

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 3

Friday, May 17, 2013

8

Cravath, Swaine & Moore LLP

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825 Eighth Avenue

New York, NY 10019

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13 The hearing convened, pursuant to notice, at 9:00 a.m.

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16 BEFORE:

17 RICK JONES, Task Force Chairman

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FILE NO. A70532D

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

2 MR. JONES: All right. Well, we're going to
3 start. We are sans a few of our colleagues, who I'm
4 told are in a cab racing northward from lower
5 Manhattan, where the NACDL is housed for their seminar,
6 but we're going to sally forth without them, and
7 hopefully, they will show up sooner rather than later.
8 This is the third and final day of our stay in New
9 York, and if today is anything like yesterday, then we
10 certainly, as Task Force members, are in for a real
11 treat. And certainly, we know that this will
12 ultimately inure to the benefit of those folks who
13 we're doing all this work for.

14 We are pleased to have you here and are
15 looking forward to learning from you and having an
16 interesting discussion and conversation with you. We
17 have been, as you know, across the country talking to
18 folks, listening to stakeholders and trying to learn as
19 much as we can about the road to restoration of rights
20 and status after conviction for the some 65 to 70
21 million Americans who are living in this country with a
22 conviction, and the testimony and the knowledge and the
23 wisdom and the insights that you all bring has really
24 been valuable to us. So we are pleased to have you
25 here.

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The way that we operate is that we give each of you five to ten minutes to give us the benefit of some opening thoughts, a little bit about who you are and the work that you do, and then we have lots and lots of questions for you. The way that we do the questioning is that one of our members normally leads the discussion, and then to the extent that there's time at the end of that, the rest of us will ask the questions we might have as well.

There's never enough time. We always run out of time. These discussions are always very fruitful, but for the purposes of this discussion, assuming that they arrive, Margie Love was supposed to lead the discussion. She's not here, but if and when she arrives in time, then she will do that. If not, I will sally forth without her.

I'm going to stop talking in just a moment, but there are some new faces down at the end in the audience, and so for those folks who are here for the first time, if you could just, in a good voice, give us your name for the record and where you're from, we'd appreciate it.

MR. SMITH: I'm Nick Smith. I'm a policy associate at College & Community Fellowship, where my

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executive director is Vivian Nixon.

MR. JONES: Welcome.

MR. SMITH: Thank you.

MR. FERRANTE: Good morning. I'm Mark Ferrante. I'm a senior policy advisor at the Department of Probation.

MR. JONES: Welcome.

MR. DODGE: I'm Ryan Dodge. I'm the communications director at the Department of Probation.

MR. JONES: Welcome.

MR. SCHECHTER: My name is Marvin Schechter, a criminal defense attorney.

MR. GOLDMAN: Marvin is also too modest to tell everybody he's head of the Criminal Justice Section of the State Bar, correct?

MR. JONES: I'm also debating whether or not I want to say welcome, but welcome, Marvin. Thank you.

So I'm going to stop talking at this point and turn the floor over to you. Maybe we should start with you, Ms. Nixon.

MS. NIXON: Thank you. I really am pleased to have been invited and even more pleased that this discussion is happening. It's a very important discussion. So I thank you for giving me ten minutes

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of your time this morning. I have submitted a written copy of testimony that is much more detailed and provides all the citations that will be necessary. So I'm going to try to have a conversation with you rather than read to you, but there are some important points I do want to make.

I've been involved in criminal justice reform here in New York for 12 years now, and my role is as executive director of the College & Community Fellowship and founding member of the Education From the Inside Out Coalition. Our work is primarily in two areas. At College & Community Fellowship, we use higher education as our primary strategy to help women reintegrate into the community after a period of incarceration. So we connect women, of course, to basic services that they need, but also, a required part of our program is that the woman must seek and maintain a relationship with an institution of higher education, a community college or a university.

Many of the women who come to us enroll in associate's degree programs, but more than 80 percent of them go on to bachelor's degrees and then some even to graduate school. So we really do emphasize education as the primary strategy, which makes us

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2 different from a lot of reentry programs that really
3 focus on subsistence needs. You know, we've had a lot
4 of success over the years, and I'm not going to spend
5 time talking to you about our low recidivism rates or
6 other success rates because all that's available on our
7 website, and I'm happy to talk to anybody who wants to
8 know more.

9 While doing that work, we realized and
10 discovered that there is a much larger need for a
11 conversation to happen nationally about why education
12 is not used as a primary strategy to fix some of what's
13 broken with the criminal justice system. Why are
14 colleges out of the prisons? Why is the quality of
15 education so hard to maintain inside of a prison? And
16 so we started looking at policies that impact that,
17 such as Pell Grants being -- the right to Pell Grants
18 being removed from prisoners in 1994 and other
19 policies, local and state, around the country, and
20 that's what the Education From the Inside Out Coalition
21 works on.

22 I'm not going to bother to talk to you about
23 the state of mass incarceration in the United States.
24 I think all of you know about that because that's why
25 you're here. It's not just mass incarceration. It's

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2 mass criminalization. You just pointed out that, you
3 know, over 65 million people have criminal history
4 records in the United States, but it's important to
5 note that people of color are disparately impacted by
6 this situation. And although we often talk as though
7 this entire system of mass incarceration and
8 criminalization was driven by the drug war, the drug
9 war on its own does not account for the racial
10 disparity because research, which I do cite in my
11 written testimony, shows that, across the board, drugs
12 are used, abused and sold at proportionate rates within
13 each population. So the disparate impact has to be
14 attributed to something else.

15 There is a history, and I really want to
16 talk about the history of structural inequality in
17 America particularly as it relates to education. The
18 racially disparate consequences of criminal convictions
19 span across all areas, including employment, education,
20 enfranchisement and equality, but in the context of
21 education, for us, we find education, and especially
22 higher education, to be the most under-appreciated,
23 underused and under-resourced tools to ensure the best
24 chance for long-term stability and security for those
25 who have been marked by criminal punishment.

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2 History confirms that education has always
3 been a principal source of upward mobility for people
4 of color in America. You all are lawyers -- many of
5 you are lawyers anyway -- and so everything I'm about
6 to say you already know, but when the abolition of
7 slavery and the end of reconstruction threatened to
8 level the educational playing field, the Supreme
9 Court's 1897 decision in Plessy versus Ferguson,
10 commonly known as "separate but equal," ensured
11 continued inequality.

12 Legal segregation in primary and secondary
13 schools ended with Brown versus Board of Ed in 1954.
14 Hawkins versus Board of Control granted equal access to
15 higher ed in '56. Yet these decisions, which came at a
16 very high cost, did not guarantee equal access to
17 education for all. Indeed, the protections that made
18 access a reality for many, such as broad admissions
19 policies in public colleges and affirmative action in
20 college admissions, which opened the door for millions
21 of minority doctors, lawyers, social workers and
22 others, are still under growing attack.

23 But nowhere, nowhere is denial of access to
24 education more evident in the United States than in the
25 system of criminal punishment. As some level of

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2 post-secondary education increasingly becomes necessary
3 for entering and moving up in the labor market,
4 incarcerated people have been virtually expelled from
5 higher education by being made ineligible for
6 need-based Pell Grants at the federal level and state
7 education grants in most states, including New York.
8 These collateral consequences were enacted as a means
9 of punishment and to emphasize the separation between
10 people with criminal history records and law-abiding
11 citizens. In stark contrast to laws that have been
12 enacted for the purpose of increasing public safety,
13 the denial of funding for education became law despite
14 overwhelming evidence that access to post-secondary
15 education drastically increases public safety.

16 Barriers to education also exist for people
17 with criminal history records when they're in the
18 community. In addition to restrictions in federal
19 student aid related to certain convictions, colleges
20 and universities across the country, including some
21 here in New York, are ever more engaged in screening
22 applicants for criminal history. As pointed out in
23 research conducted by the Center for Community
24 Alternatives, this practice continues to grow despite
25 data suggesting that crime on campus is more likely to

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2 be committed by students who have no prior criminal
3 record than by students who have prior records.

4 Sixty percent of colleges and universities
5 in the United States employ some type of screening for
6 criminal history. Many do so without understanding the
7 complexities of these records and with no thoughtful
8 process through which to evaluate the impact a criminal
9 record may or may not have on a particular student's
10 ability to successfully engage in the educational
11 process. Thus, when a student applies to college, he
12 or she may be required to disclose whether or not
13 they've ever been convicted of a felony or a
14 misdemeanor, and furthermore, in some cases, they are
15 asked whether they've ever been arrested, even if the
16 arrest did not lead to a conviction. Upon disclosure
17 of past convictions and/or arrests, these aspiring
18 students become subject to an intrusive and humiliating
19 process of investigation that is often conducted by
20 untrained, misinformed and subjective reviewers.

21 For example, consider the practice of the
22 State University of New York. Current State University
23 of New York policy requires the university, along with
24 each individual campus within the SUNY system, to
25 inquire about the criminal history of applicants. Once

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a student self-discloses this information by checking the box on the application, the applicant is required to comply with a screening that varies by individual SUNY campuses. Each campus acts virtually autonomously in developing procedures once an applicant checks the box.

Many SUNY campuses require that applicants obtain their rap sheets from the New York State Department of Criminal Justice Services. The problem with this is that the Department of Criminal Justice Services' rap sheet includes information that the school is not entitled to have. It violates the spirit of confidentiality, sealing and existing DCJS regulations governing levels of suppression. DCJS rap sheets contain information that is meant for the applicant's or the applicant's legal representative's eyes only, such as youthful offender adjudications, juvenile delinquencies and otherwise confidential or sealed information.

Applicants who check the box are subject to an array of often unforeseen procedures once the box is checked, from interviews with public safety committee members, who are not necessarily versed on relevant laws and regulations, to character references from

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2 parole or probation officers. One school even asked
3 for a letter from the warden of the prison where the
4 person was. We don't even have wardens in the State of
5 New York. They're asked for narrative essays about how
6 the applicant will not be a public safety threat to the
7 wider campus, among many other various tweaks over the
8 different campuses.

9 These policies impact real people. So I'm
10 going to give you really two really one-paragraph
11 stories. A woman -- we'll call her Trina -- was
12 released from Bedford Hills Correctional Facility here
13 in New York after doing 17 years inside that facility.
14 She was locked up when she was 16 years old. She did
15 17 years. So obviously, it was a very serious crime,
16 but she was 16. The crime itself, the circumstances
17 surrounding the crime were very traumatic for her.

18 While she was on the inside, she was lucky
19 enough to have been in a facility that had college when
20 it was available, and she obtained an associate's
21 degree. When she got out, she did everything she was
22 required to do. She found a job. She found a place to
23 live, and she wanted to go back to school and get her
24 bachelor's degree. She applied to the State University
25 of New York school, who then proceeded to put her

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2 through a very humiliating and rigorous process, asking
3 her to obtain all kinds of records at her own cost.
4 The DCJS rap sheet costs \$60 to obtain, and then wanted
5 her to write this essay. And the way they described
6 what the essay should be is that it should be a
7 narrative of the crime, a narrative of the crime,
8 something that happened to her that was extremely
9 traumatic when she was 16, for which she had already
10 done 17 years in prison, and they wanted her to relive
11 it in order to admit her into college. She refused to
12 do it, and now goes to a CUNY school because CUNY
13 doesn't even ask on the application whether or not a
14 person has been convicted of a crime, and CUNY does not
15 have any extraordinary public safety problems on their
16 campuses.

17 Another example, a gentleman named Mark, who
18 after coming out of prison for a very serious crime,
19 went to NYU, got an undergraduate degree at NYU and
20 wanted to go to graduate school, applied to graduate
21 school in Michigan, and didn't even get a formal
22 letter. Got an e-mail from some administrative person
23 saying we see that you checked the box on the
24 application. Could you send us back an e-mail telling
25 us what you did? And so he did. He told them what he

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2 was convicted of, and they sent him back an e-mail
3 saying, well, that's not enough detail, give us more
4 detail. And these e-mails went back and forth in a
5 very unprofessional, disorganized and unfair way, and
6 he is now also at a CUNY graduate school. But these
7 are just examples of the things people are dealing with
8 on a daily basis, where access to education is a
9 concern for people with criminal history records.

10 Racial disparity permeates every aspect of
11 the criminal justice system. So we have to also
12 believe, just as employment discrimination for people
13 with criminal records is sort of a surrogate for
14 employment discrimination against people of color, then
15 discrimination in the context of education for people
16 with criminal records is also a surrogate for
17 race-based discrimination in the education context.
18 And that's why it's truly important for this committee
19 to understand and take on this issue as part of their
20 agenda. Thank you very much.

21 MR. JONES: Thank you. I'm not sure if you
22 were talking about the University of Michigan in
23 your --

24 MS. NIXON: Yes.

25 MR. JONES: We heard a story, I think, the

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other day about the University of Michigan, which I'm an alumni of the University of Michigan. So I'm going to have to -- this is the second time I've heard that story. We've also turned you into a two-fisted drinker.

MS. NIXON: Thank you so much.

MR. JONES: Mr. Schiraldi.

MR. SCHIRALDI: Welcome to New York, guys. Good to see you. I'm Vinny Schiraldi.

MS. LOVE: It's a big town, lots of cars.

MR. SCHIRALDI: Cabs don't make it any smaller.

MR. JONES: Our stragglers are here. So now, we are close to full strength up here.

MR. SCHIRALDI: Thank you guys for inviting us to be here today. I'm the Commissioner of New York City Probation. Our mission, which is the only part of this I'm going to read because it's a mouthful, is building stronger and safer communities by working with and supervising people on probation, fostering positive change through our decision-making and behavior and expanding opportunities for them to move out of the criminal and juvenile justice systems for meaningful education, employment, health services, family

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2 engagement and civic participation. We don't
3 specifically talk about collateral consequences in
4 there, but we definitely talk about moving people out
5 of the system, and part of that is the collateral
6 consequences that are attached to it.

7 We have about 25,000 people on probation,
8 about 2,000 of whom are juveniles, but remember, in
9 New York State, cases in juvenile court jurisdiction
10 end on your 16th birthday. So that means a whole bunch
11 of 16- and 17-year-olds have these collateral
12 consequences we're talking about attached to them in
13 ways that isn't typical for the rest of the country.
14 I'm not going to get into the data behind collateral
15 consequences. I suspect you've heard about that a
16 whole bunch of times by this point in terms of mass
17 incarceration rates, disproportionate crime by people
18 of color. About 85 percent of our caseload are
19 African-American and Latino. About 85 percent are men,
20 and about a third of the adults on our caseload are
21 between the ages of 16 and 24. So it's a young man of
22 color game on probation.

23 I'm going to talk about four things we're
24 doing to try and help people through the collateral
25 consequences that we've set up as a society to not help

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2 them, and we're trying to help them get past some of
3 those. When I started -- I've only been Probation
4 Commissioner since 2010. Before that, I was a Juvenile
5 Justice Commissioner. Before that, I was with
6 nonprofits my whole career. So I didn't really -- I
7 didn't pay much -- I practiced more in theoretical
8 ways. When I started being Probation Commissioner, I
9 realized how much more profound this issue is than I
10 ever realized and how much more of a real issue that we
11 can touch and feel it is.

12 So COR is the first issue, and when I
13 started, I knew nothing about certificates of relief
14 from disabilities. I started to look them up, research
15 them. It seems Nelson Rockefeller wanted them granted
16 right at sentencing, and it's been a sort of struggle
17 to have lots of people understand that that's just not
18 a reward for good behavior. It's really something
19 that's supposed to help you as opposed to -- very
20 distinctly as opposed to a certificate of good conduct,
21 for which there is a prescribed waiting period. You're
22 supposed to get your COR out of the box so you can cut
23 hair legally, and so you can be a security guard and
24 the hundreds of other things you somewhat can't do if
25 you don't have it.

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My first run into this was at the Doe Fund, right, which is this nonprofit that works with homeless people in New York City. Start them out sweeping -- you may have passed them in your cab, right. They have big, blue garbage cans. They sweep up, and really, the point there is, can you come to work on time ready to work? Once you do that, then they start to funnel you to all these other jobs that they have access to; one of which is being an exterminator, right. Who knew that, without a COR, you ain't going to be an exterminator, right, because you need to be bonded. And so the guy that runs the Doe Fund is some sort of millionaire who never knew any of this stuff. He just sort of decided not to make gobs of money and run a nonprofit instead, and now, he's got a whole roomful of people just helping their folks get certificates of relief.

It's roulette, by the way. This is completely roulette. If you're lucky enough to have a lawyer that pays attention to this, you may get one. If you're lucky enough to have a judge that's sort of on it, you get one. Probation applies in all cases where people are eligible. Unless there's some really extraordinary reason, our rule is apply for the COR,

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2 right. But, you know, you guys are in court more than
3 I am. It's not the main thing you're thinking of as a
4 defense attorney. You're thinking, I don't want this
5 person to go to prison or I don't want them to get
6 probation. I want them to get a conditional discharge.
7 Whatever your argument is about, it's rarely about
8 certificates of relief.

9 And the client either, by the way. They're
10 not even thinking -- they've probably never heard of
11 collateral consequences. They're not thinking six
12 months from now, I might want to cut hair or I might
13 have a chance to be a security guard, and now, I'm not
14 going to be able to be one because I got to go back to
15 court. If you don't get it out of the chute, you have
16 to go back to court, and people on probation, at least
17 we can help, and we do help them. But if you don't
18 have a conditional discharge, you got to find your way
19 back to court on your own. Maybe Legal Aid will help
20 you. Maybe they won't. You know, they're busy, right.

21 So we've done a bunch of things. Right now,
22 as I said, we apply every time the person is eligible.
23 Our probation officers have been pushing them to have
24 this be an individual conversation that they have with
25 their client, but we also have started to have COR

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2 dates, where we're working with the courts. The judges
3 come in. We bring all our guys together. Do you want
4 a certificate of relief? Do you want -- you know, sign
5 in. We're pumping it up. Everybody comes to a room.
6 Our staff is actually literally sitting in the next
7 room with all their files. We got a law student from
8 Columbia that has a PowerPoint, explains what they are.

