment providers often have this sort of  
14 ceremony embedded in their program. There's an end.  
15 There's a graduation.

16 Why do they do it? Why do I do it next week  
17 for my John Jay students? It's to say this is an  
18 important life moment for you. It's a particularly  
19 powerful moment if the communicating entity is your  
20 government because one of the things that's been  
21 diminished has been your citizenship status, and at  
22 least in 48 of our states the last time I looked, you  
23 can't vote while you're in prison. Unlike Europe,  
24 where you can still vote while you're in prison.

25 In many states, you can't vote while you're

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2 on parole. I think probably most of them, and in some  
3 handful -- I lost track here, Margie. I apologize --  
4 you can't vote for life once you have a felony  
5 conviction, and that means a quarter of the  
6 African-American men in those states cannot vote for  
7 life. So we've changed the relationship, the civic  
8 relationship, the citizenship relationship between  
9 these individuals and government.

10 So the way of thinking about the restoration  
11 of status and the drama, "the ceremony," to use Kai  
12 Erikson's phrase, is to be every bit as important as  
13 saying at some point you earn a certificate of relief  
14 from disabilities, and now, a certificate is involved  
15 in that because it's public. It's your community  
16 welcoming you back.

17 In Baltimore when we set up the first  
18 reentry partnership at the same time the Harlem Reentry  
19 Court was established, except they're not court-based.  
20 They're community-based, and it's that community that  
21 taught me the power of what they call the Welcome Home  
22 Panel, where they have panels of service providers,  
23 community leaders that went into the prison, talked to  
24 a group of men about to come back to Baltimore in these  
25 ZIP codes, and those men were a month away from being



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2 released. They were still in. The ceremony was held  
3 while they were in. The first statement coming back to  
4 those men across the table, literally not much smaller  
5 than this, from the community to soon-to-return  
6 incarcerated individuals, the first message coming  
7 across the table was welcome home.

8 I went to a number of these. They're always  
9 powerful, and one guy came up to me afterwards and said  
10 I just want you to know I've been in and out of prison  
11 three times. No one has ever welcomed me home before.  
12 That's the most powerful thing. It's a symbol. It's a  
13 statement of restoration of status. That's the  
14 beginning of restoration because you have to earn your  
15 way to full restoration.

16 So the restoration of status as programmatic  
17 and policy and a sort of symbolic activity I think is  
18 very important. Now, this is important for a -- I'll  
19 call it a statistical reason or an empirical reason  
20 that I think the public doesn't fully understand, but  
21 we know in the criminological literature a phenomenon  
22 of desistance. You know, there's a well-known  
23 age-crime curve. You look at crime rates by age, and  
24 the map looks like this (indicating). Crime rates go  
25 up, and they peak at around 18, 19. They go down

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2 again, and this downward slope is called desistance,  
3 that people are less involved in criminal activity as  
4 they get older, right?

5 So that's pretty well-documented, and what's  
6 been recently documented by Al Blumstein and his  
7 colleagues in a literature called the Redemption  
8 literature, easy to find on various Google searches if  
9 you want to, is that we can actually start to pinpoint  
10 the moment at which an individual's likelihood of  
11 re-offending given the offense that sent him to prison,  
12 which becomes equal to the average rate of offending  
13 for people otherwise just like him. So this is a very  
14 important empirical finding.

15 So people can talk about at what point do  
16 you want to start to say, well, you're really done.  
17 Not only are you finished with your parole, but  
18 statistically, you pose no greater risk than anybody  
19 else that's like you, same age, same economic  
20 circumstances.

21 But in our retributive way of thinking about  
22 the world, in our social exclusion way of thinking  
23 about the world, in our mass incarceration way of  
24 thinking about the world, that person is forever  
25 marked. Even though they've done the legal

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2 requirements, and just by living to a certain age,  
3 they've met what I'll call a statistical prediction  
4 requirement that, for that type of offense, they're no  
5 more a risk. I don't think frankly this should be  
6 risk-based. I think this should be deserts-based.

7 So we have a lot of ways of talking about  
8 the question of when is enough enough in terms of  
9 social exclusion, and that restoration of status, which  
10 to me is a recognition, a ceremonial moment that should  
11 be thought of as part of how we think about sentencing  
12 basically. It becomes a public way of talking about  
13 this underlying phenomenon of desistance and the like,  
14 but it's the public's way of saying we know that what  
15 you did way back then is way behind you, and we know  
16 statistically or literally you can look at sort of a  
17 risk assessment that you're not posing a risk. So we  
18 need what Shadd Maruna calls elevation ceremonies. We  
19 need ways to elevate and restore people to their  
20 status.

21 The other literature that's highly relevant  
22 here, highly relevant is the literature of Tom Tyler,  
23 Tracey Meares and Jeff Fagan and others, the Legitimacy  
24 literature or the Procedural Justice literature. It  
25 basically says the following very simple, very

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2 powerful. "The way you're treated by your government  
3 when the law is enforced against you affects not only  
4 your sense of the fairness of that outcome" -- in other  
5 words, if you're treated decently, very simple -- "but  
6 it also affects your likelihood to disobey the law in  
7 the future." That's powerful.

