

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

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

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16 BEFORE:

17 RICK JONES, Task Force Chairman

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8 VICKI YOUNG

I N D E X

| 9 | WITNESSES | PAGE |
|----|---|------|
| 10 | PANEL 1: | 8 |
| 11 | Roberta Meyers, Director, National HIRE Network | |
| 12 | Steve Zeidman, Clinic Director, CUNY School of Law | |
| 13 | Sally Friedman, Legal Director, Legal Action Center | |
| 14 | | |
| 15 | PANEL 2: | 64 |
| 16 | Jeremy Travis, President, John Jay College | |

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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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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.

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

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.

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

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

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

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.

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

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.

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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,

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

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.

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

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?

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

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

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

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.

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

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

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

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

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

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.

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

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

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

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

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

25 MS. MEYERS: Absolutely. Some of the ways

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

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

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

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

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

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.

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

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.

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

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

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

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

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

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.

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

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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P R O C E E D I N G S

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

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

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

MS. FRIEDMAN: Yeah.

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

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

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

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

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

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

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

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.

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

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

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

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

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

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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P R O C E E D I N G S

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,

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

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.

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

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

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

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?

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

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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P R O C E E D I N G S

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?

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

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

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

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

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

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

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

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.

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

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.

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

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

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

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.

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

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.

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

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

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

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.

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

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

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

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

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

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.

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

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

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

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

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

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

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

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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P R O C E E D I N G S

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

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

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

So Kai Erikson, a noted psychologist, had

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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,

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

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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P R O C E E D I N G S

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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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.

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

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

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

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

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

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.

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

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MR. TRAVIS: Good. Thanks.

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

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

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

21 (Whereupon, at 4:18 p.m., the hearing was
22 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.

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.”