9 And then we just -- generally, the judge
10 comes in and speaks to them so that they know this is a
11 real possibility, and anybody who wants one go in the
12 next room. And all their POs are sitting there with
13 all their files, and they can apply, and we send a big
14 stack over to the courts. So we had 2,000 this year --
15 in 2012, that is -- 2,000 that went. I don't know how
16 many people on my caseload are actually eligible
17 because you can only have one felony, and there are
18 some restrictions. But 2,000 out of whatever number
19 are eligible on our caseload is how many we got.

20 So the second initiative is rap sheet
21 cleanup. The groups that do this in New York, Bronx
22 Defenders, Community Service Society, Legal Action
23 Center, Youth Represent, tell us that about somewhere
24 between 40 and 55 percent of the rap sheets have
25 mistakes on them, right. Stuff is on there that people

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2 didn't get convicted of. They go to court with four
3 felonies. They get convicted of one misdemeanor. All
4 four felonies are still on their rap sheet, et cetera.
5 Either a clerk didn't do what they were supposed to do
6 or DCJS didn't do what they were supposed to do. I
7 don't even care who's at fault, though. We're just
8 trying to come out the other end with a clean, correct
9 rap sheet.

10 And so the Mayor's Young Men's Initiative
11 funded those four groups who work with our clients now
12 just to clean up rap sheets, and part of that, what
13 they're being funded to do is also explain to people
14 how to have the conversation so that when they run into
15 a university that asks them inappropriate questions,
16 they sort of know where they can and can't sort of fall
17 out on that.

18 Warrants project, we had 15,000 people on my
19 caseload when I got here that were out on warrants,
20 right, which sounds like a lot, but there are actually
21 a million people on warrants in New York City. So it
22 doesn't sound quite so bad compared to that. So when I
23 started, we had 27,000 people on probation and an
24 additional 15,000 with warrants, some decades old,
25 because they stopped reporting to their POs, but most

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2 of them are doing real well because if they weren't,
3 they wouldn't have that warrant. When they got
4 arrested, the warrant would be dropped, right. Doesn't
5 always happen, but it almost always happens. So I got
6 15,000 law-abiding people, except for the part where
7 they didn't see their PO. It isn't complete
8 law-abiding, but at least non-arrested people. So what
9 do you do with that?

10 So we work with the courts, and the courts
11 agreed that -- you know, we started having a
12 conversation with some judges and said, if one of these
13 guys walked in today, walked into the court, what would
14 you do? And the answer was, you know, I'd probably
15 discharge him from probation and make the warrant go
16 away. So when we started asking the judge, well, can
17 we just do that based on the paper? And we negotiated,
18 you know, which ones, which ones. So for people who
19 are nonviolent offenders that have been -- nonviolent
20 people with misdemeanor convictions that have been out
21 more than ten years, and nonviolent felony cases,
22 clients that have been out more than 15 years, the
23 judges have agreed to accept requests based on the
24 paper.

25 And so far -- we got a little bump with

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2 Hurricane Sandy because this is real monk-like work.
3 You got to get in there with papers and find out, did
4 the guy get rearrested, does he really still have a
5 warrant, working with the clerks. It's just a lot of
6 spade work, but so far, we have 306 people for
7 misdemeanors and 70 people for felonies that the courts
8 have considered, and they've dismissed all their
9 warrants on every single one of them.

10 And then finally, the Mayor, as part of the
11 Young Men's Initiative that I just mentioned, issued an
12 executive order around Ban the Box. Again, this is not
13 to put people on the front of the line, but just to
14 allow them to get on the line. And the rule in New
15 York is not only can't you have -- for government work,
16 right, not only can't you have the checkbox that you
17 described, but you can't ask about it in the first
18 interview. You have to wait till the second interview
19 to ask the question. That's true for all nonpublic
20 safety agencies. So actually, probation was exempted
21 even though we were pushing it, but we do it for all
22 our nonpublic safety jobs, which we have a lot of,
23 secretaries, stuff like that, IT people.

24 And then we asked if we could do it with our
25 vendors, the people we contract with, and so that, you

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2 know, generated this whole procurement conversation,
3 but they said yes. So we do it with our vendors, and
4 now have to do it with all human service vendors. So
5 any human service contract at least have Ban the Box,
6 and then we subsequently then urged our vendors to hire
7 what we call credible messengers. We try -- we
8 couldn't specifically tell them to hire people with
9 criminal records, but we wanted credible messengers,
10 which tend to be a lot of people with criminal records.
11 And all our vendors have to have neighborhood-based
12 hiring plans from the neighborhoods from which most of
13 our clients come, which tend to be neighborhoods with a
14 lot people with criminal records. So it works out
15 specifically that a lot of the people in our vendor
16 pool have priors.

17 So that's three or so ideas I have. The
18 CORs, as I said, Governor Rockefeller in, I believe, a
19 fair reading, intended these things to be granted at
20 sentencing and not after the fact. We had legislation
21 two years ago to require the judges rule at sentencing
22 and to make them presumptive, but only the requirement
23 that judges rule at sentencing passed through the
24 legislation negotiation process.

25 I think this thing should be presumptive at

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2 sentencing. If the prosecutor wants to raise an
3 objection, they're more than, you know, welcome to.
4 I'm sure that that actually would be very seriously
5 taken into consideration, but the burden should -- if
6 it was this way, it would be automatic. People would
7 get them by the boatloads if they were presumptive, but
8 right now, because the burden is on the defendant,
9 they're just not getting them a lot at sentencing.

10 They're a good first step, but I think
11 people should have their records sealed at a certain
12 point, at least for civil purposes. According to
13 research by Al Blumstein and Kiminori Nakamura, after
14 seven years, people with a criminal record -- after
15 approximately seven years, the average person with a
16 criminal record has the same risk of offending as the
17 general public, and that's shorter based on offense
18 severity. So, for example, first-time property and
19 drug offenders have the same risk of offending as the
20 general public at three or four years respectively.

21 Given that kind of research, the lifelong
22 nature of collateral consequences, I think, are even
23 more indefensible as a public safety tool, and I
24 suggest that states enact civil sealing acts, which a
25 bunch have, that recognize the reality of this data by

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2 allowing records to be sealed, at least for civil
3 purposes, not necessarily for law enforcement, at the
4 appropriate time periods.

5 I think we should reconsider what it means
6 to be a young person. I think any of us would not want
7 to be tagged with the dumbest, most insensitive thing
8 we did during our college days, right, and yet we do
9 that routinely with people with regards to their
10 criminal records. Many countries in Europe have
11 extended confidentiality protections well into people's
12 20's. Brain science totally supports that, and I think
13 that we should really think about -- beyond just civil
14 sealings, we should think about confidentiality
15 protections like those that extend to juveniles,
16 extending into one's 20's, mid-20's or so.

17 And then, just one last thought is that, you
18 know, when I started -- I started these two jobs, you
19 know, ran the juvenile justice system in D.C. and now
20 running probation, and when you come in, you're sort of
21 bombarded by all this information about what to do,
22 right. The Justice Department, National Institute of
23 Corrections, Office of Juvenile Justice and Delinquency
24 Prevention, and associations, the American Probation
25 and Parole Association, all these groups that kind of

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try to help you, which is terrific, right. You get orientations, and most of what you're learning about is these evidence-based practices, right; do motivational interviewing, get a good risk assessment, do thinking for change. Those are fine things. There's really a lot of evidence that shows they can actually improve behavior by people on your caseload, which is important stuff.

There is no evidence around collateral consequences, right. I don't know if CORs matter, but it's a shitload of work to do those CORs. I'll tell you that right now, right. We got to pull all those files. I got to bring people into a room. I got to get everybody. I've got to talk to the judges, please come in, you know. I got to go to court and ask for them. It's a pain in the neck, right. I could be doing motivational interviewing at that time. Do I know whether getting somebody a certificate of relief is a better use of my time than these other practices with a lot of evidence? I don't know that. I don't know the answer to that question. I don't know if civil sealing would be worth it. I don't know if a lot of things we can all cook up in this room will be worth it.

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Somebody's got to research that because if we don't, it's never going to be on the list for these new probation commissioners to do. It's always going to be sort of a nice side event, and frankly, I don't know if the next probation commissioner is going to do that nice side event. And I don't know if it's a better use of my staff's time than some other thing. So research matters, and, you know, I'm sure that people who know more about research could come up with ways to really tell us.

And you guys may know better than me, but I'm not familiar with the body of research that tells us what the real public safety impact is. This is a good moral and ethical argument, but I don't know if people can tell you what the public safety impact of not helping people pass their collateral consequences is, and I think it's important. It would help, I think, push this issue forward with a group of people that aren't necessarily going to be moved by just a purely ethical, moral discussion.

MR. JONES: Good stuff. Thank you very much. Judge.

JUDGE D'EMIC: First, my name is Matt D'Emic. I'm a judge in Supreme Court in Brooklyn.

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Supreme Court is the felony court on the criminal side of the bench, and most of my work involves two specialized courts. I've been a judge for 17 years. For 16 years, I presided over a domestic violence felony court. So the charges would range anywhere from intimate partner murder to violations of orders of protection, and for the past 11 years, I've also presided over a mental health court. It was the first mental health court in New York State.

And when we talk about the collateral consequences or the restoration of civil rights, I'll talk first about the mental health court a little bit because obviously an alternative to incarceration, one that results in a dismissal at the end of a successful completion of a court mandate is the ultimate restoration of civil rights.

The court was planned as a nonviolent felony court for adults because it was thought that since the district attorney is our partner in the court and Judge Kaye, who was the chief judge at the time, partnered with him to get this started, that taking violent felonies would be too much of a risk, and so the court system, together with the D.A., didn't want to do that.

Well, you know, you could plan as much as

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2 you want, but one of the first cases sent to the court
3 was a young woman who killed her infant at the moment
4 of birth. Now, obviously, it doesn't get more violent
5 than that, but it was an appropriate case for the
6 court.

7 But then another young man, who was in his
8 early 20's, who was in college, came into the court,
9 and he was accused of two street robberies and knocked
10 people down and stole from them, wound up on Rikers
11 Island. He proclaimed himself an angel of God,
12 something like that, got beaten up, sent to Kings
13 County Hospital, where the doctors realized that he was
14 in a psychotic break, as the experts tell me is often
15 the case with people in their early 20's. That's when
16 you first start suffering from a mental illness, and he
17 was diagnosed with paranoid schizophrenia.

18 Well, obviously, two violent crimes came
19 into the court, but everybody agreed that we wanted to
20 help this young man, that he suffered from a serious
21 and persistent mental illness, which is criteria for
22 the court. If I can just take a minute, most of the
23 people in the court suffer from schizophrenia, bipolar
24 disorder, major depressive disorder or bipolar
25 disorders. So it's a court that really seeks to help

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2 people suffering from these serious mental illnesses.

3 In any event, this young man came to the
4 court. He'd come to court with his father every day --
5 every week because I see the people once a week at the
6 beginning, and because of the nature of the crime, the
7 D.A. would not agree to a dismissal at the end of the
8 case, but to a misdemeanor and probation.

9 He stayed with us for about 18 months and
10 did fantastic. His mother wrote to me and to the
11 district attorney and asked if the case could be
12 dismissed. It was agreed that if he stayed with us for
13 another six months and did as well as he had been doing
14 for the past 18 months, the case would be dismissed.
15 He did. It was, and the last time I heard -- this case
16 now was apparently about eight years that he graduated
17 from court. And maybe about five years ago, I heard
18 from him, he had gotten his master's degree in graphic
19 design and was doing fabulously.

20 So dismissal, restoration of rights, and at
21 this point -- I mean, they still call the mental health
22 court an experiment. Although, it's been 11 years. So
23 I don't understand that, but we've had about an
24 80 percent success rate, and most of the cases have
25 resulted in dismissals and sealings.

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Now, I don't want to take too much time, but I do want to comment on Commissioner Schiraldi's comments on certificates of relief from civil disabilities because I very much appreciate your initiative to having the certificate of relief right there at sentence so that I can sign it right there, and nobody has to come back.

The other thing is that the Department of Probation for my domestic violence court has an intensive supervision unit, which gives me, I think, much more -- I feel much more sanguine about. Don't forget, domestic violence cases, you have a targeted victim. You have complex emotional circumstances. Often, they are fueled by alcohol, drugs, mental illness, a combination of those. So they can be dangerous cases.

So most of what I've been doing in my judicial career is risk management, and the intensive supervision department or unit really helps me because the probationers come back to court. And I see how well or poorly they're doing, and I get the input from the Department of Probation. And the reason I mention this is not because I want to oversee people to the point where I'm trying to put them in jail. I'm trying

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2 to keep them out of jail, and probation is helping with
3 that.

4 And the last time that we had statistics,
5 there were two domestic violence parts. Our probation
6 violation rate for our felony probationers was
7 considerably lower. I think it was something like 15
8 percent as opposed to the general violation rate in
9 Brooklyn, which was over 50 percent. So there, the
10 judicial monitoring, I think, of the mental health
11 court and through probation in domestic violence cases
12 seems to be a way to keep people out of jail and limit
13 reoffense.

14 And I just want to -- Margie always talks to
15 me about -- I had mentioned to her several years ago
16 about the person who was a bus driver, who would lose
17 his ability to drive the bus without a certificate of
18 relief. It has really -- the anecdote has faded into
19 the recesses of my memory, but all I remember is that
20 he got it and was able to keep his job.

21 And I will say that I've signed hundreds of
22 certificates of relief, and why do people come, not
23 just now, at sentence, but people who come back to me
24 after serving their prison term or being off probation
25 or whatever, whatever happened, why do they come back?

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2 Because I ask them, why do you want the certificate of
3 relief? They're looking for a job. Why would you deny
4 somebody the opportunity to be gainfully employed and
5 be a productive member of society? It would be insane
6 not to do that. So the more initiatives like
7 certificates of relief that government can come up
8 with, I think, is important.

9 I just want to end -- I don't want to take
10 up much of your time, but two letters that I received
11 from people. One was a middle-aged black woman who had
12 a fight with a family member outside of family court,
13 was arrested, and because it was a family relationship,
14 came to domestic violence court. I wound up -- she had
15 a drug problem. She had some mental illness, and so a
16 conditional plea was entered into where she would plead
17 to a felony and a misdemeanor. But if she went into
18 treatment and succeeded, the felony would be dismissed
19 and vacated, and she'd receive probation on the
20 misdemeanor.

21 She stayed with me for over a year and did
22 really, really wonderfully. At the time of the
23 sentence, the D.A. wanted to insist on the probation
24 sentence, but everything I've read in terms of
25 criminogenic risk factors told me that this woman did

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2 not belong on community supervision, that the condition
3 of discharge would be sufficient to keep the community
4 safe and to let her get on with her life.

5 So she wrote me a letter. "Dear Judge
6 D'Emic, I want to take this opportunity to thank you.
7 My life changed drastically with the opportunity that
8 was given to me. I'm a ten-plus-year addict, and I
9 never knew I suffered from a mental condition. Coming
10 into the system gave me a chance to turn my life
11 around. That's a hard sentence. There are a lot of
12 people like me that need help and don't know any
13 better. It's the drugs that make them think there's no
14 more to life than getting high every day, and when I
15 think back to how I was when you first met me, so
16 shamefully addicted, I really thought I was going to
17 die, and there was nothing anyone could do to change
18 that. I just wanted to let you know that I am so
19 grateful, and your decision literally saved my life."

20 So, I mean, a letter like this is pretty
21 good, but I got a better one, and I'm going to end with
22 this one. This was a fellow, you know, in contrast
23 because he was a young white man who violated an order
24 of protection. I think he was a predicate, and he came
25 to me -- this is going back to 2003. In 2005, he had

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completed a drug and alcohol program, a little mental health component to it as well. He had again pleaded to a felony and misdemeanor. In 2005, he was put on probation, intensive supervision probation, and a year later, it was marked for calendar, and he was on general probation.

When he first came to me, all he wanted to do was plead guilty and go to prison. He said, I want to get this over with. I want to get this over with. What I did was say, well, think about it. The district attorney is offering you a program, and I'm willing to do it. No, no, no. I want you to go back to Rikers Island and think about it.

In 2009, I got a letter -- you know, this is one of those times -- I mean, we all -- I love my job. I mean, don't get me wrong, but sometimes you have days when you come in, maybe you don't feel as good. I think this is one of those days, and I open up this letter and say, what the hell is this, you know, that kind of thing.

But in order to appreciate this, does everybody know where City Island is or does anybody know? It's in the Bronx. You'd hardly know you were in the Bronx, but it's a beautiful little -- kind of

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2 surrounded by water island in the Bronx.

3 "Dear Judge D'Emic, my name is Thomas
4 Houlihan. A few short years ago, I stood before you in
5 shackles, an addicted and broken man. I had lost all
6 love for myself and those around me. I was looking at
7 a long prison term for my selfishness, foolishness and
8 arrogance. At that time, I saw nothing in myself worth
9 salvaging, but you did. For this, you will always hold
10 a special place in my heart. You offered me treatment
11 instead of prison, but I refused. You sent me back to
12 Rikers Island to reconsider. We went through this for
13 several months. You could have washed your hands of me
14 so many times but didn't. I relented and went to
15 treatment. For this, I owe you my life. Today, I am
16 sober, happy and healthy. I own my own business, live
17 in a beautiful home and have a wonderful, little
18 Italian fiancée and a great soon-to-be stepson. I
19 would have none of this were it not for you."

20 Not for me, but because of the opportunity
21 that was given. And let's see. Okay. "I will never
22 forget you for introducing me to this precious gift
23 called life. From Rikers Island to City Island, not
24 bad." He has a home in City Island.