8 So Tyler in Procedural Justice does a lot of  
9 randomized experiments trying to enforce the law in  
10 different ways and seeing the outcome in terms of  
11 future behavior, and I'll call it attitude or  
12 relationship to the law. And the first one, maybe not  
13 a surprise to people, that if you're treated decently,  
14 with respect or if you're given an opportunity to ask  
15 questions of the law enforcement agent, if you're given  
16 an opportunity to express the way this moment feels to  
17 you, that if you're treated fairly, justly, and all  
18 those different conditions have been tested by Tom and  
19 others, that, A, your respect for the law goes up if  
20 you're treated fairly. Very important just as a  
21 citizenship question, a legitimacy question, a  
22 democracy question, but, B, if you're treated fairly,  
23 you are more likely to obey the law in the future.  
24 That, to me, is the kicker. That's really interesting.

25 So how does that fit into what we're talking

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2 about? So if parole officers treat people a certain  
3 way, if sentencing judges treat people a certain way,  
4 if parole boards treat people a certain way, when we  
5 revoke people's parole, we treat people a certain way;  
6 in a way that's consistent with this literature, these  
7 principles. There's a big footnote Tom has not done  
8 this research in those settings. The theory this would  
9 hold is that you're improving people's relationship to  
10 government, and it's reducing crime.

11 Let me just do one other thing, and then I'd  
12 love to hear what your thoughts are if this sounds a  
13 little off base for you. There's another very  
14 important concept and literature that I've written  
15 here, and that's the literature of or the practice of  
16 restorative justice. There's literature there too of  
17 conflict resolution or mediation or the wonderful  
18 interns that I and Bettina spent the morning at the  
19 community court over here, looking at a problem-solving  
20 court in operation.

21 The work that they're doing and this whole  
22 sort of different way of thinking about the law and  
23 antisocial behavior and what's the right response of  
24 government, just looking at all of these issues through  
25 a very different lens. It's to say, okay, that bad

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2 thing happened. There's probably accountability  
3 leading up to that antisocial behavior, but we have a  
4 relationship here. We have a relationship maybe  
5 between the parties. We have historical context for  
6 what might have caused this behavior. We have a victim  
7 who has certain needs who have to be attended to  
8 because that's the right thing for government to do.  
9 It just widened the frame to a -- I'll use the word  
10 restorative frame.

11 My wife's writing on this, Susan Herman's  
12 writing on this, she used the phrase "parallel  
13 justice," a parallel way of thinking about justice, how  
14 do victims feel, how do you reduce the retributive  
15 sense in our communities, how do you heal the wounds,  
16 what's the reparative work that has to be done. That  
17 opportunity doesn't end after conviction.

18 So the restoration of status agenda that I  
19 am so passionate about also raises for us when we think  
20 about sentencing policy, and when we think about  
21 corrections policy, and when we think about parole  
22 policy, this question that's very difficult for our  
23 adversarial minds to get our minds around, which is how  
24 do we help the offender to come to terms with what he  
25 did? So if there's a restoration of rights and a

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2 restoration of status -- because the underlying  
3 question is what have you done, Mr. Jones, to bring  
4 yourself to a point where that's the right thing for  
5 society to do?

6 Some of the most fascinating work that I'm  
7 in touch with right now and they've talked about it a  
8 little bit publicly, not much. Some day, I hope  
9 they'll write it up is being done with lifers in one of  
10 the New York State prisons. A group of prison  
11 reformers, criminal justice reformers led by Kathy  
12 Boudin and Liz Gaynes from Osborne and a couple of  
13 other people in that group, and a group of victim  
14 advocates led by Susan Herman and by -- I forget her  
15 name.

16 It's sort of like half a dozen people or so  
17 trying to bridge the divide between the -- I'll call it  
18 the victim's view of the world and the offender's view  
19 of the world and saying there's something going on here  
20 that we shouldn't be so far apart from each other. We  
21 should be talking about the ways to bring our worlds  
22 together. That work led to a curriculum, a 12 or  
23 16-week curriculum that they then field tested with  
24 lifers facilitated by a social worker with a lot of  
25 involvement by Kathy and others, and the title of the

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2 curriculum was Coming to Terms.

3 So some of the writing that's coming out of  
4 this emphasizes the fact that we squeeze truth out of  
5 our system. We squeeze truth out of what actually  
6 happened. You can't talk to the cops. When you plead  
7 guilty, it's all pro forma. You can't talk about what  
8 happened. You plead to something else. When you get  
9 to prison, you shouldn't be talking about what you did.  
10 That's not part of the culture. So we squeeze the  
11 truth telling out of the system. There are a bunch of  
12 people. These are all lifers. They're chosen for that  
13 reason who said during this process they had never  
14 talked to each other about what they did on the outside  
15 and never come to terms with it.

16 So there's an underlying issue here, an  
17 underlying imperative, which is to rethink -- this is  
18 big to rethink this notion of truth in our system so  
19 that the restoration of status seen from a societal  
20 point of view is not just statistically it says your  
21 risk has gone to the same as everyone else's. It's not  
22 just you served your time. The lawyers will say you've  
23 done your penance.

24 It's not just that it's sort of the right  
25 thing to do to get you back right with your society,



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2 but there's an underlying notion that what gave rise to  
3 this whole cycle of events has been made right, and  
4 that requires something that we're not accustomed to,  
5 which is coming to terms individually, perhaps coming  
6 to terms with the people that you've harmed and maybe  
7 not just about that offense.

8 I have a friend who's a former incarcerated  
9 colleague who says that the most important thing for  
10 him in prison was he realized it wasn't just one case  
11 that put him there for a lot of years. He just really  
12 hurt his family and his community, and he had to talk  
13 to them about that before he was right with the world.