25 And, you know, I read these letters, not

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kind of to self-promote, but in the years that I've been a judge or in public service, it's always been my belief that the relationship of government -- and I think especially the judicial branch of government -- has to be primarily a human one, and only secondarily a legal one. I consider my job -- and obviously, I put people in jail, you know. That's part of my job. Not the best part of it, but part of my job. But I'd like to think that I'm not judging them as human beings. I'm just judging their actions, trying to mete out something that is proportionate to their actions.

So given the opportunity -- and I hope that this Task Force comes up with more opportunities to give me to do this, to better the lives of people that have come into the criminal justice system. I think the better off that we, as a society, will be.

MR. JONES: Thank you. Certainly a refreshing perspective. We appreciate it.

You okay?

MS. LOVE: I'm good. I'm good. I'm particularly good hearing all of you guys. I'm sorry I didn't hear more of Vivian. I really am. Thank you, all three of you, and I think that the sort of daily chapter and verse that we hear from those of you who

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2 practice is incredibly valuable.

3 This Task Force, I suppose if you had a
4 single way of describing what we are trying to do here
5 is identify ways in which the legal system can be more
6 functional in terms of a goal of reintegration, not
7 simply punishment, but a goal of trying to help people
8 who come into the criminal justice system move out of
9 it and return their lives to ordinary, productive
10 citizens.

11 Now, we've heard a lot of testimony here
12 about the New York system, and in particular, the
13 certificates of relief and how they work. And New York
14 is unique in states in having this at-sentence
15 possibility, and it's wonderful to hear how you all are
16 making that work.

17 We also heard about this issue of sealing,
18 expungement, getting rid of the record, and I think if
19 there's one thing that this Task Force has had is this
20 sort of a tension between forgiving and forgetting, and
21 I'd really like to ask you particularly, Commissioner
22 Schiraldi -- Vinny, I used to call you --

23 MR. SCHIRALDI: You can call me Vinny.

24 MS. LOVE: -- a long time ago. You
25 mentioned sealing, and I know New York has sealing for

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2 non-conviction records. So if a case is dismissed and
3 there is no conviction, then there's the possibility of
4 sealing. But I'd like to ask sort of functionally, is
5 sealing realistic these days? Technologically, what
6 does it mean? This is kind of what we're struggling
7 with. People would like their record to go away. How
8 would a more thorough relief beyond the simple removing
9 the barriers that the CRD accomplishes -- what would a
10 more thorough relief system look like?

11 MR. SCHIRALDI: So we have legislation right
12 now to reduce -- to give judges options at sentencing
13 to give three, four or five years for felonies and two
14 or three years for A misdemeanors, instead of a
15 straight three or a straight five that they have to
16 give now. Had we not had -- and so I'm busting my butt
17 trying to get that passed. I've been trying to get it
18 passed for three years. I don't know if I'm going to
19 have a fourth year, but I'm focused on that.

20 But had we not had that, we probably would
21 have had the civil sealing bill that we were promoting
22 this year. I had gotten sort of conceptual approval,
23 and we had done a lot of work on it. We were just
24 getting ready to start to talk to OCA, talk to
25 prosecutors, but they figured, look, you ain't getting

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2 two things of out of them this year. So you got to go
3 for one thing, right.

4 So I say that by way of saying we actually
5 had to grapple with all this. I mean, we talked about
6 civil penalties. How do you get the world of sort of
7 these not particularly upstanding companies that
8 proffer criminal records to do the right thing, right?

9 And so the two things we had thought of
10 was -- one is there's this group that's like Teach for
11 America. It's called Code for America, and they're a
12 bunch of sort of tech guys that just go out and help
13 government do better IT stuff. And we were going to
14 deploy them onto this problem and say help us figure
15 out a way for the state to purge these records, right.

16 And we were also going to ask them for help
17 on the rap sheets too, right. Because I tell you what,
18 DCJS is damn good at letting people know when someone
19 gets a felony conviction, right. When they don't get a
20 felony conviction, not quite as good at letting the
21 world know that, right, but if they can let you know,
22 they can also let you not know, right. So the
23 technology should exist.

24 So one was going to be a technological fix,
25 and one was going to be an old-fashioned civil penalty,

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screw it up, and you get fined, right, or people can sue you, right. If you put out information on my rap sheet that's sealed, I'm going to sue you or we're going to fine you.

And then, you know, we'll do a communications strategy around that. So once we took a shot at one of the big ones and advertised it, let The Times know about it, so the rest of them say, uh-oh, you know, I better figure out a way to do this. There's a whole bunch of bad information I'm giving out about a whole bunch of people. They can sue me or the state will fine me. So that's open on the civil penalty, but we didn't play it out because I didn't push the bill.

MS. LOVE: How do you feel about a sealing remedy, Judge, for cases that are now not in the dismissed category but in the category of convictions? How would a sealing remedy work or is there an alternative to sealing in your opinion?

JUDGE D'EMIC: Yeah, yeah. It's an interesting -- I mean, obviously, sealing is sealing, and a dismissal will result in sealing. But sometimes the D.A.'s Office of Mental Health will allow a dismissal without sealing because they want to know if

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there was a prior case only because, I mean, we take predicate felons as well, and, you know, they're willing to give it a chance and give the dismissal but not the sealing.

I mean, again, I have to -- you know, you have to look at the individual cases, but it wouldn't be something as a blanket rule I'd say I'd be against it. I'd probably be for it. I'd say let's look at it, and without making any presumptions, say look at it on a case-by-case basis and then determine whether or not, you know, the balance between public safety and the consequences to the defendant can balance. If it tips in favor of the convicted person, then seal it, you know.

MS. LOVE: Is there some alternative to sealing that you might have thought of that or you might think of that would be less in the forgetting side and more in the forgiving side that would -- we talk about restoration of rights, but also restoration of status, that we want people to be able to be in the community and be a full-fledged, good-standing member of the community. Is there some more visible sign of that that you could comment on?

JUDGE D'EMIC: I always liked the idea of

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2 expungement after a certain period of time. I think
3 the forgetting is more important than the forgiving.
4 Do you know what I mean? I mean, nobody is asked to
5 forgive anybody, but to forget so that the person can
6 get on with their life.

7 MS. LOVE: Vivian, how do you feel about
8 this sort of larger relief? What would be, in your
9 view, an ideal way to deal with this problem of sort of
10 lost status, lost citizenship that comes with the
11 conviction?

12 MS. NIXON: All the evidence points to the
13 fact that time matters. People age out of crime, and
14 there's a certain point where a person is no longer a
15 threat. And, you know, really oddly, the more violent
16 the crime, the less a threat a person is over time, and
17 I think that we need to take a look at the science.
18 And after a certain period of time, the record
19 shouldn't exist. It just should not exist.

20 It's the easiest solution. It doesn't
21 require people to have compassion or forgive. Just it
22 requires them to not have the information, and if they
23 don't have the information, they can't make decisions
24 based on it. If the research proves that that's a safe
25 thing to do, it's the easiest thing to do. I think

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expungement after a period of time is the way to go.

MR. SCHIRALDI: We were talking with our legislation about civil purposes. We weren't talking about the courts and the cops. They can still see it. It was just for civil purposes. I'm a landlord, by the way, right.

MS. LOVE: Right.

MR. SCHIRALDI: So I do credit checks on people who live with me, who live at my place, and ten seconds after I do my credit checks, I get like five e-mails from different companies asking me if I want to run people's prior records. Very often, they're the same -- they're willing to take the same release of information form, even though it doesn't say criminal record on it.

I specifically -- I wrote it because I didn't pull one off the Internet. I read it and wrote it because I didn't want the ability to check people's criminal records, but I have the ability just based on their release of information that allows me to check their credit. People will tell me anything for ten bucks.

MS. LOVE: Yeah. Well, I know. You turn your computer on, and you've got an offer down there,

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2 ask about your neighbor or your -- whoever.

3 If there are political and practical
4 obstacles to actually making a record go away, is there
5 an alternative that you could think of? I mean, I
6 guess it was you, Vinny, that mentioned the
7 certificates of good conduct, which in New York -- in
8 some jurisdictions, there's kind of a two-tier relief
9 system.

10 The first tier, which is the in aid of, get
11 rid of the barriers, and then there's the second tier,
12 where you've made it, and it's been seven years or five
13 or ten or whatever it is that you've been -- and then
14 you get an additional -- sometimes it's called a
15 pardon. Sometimes it's called a certificate of good
16 conduct. In Illinois, for example, it's what the
17 courts do, but it's a transparent thing. It's not an
18 expungement thing.

19 Is there an alternative that would work in
20 the sense of actually restoring people, that you can
21 imagine, that's something different from making it go
22 away?

23 JUDGE D'EMIC: Doesn't parole issue
24 certificates of good conduct?

25 MR. SCHIRALDI: After certain waiting

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2 periods.

3 MS. LOVE: But they don't mean the same
4 thing in New York. In New York, it's cut in a
5 different way. It's the eligibility criteria as
6 opposed to the two-tier.

7 MR. SCHIRALDI: Right.

8 MS. LOVE: Yeah, yeah.

9 MR. SCHIRALDI: You go to prison. You get a
10 certificate of good conduct.

11 MS. LOVE: Exactly, exactly.

12 MR. SCHIRALDI: You don't --

13 MS. LOVE: It's a different population
14 eligibility as opposed to a different function.

15 MR. SCHIRALDI: You know, New York also has
16 this other law, which we didn't talk about, that says
17 that if your criminal offense isn't related to the job
18 you're applying for, it's illegal to discriminate,
19 right.

20 I could imagine -- first of all, I think New
21 York City is just unbelievable the number of people we
22 deal with, right. There were 125,000 misdemeanor
23 arrests last year, right. Sixty thousand just to sort
24 of add to the Judge's concept that he mentioned before
25 about, you know, the conditional discharges versus

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2 probation and how he made that decision based on risk,
3 you know, and evidence. Sixty thousand of them got
4 conditional discharges. 690 of them got probation.

5 So New York's judiciary is screening at an
6 unbelievable rate. There's a whole story that needs to
7 be written just about how you -- it's much harder to
8 get locked up and even to get formalized in New York
9 than it is in a lot of other places, and yet we're the
10 safest city in the country. We probably have the
11 lowest incarceration rate in the country, and it's
12 dropped by 45 percent since its peak when you include
13 prison and jail admissions so -- but I digressed, and I
14 forgot what I --

15 MS. LOVE: But that's a very -- thank you
16 for putting that in our record because I think that's
17 really important, this whole issue of the solution is a
18 more nuanced thing, and to keep so many cases out of
19 the system, I think, is a really important point.

20 MR. SCHIRALDI: But the other point about
21 the size of what's happening in New York City is that
22 automating stuff in my opinion -- even though I know
23 you lawyers really want to individualize, and I do
24 appreciate it when you do that, but sometimes it's just
25 better to make it automatic or at least presumptive

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just so that you can just automatically give the good thing to a bunch of people, and then you can individualize the really good thing.

But if you want to have a two-tier system, I would urge you guys to suggest presumption, not like you got to get it, but that you should get it so that the burden shifts to the prosecution for you to not get it. And then if you want to have a second tier, where, oh, you really did something. Now, you got to go back to the judge. Five years later, you want to get a certificate of good conduct, and that's an extra specially good thing. Then you've got to go back to the judge, and I can envision standards applying then to regulatory bodies, right.

We didn't mention housing, by the way, and we really ought to mention housing. You come out of court without a COR, and you're getting kicked out of public housing with a felony way more than what the feds require the public housing to do in New York City. It's one area where we're really backward in my opinion.

But if you wanted to then have the regulatory bodies have two tiers -- so I don't know all the standards for all regulatory bodies because there's

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just too many of them, but you could have like a COR gets you this, good conduct gets you that, and that would be the extra hoop to jump through that you have to affirmatively go for. That might be one way of structuring it, if you guys were to think it through that way.

MS. LOVE: Why don't I let my colleagues have a chance to ask you all some questions?

MR. JONES: Vicki.

MS. YOUNG: If I'm understanding you correctly, Commissioner, because -- so in New York, you've got these CORs and you have the certificate --

MR. SCHIRALDI: Certificate of good conduct.

MS. YOUNG: -- of good conduct, and you said, well, we don't know. There's no research on do these work, do these not work or whatever. Do you get any feedback from the supervising probation officers as to whether their probationers that have these are still having trouble or anything like that?

MR. SCHIRALDI: Not really. I get more from the nonprofits, the people like the job finders, and the two groups that give us the most feedback are the people that are concerned with housing and the people that are concerned with jobs.

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So the job finders say without this, you either don't find a job or you dive into the underground economy. So you can cut hair. You just have to get a license to cut hair, right. And housing is just absolutely clear. It throws families into turmoil, right, because --

MS. YOUNG: So you have to have the COR, but even if you do have the COR, they still may not -- they may not say we're rejecting you for this, but they still may end up being rejected?

MR. SCHIRALDI: Correct. In other words, for example, if you don't have a COR, your expulsion from public housing is mandatory. If you do have it, it's not mandatory, but you can still get expelled for what your crime was. It just means that it's now a decision to expel you.

Same with -- and the regulatory bodies are all over the board on this. They're all over the map, and I'm not sure if they're all over the map in compliance with the law. So what I think was intended in the 1960's as an aid to rehabilitation has now, in some odd twist of fate, become a bar to employment, right.

So I'm at the haircutting regulatory body.

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I see Vicki Young's rap sheet come across the thing. You don't have a COR. You go in the no pile. Does the law require you to go in the no pile? No. But I'm busy, right. I got to now find out about you? Forget it. The judge could have given you a COR. He's the one in charge of finding out about you. He didn't give it to you. So you must not be of good character. So you go in the bad character pile. You don't get to cut hair.

You have to think about the way these real bureaucrats work, and I'm learning more about it. We're about eight years now. That's the way they work. You know, I'm not going to risk my job for you. You don't have a COR. I'm in Albany. You're in Brooklyn. How am I going to find out whether you're good enough to cut hair without a COR? This makes it easy.

MR. JONES: Do you have a question, Penny?

MS. STRONG: I don't.

MR. WELLBORN: I just have one, and this is following up --

MR. JONES: Did you say no?

MR. WELLBORN: Penny said no.

MS. STRONG: I said no.

MR. JONES: You said no. Oh, I got to cut

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you off, Chris. I'm sorry. We have time for just one more, and Larry is sitting right next to me twisting my arm.

MR. GOLDMAN: Let me ask Commissioner Schiraldi. I assume you've been asked this question before, but let me put it in some context. The criminal defense bar has, I think we would all admit, been somewhat remiss over the years with respect to advising clients of collateral consequences before plea.

Padilla, which resulted in the failure -- by the failure of defense lawyers to advise clients of potential deportation, probably even thousands of people being deported, some of whom may not have or would have chosen to go a different route. And the role of the defense lawyer frankly -- I think you indicated and said it -- we don't pay much attention. We're concerned, as are clients, with today, the sentence.

As the role is changing, all defense lawyers in New York are concerned with failure, the refusal of probation officers generally, I think entirely, that defense lawyers go in with their clients. If we did, one, a lot of the things you're talking about --

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2 frankly, my clients often don't know whether they've
3 been convicted of a felony, a misdemeanor, if an arrest
4 was a conviction. To some people, if they don't go to
5 jail, it doesn't count in their heads as a conviction.

6 Why shouldn't there be more of at least some
7 partnership in probation? I think putting in better
8 probation for them is certainly in our narrow focus
9 here, being better able to advise our clients the
10 collateral consequence. Why shouldn't we be there in
11 that interview room?

12 MR. SCHIRALDI: I don't think you shouldn't.
13 I've circled back around three different times with my
14 staff on this, and I'm getting closer each time to
15 busting through. The reasons against you guys being in
16 there are, I think, relatively pathetic compared to the
17 reasons for you being in there. Not that I think
18 people would be barging down our doors if we did let
19 you in, by the way, but I think you should be allowed
20 in.

21 I've tackled a lot of cultural issues at my
22 department, and I'm still tackling them. Some of them
23 I win, and some of them I don't. I haven't won this
24 one yet, but I'm also not dead yet. But I think you
25 guys should be allowed in.

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MR. JONES: We've gone a few minutes over on this panel, but we started ten minutes late, so it's all right. Yesterday, we launched the campaign of a guy who was here for mayor in Philadelphia. I think we decided that today we're going to run you, Schiraldi, in New York. So you've taken on a whole new task. This has been fantastic. This is a great start to the day. Thank you very much. We appreciate it.

(Whereupon, a short recess was taken.)

MR. JONES: All right. We are going to start with our second panel of the morning. Welcome. We are pleased to have you. This is our third day in New York, and to date, it has been very informative. We've learned a lot. We've had some very interesting discussions, and I expect this to be no less. Although, I got to say, you don't look like Joe Hynes.

MR. OGISTE: I know, but hopefully, I'll be a decent imitation.

MR. JONES: But we're pleased to have you. The way that we work is that we're going to give each of you about five or ten minutes to give us your thoughts by way of an opening statement, tell us a little bit about yourselves and the work that you're doing, and then we have lots of questions.

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And the way that we ask our questions is that one of us leads the discussion, and to the extent that there's time, the rest of us will then join in. We usually run out of time before we run out of questions, but that is sort of the nature of what we're doing. There's a lot to talk about, and you guys have a lot to offer.

So for the purposes of this discussion, Penny Strong is going to lead the questioning, and I am now going to turn the floor over to you. You can decide, I guess, amongst yourselves who's going to go first, but the floor is yours. And I should just also say that, just as a precautionary, these mics are hypersensitive. So they pick up everything. I mean, we're also being transcribed.

MR. OGISTE: Well, good morning, everyone. My name is Lance Ogiste. I'm the Counsel to District Attorney Charles J. Hynes, and one of my responsibilities for D.A. Hynes is to oversee his ComALERT reentry program. ComALERT stands for Community and Law Enforcement Resources Together. It is the first prosecutor-run reentry program in the United States. We started back in 1999. All right. I'm joined today by two of my colleagues, John Chaney,

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2 who's our executive director of ComALERT, and Lanina
3 Floyd Cooke, who is our deputy director.

4 Let me tell you about ComALERT. As I said,
5 it started back in 1999, and what we try to do is
6 provide a wide range of services on site at ComALERT
7 for those people returning back to Brooklyn from our
8 Upstate prisons. Roughly about 2,500 to 3,000
9 ex-offenders return to Brooklyn each year. I'm happy
10 to say, last year, we serviced about 977 formerly
11 incarcerated people who have come back to Brooklyn.

12 What do we provide them? We provide them
13 with drug treatment through our partner, Counseling
14 Service of EDNY New York. We provide anger management
15 counseling, job training, job development. We have a
16 very close association with what used to be called
17 VESID, Vocational and Educational Services for
18 Individuals with Disabilities, so they can get job
19 training. Housing assistance, three-quarter housing,
20 permanent housing, and a wide range of other services
21 so that including -- of course, we have a workforce
22 developer, so transitional employment, permanent
23 employment for individuals coming back home to
24 Brooklyn, and those are just some of the many, many
25 services that ComALERT provides to the formerly

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2 incarcerated who come home to Brooklyn.

3 One of the other things that we think is
4 very, very important that we're involved in is
5 educating not only the community about how we can help
6 the people coming back to our community to fully
7 integrate into the community, but also educating
8 employers, which is a very important aspect of reentry,
9 employment.

10 D.A. Hynes, as you can imagine, speaks at
11 numerous locations every day and on the weekends, going
12 into different houses of worship, explaining to
13 individuals and to the employers how important it is to
14 give people an opportunity, a second chance to enter
15 the workforce, to provide for themselves and for their
16 families. We have been very, very successful in this
17 endeavor, and also our staff, in going out and working
18 with employers so that they will hire our people.

19 At present, we have about 130 different
20 employers who have employed ComALERT staff of graduates
21 of the program. All right. And they do that
22 because -- maybe because we're law enforcement, and
23 they see that as being able to trust us when we say
24 we're bringing folks to them. They know that these
25 individuals have prior criminal histories, but they are

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2 more than willing to hire our graduates. And they know
3 that they have a connection with our office, so that if
4 there are any issues, that they can call upon us, and
5 we can work things out. About 72 percent of ComALERT
6 graduates have a job. All right. The rest are either
7 in vocational training or they're in school. All
8 right. As I said, since 1999, we've serviced about
9 6,300 formerly incarcerated individuals.

10 What more can be done, though? You already
11 heard, I believe, from Commissioner -- I believe he was
12 going to come here -- Commissioner Schiraldi. So you
13 know of the work that he is doing in trying to expand
14 certificates of relief from civil disabilities, which
15 is very, very important, and we have to do more.

16 Also, you'll probably hear from Angie
17 Jimenez this afternoon, and she will tell you about the
18 work that DOCCS is doing to provide certificates of
19 relief from civil disabilities and certificates of good
20 conduct. Very, very important work to give people
21 again an opportunity to apply for so many positions. I
22 think there's more than 100 different occupations in
23 New York State that require some kind of license or
24 certificate from some kind of agency. So getting these
25 certificates is very important to at least open the

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2 door and let someone try and get employment.

3 I think it's also very important -- there's
4 a wide range -- the Four Cs project and other projects
5 done by ABA to really point out to lawyers and the
6 whole community how many collateral consequences there
7 are of a criminal conviction. So we think it's really
8 very, very important that our state legislature take a
9 real look at the types of crimes that bar people from
10 applying for certain types of jobs, and other issues
11 that they can look at that maybe they can lift these
12 collateral consequences and give people a full second
13 opportunity to come back into the community and be
14 productive members of society. That's what we want.

15 One of the things that ComALERT -- there's a
16 study that's done by Professor Bruce Western, who's now
17 at Harvard University. His study found that ComALERT,
18 in comparison to a control group that he studied,
19 reduced recidivism by more than half. So we have to
20 continue to provide resources to the different programs
21 that exist that give people the resources they need.
22 We can help train them and help develop them and give
23 them the skills that they need to enter the workforce.
24 Again, we just need to extend further that open door so
25 that they can come in and find full employment and also

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all the other resources that they need so that they can be productive members of society.

MR. JONES: Thank you very much.

Ms. Scotto.

MS. SCOTTO: Hi, my name is Melanie Scotto. I'm an attorney at the New York State Department of Labor, and I'm joined by my colleague, Wendy, who will speak to you after, and Ryan Naples in the back over there. So I'm here to talk about the Work for Success program, which is the governor's initiative to help employ the formerly incarcerated, and because we're talking about employment, obviously the Department of Labor is involved in this.

So the governor, in 2012, came up with this program, and it's part of his general plan to help underserved populations get employed. Last year, we launched a New York Youth Works Program, which helped underserved youth in the New York area find employment. It was a huge success. So then we came up with this program.

So how does this work? Obviously, there's this preconceived notion of what a formerly incarcerated person looks like. Society has it. It's a fact. We're not going to change that overnight. The

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2 issue is we want employers to see that even though you
3 may have an idea of what a formerly incarcerated
4 individual looks like, it's probably not the correct
5 idea. So we really want to change society's perception
6 as to this group of individuals. An employer says
7 that's great, but what is in it for me? I can employ
8 somebody else who has absolutely no background or
9 negative record. Why would I employ somebody from this
10 population?

11 The department is working with numerous
12 community-based organizations that have already gone
13 through this process and are well-established with
14 receiving this population, putting them through
15 extensive training, showing them soft skills. We work
16 with numerous partners throughout the region. Just to
17 name a few, our CEO, the Osborne Society, the Doe Fund,
18 and they then do all of the hard work for the employer.
19 This person comes to the employer fully trained, fully
20 ready for employment.

21 The department is serving as the middleman
22 in this process. We've seen a large disconnect between
23 these community-based organizations actually getting
24 all of these individuals employed, and we are kind of
25 serving as a link between the businesses to these

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2 community-based organizations. So how it works, a
3 business can sign up for the program. They will call
4 the department and say, I have five openings for a
5 janitorial position. Can you please send me five
6 qualified résumés? And I will interview these
7 individuals, if I choose. We then contact the
8 community-based organization, say, who do you have
9 within this region that we can send to this business?
10 The employer can choose to interview them, if they
11 like. They can choose to hire them, if they like.

12 What the governor and the department has
13 done is provide incentives for these employers to hire
14 these individuals. We can tug on their heartstrings
15 all we want, but when it comes to a business, you want
16 to know what's in it for you. So what we offer is up
17 to a \$2,400 tax credit for each individual that is
18 employed for one year within this business. We also
19 offer \$25,000 in federal bonding just to make this
20 process easier, kind of ease the minds of these
21 businessmen and women. In addition, you are also
22 receiving an employee who is completely trained within
23 the area you've requested.

24 So how we're selling this is all the hard
25 work is done. We've trained this person. They're

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2 prepared to work. And Anthony Fisher is actually here
3 and sitting on this panel later this afternoon, who
4 we've been working with, is an employer within this
5 program who has employed formerly incarcerated
6 individuals. I think he can attest to how dedicated
7 and hardworking these individuals are.

8 So it's really the governor's mission, as
9 well as the Department of Labor, to show society, to
10 show the businesses within New York that this is an
11 underserved population that deserves a second chance,
12 and not only will you receive some sort of monetary
13 benefit along with it, you're going to get really
14 hardworking, very qualified individuals to help boost
15 your business and, overall, the New York State economy.

16 MR. JONES: Thank you.

17 MS. SCOTTO: Thank you.

18 MS. PRUDENCIO: My name is Wendy Prudencio.
19 I'm also with the Department of Labor. I'm working in
20 really a lot of the day-to-day workings of the Work for
21 Success initiative. Like Melanie explained, it's
22 really a public education campaign to get employers to
23 think of hiring the formerly incarcerated. However, as
24 we went through this process -- we're working with
25 different partners. The governor got all the state

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2 agencies together, everyone who -- every state agency
3 that works with the formerly incarcerated. So DOCCS
4 was at the table. Obviously, labor plays a major role.

5 And so one of the things that we were
6 working on was to see what some of the obstacles, the
7 barriers the formerly incarcerated has other than
8 employment, and so come together and how can we really
9 focus on meeting those challenges for this population.
10 And it's been -- like Melanie said, we're working with
11 nine community partners throughout the state and five
12 cities, including New York City, and really, it was to
13 bring everyone together so we can talk about some of
14 the obstacles and then come up with solutions so we can
15 help this population.

16 One of the things that we've been doing,
17 besides educate and inform employers about the formerly
18 incarcerated, also at the Department of Labor, is
19 training our own staff. One of the things that we did
20 hear about from our community partners is -- the
21 Department of Labor has a presence throughout the
22 state. Many people know them as one-stops. These are
23 the local field offices where the unemployed go to try
24 to find employment, get services like résumé writing,
25 interview skills.

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2 However, the community partners of the
3 formerly incarcerated individuals were saying that they
4 were going into our field offices and not feeling
5 welcome or that the staff person there did not know how
6 to help them with their needs, and it is true that the
7 staff at the field offices, they see many different
8 individuals with many different obstacles, with many
9 different experiences. So what we're looking at is how
10 to train our own staff with the obstacles that we know
11 that this population has and to educate them also on
12 some of the things that they need to know, like the
13 certificate of relief, for instance.

14 So we had -- a few weeks ago, here in the
15 Bronx, we actually did bring in all our local New York
16 City field staff, and together with DCJS and DOCCS
17 staff, came in and trained them, and they did a
18 national training on the Offender Employment Specialist
19 Program, it's called. And we're just looking at ways
20 where we can facilitate that communication with the
21 community partners.

22 I've been going around to talk to some of
23 the community partners that work with this population,
24 and one of the things that they're just happy to hear
25 is that we're open to hearing what the problems are and

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2 discussing what some of the solutions can be. I think
3 that one of the great things this governor has done is
4 bring everyone together to the table. So that way, we
5 can work together, and not everyone is working
6 individually, but actually bringing everyone together
7 and look at the whole picture because someone who's
8 coming and looking for employment also may have housing
9 issues and some of the other obstacles, so how do we
10 bring everyone together so we can work together on
11 this.

12 And we are also working with DOCCS with
13 looking at and understanding the vocational training
14 within the prison system. I know that it was mentioned
15 that later today, Angela Jimenez will be here, and
16 we've been working very closely with DCJS and DOCCS.
17 And actually, just this week, I went with some of our
18 community partners to two prisons to look at their
19 training program. So that can help our field staff
20 also understand what the formerly incarcerated is
21 learning when they're in prison and how to then tie
22 that into employment because they are learning skills
23 when they're inside, and so how can we put that into
24 their résumé and explain to the employer that this
25 person has work experience, job training. Like Melanie

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2 said, it's really selling the employee to that
3 employer.

4 So those are just some of the things that
5 we're working on. I'll leave it there, and I'm sure
6 everyone will have more questions for us.

7 MR. JONES: Great. Thank you.

8 Penny.

9 MS. STRONG: Thank you, Ms. Prudencio.

10 Thank you, first of all, all of you, for being here
11 today. We really appreciate your input and appreciate
12 the opportunity to ask you questions.

13 In terms of eligibility for services under
14 the Work for Success program, are there any type of
15 offenders that are excluded, such as violent or sex
16 offenders?

17 MS. PRUDENCIO: No. So the way it works is
18 we're working with community partners. So it's the
19 community partners who are serving the population. So
20 the jobseeker goes directly to the community partner,
21 let's say, Osborne or the Fortune Society, and they're
22 the ones that have their criteria. Now, the Department
23 of Labor, we service everyone, you know, besides
24 formerly incarcerated, but everyone who comes into our
25 field office. So there are no exceptions to that.

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However, we've heard from employers, of course, that there's a concern about that. Well, am I going to get someone with -- what type of crimes am I going to get? And is it someone with a sexual offense?

So we do work with the community partners in that. We do look at all those factors, and the community partners are well used to this. This is not the first time they've heard this because there are certain industries that, depending on the crime, the employee cannot work in, right. So we do work with everyone on meeting that.

MS. STRONG: All right. And are there statistics on how many people have actually been placed thus far in the program, which I believe you said started -- did it start at the beginning of 2012 or later in the year?

MS. PRUDENCIO: So the work group started last year, and that's really -- it took us an entire year just going over and looking at all the obstacles and challenges, and there's different subcommittees. And so this is not the one thing we're looking at. There's many other things, but the public education campaign for employers just started --

MS. SCOTTO: Not even two months ago, so

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2 this is fairly new.

3 MS. PRUDENCIO: Yeah. And we have placed so
4 far in New York -- if I have the status. So the
5 numbers may not sound very impressive. We've placed
6 two formerly incarcerated in jobs right now. However,
7 while working with the community partners -- because
8 the Department of Labor is so used to, you know, like
9 these large numbers. The community partners, actually,
10 they gave us a statistic this week that they say it
11 takes about an average of 250 calls to employers, 250
12 businesses, to get one interview, not even getting them
13 hired.

14 So they said to us, yeah, no, that sounds
15 right when we said, you know, we've only had the two
16 hired. That sounds right. This is what we've been
17 working with. In fact, we're happy now that the state
18 really understands where we're coming from because,
19 like Melanie explained, we heard from the community
20 partners saying they have all this great training, all
21 these great people ready to work. However, finding
22 employment is the harder task, right. So that's some
23 of the things that we're going through, even as the
24 state.

25 MS. STRONG: And how is the program funded?

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MS. PRUDENCIO: Well, there is no -- the tax credit is the WOTC, which is a federal tax credit, and it's federal bonding. So it's not any state dollars being put into it.

MS. STRONG: My question is, when you talk about the comprehensive training and that you're providing employees who are basically ready to go, is that being paid by federal grant funding also or is there also state and local funding that goes into that?

MS. PRUDENCIO: They're being trained through the community partners. So these are nonprofits, and they have different -- money coming from different places. So they have some funding from government, some funding from grants, some funding from just donors.

MS. STRONG: And you mentioned that there are a number of field offices, and just to clarify that, is that for the New York Department of Labor or are those also the community partners?

MS. PRUDENCIO: The New York State Department of Labor was what I was referring to, but the community partners -- we're working in five cities right now. We will be expanding to the rest of the state. And so, for instance, CBO has like three or

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four different locations, but it really varies. Some nonprofits are found only in New York City. Others have local locations.

MS. STRONG: And is there any advanced screening of offenders in terms of -- like is some sort of assessment given in terms of eligibility for a particular job or occupation? I imagine that's done by your community-based partners.

MS. PRUDENCIO: Right. So when they do the training, they will assess them with their prior skills and experience, and then they put them in the training program that they get tested. And once they fulfill all the criteria, the requirements, then they get a certificate or whatever it is, whatever method that CBO uses.

MS. STRONG: And specifically, with regard to the training that's provided, if a person is going into an occupation that requires state licensing, like CNA or barber or whatever, how is the issue of the licensing bar handled? And that might be a question that's more appropriate for Ms. Scotto, but if you can address that, either of you.

MS. SCOTTO: Well, I know that certain licenses -- I know you mentioned the barber's license,

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2 which we recently found out has changed. You actually
3 can receive a barber's license and have a prior
4 conviction.

5 In regards to the licensing, if it's barred
6 by law, there's nothing that the CBO can do. There are
7 so many other opportunities for employment. So in that
8 instance, the CBO will train the individual to be put
9 into a different field, but if they are eligible for
10 licensing, they will assist with the licensing and help
11 the individual obtain that licensing for employment if
12 that's really what they want to do and if there's a
13 need and demand for that occupation.

14 MS. PRUDENCIO: For example, security
15 guards, security officers is a big thing here in
16 New York City. It's an industry that is hiring, right,
17 and we see a lot of open positions in that industry.
18 However, there's always a concern, will they need a
19 license, will that jobseeker be able to get the
20 license.

21 So CBOs -- and I know there's also -- a lot
22 of these CBOs are working with attorneys on this, where
23 they cannot be excluded just because they have a
24 criminal record. There's a whole process, and so CBOs
25 will help that jobseeker. If they're denied, they will

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2 go through all the procedures that they need to. They
3 work with them on a case-by-case, and if the CBO
4 cannot, they'll refer it out.

5 MS. STRONG: Ms. Scotto, what was the
6 impetus for Governor Cuomo to establish this particular
7 program?

8 MS. SCOTTO: Jobs. We want to get New York
9 hired, and it's a matter of really focusing on the
10 groups of individuals who are unemployed that are going
11 to have much more difficulty than somebody else. We do
12 receive a lot of backlash saying, well, I have a
13 master's degree, and I don't have a job. So why are
14 you helping this group of individuals? And it's this
15 mentality through society that we're really trying to
16 change and say that these individuals are deserving of
17 a chance, and these individuals need a little bit extra
18 help in regards to finding employment.

19 So, like I said, Governor Cuomo had launched
20 New York Youth Works last year. It was a huge success.
21 I believe we have over 12,000 youths employed now, and
22 organizations and businesses are receiving tax credits.
23 So going off of that model, we went to the next
24 underserved population, and this seemed to be a big
25 issue. So really, we just want to get people jobs, get

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2 everyone employed.

3 MS. STRONG: We've had a lot of discussion
4 about the term used to describe individuals, and has
5 the governor's office taken -- or the Department of
6 Labor, are you using a particular term and why?

7 MS. SCOTTO: We're using "formerly
8 incarcerated." We must have brainstormed over so many
9 different terms, especially in regards to our
10 brochures, and it's really a touchy subject. And when
11 settling on "formerly incarcerated," we spoke to a lot
12 of the CBOs and looked at their materials and said,
13 what's worked for because you obviously have a much
14 closer connection to these individuals. So, based on
15 the poll, I guess you could say, we settled with
16 "formerly incarcerated." And even in speaking with
17 businesses, it was, if these five options were
18 presented to you, what sounds so much more harsh than
19 the other one? You know, so that's really how we came
20 to that conclusion.