14 So there's a bigger restoration of status  
15 question than I'm talking about here, which is really,  
16 really deep. So I'll stop. That's what I wanted to  
17 share with you.

18 MR. JONES: Thank you very much.

19 Margie.

20 MS. LOVE: Well, first of all, let me say  
21 that I really appreciate your bringing to our  
22 discussion the sort of larger themes of the social  
23 science literature and the criminal justice agenda  
24 literature, which we haven't really heard about from  
25 the practitioners that we've talked to.

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I, in preparation for this meeting, actually did not turn to that book, but I looked at the prior book, I believe, which you did, the chapter in Invisible Punishment. I looked and I thought -- one of the first things, I was a little embarrassed reading it because I thought, gee, did I steal a lot of things from Jeremy?

MR. TRAVIS: No such thing as theft here.

MS. LOVE: A few familiar phrases there. Gosh, I'm awfully glad you never called me to say stop using my language.

MR. TRAVIS: You can feel free to continue to use it.

MS. LOVE: So look, one of your last paragraphs just jumped out at me, and you read a little bit. I just want to read your language here. This is after talking about David Garland's work. You said, "the most important recommendation -- indeed, more a hope -- is that the country reverse the current cultural sensibility about those who have violated our laws and adopt a goal of reintegration, not exclusion. We need to find concrete ways to reaccept and reembrace offenders who have paid their debt for their offense."

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2 Now, you wrote this 12 years ago, and I  
3 think we've made a little bit of progress toward the  
4 specific steps of making invisible punishment more  
5 visible, of getting the conversation started in the  
6 community about the sort of dysfunction of the  
7 exclusion agenda, but what I really want to ask you  
8 now -- we have an opportunity to make some very  
9 specific recommendations to implement your suggestion,  
10 the concrete ways, and I was struck by your talking  
11 about this sort of graduation ceremony notion. We need  
12 a little bit of help in how to envision this coming to  
13 terms, this graduation.

14 We've had this theme of forgetfulness versus  
15 forgiveness, expungement of the record versus a kind of  
16 a pardon, who should do it, should it be the courts.  
17 Could you just help us a little bit in some suggestions  
18 as sort of institutional actors, public spokespeople?  
19 I mean, what can we recommend that would move this  
20 agenda, move this, whether it's forgiveness or  
21 forgetfulness, the reintegration agenda forward?

22 MR. TRAVIS: So I'm going to set aside just  
23 for a moment what might be a longer conversation about  
24 forgiving, forgetting, expungement. Those are all  
25 related ideas, but let me talk about reintegration. So

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2 a task force like yours, first of all, can highlight,  
3 as I did in that statement of hope, and accentuate the  
4 reintegration agenda as a goal of the sentencing  
5 process.

6 The reentry, the way I defined it is all  
7 about people going to prison or jail and coming home,  
8 but there's a sentencing step in our system that  
9 happens in all the cases where there's a conviction of  
10 some sort. There's a sentence imposed by a judge, and  
11 there are conditions. It could be probation. It could  
12 be restitution. It could be whatever, and we adopt  
13 language and protocols that don't emphasize officially  
14 in my view -- I mean, we don't do it at all -- a  
15 statement by government to the individual and  
16 surrounding family and the victim, if the victim is  
17 there, that our hope is with the completion of this  
18 case and the sentence that I've imposed, that this is  
19 but a step along the way towards your being a full  
20 participating, productive member of our society.

21 And just that allocution by itself from the  
22 bench would be in my view -- because I think all of  
23 these processes operate on the Kai Erikson level. It  
24 could be enormously powerful, like the welcome home  
25 statement that the folks in Baltimore designed. I

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2 didn't tell them to do that. So these statements are  
3 very, very powerful.

4 As we sit here, I was out of arraignment  
5 court for a long time, but I was trying to imagine  
6 myself there today as a brother of -- I saw two cases  
7 being handled, and it's all gobbledygook. And that's a  
8 good court. That's a more accessible court than most.  
9 It's all -- you know, you're charged with 265.05  
10 Subsection 2, whatever it is. You're being remanded,  
11 730, and it just swirls around your head, right, unless  
12 you're on the inside.

13 So just to make a plain language statement  
14 to say there's an expectation that courts would adopt  
15 that as part of judicial training and maybe even  
16 required that our goal is your reintegration. Now, we  
17 have a lot of goals that we talk about with sentencing.  
18 They're usually framed in short-term, more utilitarian  
19 concepts of rehabilitation. We want to get you fixed,  
20 right, or deterrence. We don't want you to do this  
21 again, right, or incapacitation. I'm sorry, but it  
22 goes -- it happened in one case we saw. I'm sorry, but  
23 you're just going to have to be off the street for the  
24 next six months because you're a danger to others or it  
25 serves justice. So it's like what you did, you really

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2 have to be away for a year.

3 The way I view the hope of the reentry  
4 movement, it's recognition that everybody comes home.  
5 It's also recognition that reintegration should be the  
6 goal of all of these conversations. That can be  
7 articulated as the goal of sentencing, this successful  
8 reintegration.