21 MS. STRONG: Sounds like you gave a lot of
22 thought and effort to it.

23 MS. SCOTTO: We gave a lot of thought and
24 effort to it, yes.

25 MS. STRONG: In terms of the 100-plus

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2 occupations that require state licensing that we've
3 heard about and some of the horror stories, what
4 position is the New York Department of Labor taking to
5 perhaps revamp any of those either statutes or
6 administrative rules that just wholly bar anybody with
7 a record, but in particular, individuals who have a
8 former felony record? And are you taking any
9 initiative in that regard?

10 MS. SCOTTO: That's a good point. This is
11 our starting point. This is how we are trying to
12 figure out what needs to be done, and we're learning a
13 lot along the way. So I would hope that that ends up
14 becoming a goal of ours. At the moment, we're really
15 trying to see what issues we're presented with, and if
16 that is one of the top few, I'm sure that the
17 department and the governor will try and amend that.
18 But at this point in time, we're kind of just trying to
19 figure out what we really need to focus on and if that
20 ends up being part of the problem.

21 MS. PRUDENCIO: I just want to add -- I'm
22 going to go back to what I was saying earlier is that
23 the conversation -- the ongoing conversation that we're
24 having with the community and the community partners
25 who are representing their participants, so this is

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something that we've heard.

For instance, a driver's license is a major issue as well. Especially in the Upstate regions, it's very difficult for someone where, if they do find employment, how do they get to that job? And so we are listening to our community partners and going back and having this discussion with the governor's office. This is a major issue. You know, here we are working so hard in getting the job of getting that employer to say yes, but then there's these other obstacles, so how can we really look at everything. So I think continuing to have that conversation is the key to all this.

MS. STRONG: And, Wendy, in that regard, are the CBOs coming back and telling you that, even with people who do have a certificate through the New York court system, are they running into obstacles, such as private background checks that are run by corporate employers or anyone else who's hiring and is running a background check?

MS. PRUDENCIO: Well, I tell you that I was actually even surprised when we started rolling out this program to hear employers say to us, as we introduce ourselves as government and Department of

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2 Labor, telling us that they just do not hire anyone
3 with a criminal record, and that they have this blanket
4 policy, even though we know that that's against the
5 law, and we're telling you that we are government
6 employees.

7 So, yes, I mean, the community partners have
8 told us, and we are experiencing that where, yes,
9 that's what employers are saying, but I think that a
10 large part of this, what the governor's office is
11 really trying to achieve is that education piece also.
12 I think what the community partners have said to us is
13 we know that overnight not everyone is going to get
14 hired. We're not going to get hundreds of job openings
15 today, right, but at least in the long run and hearing
16 this message over and over throughout the state, it's
17 going to click for some people. And I think that our
18 long-term goal is for them to start thinking
19 differently as employers.

20 MS. STRONG: Ms. Scotto, I have kind of a
21 legal, technical question. Does the New York
22 Department of Labor then administer civil suits that
23 are brought under the anti-discrimination provisions
24 for individuals with criminal convictions or is that
25 like a separate Human Rights Bureau?

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MS. SCOTTO: We don't. We actually, in forming this program -- I should have mentioned -- we did work with the Division of Human Rights, which is a separate state agency, and on our web page -- and you can take a look -- we actually have a link directly to them for issues like that. And then the Division of Human Rights deals with those civil suits.

MS. STRONG: All right. And my last question for you, Ms. Scotto, is, has either the governor's office and/or the New York Department of Labor taken an official position on what we understand to be the pending legislation for sealing of criminal records in certain situations?

MS. SCOTTO: Official position, not that I can state. No, not at this time.

MS. STRONG: Are you aware of that legislation?

MS. SCOTTO: I am.

MS. STRONG: Thank you.

And is it Mr. --

MR. OGISTE: Ogiste.

MS. STRONG: Ogiste?

MR. OGISTE: Yes.

MS. STRONG: Thank you. What is the

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2 position of your boss in terms of that current
3 legislation?

4 MR. OGISTE: He has not taken a position on
5 it yet, but, as you know, Assemblyman Lentol, who is
6 the one who presented that legislation to the
7 assembly -- it only deals with misdemeanors. It does
8 not deal with felonies. So what we've been doing --
9 it's interesting when you were asking all the questions
10 of my colleagues up here. We've been dealing with a
11 lot of these same issues since 1999.

12 Margie Love has come to visit ComALERT, and
13 I would invite all of you to come visit because I think
14 the reality is, whenever anyone is going on a job
15 interview, it really helps if you have established a
16 relationship with the employers. And that's something
17 over time, as they start moving forward with the
18 program, they're going to see because employers, like
19 anyone else, if they know you and they trust you and
20 you're sending them people, they're going to be a lot
21 more willing to hire them.

22 And they're not coming there cold. They're
23 not coming there as just a face, and all of a sudden,
24 they open up a folder and it says, oh, he's been
25 convicted of a felony or some kind of crime. Because

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2 we're sending them over there, they have confidence in
3 us, and we've built it up over the years. And they
4 trust us because again we're law enforcement. Maybe
5 that plays another role in it, but they are willing to
6 hire our people.

7 There's only two groups that we do not take
8 in ComALERT. That's sex offenders and arsonists, but
9 52 percent of our people who come in -- and we use the
10 term "clients" -- are returning citizens. All right.
11 Of those 52 percent, they go anywhere from homicide on
12 down. All right. So we take serious felony -- you
13 know, people who have committed serious felonies into
14 the program, and our employers will still hire them
15 again because if you're able to show that the person
16 has the skills and the drive and the determination to
17 take on the job, they'll give them a shot. That's my
18 feeling. I think my colleagues will say the same
19 thing.

20 MS. STRONG: Just going back a minute to the
21 pending legislation because I did look on the New York
22 Bar Association website, and it's, I guess, proposal
23 160.65, and it does refer to felony offenders.

24 MR. OGISTE: Well, the one I have, unless it
25 changed, and that's Assemblyman Lentol. I just read

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2 it. Let's see. Bill Number A04026-2013, and that one
3 only deals with misdemeanor, as when I read it. It
4 could be different.

5 MS. STRONG: Well, if it does deal with
6 felons, can you speak to some of the issues? For
7 example, such as, there are some waiting periods. I
8 believe it's two to three years for misdemeanors and
9 five years for felonies in the legislation that I'm
10 looking at on that website.

11 But just generally speaking, how would your
12 office or how would you feel as a prosecutor? Because
13 I don't know if that waiting period dates from the date
14 of the judgment being entered or the date of the
15 conviction, but you've got folks here who want to go on
16 and get their higher education. If they have a drug
17 conviction and that's not expunged -- I understand you
18 do have limited expungement for that -- they're barred
19 from getting any college loans or any aid for one year.

20 MR. OGISTE: I think that's why -- I don't
21 know what the D.A.'s position is on that specifically
22 regarding the waiting periods, but I do know, from
23 reading the draft that was done by the New York State
24 Bar Association, which I think you referred to, which
25 is somewhat different. Again, they deal with felonies

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in their recommendations, and they deal with misdemeanors as opposed to Assemblyman Lentol in what I've read, which I'll be happy to share with the committee, just dealt with misdemeanors.

And I think the waiting period was at least five years have passed as to the completion of a sentence on an eligible misdemeanor. That's from what I'm reading right now, and I think that meant from the time of the end of sentence -- don't quote me on it. It's either from the end of the sentence or at the time of the sentencing. I'm not sure which one starts the period.

As you can imagine, it can add some additional time. If you're on probation, let's say, then you have to wait for your three years to end before the clock starts to run. I mean, I think all these things are negotiable. I think many people have differences of opinion, which are the main concerns and legitimate questions as to when the clock should run, how long should it be, all these things. You know, they say the devil is in the details.

MS. STRONG: When your office does plea negotiations, I have heard anecdotally -- and you may not be able to speak to this, of course -- that at

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2 certain points in certain cases, your office has
3 required defendants to waive their right to apply for a
4 certificate of relief.

5 MR. OGISTE: I'm not familiar with that.

6 MS. STRONG: Would you agree that that type
7 of blanket policy really does place a roadblock in
8 terms of these people subsequently reentering and
9 gaining employment?

10 MR. OGISTE: I think what you have to do is
11 look at each case individually. I know, in practice,
12 the D.A. doesn't have any objection to someone asking
13 for -- and you had Judge D'Emic here. I'm sure he must
14 have spoken to that whole issue as to whether or not
15 someone should, at the time that they're being
16 sentenced, ask for a certificate of relief, which is
17 fine. I don't think there's any objection to it in
18 practice.

19 There are some occasions, though -- I know
20 some of our rackets cases or with medical fraud cases,
21 where individuals who have licenses -- yeah, there's a
22 good chance that we might say no, we're going to be
23 opposed to the person getting the relief at the outset.
24 We would like to see something happen after they've
25 done their time or they've done their probation or

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2 whatever.

3 So I think you have to really look at each
4 case individually and look at the kind of crime that
5 the person committed and whether or not we would be
6 opposed to the person requesting relief upfront
7 immediately, and I really do believe that it depends on
8 the crime that's been committed.

9 MS. STRONG: All right. Do you prosecutors
10 here in the State of New York have your own state
11 association?

12 MR. OGISTE: Yes, we do. New York State
13 District Attorneys Association.

14 MS. STRONG: And do you know what their
15 position is on either of these bills on criminal
16 sealing?

17 MR. OGISTE: No, I don't.

18 MS. STRONG: Because would you agree that
19 what we have heard here and also through other sources
20 is that the current New York system of relief, if you
21 will, from disabilities due to these various
22 certificates basically is pretty dysfunctional in terms
23 of allowing people to be gainfully employed, both in
24 occupations that require licensing and in other arenas,
25 so to speak?

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And, you know, a lot has to do with the private background checks and also the fact that many state agencies sell criminal records that are, you know -- for the most part, we've heard of a 40 to 50 percent error rate in these type of things, and you expand that out into the educational arena, where your people are getting out and trying to get the diplomas so they can get into the job placement program.

So do you think there needs to be reform in the New York laws regarding sealing, expungement, whichever term you want to use?

MR. OGISTE: Well, when you read the New York State Bar recommendation, they make a whole big discussion over whether or not they should use the term "sealing," which is only used in the CPL in New York State. They don't use the term "expungement." So they make a real distinction because, one, sealing is something that could really cause the "spring back" provision. So if someone gets rearrested afterwards, it opens back the case again, and it could be used as opposed to expungement, where it just cuts it off, and you destroy all the records. So I think sealing is the right term to utilize as opposed to expungement.

In terms of how you talk about the issue of

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2 certificates of relief from civil disabilities and what
3 have you, I think, because most of our clients at
4 ComALERT are fresh out from prison, so they're not the
5 ones that really we're dealing with for this issue, but
6 I would say when you start talking about these private
7 companies that are supposedly giving information on
8 someone's criminal history, if you talk about laws to
9 tighten up them and to make them, you know, responsible
10 for the information that they're disseminating on
11 people, by all means. I think everyone would say that
12 they have to be much more responsible because it can
13 affect someone's ability to get a job.

14 MS. STRONG: But we're also hearing -- we
15 just heard from the New York Commissioner of
16 Probation -- that the errors do not originate with the
17 private background companies. They're originating
18 actually in the court system. So that's, I think,
19 would you agree, a difficult problem to deal with?

20 MR. OGISTE: Well, I know that the Office of
21 Court Administration, I think, about a year ago, maybe
22 even longer, had decided that they were not going to
23 give out information on noncriminal convictions, in
24 other words, disorderly conduct and things of that
25 nature, and hopefully, that that is the case now and

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2 that -- I don't see it on rap sheets any longer when I
3 look on rap sheets. So I would assume that that is
4 actually happening, and it's those kinds of little
5 crimes -- I shouldn't use the term "crime" because
6 technically it's not a crime.

7 But those violations that show up, I think
8 those things need to be, if they are getting to the
9 private companies, then that should be definitely
10 looked into to try to see what we can do to improve the
11 security on that and make sure the information is
12 accurate.

13 But we need to have accurate information
14 also. If I'm doing a trial or doing a case, I want the
15 information to be accurate. If I'm going to start
16 cross-examining a defendant on a case, I want to make
17 sure I have the right information, and also for
18 sentencing purposes, when you're talking about
19 augmenting, enhancing someone's time in jail, it has to
20 be based on accurate information that they were
21 convicted, in fact, of whatever previous crime that
22 they were convicted of.

23 MS. STRONG: But that's a different tool,
24 and you and I know -- I practice in Montana -- from
25 working in the criminal justice system as attorneys on

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2 opposite sides, that we have confidentiality provisions
3 for sealing. We might talk about things on a
4 presentence in open court, but the public still never
5 absolutely gets that document. And that, I think, is
6 the issue with the sealing that the proposed
7 legislation speaks to.

8 So my final question for you is, will your
9 boss be taking a position on either of these pieces of
10 legislation?

11 MR. OGISTE: I don't know.

12 MS. STRONG: All right. Okay. Thank you.

13 MR. OGISTE: You're welcome.

14 MR. JONES: Chris.

15 MR. WELLBORN: Yeah. A couple of questions
16 for you, Mr. Ogiste. One thing is, your program deals
17 with returning citizens, people who were formerly
18 incarcerated, but there seems to be this mass of folks
19 out there anywhere you go in the United States, who
20 were never sent to or given an incarceration-type
21 sentence but also wind up, because of their criminal
22 conviction, being effectively disenfranchised from
23 employment, from housing, from licensure, being able to
24 attend their kids' school functions, whatever it may
25 be.

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Is that something that you, in your position as somebody who is effectively involved in public safety, is of concern to you or your boss on how to address those folks in terms of getting them connected with their community, becoming vested in their community because they're able to contribute or is that something you're even looking at?

MR. OGISTE: I guess the best way for me to answer that is we found that the folks who are the most affected, the most -- and we're dealing with limited resources -- the people who are most affected are the ones who have been in prison Upstate for varying lengths of time. You have to go at least one year away and that they've gone Upstate in New York State, and having those individuals, when they come back to the community, that's what ComALERT has focused on. All right.

So I can only speak from my experiences in working with the population. I think what you're saying has a lot of validity. Of course, it does affect them, but what we focus on are folks who are coming back -- who are on parole coming back to the community and how best we can help them so that we have individuals who can make that connection back to the

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2 community. The folks that I think you're speaking of
3 haven't left the community, but they still have
4 problems because they've been convicted of a crime.

5 One of the ways that D.A. Hynes -- one of
6 the things you might know about D.A. Hynes is that he
7 has a lot of alternative to incarceration programs.
8 That's one of the ways, I think, that you address the
9 particular issue you're speaking of, and that is by --
10 if someone is involved in drug treatment and he
11 successfully completes the drug treatment, we dismiss
12 the case.

13 We have other programs, such as Youth and
14 Congregations in Partnership. Again, if they
15 successfully complete the program -- I'm talking about
16 kids sometimes, criminal possession of a gun. All
17 right. Instead of having a felony, they might get a
18 B misdemeanor or other cases -- some cases might be
19 dismissed.

20 So that's how I think D.A. Hynes tries to
21 deal with the issue you're talking about, by hopefully
22 carving away a criminal conviction from someone's
23 record if they're able to complete the different
24 requirements of our programs that are alternatives to
25 incarceration.

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MR. WELLBORN: Two quick follow-ups, if I may. One, I would assume, just based on the other folks that we've talked to in various cities, police chiefs, probation folks, that your program and this whole philosophy behind it has a huge boon for public safety.

MR. OGISTE: Absolutely, it does.

MR. WELLBORN: And that's something that is documentable. Certainly, because you've been doing this since 1999, you must have some indication and statistics on recidivism rates and how much safer the community is directly related to these programs.

MR. OGISTE: Yes.

MR. WELLBORN: So saying that or you nodding and affirming that --

MR. OGISTE: Yes.

MR. WELLBORN: -- is this something that your police officers are on board with?

MR. OGISTE: Every community that I've spoken to -- when I say "communities," I'm talking about different states -- deals with reentry differently. We really don't interact a lot with the police department on this issue. That's not something -- do we try to make them aware of it? Yes,

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2 we do, but the average police officer on the street, I
3 don't think he's very familiar with the programs.

4 We do talk to them when we do training with
5 officers about some of the different alternative to
6 incarceration programs or a program like ComALERT. So
7 if they come across someone who is in need of it, that
8 they can offer -- you know, say, hey, have you called
9 the D.A.'s office? I know this person, call him. He
10 might be able to give you a hand, but it varies. Some
11 states and some jurisdictions outside of New York City
12 have a better relationship in terms of the reentry
13 issue with the police departments.

14 Let me just say this. ComALERT, because
15 it's been around so long, we basically were the model.
16 Now, in New York State, there are 19 countywide reentry
17 task forces, all right, that they've opened up around
18 the state, and basically, it's based on ComALERT
19 bringing in all the different partners, situating them
20 as much as possible with our belief that they should be
21 situated somewhat together so that you can go walk down
22 a hall and speak to people about, you know, how is this
23 person doing in their drug treatment.

24 Coming in, getting them signed up with VESID
25 so they can get the services they're going to need to

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2 pay for getting educational benefits, vocational
3 training. So that varies from county to county. In
4 Brooklyn, it's not a part of our reentry task force.
5 We have parole, is very much involved, as you can
6 imagine, and then all the other provider agencies that
7 work with us.

8 MR. WELLBORN: One last question. Following
9 up again on revesting formerly incarcerated folks in
10 their community, which, as we've discussed, is a boon
11 to public safety, I think we would all probably agree
12 the most internally exiled group of formerly
13 incarcerated people in the United States are the "sex
14 offenders."

15 Has there been any discussion amongst
16 district attorneys in your area about the idea of
17 categorizing the sex offenses so that after a certain
18 period of time for certain type offenses, these folks
19 would also be potentially entitled to sealing or not
20 have the same regulations apply in terms of have to
21 live eight million miles away from any public park or
22 circus or whatever it may be because that also seems to
23 be a huge waste of public resources, keeping track of
24 people that may not need to be kept track of if their
25 prior record is, you know, peeing on a sidewalk or

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having sex with their girlfriend that they're now married to and have three kids with?

So along those lines, have there been any such discussions about either categorizing these offenses in terms of how long somebody needs to be kept on a registry and/or sealing within your office?

MR. OGISTE: Well, I haven't been privy to any of those discussions between the various district attorneys. As you know, each county in New York has their own district attorney. So I work with Kings County. I do not know of any discussions. They might have gone on, but I'm not aware of any.

MR. WELLBORN: Would that seem like a fruitful enterprise to you in terms of again a public safety aspect?

MR. OGISTE: I think the best way for me to answer that question is, you know, I think D.A. Hynes and -- I'm going to go out on a limb -- speaking about other district attorneys, I think they're all open-minded people, and they're willing to listen to various sides of any issue so that they can see what they can do.

I'll tell you, as far as ComALERT is concerned, we've always kind of gone back and forth on

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2 the issue as to whether or not we're going to have sex
3 offenders in the program. As it stands right now, we
4 don't, but it's an issue that we continue to grapple
5 with.

6 MR. JONES: Elissa.

7 MS. HEINRICHS: My question is really for
8 the whole panel because I want to know what the
9 district attorney's office and how DOL -- I want to
10 know your separate positions on this.

11 We talked about culture changes, right, and
12 if you look at criminal laws, you look at domestic
13 violence, you know, there is a cultural -- I guess it
14 was permissible to abuse women, and you enforced laws
15 that imposed -- passed laws that said that was not
16 permissible. And with the enforcement of domestic
17 violence laws, we're saying we're not waiting for
18 change. We're going to enforce it. We're going to
19 force change, right, just using that as an analogy.
20 Well, we have laws on the books that say you can only
21 consider certain factors in employment when you're
22 looking at criminal records. All right. I'm just
23 comparing those two.

24 Now, with the program that the D.A.'s office
25 is running and the work that you're doing with DOL, you

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2 know that employers are violating the laws that are out
3 there, and what I'm struggling with is why we're
4 sitting back and saying we're going to wait for the
5 culture to change. We're not going to wait. We should
6 not be waiting. There are laws in place. Just like we
7 didn't wait in other areas, where there's hate and bias
8 laws. We're not waiting for society to change. We
9 impose laws. We enforce them. We make society change.

10 So in light of what you're seeing with the
11 work you're doing in the community, and in light of the
12 information you're receiving from employers that they
13 have blanket policies that are denying those with
14 criminal records their right to come back to society
15 and be employed, what are you doing, and why don't your
16 state agencies, whatever -- why don't you see a sense
17 of urgency in either reporting, working with the proper
18 agencies that enforce the laws? What do you think your
19 obligation is to New York? And I'll leave it at that.

20 MR. OGISTE: Do you want to go first?

21 MS. SCOTTO: Sure. That's what Work for
22 Success is. This is -- what I probably should have
23 touched upon more so is that a large component of this
24 program is the education campaign. We have been going
25 to regional economic development councils, where we

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2 present this to employers, where we have been traveling
3 throughout the state and meeting with businesses and
4 saying, listen, this is what we're offering. And also,
5 FYI, this is what's legal and this is what's not, and
6 it tends to be this ignorance to the law and businesses
7 not following the law or even being aware of it.

8 And, yes, it is your duty, and that is not a
9 defense, as I'm sure all of you know. But we really
10 want to take the position where, okay, listen, we're
11 going to educate you, and this is our kind of -- not a
12 free pass but our way of the department saying we want
13 to help you, but in turn, this is a population that you
14 should also be helping. And these are the factors you
15 can look at, and these are the factors you cannot
16 consider.

17 So that is what we're doing, and like I
18 said, we're in the beginning stages of this process.
19 And I'm sure, as we meet with more businesses, if we
20 see that this is really a large-scale issue where a lot
21 of businesses are breaking the law, we will expand upon
22 this component, but this is what Work for Success is
23 for us. So it's two-fold. We're going to educate
24 employers, and while we're doing so, we expect them to
25 also help restore this population.

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MR. OGIESTE: PSAs, too.

MS. SCOTTO: Right, sorry. We do have public service announcements on our website, which I'd direct all of you to take a peek at if you haven't, where we actually have mock interviews and we have little vignettes of what can you ask and what you cannot ask in regard to sealed records, previous convictions and whatnot.

MS. HEINRICHS: And the education piece is important. We're hearing that from other panelists as well, and while I applaud you for that, I think that's important, we're hearing that, across the state, there is a lack of awareness on some part to what the laws are, but I do -- I wonder if -- I believe that you probably have an important voice when it comes to working with the other agencies that have the enforcement responsibilities.

And I would just hope that that would be something that you'd look at because although you don't enforce it, your voice is powerful, and they do need to be enforced beyond when they are educated, and they're still making those decisions.

MS. SCOTTO: Well, we struggled with that because we said, what's our ultimate goal here? Is it

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2 to lay down the law and say to employers this is what
3 you can and cannot do, and, oh, by the way, hire this
4 population? So we are walking a fine line of where the
5 department wants to be for business as well as for this
6 population.

7 So this was an issue that we dealt with, and
8 that's when we partnered with the Division of Human
9 Rights, where they were going to kind of take the
10 enforcement side of it, where we were going to educate
11 but also really promote the employment piece of this
12 program.

13 MR. OGISTE: Right. In our office, we work
14 very closely -- one of the groups that comes and speaks
15 on a regular basis to our incoming clients is the New
16 York City Human Rights Commission, and actually, the
17 former -- or the present head of the Human Rights
18 Commission of New York City is Pat Gatling. She used
19 to be the first assistant to D.A. Hynes.

20 So it's someone we have a very close working
21 relationship with and who sends people. So if any of
22 our clients feel that they were discriminated against,
23 they have the ability to go and work with anyone on the
24 Human Rights Commission to bring some kind of suit, if
25 they wish.

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2 MS. PRUDENCIO: I just want to add that
3 another key piece to this -- I mean, a lot of the
4 public education campaign is geared towards the
5 employers, but obviously, it's also informing the
6 jobseekers, those who are formerly incarcerated, that
7 if they do go to a job interview or if they do have
8 that experience, what they need to do in order to file
9 a complaint.

10 And, I mean, Melanie and I and a lot of the
11 DOL staff, we've been going out there throughout the
12 state and sitting on panels where we are informing also
13 the community of their rights, and so you're right. I
14 mean, we do hear it, and so we're also educating the
15 jobseekers of what to do in that case and working with
16 the Division of Human Rights.

17 And also, in training our own staff of when
18 they do get that employer saying that, of how to open
19 it up, like why do you have that blanket policy, right,
20 because it's usually because there's this fear under it
21 all, and then it's sort of like teasing it out also.
22 That's why I'm saying that a lot of it is looking at
23 internal ways of training our staff. So we can then
24 make sure that we are doing the best we can for both
25 because, as Melanie said, it's very hard for us to be

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like, oh -- calling them or going to them, saying hire our people, and it's like, oh, you're breaking the law. Well, here's a fine. Then no one is going to want to pick up the phone or open the door for us, right.

And, yeah, we have -- the Department of Labor, for instance, has an enforcement piece to it, but do we want to be that state government of going door to door and are you following the law? You know, it's just like education versus enforcement. I think our mission is to educate first, work with them, go along the process of how to do it with them, and then, yes, if the violations, you know, continue, then we have to then obviously look at that next step.

MR. JONES: Larry.

MR. GOLDMAN: Mr. Ogiste.

MR. OGISTE: Yes.

MR. GOLDMAN: Is it the correct pronunciation?

MR. OGISTE: Ogiste.

MR. GOLDMAN: I know I've had some problems before. Thank you. Let me say this is a terrific program, and the Brooklyn D.A.'s office needs to be commended for it. I wonder, what else is happening in the rest of the state? You know, part of me says, hey,

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I don't really want you guys to look good -- to look in that jury pool. So I have kind of mixed feelings, but on the other hand, I realize, if a district attorney says hire this guy, it probably is a better recommendation than a criminal defense lawyer saying hire this guy. So I appreciate it.

What is happening with the other D.A.s in the state? Why aren't they following this? To what little extent do they?

MR. OGISTE: It's funny because my colleagues are smiling and I'm smiling because last week, we were just meeting with folks from DCJS. Most of our funding comes from DCJS, and as I said, because of the success of ComALERT, they created these countywide reentry task forces all over. There's 19 all over the state, but we are the only one that's headed by the district attorney's office. I mean, you have to take -- someone has to take the responsibility. That means there's a good and there's a bad that comes with it because if something bad happens, people are going to point to you and say, why is this happening?

But, in our opinion, for a reentry program to be really effective, there has to be someone who says, okay, we're going to be the ones that are

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2 responsible, and all the other groups, and we have to
3 work very closely with parole because parole -- it's
4 really their responsibility. They're the first ones
5 who have the responsibility for individuals who are
6 coming back home who are on parole from prison. All
7 right.

8 What happens when they get a new case?

9 That's where we come in. A lot of times, it's
10 committed right where the guys live, right, you know,
11 in Brooklyn. So we get a chance to look at whether a
12 case is really -- you know, what are we dealing with
13 here? What kind of case is this?

14 And if it comes out this guy has already
15 been in ComALERT and he's been doing good. You know,
16 he's been -- we do drug testing on site. His urine has
17 been coming back clean. The guy has been following
18 through on everything that we're asking him to do. So
19 let's say he then gets arrested for turnstile jumping
20 or he gets into an argument with his girlfriend, and
21 the cops come, and he gets arrested or something of
22 that nature.

23 We're the ones who are looking at his case
24 and saying, okay, let's try to do something here.
25 Don't violate him, and parole has been very good. It

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2 changed their attitude about these things. I've been a
3 prosecutor for 26 years now. I've seen a huge sea
4 change in how law enforcement looks at these kind of
5 issues. So some of the D.A.'s offices are really good,
6 and they're involved in their countywide reentry task
7 forces. Some are doing extremely good work; others
8 aren't.

9 But I think you're going to see a growing
10 body of offices, and D.A. Hynes, his goal is to have a
11 reentry program in every D.A.'s office in the United
12 States. He believes it's something that -- if you
13 really care about public safety, it's something you
14 should have because you can cut recidivism. If you cut
15 recidivism, you're cutting crime. You're cutting the
16 people who are the victims of crime. So it's a good
17 thing to do, and I think more offices are going to be
18 doing it.

19 MR. GOLDMAN: Let me ask you one more
20 question, and this deals with the question of sealing,
21 expungement, whatever. It is my belief -- and this is
22 an understandable belief because basically, deep down,
23 D.A.s want to win cases as much as defense lawyers do,
24 and there is presumed to be an advantage to
25 cross-examining a defendant and, to the extent allowed

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by law, showing his or her prior criminal record.

How would you feel -- maybe you can answer this, and maybe you can't -- about a sealing which allows -- and I realize you have this rather peculiar sometimes sealing, where you can see it in the court records, but the D.A.'s office can't keep it, which is a little bit absurd.

But what would you think about a sealing law that allows -- limited to civil sealing -- allows a district attorney in evaluating how fervently to prosecute a case, evaluating their bail determinations, sentencing recommendations, court sentencing recommendations also -- how would you feel about sealing laws if they allowed the district attorney, in the proper performance of his or her duties, to use those convictions? Would that make you feel a little bit better? Would your office be more likely to support them?

MR. OGISTE: Well, again, I don't know the position. I don't think the D.A. has taken a position on the issue of sealing, but if you're asking me personally --

MR. GOLDMAN: Yes, if you can.

MR. OGISTE: Me, personally, I think that's

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2 what is actually in the assembly bill that's been
3 presented by Assemblyman Lentol, that if someone
4 gets -- let's say a case was sealed, but they get
5 arrested on a new case. It springs back to life. It's
6 unsealed automatically.

7 So, of course, I would want to be able to
8 use that as part of my investigation. I would want to
9 use that if I'm cross-examining and the court allows me
10 to go into, if not the underlying facts of his prior
11 conviction, at least be able to mention that, yes,
12 wasn't it, in fact, true that you were convicted of
13 whatever crime you were in the past. I would
14 definitely like that.

15 I think one of the issues that has come up,
16 from what I've read in the New York State Bar
17 Association draft, was the issue -- I thought you were
18 going there -- talking about whether defense counsel,
19 if it's a person that's a victim of a crime or a
20 witness for the prosecution, whether that sealed
21 conviction would be unsealed so that the defense
22 counsel can cross-examine our witness about it. What's
23 good for the goose is good for the gander. I have no
24 problem with it.

25 MR. GOLDMAN: Sounds fine to me.

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MR. OGIESTE: I have no problem with it, me personally. That's one of the issues that's actually been debated as to whether or not that should be allowed.

MR. JONES: Margie.

MS. LOVE: I'm sorry to hammer you on this particular issue, Lance.

MR. OGIESTE: It's all right. Go ahead.

MS. LOVE: But it is one that is of great concern to us because we're really looking at relief mechanisms, legal relief mechanisms. I have to say I'm a little surprised to hear that D.A. Hynes has not thought about a policy on sealing or expungement.

MR. OGIESTE: I didn't say he hasn't thought about that. I just --

MS. LOVE: All right. That he doesn't have a position, let me put it that way.

Beyond the CRD, which is -- well, first of all, this morning, Commissioner Schiraldi said that he favored kind of a mass presumption of the CRD at sentencing as kind of a mechanism that Governor Rockefeller, who pushed this law back in the '70s or '60s, wanted to help people get on their feet.

Now, what would your position be -- your

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2 office's position be on that sort of presumption of
3 getting a CRD right at sentencing?

4 MR. OGISTE: Again, you're asking me to --
5 in this particular case, I cannot speak for the office.
6 I would say this. I would think, if you want to go
7 with a presumption that the CRD would be granted at the
8 time of sentencing, I cannot see anything wrong with
9 that presumption because again it depends on the case.
10 It really does.

11 If we're talking about -- you know, New York
12 City is different from Upstate, but let's say someone
13 steals a bicycle. Even though it might be a
14 thousand-dollar bicycle, you know, I don't think anyone
15 is going to say, okay, you can't get a certificate of
16 relief at sentencing on that particular matter, where
17 there's no injury, nothing like that.

18 MS. LOVE: How about --

19 MR. OGISTE: But if you're talking then --
20 let's say where it's some kind of medical doctor or
21 something of that nature who is involved in Medicaid
22 fraud. Well, we might have a different attitude about
23 that. We really might. So again, that's what I was
24 trying to say before. It really depends on the case,
25 what the facts are that occurred.

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MS. LOVE: I'll give you a piece of information that you can use from now on. There are actually 1,159 employment licensing bars in New York, of which 518 come from federal law and 641 come from New York law. So you've got a big, new figure from everything ranging from not being able to be a CPA to a pesticide applicator to who knows what, and you can look it all up on our little website.

MR. OGISTE: And that's exactly the reason why D.A. Hynes believes that we really do have to look at all these -- these are on the state level, state laws?

MS. LOVE: Right.

MR. OGISTE: -- at all these various bars and see what -- logically, what we can whittle away so that we don't have to deal necessarily with the issue -- not deal with the issue of expungement or sealing, but something we can attack, where we can look at on the law, our legislature, and say, okay, we need to take this away. It's a bar to people getting jobs.

MS. LOVE: But even if it's a bar gone -- even if the bar is gone, there is still the need for guidance. Bureaucrats -- Commissioner Schiraldi said this morning, bureaucrats don't like to make decisions.

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They like somebody else to have made the decision. If you don't come in with a CRD, you go in the no pile.

We need to know what the state officials, including the prosecutors in the state, are thinking about helping decision-makers come to a positive solution. What sort of legal mechanism, apart from dismantling the structure of automatic bars, what are you doing to help get relief for individuals? What sort of mechanism, whether it's sealing, whether it's some super certificate, whether it's a pardon, whatever it is.

I mean, that seems to me to be an exercise, sort of the next step from ComALERT, but beyond the point where they're formerly incarcerated, where they're just people, your clients. I like "clients." That's a good, neutral word, but people with a criminal record, what they can do. And let me just ask you. Have you all been brainstorming about that issue?

MR. OGISTE: Well, I know, as I said, there's discussion regarding -- as I mentioned, on Assemblyman Lentol's bill. I'm sure that's been under discussion.

MS. LOVE: Misdemeanors only. How about felonies?

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MR. OGISTE: Well, that bill --

MS. LOVE: Right, right.

MR. OGISTE: -- only deals with misdemeanors.

MS. LOVE: Right, right.

MR. OGISTE: So I know that the issue of sealing is under discussion among the district attorneys. I know it is under discussion. Where, at what point it is, I have no way of knowing.

And the same thing, as I said, regarding certificates of relief from disabilities, CRDs, as you call them. I know the amount of work you've done on it, Margie, regarding that issue. Again, we're all for, if you want to say a presumption at the beginning, that the CRD is given. I don't think anyone is against that, at least not -- I don't think D.A. Hynes is. It's just a matter of we have to look at the case and whether or not we would be opposed to it. I mean, I hope I gave good examples of when we would be opposed possibly to it.

MS. LOVE: Yeah. Thank you very much.

MR. OGISTE: You're welcome.

MS. LOVE: I appreciate that.

MR. JONES: Vicki.

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2 MS. YOUNG: I can't remember whether it was
3 Ms. Scotto or Ms. Prudencio who said that you had heard
4 from the nonprofits on the ground that, even for them
5 to get an interview for one of their clients coming
6 through, it was 250 calls. Somebody said that. That
7 figure is out there, and you said that's just to get
8 the interview.