9 We have language problems that get in the  
10 way a lot. We label people. We've had discussions  
11 around many of the tables that you and I have been at,  
12 Margie, about the use of the words inmate or offender.  
13 That becomes problematic. I was very careful a moment  
14 ago to say incarcerated individual. I'm finding myself  
15 increasingly just to make a point to use the words our  
16 fellow citizens who are in prison. So there are  
17 messaging issues that are really powerful. There are  
18 messaging opportunities that are really powerful.

19 Then to take your invitation to talk about  
20 sort of the practical things, so if you believe as I do  
21 that these messages are important, and the ceremonies  
22 are important, and the public acknowledgments of  
23 restoration of status are important, then this Task  
24 Force could adopt the idea of end of parole ceremonies.

25 So I forget which state it was. There was a

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state at one point that sort of adopted this idea, and I don't know if I floated it first or it came from some other context because we were talking about it nationally of an end of parole, you're done, congratulations, that a parole officer could do without judges, right, and here's your voting certificate, whatever it is. Welcome back.

If you're a state that allows for other legal instruments that sort of -- the only one I know is New York, relief from disabilities, whatever it's called, that could be a moment to give that or a graduation ceremony. Why can't that be part of the parole function?

A mutual friend, Tom LeBel, who's now a criminologist and teaching in the SUNY system somewhere, a formerly incarcerated individual, got his Ph.D., wrote it in his book -- and that's how I learned this. I think maybe I used it in this book -- that he knew he was off parole when he called his parole officer to request permission to travel to an academic conference in another state to present a paper, and the parole guy says you don't have to call me anymore. You've been off parole for three months. He said really, that's how you're going to tell me? So there's

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2 a sloppiness to the way we think and missed  
3 opportunities. Let's put it affirmatively. Missed  
4 opportunities to the way we think about the completion  
5 of the criminal sentence, the imposition of it and  
6 completion of it.

7 Then you get a little more concrete and talk  
8 about Reentry Courts. I'd like to know more about the  
9 literature here about how they're working, but that's a  
10 way where the individual who's getting that  
11 elevation -- that's participating in that elevation  
12 ceremony has a better sense of what they've done to  
13 earn it. That's a judge talking to an individual if  
14 it's an Article III Court or ALJ Courts. It's still  
15 somebody wearing a robe. It could be on a platform six  
16 inches off the ground. It has a feeling of authority,  
17 and part of what we're trying to do is restore the  
18 relationship between the person who broke the law and  
19 the person we hold to be law-abiding, and that matters.

20 But I think you can also go deeper and say  
21 there are some important opportunities for doing the  
22 harder work of healing the wounds. So you know Susan's  
23 work. So we talk about this at the dinner table. She  
24 says -- here's a perfect example. So I'm very proud of  
25 something we did at John Jay with the Mayor's Office.



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2 We designed something called the Justice Corps. It  
3 operates in a couple of communities in New York. It's  
4 a demonstration project. There's a big research  
5 component, communities-based supervision of young  
6 people who are either coming out of parole or  
7 probation, and the work they're doing is intended to  
8 restore their relationship to the community. It's  
9 subsidized work, all sorts of good things about it.

10 And one night, Susan said to me what about  
11 the victims? What is the role of the shop owner whose  
12 stuff was taken by this kid? How is making -- I said  
13 it's with the community. Not good enough, she says.  
14 You can't just pay restitution to the community when  
15 there's a victim who you owe for whatever you took out  
16 of his shop, and maybe that's been ordered, maybe not.  
17 Why isn't that part of it?

18 So the deeper work to restore status is to  
19 acknowledge harm done so that the status -- the  
20 ex-offender community doesn't like it when I talk this  
21 way. They said I've paid my dues. My dues is what the  
22 court told me to do. I don't have to do more work.  
23 Thank you very much, Jeremy.

24 I have a different view, which is there is  
25 more work to be done beyond that legally imposed

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2 sanction. It's a voluntarily process, and it's deeper,  
3 but it means a lot, particularly if the status is to be  
4 in some sense a reward -- restoration of status is in  
5 some sense a reward to coming back to the circle, and  
6 it means a lot to the community and to victims.

7 And I don't know if Liz Gaynes is on your  
8 agenda, but talk to her about the Coming to Terms work  
9 that she's done, and that's concrete. So there are  
10 some case studies that you could elevate that are very  
11 concrete that could underscore the importance of this,  
12 how big the status concept really is beyond the legal  
13 dimensions of legal status.

14 MS. LOVE: You know, it's very interesting.  
15 I mean, this is the construct of the old-fashioned  
16 pardon. This is the recognition --

17 MR. TRAVIS: There's a long lineage there of  
18 ideas.

19 MS. LOVE: And that's what used to be  
20 institutionally and instrumentally the recognition of  
21 that reconciliation, but we're kind of stuck now  
22 because we don't have a functioning pardon system in  
23 most states. There may be a dozen or 15, where it  
24 functions. We're going to hear from the Connecticut  
25 Board tomorrow, where it does function, but what

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2 recognition --

3 I mean, I agree with everything that you're  
4 saying that there ought to be this additional step  
5 after simply satisfying the terms of the court-imposed  
6 sentence that would somehow sort of complete the  
7 circle, the graduation ceremony, if you will. What  
8 does that look like? I mean, we're talking -- you  
9 know, is this courts that should do it as opposed to  
10 the elected official, which has kind of gotten out of  
11 hand? They don't want to do it. Most of them don't  
12 want to do it anymore.

13 We're lawyers, you know, and we got to make  
14 some recommendation for the legal system that will  
15 incorporate all of the research and all. I mean, you  
16 talk about authority figures. You talk about  
17 ceremonies. That sounds to me like a public  
18 forgiveness approach.

19 MR. TRAVIS: It's got to be public. It's  
20 got to be public.

21 MS. LOVE: Okay, but there you go. How do  
22 we make that --

23 MR. TRAVIS: Let's give a very concrete --  
24 so the ceremonies that I write about and talk about,  
25 Shadd Maruna's work on this, he talks about -- let's

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2 see if I can find it quickly. He writes about a  
3 ceremony where people come to just shake hands with the  
4 person who's completed the term. Elevation ceremony is  
5 a public and formal announcement to "sell and spread  
6 the fact of the actor's new kind of being."

7 Maruna is a psychologist. So he looks at  
8 the way, when people violate the law, to create new  
9 narratives to develop a positive forward identity. How  
10 do you deal with your previous identity? His work wins  
11 all sorts of awards. So that's page 268 if you want to  
12 look at that. So there are some very concrete  
13 examples.

14 Okay. Let's be creative. I don't know if  
15 any state has done this. Wouldn't it be interesting if  
16 a state said that -- there's even a little twist here  
17 that would be interesting -- that at the end of a  
18 period of parole -- and forget Reentry Courts. Let's  
19 say the state -- whether that's not what they want to  
20 do -- that they say that at the end of a period of  
21 patrol when you're discharged from patrol, you are  
22 invited back to the courtroom for a ceremony with a  
23 judge, maybe the judge who sentenced you, but a judge.

24 A ceremony that's managed by the patrol  
25 division, and you're invited to bring your family.

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2 You're invited to bring your employer and anybody who  
3 helped you along the way, and we want to just applaud  
4 the fact that you've been on this journey for three  
5 years, five years, whatever, and have successfully  
6 completed it.

7 You get a picture. You get to wear -- when  
8 we graduate -- so these students, both of them got  
9 multiple awards at our awards ceremony, and they each  
10 had a carnation on their lapel, right, when you got  
11 your awards, whatever day it was. You get to wear that  
12 carnation on your lapel. Your kid is there, who says  
13 my dad just did something. This is pretty cool. Even  
14 if the kid is two years old, they'll remember it. And  
15 there's applause, and you're given your voting  
16 certificate back, if it's a state that denies your  
17 right to vote during that period of time.

18 Why not? If you press people on why not,  
19 you'll get maybe it's too much time. Maybe a judge  
20 will say it's inappropriate. You say, come on, you're  
21 the one who sentenced this person. He's done what you  
22 asked him to do, and you won't give him five minutes  
23 when it's going to mean the world to him and send  
24 ripple effects about the quality of justice through his  
25 community. Isn't that the best investment you can make

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2 more than what you do with the rest your time on the  
3 bench?

4 I would just sort of challenge people to  
5 think very differently about the relationship between  
6 the law and sentencing, the violations of criminal law,  
7 and the social fabric, and talk about Kai Erikson, talk  
8 about the Yale study with them. So there's something  
9 very concrete. You can add to that -- this should be a  
10 nice, little twist -- if you complete early, you get  
11 this. I'm sorry.

12 MS. LOVE: No. I was just going to say this  
13 was exactly the approach in the Model Penal Code in  
14 1962.

15 MR. TRAVIS: We have lost that.

16 MS. LOVE: And we have lost that. We really  
17 have.

18 MR. TRAVIS: That's exactly right.

19 MS. LOVE: And there's a new draft of the  
20 Model Penal Code now out.

21 MR. TRAVIS: I haven't seen it.

22 MS. LOVE: Yeah. Well, it's going to be  
23 discussed like next week at the ALI meeting in  
24 Washington, but that makes it a little more developed  
25 than the old vacatur approach, which was pretty

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2 rudimentary, but although the idea was there. Are  
3 courts in your view at this point in time the proper  
4 institution to implement this?

5 MR. TRAVIS: I can't think of one that comes  
6 close to being as good. It's the court that sentenced  
7 somebody. It's the visible embodiment of the law.  
8 It's the government talking to people about violations  
9 of the law, and in this case, restoration of status.

10 Who could come close? The D.A. maybe.  
11 Joe Hynes does this with ComALERT. That's pretty great  
12 for a D.A. If he can do it, then a judge can do it. I  
13 don't know. Maybe parole boards, but that's a mirrored  
14 body. Parole boards could. Parole officers, the  
15 administrative agencies could, but I think the idea of  
16 going back to court and having a judge with his or her  
17 robes on giving out the diploma. That happens. The  
18 drug courts are really powerful because it's the judge.  
19 That's what the research shows also because it's the  
20 judge.

21 MS. LOVE: I'm taking up a lot of time here.  
22 Rick, would you --

23 MR. JONES: Do you have one more?

24 MS. LOVE: Do I have one more? May I?

25 MR. JONES: Go ahead.

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2 MS. LOVE: All right. I do have one more.

3 What do you think -- I mean, you talked also  
4 about after the sentence is done, yes, there's a  
5 graduation ceremony for completing the parole, but you  
6 also talked about an additional piece of work to be  
7 done after that time that's sort of a reconciliation,  
8 if you will, recognition on the part of the person who  
9 violated the law. I mean, how would that be given? Is  
10 that an additional ceremony after an additional period  
11 of time?