9 And I guess they didn't give you the
10 separate figure of -- and how many interviews do one of
11 the clients normally have to have before they actually
12 get a job? And I guess, if anyone back there has these
13 numbers, but I'm just saying so these are really -- and
14 this is when the nonprofit is helping them get a job as
15 opposed to someone just trying to get a job on their
16 own. So the collateral consequences are truly
17 tremendous, and since D.A. Hynes' ComALERT program has
18 been in effect since 1999, I'm sure you're hearing it
19 through your partners as well about the difficulties.

20 So what consideration, if any, does it play,
21 either in the prosecuting decision-making, the
22 disposition or in the court system -- what discussion
23 is there of all these collateral consequences at the
24 front end as opposed to ComALERT is at the back end? I
25 mean, you know, does the fact that there are such

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2 collateral consequences -- what discussion or training
3 is there for, you know, A.D.A.s within the court
4 system? In the D.A.'s office, does the Brooklyn -- is
5 there training on that or discussion?

6 MR. OGISTE: Collateral consequences? I'm
7 sorry. I thought you were directing the question to
8 them so I kind of --

9 MS. YOUNG: Well, I started talking to them,
10 and then I -- I mean, it sort of -- their numbers show,
11 you know, just a snapshot of what a difficult problem
12 it is, and the Brooklyn D.A.'s office has had their
13 ComALERT program. So they should be having -- I'm
14 assuming hearing similar input from their partners.

15 So then knowing how tremendous these
16 collateral consequences are, is that information
17 applied or analyzed or used at the front end of either
18 charging or how something is going to be disposed of or
19 what somebody should be told in court? Is there any
20 discussion of that?

21 MR. OGISTE: I mean, it's a real -- I hope
22 I'm going to answer it correctly. That's a very broad
23 question because the first thing that we're concerned
24 about when a case comes in is the fact of that case.
25 That's the first thing that we are looking at. What's

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2 the evidence? Is the case -- so again, in New York
3 State because felonies, you have to go before the grand
4 jury. Is this a matter that should be a felony or
5 should it be a misdemeanor? All we're doing is looking
6 at the facts of the case first.

7 So all the other issues about collateral
8 consequences, at that stage, are not being looked at.
9 I think you have to kind of go with a step-by-step
10 process. Let's deal with the facts of the case as it
11 comes in. Is it a felony? Is it a misdemeanor? You
12 know, injuries, all the basic things we all look at.

13 And then, once you indict it, how you handle
14 it becomes a whole nother issue. I think that's where
15 collateral consequences do come in, and as I tried to
16 say and answer the gentleman's question at the end, why
17 we have all these alternative to incarceration programs
18 and how we deal with those issues because we do realize
19 that you don't want to saddle a kid, when you get a
20 16-, 17-, 18-year-old arrested for a felony, and we
21 don't want to -- we know the stigma it carries. How do
22 we deal with that? I hope that answers your questions,
23 ma'am, at least to a certain extent.

24 MS. YOUNG: And how has that approach been
25 translated to other D.A.'s offices? I know Brooklyn

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seems to be -- you know, there's a lot more different courts and programs in Brooklyn, we hear.

MR. OGISTE: I was going to be flippant, but let me take that back. I was going to say, every D.A., they run their shop the way that they want to. So, you know, some D.A.'s offices -- I mean, we have visitors from -- we just had visitors from Maryland, from Delaware, from -- I can't remember all the different locations that have come to see ComALERT and how -- and also not just -- oh, and Philadelphia. Philadelphia D.A. Williams has sent people up to look at ComALERT, how it's organized, and other programs too.

So I think again there is a sea change that is happening in prosecutors' offices. There's a lot of ways to look at how you deal and bring public safety, and I'm proud to be a part of it.

MR. JONES: Jenny.

MS. ROBERTS: Thanks. I guess, let me start with a follow-up question on that last one. I'm going to give you a hypothetical in a white collar case. If someone was to come to the assistant and say someone will -- the defendant is going to lose, my client -- a defense lawyer coming to you is going to lose a professional license if you indict on a particular

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2 crime. Is your position that you would not factor
3 those things into account in, say, preindictment
4 negotiations or is there a role for that?

5 And the reason I ask is because we're
6 getting a pretty clear picture both from you and from
7 pretty much every panel that we've had that a lot of
8 the things we're talking about are too late for some
9 people so that there aren't effective legal mechanisms
10 for relief in certain cases, and so that there may be a
11 need for, and this Task Force might look at whether
12 there should be, recommendations about the front end.
13 And I think that's why you're getting some of the
14 front end questions.

15 So, for you, I think my question is whether
16 you would consider that as a policy in the district
17 attorney's office, that you would move consideration of
18 collateral consequences to the front end, knowing the
19 sort of web that's out there, as you well know from
20 ComALERT.

21 MR. OGISTE: It's interesting the way you
22 posed the question because it really does depend on the
23 type of case you're talking about. If you're talking
24 about white collar crime, usually, there's been an
25 investigation. So our rackets division would be

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2 utilizing wiretaps. They would be utilizing
3 confidential informants and building a case, and just
4 like, I guess, even the U.S. Attorney's Office, then
5 you might tell the person that they need to come in or
6 you send out your officers or whatever, and they make
7 an arrest, and they come in with their attorney.

8 Maybe at that point in time -- it's not
9 unheard of, of course, for them to have a discussion as
10 to how they can resolve that issue, and they do it at
11 the front end. But when I was giving my examples, I
12 was talking about the kind of regular crime that we
13 normally get.

14 MS. ROBERTS: Well, I'd like to extend it.
15 Do you take the white collar example to "regular"
16 crime, which is really what most people are charged
17 with because some of the same issues apply? They may
18 take some licensure issues. They may take -- they may
19 not be white collar licensure issues or they might be
20 in the future.

21 MR. OGISTE: I used white collar to follow
22 your example when you're talking about investigations.
23 In those kind of instances, when you have an
24 investigation, possibly then you can, and I'm sure they
25 do, even though I've never worked in the rackets

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2 division.

3 But from just speaking to my colleagues,
4 that in those kinds of situations, yeah, I think there
5 is a lot of discussion that goes on preindictment,
6 let's say, so they can get some kind of plea prior to
7 the indictment, and maybe they do consider -- and I
8 know -- not maybe -- they do sometimes negotiate as to
9 whether or not the person is going to surrender their
10 license as part of their plea. That's done upfront.

11 But again, normally speaking, someone gets
12 arrested because of -- it's kind of like a spontaneous
13 kind of situation. Someone gets arrested for robbery
14 or it's an undercover buy and bust, and this person is
15 arrested. They don't get to see their attorney until
16 at the arraignment stage.

17 Now, it's up to the defense attorney to
18 reach out to us if they want to try to negotiate
19 something beforehand, but usually, when we're talking
20 about the undercover buy and bust, I haven't seen too
21 many of these guys selling drugs having a license to do
22 some kind of occupation. So that's really not in the
23 discussion.

24 We do have sometimes discussions prior to an
25 indictment if the guy is willing to plead out to a

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certain offense, and we do speak about those things. But that's not the normal course of business. So I'm just trying to give you an example from what I've seen over the years that I've been prosecuting. I hope that answers your questions.

MS. ROBERTS: Yes. I'll move on. I can follow up later.

MR. OGIESTE: Okay.

MS. ROBERTS: Another question is about -- we've heard a lot of testimony about Ban the Box initiatives and so -- I'm sorry. I was out of the room for a little while, so just tell me if it's already on the record. But I'd like to know if any of your offices have taken positions on that, and related to that, what your office's hiring practices are with respect to hiring individuals with criminal records.

MS. PRUDENCIO: So DOL wouldn't take -- you know, we don't have a standard Ban the Box. That's something that's gone to the governor's office, and I know that's something that's reviewed. And part of the task force that we put together, the community partners obviously have brought that issue up to the governor's office as well.

The state has equal opportunity employment,

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2 and so it is something that we have looked at and
3 talked to our community partners with as well, where
4 someone that's formerly incarcerated is encouraged to
5 apply to jobs through the state as well because -- I
6 know we were given an example recently that someone
7 actually applied to a DOCCS position who had been in
8 prison, and now is working with corrections. And
9 usually, those with criminal records won't think of
10 going through the state for work, for employment, but
11 it is a possibility.

12 MS. ROBERTS: Yeah, we did just hear on the
13 record that the Department of Probation, in certain
14 jobs, will actually actively seek out and hire people.
15 So I guess my follow-up question is then what your
16 organization or agency does with respect to that.

17 MS. PRUDENCIO: Right. I mean, again,
18 working on this initiative, we've been touring around
19 and meeting a lot of different people, and I know that
20 one of our One-Stop partners in -- I think it's the
21 Hudson Valley. They actually hired someone who is
22 formerly incarcerated to do the job connections for the
23 population. So it's being mindful of hiring so that
24 they can also understand the populations coming into
25 the office. So it is something that has been done

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2 before.

3 MR. NAPLES: And can I just add something?
4 We're talking about --

5 MS. ROBERTS: Just put your name on the
6 record so we can remember.

7 MR. NAPLES: I'm Ryan Naples. I'm the
8 deputy special counsel for the New York State
9 Department of Labor. I'm working with Melanie and
10 Wendy.

11 So this came up very recently in the City of
12 Syracuse, right. They introduced the Ban the Box
13 legislation in January, and this couldn't come right at
14 a more awkward time for us when we're going to the City
15 of Syracuse and saying we want you to hire these folks.

16 We're telling them this is the wrong
17 conversation to have. The conversation to have is that
18 you should be open and honest with your criminal
19 record, and it shouldn't make a difference because
20 these people are ready, willing and able and can
21 contribute to your business and can contribute to
22 economic development in your region.

23 So the Ban the Box legislation is something
24 that we do come across quite often, and it's something
25 that we think is obviously kind of a moot point for us

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because we walk in and we say we're giving you people that have criminal records, and they're trained. And it's about economic development, and these people are going to help you. So it's definitely something we see a lot more, and it's definitely tricky.

MS. ROBERTS: I guess I have a follow-up question to anybody to just dig a little deeper past that because we've heard a lot of different opinions about whether employers -- and honestly, mostly very different opinions not -- sort of stories than what we just heard, that employers largely are not willing or able to look past the record, even if they're well-intentioned, most employers, and so that's why a lot of jurisdictions have chosen Ban the Box initiatives.

So is it the Department of Labor's official position that those are not the way to go, and that instead, people need to list everything and should have to work through that because you've had success? You have data showing that there's better success with that as compared to --

MR. NAPLES: Yeah. We haven't had that conversation yet, and so our conversation really is just focusing on -- you know, it's really finding the

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employers who are able to look past them, and the CBOs that we work with have had a lot of success throughout the years. And what we're doing here is, with the good name of the governor, going out and saying take a chance on these people. This is about economic development.

I think it's almost too early for us to decide if we've hit a wall, and we need to take a stronger position for or against Ban the Box. I think it's kind of like -- it's a little -- it's kind of like the next step.

Same with, what about these licenses? Right now, the most formerly incarcerated individuals get hired by the food service, construction and building maintenance, and the real focus has been to enhance the number of employers who will hire from those industries because it's not tapped out, right. There's still employers in each of those three industries.

So I think a lot of what you guys bring up, we kind of will be looking at very closely because we keep incredible records once this gets off the ground. This was launched on March 12th of 2013. So we're in the start of it.

MS. ROBERTS: I guess we won't ask you for

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2 the data yet.

3 MR. NAPLES: Yeah.

4 MR. OGISTE: I would just say that, yes, at
5 the D.A.'s office, we do hire people with criminal
6 records. Many people that we have at ComALERT have
7 prior criminal history.

8 John, do you want to acknowledge something?

9 MR. CHANEY: Yes. I just want to --

10 MR. JONES: John, you have to put your name
11 on the record.

12 MR. CHANEY: Yes. I'm John Chaney. I'm the
13 executive director for ComALERT, and I just wanted to
14 underscore what Mr. Ogiste just mentioned, just to give
15 you an illustration of the scope of commitment of
16 District Attorney Hynes. I, the executive director for
17 ComALERT, am also a formerly incarcerated person. I
18 just want to put that on the record.

19 MR. JONES: Thank you.

20 MR. OGISTE: And also for the city -- I
21 believe New York City -- I think, maybe about last
22 year, maybe even two years now, they started that when
23 you come for your initial interview, they do not ask
24 you any questions as to your prior criminal history
25 when you apply for a job in New York City. It's after

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2 you progress to the next level of interview that they
3 will ask you whether or not you have a criminal
4 history.

5 MR. JONES: We are almost out of time. I'm
6 going to take one last stab at this front end.

7 MR. OGIESTE: I guess that's all me then.

8 MS. SCOTTO: So glad it's you and not me.

9 MR. JONES: And I guess I'd like to ask you,
10 are all the line A.D.A.s, when they come into the
11 office, given some sort of orientation about the sort
12 of comprehensive package of collateral consequences and
13 barriers that exist or is that not something that
14 happens?

15 MR. OGIESTE: I don't think it happens. I
16 don't think it happens.

17 MR. JONES: Okay. And I see that because I
18 practice mostly in Manhattan. I know it doesn't happen
19 there, but here's the real question about the front end
20 stuff because we're talking about changing cultures and
21 changing paradigms and that kind of thing. A young
22 woman gets arrested. Young mother gets arrested,
23 right. She gets arrested at CVS. She's paid for
24 Pampers, but in her purse are cosmetics, right, and she
25 gets arrested for petty larceny, an A misdemeanor, a

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theft crime and a crime of moral turpitude, right.

As a result, she could find her children and family in family court. She could find herself losing her home. She could find herself not able to get her education or to get loans for her education. She could find herself out of her public housing, and she certainly is going to have, as we know, a hard time getting a job.

Should a line D.A., when they're making those determinations about how to write this up and/or about how to think about sentencing -- should they not have that wealth of information, that knowledge about the life impediments this woman is going to face when they're making those decisions on the front end?

MR. OGISTE: I can only speak for myself on this particular issue. Mr. Jones, have you ever practiced in a prosecutor's office?

MR. JONES: No.

MR. OGISTE: Okay. That's very important to know, and I'll tell you why because the line isn't making those kinds of decisions.

MR. JONES: Well, whoever is.

MR. OGISTE: Hold on. It's important to know that, and I think where that begins is with

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2 educating my colleagues on the defense line about how
3 they want to handle their cases because you decide
4 whether or not you want to plead your client out at the
5 arraignment. If you don't want to, you don't have to.

6 And what happens, at least in Brooklyn, if
7 all these other issues you're talking about are -- and
8 I think they're legitimate concerns. Then you need to
9 bring that to the attention of the supervisor of that
10 line assistant who will be handling the case because it
11 depends on the person's criminal history again. Does
12 this person have a drug addiction? If they do, let's
13 put her in alternative to incarceration, some kind of
14 drug program. If she successfully completes the
15 program, boom, the case is dismissed. We have so many
16 programs that deal with things of that nature.

17 But, you know what, it means that the
18 defense counsel is going to take an active
19 participation in that case and not just plead the
20 person out because they want to move on with their
21 case. They have to be concerned about their client and
22 then bring it to our attention.

23 And, again, we look at all these different
24 factors. If this person has a rap sheet that's as long
25 as my arm, no, they might not get it. They've already

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had drug treatment twice. They might not get it a third time. It might be that they are going to go to jail because eventually, it starts to affect the quality of life of the merchants who they've been stealing from or the individuals who are the victims of their crime. That's my personal position from what I've seen as a prosecutor.

I am more than willing. Many of my colleagues, at least in Brooklyn, are more than willing, and I'm sure you've probably heard from your colleagues at the defense bar of all the alternative to incarceration programs we have in Brooklyn. Many times, people say if you're going to do it, do it in Brooklyn, where you'll get help.

MR. JONES: You will certainly get no argument from me or anybody on the Task Force about the fact that the education piece needs to be on all three stools at the bar. We should make sure that the defense bar is doing what they're supposed to be doing and doing a better job of it, that the judiciary is the same.

But I'm just trying to see if you agree with me that, whether it's the line or it's the supervising assistant or the bureau chief, they need to -- I'm

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2 asking right here -- do you think that they need to
3 have that sort of body of knowledge about the
4 collateral consequences?

5 MR. OGISTE: My answer would be -- and it's
6 kind of connected to Mr. Goldman when you had mentioned
7 about prosecutors who wanted to win. I'd love to say
8 for every one of my colleagues in the D.A.'s office --
9 I know what the philosophy is from my boss.

10 My job -- it might sound cliché, but my job
11 is to do justice. All right. So if that means someone
12 getting drug treatment as opposed to going to jail,
13 then that's what it means. And my colleagues who are
14 supervisors, bureau chiefs, deputy bureau chiefs, they
15 look at these kind of issues, and they are very much
16 aware of the collateral consequences. Not the line
17 assistant, though, because again they're fresh. They
18 are assistants to other people.

19 MR. JONES: That's it for questions. We are
20 out of time unfortunately, and I know they want to
21 bring in lunch.

22 MS. LOVE: No, they don't.

23 MR. JONES: Oh, wow. Well, we are over
24 time, and there is another panel waiting. Let me put
25 it that way, but thank you. I do want you to know this

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as you leave, that we commend you for the work that you are doing because we have been in other regions of the country, and there is not -- we have not seen the emphasis to change the culture, to change attitudes or to do sort of the work and have the mindsets that you have. And even though this is a tough crowd, I want you to know that we commend you for the work that you do, and we thank you for your time.

MS. SCOTTO: Thank you for having us.

MR. OGISTE: Thank you very much. We definitely appreciate it. I'm sorry. D.A. Hynes wishes he could have been here.

MS. LOVE: You're so good. We want you to be perfect.

MR. OGISTE: And we'll keep trying.

(Whereupon, a short recess was taken.)

MR. JONES: I think, because I thought it was lunchtime, everybody just had to take a lunch break. So we are starting a little behind schedule, but I have every confidence, nonetheless, this is going to be another fabulous discussion.