12 MR. TRAVIS: So here, we have to tread  
13 lightly because this is one step beyond my expertise.  
14 I'd ask you to pursue to talk to others. Again, I'd  
15 start with that group who's doing the Coming to Terms  
16 work. You don't want to impose upon people or require  
17 people. I'm not saying it can never be done. It's  
18 very complicated to require people to do deep, personal  
19 work. That's something that has to be volitional.  
20 It's something you choose to do, this coming to terms  
21 with.

22 Having said that, we have a lot of diversion  
23 programs that divert cases to restorative practices or  
24 ADR practices as they go try to work it out, and then  
25 there's a third-party facilitator, who's not a judge,



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2 and those can be very successful. I used to run one of  
3 them in Brooklyn years ago. They can be very powerful.  
4 Those tend to be seen as diversion programs, and I'm  
5 not talking about some of those low-level case  
6 diversion programs. I'm really talking about more  
7 importantly the harder cases, where there's a lot of  
8 harm been done.

9 But I'm just reluctant to say this, to  
10 propose this, and I'm also philosophically reluctant to  
11 say that it's something that should be credited, like  
12 you get reduced time just because I think that tends to  
13 cheapen the motivation. That's one reason they chose  
14 lifers. They're not going anywhere. They've exhausted  
15 all their appeals. So it was clear that they were  
16 doing this work just to come to terms with their own  
17 past because the victim is an important part of that in  
18 terms of this guy to be seen favorably. So it's all  
19 very complicated stuff.

20 It wouldn't be a ceremony, but our system  
21 needs to allow space for it. It needs to more  
22 affirmatively allow space for that sort of work, a  
23 reconciliation between the parties, and sometimes the  
24 reconciliation is simply acknowledging active harm to  
25 the party. Sometimes it just involves going deep and

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2 saying I really screwed up.

3 MS. LOVE: How do we line that work up with  
4 a legal system that has so many barriers and  
5 disqualifications and restrictions that's just  
6 absolutely jammed full?

7 MR. TRAVIS: It's really tough. Having just  
8 said that I think you shouldn't reward that behavior, I  
9 think maybe some ways of encouraging it can be noted by  
10 courts, by probation or parole agencies. But you don't  
11 want to make it -- sometimes our system, when it gets a  
12 hold of these good ideas and uses it to apply this good  
13 idea to inappropriate cases, then that net widening is  
14 a concern sometimes. The motivations are questioned  
15 when people are engaged in this work.

16 But to me, it's part of this larger notion  
17 of restoration of status in my view philosophically is  
18 even more powerful when the individual whose status is  
19 being restored has come to some sort of recognition  
20 that can be publicly stated that that earlier life  
21 caused a lot of harm. I think the restoration status  
22 feels different in that circumstance to the rest of  
23 society than, oh, he completed his parole. Therefore,  
24 he's been restored.

25 This is sort of a new terrain for me. It's

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2 a lot by Susan and her work. Although in the ADR  
3 world, it's a very familiar concept of mediating  
4 disputes as a way of resolving a conflict outside of  
5 the criminal law. So it's both new and old. I wish I  
6 could help you more.

7 MR. JONES: Thank you. Chris.

8 MR. WELLBORN: I'd like to talk to you about  
9 the ceremony bit because when I'm looking at this from  
10 the aspect of -- as important as it is and it's  
11 extraordinarily important, and I get that, the concept  
12 of how connected is the individual who is having their  
13 rights restored, for lack of a better term, how  
14 connected do they feel to the society that's restoring  
15 those rights.

16 But the other piece is -- and that's  
17 something that we've been dealing with everywhere we've  
18 been is, okay, that part is important, but also, can  
19 they find a job? Can they find housing? Are people  
20 going to feel comfortable employing them and living  
21 next to them, and therefore, how does that later extend  
22 to their families and everything else?

23 So getting back to the ceremony bit, and I  
24 think Margie touched on it. If you want something  
25 that's going to have the biggest impact for those

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2 looking on either directly or indirectly towards this  
3 ceremony, and what this ceremony meant, and what this  
4 certificate that this person is getting actually means,  
5 would you suggest or possibly feel that a courtroom  
6 setting with the judge would be much more powerful  
7 certainly than a parole board or certainly even a  
8 probation office, where somebody might just say  
9 somebody is checking a box?

10 Then having said that, could not a component  
11 of that ceremony be in those instances where there's  
12 been restorative justice? And I'm using the Eastern  
13 Mennonite University term. Could there not be an  
14 invitation, an overture to the victim or victims to  
15 appear at that ceremony, and if they did voluntarily,  
16 could that not be something that's acknowledged  
17 publicly, which therefore, creates a more powerful  
18 incentive for people looking on, the public, potential  
19 employers, potential landlords to say, gee whiz, the  
20 victim has forgiven him, this really means something?

21 MR. TRAVIS: Yeah.

22 MR. WELLBORN: So that was my --

23 MR. TRAVIS: So let me just take it in a  
24 slightly larger frame. You've raised a lot of issues  
25 on one side. Let me just try to talk about them. As

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2 this group knows better than anyone, our new era has  
3 placed lots of legal barriers -- I don't know if the  
4 phrase invisible punishments -- towards some of the  
5 necessities of life, TANF, housing you mentioned. Some  
6 are not actual legal barriers, like you can't get a  
7 job, but they have become de facto legal barriers  
8 because their criminal records could be discovered so  
9 easily. So that's all part of this larger engine of  
10 marginalization.

11 If the goal that we have here is -- setting  
12 aside what we'd really like to do, I think it's to  
13 reduce the era of mass incarceration, reduce mass  
14 incarceration. If the goal is to recognize that  
15 reality, we want to reduce the marginalizing effects of  
16 our current legal system. Then setting aside the  
17 restoration of status questions, the ceremony  
18 questions, there are some very harsh realities that you  
19 have to come to grips with about the ways which the  
20 collateral consequences of convictions are instruments  
21 of that marginalization, that exclusion, and can that  
22 be reversed.

23 So you can imagine that this ceremony, this  
24 restoration of status might have some legal dimensions  
25 to it. By which, I mean it might have some legally

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2 powerful or legally cognizable documents that would  
3 help the individual reduce some of those barriers that  
4 now exist to full reintegration.

5 I think my own view, and this is something  
6 where we may have a difference of opinion, and I don't  
7 know the research on this. I'm always hesitant to get  
8 out front of researched knowledge. I don't know how  
9 effective the certificate of relief from disabilities,  
10 for example, is to make sure if you want a job, you get  
11 a job that otherwise you wouldn't have gotten if you go  
12 down that road.

13 So the law school exercise is to try to  
14 imagine a way to have a restored right, like you are  
15 now entitled by some statute to be considered for that  
16 job without consideration of your prior criminal  
17 record, have that right enforceable in ways that are  
18 not now enforceable. You can imagine there could be  
19 some ways that the certificate can be strengthened.

20 There could be a law school clinic that  
21 helps people to think about how to make sure the  
22 employer actually hired you. It's probably not a great  
23 start to a job saying I'm going to sue you for having  
24 denied me that job last week. The legal exercise -- so  
25 the law, how to be exercised here is what are the legal

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2 rights that can be established at that moment in time,  
3 ceremony or not, that would help overcome some of those  
4 barriers? So that's one way to think about it.

5 You're going a step further, which is -- I  
6 like the way you're pursuing this, which is are there  
7 some ways that the ceremony itself -- if the goal is  
8 reintegration and the ceremony is part of that -- could  
9 help effectuate reintegration more than even just a new  
10 legal document could by bringing people to the table,  
11 maybe even literally to the ceremony, such that that  
12 employer might think differently or not.

13 So it's a nice, little experiment here you  
14 can do with public housing, right? You can say, okay,  
15 you've been excluded from public housing, whatever the  
16 public housing guidelines are in different  
17 jurisdictions. We know those are not mandatory.  
18 They're all discretionary because of your criminal  
19 conviction. So is there a way that the public housing  
20 authority could come by and say, okay, you can come  
21 rent an apartment again because of this judicial  
22 ceremony?

23 So it would be an interesting exercise to go  
24 through the disqualifiers that now exist in the world  
25 of collateral consequences and say which of them could

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2 be overcome -- would be more likely to be overcome by  
3 using this leverage, by leveraging the ceremony to help  
4 that individual reduce the social exclusion. They'd  
5 be included. It's a fun thought. I haven't thought of  
6 that experiment, but I think you can sort of go down  
7 that road a little bit.

8 Now, you're all defense lawyers, and defense  
9 lawyers sitting here talking about why the hell you're  
10 waiting three years while you're on parole to make that  
11 happen? He needs that job over those three years,  
12 right? There's another way to think about this is, at  
13 that point, this guy is sort of alienated from the  
14 system. He's not going to come to that ceremony  
15 because he's fed up. So you're only helping those who  
16 don't need help. I don't know. So it's an interesting  
17 way of thinking about what's the asset building that  
18 you want to do? It's really the way to think of parole  
19 or reentry. What's the asset building you want to do  
20 over that period of time?

21 Here's another way of thinking about it.  
22 Let's say the employer took a risk on this guy in year  
23 one with the help of a workforce development agency.  
24 Okay. You got a felony conviction. You're still going  
25 to get a job, and the guy does well on the job. You



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2 say to that employer we want to invite you to the  
3 ceremony because you helped him succeed. The court  
4 says this. It's not just he invites his boss, but the  
5 court says we know that you've been part of the success  
6 equation, not just the family, and you took a risk.  
7 Thank you. Then that gets in the local newspaper.

8 You can think of ways to use the public  
9 nature of the restoration of status and people who  
10 helped in that status. I tend to think more of family  
11 and community folks and peer groups and ex-offender  
12 groups. Inviting the victim, I would suggest that you  
13 talk to the victim advocates. They would want to talk  
14 to you about that idea. It's very hard to get them to  
15 step forward, to get them to that point.

16 MR. WELLBORN: That's what I'm talking  
17 about. I mean, this isn't going to be a standard thing  
18 because obviously in some cases you're going to have  
19 people who show up and say the guy should still be in  
20 jail.

21 MR. TRAVIS: Right.

22 MR. WELLBORN: But in those cases where  
23 there's actually been a restorative process, why not  
24 invite the victim and have that box ticked off? So  
25 then later, if the person is going to an employer, they

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2 can say, look, I had this ceremony. The judge, the  
3 police, the prosecutor, the victim all recognized that  
4 I'm a different person now.

5 MR. TRAVIS: And there's very specific  
6 application of that, which is in restitution. The guy  
7 paid restitution. He paid \$1,000 over five years, and  
8 that was just to the victim. And he could say I never  
9 thought you could do it. Thank you. It helped me. I  
10 had an injury or whatever. It helped me to get back on  
11 track.

12 MR. WELLBORN: That's all I had.

13 MR. JONES: We are once again almost out of  
14 time, which we always find ourselves when we start  
15 talking, but we do have time for one last question.  
16 Larry.

17 MR. GOLDMAN: Let me ask you one question,  
18 and I must say this opened my very kind of narrow  
19 blinder criminal defense lawyer's eyes, as do a lot of  
20 things, but I appreciate it. Thank you for it, but I'm  
21 thinking practically.

22 I have sat for 20 years on the committee  
23 with respect to the criminal procedures in the State of  
24 New York. The constant refrain that I get and I get  
25 even more these days is we, judges, don't have enough

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2 time. We can't have more time. We can't add things.  
3 Every time there's a suggestion, it's like graded  
4 initially. I'm sorry. I wish Jonathan Lippman were  
5 here, but he isn't.

6 MR. TRAVIS: Was he working --

7 MR. GOLDMAN: There he is.

8 MR. TRAVIS: Jonathan, we'll talk to you.

9 MR. GOLDMAN: How do we convince state court  
10 judges -- Judge Baer -- or at least I think someone  
11 will ask him tomorrow about this. I predict he'll be  
12 receptive, but how do we convince the court  
13 administration to say, hey, we're going to do something  
14 like this, and maybe we'll find a way to fit it in?

15 MR. TRAVIS: Well, so this is -- I know that  
16 reality, and the judges particularly in our state under  
17 Judge Kaye's leadership, there's been a lot of movement  
18 on this issue of the judges need to work creatively  
19 about their relationship to cases. It's not just an  
20 assembly line. It's actually people with problems, and  
21 having been to the community court this morning, I'm  
22 reminded of how powerful that is. And there's an  
23 openness that Judge Lippman follows in Judge Kaye's  
24 traditions very much so. I believe he was the  
25 operational guy and may help -- without having spoken

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2 to him about it, I think you got a friend there.

3 There are ways to talk about this issue at  
4 the level of it's the right thing to do, and that  
5 doesn't always win the day. And there are also ways to  
6 talk about it at an operational level, how many of  
7 these things are we talking about and with what  
8 frequency. I think actually the problematic agency  
9 would be the parole folks. They would have to -- they  
10 should be the ones who do the convening. They sort of  
11 bring people in.

12 So it would be worth asking them how many  
13 people are discharged from parole per month in Kings  
14 County. Then you have a number. Then you do some  
15 predictions as to how many of them would be interested  
16 in such a ceremony. If they sort of love it, then you  
17 would hope that it would grow over time because it  
18 seems to be worthwhile. Then you get another number  
19 that's smaller than the first.

20 Then you say, okay, if you got parole on  
21 board willing to sort of bring in their caseload that  
22 they're about to discharge into a courtroom at four  
23 o'clock on an afternoon with the family, kids,  
24 employer, then you get creative as to who's invited. I  
25 would expect to see the arresting officer. It would be

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2 nice. The police think that they have nothing to do  
3 with it, but having worked there, I think that might  
4 change their attitude as well.

5 Then you say to the administrative judge for  
6 Kings County, either Criminal or Supreme, depending on  
7 what you're working with, is there a judge from your  
8 roster of judges who would come down for half an hour  
9 once a month to talk to this number of people and say  
10 congratulations, shake their hands, and take pictures,  
11 and go on his way?

12 So you make it both elevating, and in  
13 New York State's case, innovative and nationally  
14 important, which Judge Lippman would like because  
15 that's the way we, New Yorkers, think, and it's  
16 consistent with, in this case, in the case of our court  
17 and traditional problem-solving courts thinking about  
18 restoration. Then you ask them to ask their R&D on  
19 this, Center for Court Innovation to be the designer of  
20 it, and come back with a concept paper, and do it in  
21 one county.

22 Then you've got something that's manageable,  
23 and then you get judges talking to judges, and they  
24 say, oh, yeah, I sort of like doing that. And you  
25 remind them that we have all sorts of ceremonies all

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P R O C E E D I N G S

the time that are important. We swear people in the bar. We do naturalization ceremonies for American citizens, and might this be one that would be appropriate for the Hall of Justice to say congratulations. It's an uphill battle just to be realistic, but that's how I think about it.

MR. JONES: We are out of time. This has been great.

MR. TRAVIS: Good. Thanks.

MR. JONES: You certainly have given us food for thought and have set the stage for the next two days of work. Much appreciated. Thank you.

MR. TRAVIS: Good to see friends and people I'm meeting for the first time. This is a nice change of pace from running a college. You've allowed me to change my frame for a moment.

MR. JONES: Thank you very much for coming. So we are adjourned, and the Task Force will reconvene tomorrow at 9:00 a.m. Thank you, everybody.

(Whereupon, at 4:18 p.m., the hearing was adjourned.)

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C E R T I F I C A T E

STATE OF NEW YORK            )  
                                  :  SS.:  
COUNTY OF NEW YORK        )

I, HELEN SHUM, a Notary Public for and within the State of New York, do hereby certify:

That the above is a correct transcription of my stenographic notes.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2013.

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HELEN SHUM

**Transcript Edits  
New York Hearing  
Day 1**

**Roberta Meyers**

On page 9, Line 9-10, omit “as I go forward to talk about some of these policies.”

On page 10, Line 19, omit “and all of these things.”