I believe you guys were here for the last panel. So you got a sense of how we operate. Let me ask each of you to take about five or ten minutes to

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give us the benefit of your opening thoughts, tell us a little bit about yourselves and the work that you're doing, and then we've got, as you can see, lots of questions.

For the purposes of this discussion, the person who's going to be leading the discussion from our perspective is Larry Goldman, and to the extent that there's time, the rest of us will have an opportunity also to engage you. But I'm going to stop talking at this point, turn the floor over to you. You can flip a coin, choose amongst yourselves who wants to go first, but the floor is now yours.

MR. MAIER: I'll go first.

MR. JONES: Great.

MR. MAIER: My name is Philip Maier. I'm presently general counsel and deputy director for the Office of Collective Bargaining. I want to make it clear I'm not here on behalf of the city or on behalf of that agency. I'm appearing basically because Larry gave me a call about a new article I had written that was published in the State Bar Association Journal dealing with the topic that we've been discussing. The article is entitled "Post-Convictions and Employment Discrimination" and specifically dealt with Article 23

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of the State Correction Law, which provides limited protection for people who have prior criminal convictions.

But I'd like to, I think, give you a little bit more of a general employment context in which this subject comes up. I was talking to Margaret very briefly, and I've been in the labor field for a long time. I'll leave it at that. Basically, I've been dealing with public sector unions at either the Public Employment Relations Board jurisdiction or, since October, those that fall under the jurisdiction of New York City Office of Collective Bargaining.

Now, unions basically provide some form of job protection for most of their employees, but New York still somehow has liberal representation. But in the employment field, I don't find it to be so liberal. Basically, it is a strong, traditional employment at will state. So what that means is that you can fire anybody for whatever reason you want or hire them for whatever reason you want as long as it's not an illegal reason. So in New York, there's got to be a specific statutory, constitutional prohibition which would prevent you from firing somebody.

So recently, within the last few years, the

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2 Court of Appeals issued a decision in Smalley versus
3 Dreyfus. That case came out of the financial
4 community, where there was a number of individuals who
5 were induced to remain with Dreyfus Corporation, and
6 they alleged simply that they were fraudulently induced
7 to stay there and stayed there based upon those
8 misrepresentations. Assuming those misrepresentations
9 were true, the Court found that they still didn't have
10 any cause of action. So they were able to be fired.

11 This case was basically premised upon an
12 older case from the Court of Appeals, which was issued
13 in 1983 entitled Murphy versus American Home Products,
14 and that too was an employment at will case in which an
15 employee alleged that the corporate officers were
16 engaged in misappropriating funds. And he told other
17 officials at the company about this impropriety, and he
18 was fired. This case also was in the Court of Appeals,
19 and the Court of Appeals said that this is an
20 employment at will state. So they have the right to, I
21 suppose. So you're dealing with a context where
22 there's very limited protection in employment law. So
23 that's one thing I wanted to mention.

24 The other thing I wanted to mention is the
25 court does have cases that come out, and I want to

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2 mention it before I forget about it because it's not
3 directly related to the article I wrote. You were
4 talking previously with the prior panel about
5 collateral consequences, and in the employment field,
6 there's a series -- a host of agencies which have an
7 intimate and important effect on people's lives. For
8 example, there's Workers' Compensation. There's
9 Unemployment. There's PERB. There's NLRB cases.
10 There's OCB cases. These agencies issue decisions
11 which affect people's employment.

12 There's a case that was just recently issued
13 by the Court of Appeals called -- I think it was
14 entitled Howard versus Stature Electric. In that case,
15 there was a criminal conviction for Workers'
16 Compensation fraud, insurance fraud. That person pled
17 guilty pursuant to North Carolina versus Alford. The
18 case reached the Court of Appeals, which presented the
19 Court with the following issue, what was the effect of
20 the plea on the Workers' Compensation case? First, they
21 had applied for Workers' Compensation previously, and
22 they went back for continuing benefits.

23 So the Court found simply, basically that
24 the traditional criteria of collateral estoppel
25 applied, which means that in order for a Workers'

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2 Compensation Board to be precluded from offering
3 benefits in accordance with the plea that was entered
4 into, that issue would have had to be necessarily
5 decided in the criminal context, and it had to be an
6 identical issue, and the defendant had to have a full
7 and fair opportunity to contest that. In that case,
8 however, there was no allocution of the facts when the
9 plea was entered. So the Court found that the Workers'
10 Compensation Board erred when it found that the plea
11 precluded the award of any additional benefits.

12 So, I mean, I think the employment -- this
13 is a situation where there's an intersection between
14 two fields. There's not a lot of people who have a lot
15 of criminal law experience and a lot of employment law
16 experience, but this is where the Court has spoken and
17 recognized the intersection between the two fields.

18 Now, with regard to my article, it was
19 published -- actually, it was originally published in
20 the New York State Labor and Employment Law Journal.
21 Then it was picked up by the State Bar Association, and
22 this is not to bore you, but they didn't mention that
23 to me. So I saw this. I said I wrote an article about
24 employment practices. I called and said I don't have a
25 problem with you publishing this, but it probably would

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have been a good idea to let me know about it. So I gave Larry -- actually, probably his secretary a few more calls to try and track him down, but ultimately, I did.

One thing I said interested me about this -- or one reason why I wrote this article is I saw a recent decision, which was recent at that time, that was issued by the Court of Appeals in the case called Acosta versus New York Department of Education, and in that case, it was pretty sympathetic. The court painted a sympathetic picture of the person whose employment was denied by the DOE.

That person had been involved in a robbery conviction at the age of 17, and I think, for the next 13 years, had been pretty much a model citizen. She worked for two law firms. She ended up raising a family. She had gone to high school across the street from where I lived, which totally didn't weigh into the decision, by the way, but she did basically everything right. She was working for an agency of the Board of Education, and according to that agency's contract with the Board of Ed, they had to find out whether people had prior criminal convictions. She admitted that she had one. The Board of Ed did a cursory pro forma

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2 interview, in which they ultimately denied her ability
3 to get a waiver, and her agency fired her.

4 The case went up to the Court of Appeals on
5 one of two exceptions that are present in Correction
6 Law 750, which prevents discrimination against people
7 with a prior criminal conviction. Her case went up on
8 the issue of whether the Department of Education acted
9 in an arbitrary and capricious manner in evaluating
10 whether she posed an unreasonable risk to continue to
11 work at that company.

12 The Court found basically that the analysis
13 undertaken by the Board of Education did not comply
14 with the statutory requirements in order to deny
15 somebody a job based upon a criminal conviction, and
16 the facts are clear here. And it would have had to at
17 least evaluate all the factors that were set forth in
18 the statute.

19 Those factors are what you'd expect those
20 factor to be; the age of the person at the time of
21 conviction when the crime was committed, the length of
22 time that had passed since then, the seriousness of the
23 offense, taking into consideration the purpose of the
24 statute, which was rehabilitation, and the other
25 factor, which was not adhered to by the Board of

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Education, was to give the applicant the opportunity to submit information on his or her behalf.

So that was a situation in which the Court found that the statute was not complied with, and I found it interesting from the context of the employment situation because that's one of the few situations where there is an exception to employment at will because it's a specific statute.

Ironically -- this is in passing. To give you an idea of how strict New York is, if you're fired for serving on a jury, you do not have a proper cause of action. So you can be -- the person firing you can be held in contempt by one of the D.A.'s offices that was here, but that doesn't really serve the purposes of the person who's unemployed.

In any event, just to round out what my article was saying, the other exception is direct relationship. For example, if there's a direct relationship between the crime that was -- for which the person was convicted and the job, the employer has the ability to deny that applicant the job on that basis.

So the Court has found a direct relationship is in existence when it's related to the duties at

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2 issue and one of the elements of the crime is directly
3 related to the duties. That particular exception is
4 specifically defined in the statute.

5 Now, since the decision was issued in
6 Acosta, there hasn't been a lot of cases at issue.
7 Most of the cases really, in general, both before and
8 after the statute are -- it's a pretty deferential
9 standard in terms of overturning an employer's
10 decision.

11 I think, really just taking broad brushes
12 here, if you have a criminal conviction, even a few of
13 them, and it's been a number of years ago, it's going
14 to be very tough to get a job in the school district.
15 Let me put it that way. There are a few times when
16 I've seen -- there are cases where a determination that
17 an employer violated the statute has been found, and
18 it's basically when there's absolutely no basis, in
19 fact, for the decision not to hire somebody.

20 So one case recently, which was issued by
21 Judge Velasquez -- I think it was in New York County --
22 is Exum versus New York City Health and Hospitals
23 Corporation. This person was disqualified for a
24 position as a special officer or peace officer because
25 he was terminated from prior employment through an

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2 arrest for marijuana, and he was arrested and convicted
3 once for marijuana possession. And the Court found
4 basically that it was arbitrary because it was
5 factually incorrect, and putting aside the fact that
6 they considered his arrest, which I'm not sure that's
7 even appropriate, the facts did not support the
8 statutory exception.

9 So just in general -- I don't want to take
10 up too much of your time -- all the cases set forth in
11 the article would be assistance to advising people or
12 to further help this panel's investigatory duties, but
13 generally speaking, New York is tough, but this is one
14 situation where there is some limited protection for
15 people based upon a statutory exception.

16 MR. JONES: Thank you.

17 MR. WIGDOR: My name is Doug Wigdor. Thank
18 you for inviting me. I'm a founding partner at
19 Thompson Wigdor. We are a firm that specializes in
20 employment litigation. We also do some criminal
21 defense law as well. I'm a former law clerk to a
22 federal judge and as well as a former prosecutor, and
23 then worked at a big firm prior to starting my own
24 firm.

25 And I understand that the Task Force is

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2 exploring the collateral consequences of a conviction
3 in the state and federal systems. I want to focus on
4 something that is directly related to that in the time
5 that I have, but it's on the collateral consequences of
6 accepting an adjournment in contemplation of dismissal
7 because many criminal defense lawyers don't realize and
8 don't probably discuss with their client what the
9 consequences of entering into an ACD are. And what I
10 want to do in the limited time I have is just discuss
11 the state law, the federal law and the inherent
12 conflict between the two and how that's shaped up.

13 So in the state law, you've got obviously
14 the ACD statute 170.55, which is part of the Criminal
15 Procedure Law, and part of that statute actually says
16 that no person shall suffer any disability or
17 forfeiture as a result of accepting an ACD, and it goes
18 on to say that upon dismissal after the six-month
19 period, the arrest and prosecution shall be deemed a
20 nullity and the defendant restored to the status he
21 occupied or she occupied before arrest and prosecution.
22 So that's some very good language that one might sort
23 of look at.

24 And then the Criminal Procedure Law at
25 Section 160.60 goes on to say that a termination of a

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2 criminal action at ACD shall not be considered to
3 operate as a disqualification of any person from any
4 job or profession. So the Criminal Procedure Law
5 specifically states that if you accept an ACD, it
6 shouldn't act as a disqualification from you working.

7 And there also is a civil remedy if an
8 employer -- along the lines of what you were saying --
9 New York is an employment at will state, but there's
10 actually a remedy under state law and city law as well,
11 so two separate remedies. They're pretty much the
12 same.

13 Under Section 296, where an employer is
14 prohibited from taking an adverse employment action,
15 termination, a failure to hire, anything like that,
16 where the criminal action was in favor of the
17 individual as defined in 160, which I just said the ACD
18 is considered a favorable determination for the
19 individual.

20 So that all sounds great, and so when
21 Mr. Hynes is offering you that ACD for the petty
22 larceny, you may advise your client that that is a
23 great deal, and you should go on with your life and
24 live happily ever after.

25 However, there is the federal law, and

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2 specifically, there is a federal law called the Federal
3 Deposit Insurance Act, the FDIA. And if anyone is
4 interested, I can give cites, but for this purpose, I'm
5 not going to right now.

6 But Section 19 of the FDIA specifically
7 provides that any of the FDIC-insured employers -- that
8 obviously is all the banks, some of the biggest
9 employers in this country, employing hundreds of
10 thousands, if not millions, of people -- can take an
11 adverse employment action, A, where a person has been
12 convicted of a crime of dishonesty, and where a person
13 has agreed to enter into a pretrial diversion or
14 similar program. And the question then becomes whether
15 an ACD constitutes a pretrial diversion or similar
16 program.

17 That same statute, just to show you the
18 breadth of the statute, permits the FDIC-insured
19 employer to take these adverse employment actions
20 against any director, officer, employee, even if it's a
21 shareholder or consultant. So Congress, when it
22 drafted this statute, perhaps thought that if you
23 wanted to be a shareholder of Citibank and you took an
24 ACD on a petty larceny charge, that you no longer have
25 the right to be a shareholder, I presume, based on the

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2 wording of the statute, but that's not why I'm here.
3 I'm here to talk about employment, not shareholder
4 rights.

5 The statute has a penalty of up to a million
6 dollars for each day that you employ this person and
7 imprisonment -- go to jail for this -- of not more than
8 five years. So you'll only do five years max for
9 employing this person who took an ACD on a petty
10 larceny charge perhaps.

11 So the question, as I said, is what
12 constitutes a pretrial diversion program. And the
13 FDIC, in its infinite wisdom, like many other agencies,
14 issues opinion letters, and, lo and behold, in 2009,
15 they issued an opinion letter on the question, opining
16 on whether the New York ACD statute was a pretrial
17 diversion program. And I'm not going to get into
18 whether that gets Chevron deference or other types of
19 deference and how that plays out because that's not
20 what I'm here for.

21 But the opinion letter concluded that the
22 New York ACD statute is a pretrial diversion program,
23 despite all of the language I just read to you about
24 the purpose of the ACD statute, to wipe the slates
25 clean and not to be used against oneself. The FDIC

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found what I just said, and they tried to rationalize that conclusion that the ACDs are conditioned upon a person not getting arrested again, and that's a condition of them ultimately getting the case dismissed, and also that oftentimes, ACDs are conditioned on a person entering into some sort of program or community service.

So the federal district courts -- there have been some cases that have been taking these cases to the federal courts, and there's actually a split in the authority in the Southern District, the only two cases I know about.

One was issued by Judge Sweet. It's a case involving HSBC, and he found that it remained unclear whether the New York ACD is a pretrial diversion program within the meaning of the Act, Section 19. I just talked about the FDIC Act.

On the other hand, Judge Weinstein, who you would think perhaps would rule that -- I saw some hands sort of waving in the air -- champion of criminal rights perhaps.

MR. JACOBS: He's not in the Southern District.

MR. WIGDOR: Oh, he's in the Eastern

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2 District, yes. So Judge Weinstein found that the ACD
3 is a pretrial diversion program, found that it is, and
4 therefore, because it permits various nonpunitive
5 conditions, such as the things I mentioned, community
6 service, not being arrested again, and so found that an
7 FDIC-insured bank can prohibit an employee from working
8 at a bank, no matter what they're doing at the bank.
9 They can be a teller or they could be a janitor. And
10 he went on in his decision to say, though, that "the
11 federal statute and its administration should be
12 revised to bring them into line with highly laudable
13 state policy." So he did recognize, although he
14 concluded that it was a pretrial diversion program,
15 perhaps the federal statute should be changed.

16 So therein lies the conflict between state
17 and federal law in the cases. Section 19, in my view,
18 and I guess, in Judge Weinstein's view, does need to be
19 amended. It's the only federal statute that I'm aware
20 of frankly that would permit an employer to take an
21 adverse employment action based upon an ACD.

22 And to show you sort of how crazy it is,
23 there's a statute that makes background checks
24 mandatory for all individuals with unescorted access to
25 secured areas of airports, which seems somewhat logical

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2 perhaps, and even that statute -- you know, talking
3 about national security in airports and things --
4 doesn't have this ACD provision that the FDIC Act has.
5 So you can see sort of the discrepancy there.

6 The same holds true -- there's another
7 federal statute that applies to people who work for
8 benefit plans, and that statute does not have this ACD
9 provision. So there are broad swaths of the public who
10 are subject to exclusion from consideration of
11 employment. We're not just talking again about bank
12 tellers, janitors, mortgage loan officers. We're
13 talking about people who might do consulting work for
14 banks, people who might be independent contractors for
15 banks. All of these people would be adversely affected
16 by this statute.

17 And again, to get back to where I started, I
18 highly doubt criminal defense lawyers in New York are
19 really talking to their clients about the potential
20 consequence of accepting an ACD, which sounds like a --
21 oftentimes, they will talk to them about the
22 consequence perhaps in the context of not being able to
23 file a malicious prosecution claim or a false arrest
24 claim. That's another subject, but I highly doubt
25 they're talking to them about the fact that, for the

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rest of their life, they may be precluded from working at a bank.

And if the defense bar now starts to do that and becomes aware of this, obviously the whole purpose of the ACD statute gets flipped on its head, as well as clogging the courts. People aren't going to accept ACDs if it's going to come down to that, and so there are some really serious practical ramifications as well.

MR. JONES: Thank you.

Mr. Jacobs.

MR. JACOBS: That was really interesting. Thanks. My name is James Jacobs. I'm a law professor at New York University, and I've been working on criminal records issues for the last several years, and therefore, I'm a very happy consumer of Margaret Love's and Jenny's volume on collateral consequences.

I've written a lot on this, on all the different phases about criminal records from juvenile records and the significance of sealing juvenile records for the juvenile justice system to intelligence records and gang databases and stuff like that, about arrests and the way we handle arrests and the consequences of arrests, about sex offenders, and not

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2 just in the U.S., but also, I've done a lot of
3 comparative things with Europe and also with the
4 exchange of criminal records within Europe and then
5 between Europe and the United States. So I'm deeply
6 into this topic, maybe from a little different
7 perspective than some of you.

8 But I thought today that I would just put on
9 the table some issues about the forfeiture of the right
10 to keep and bear arms, which is a topic that I'm
11 thinking about in my work and kind of drafting up
12 something about that, and it seems to me to be a very,
13 very important collateral consequence and one that
14 shouldn't be ignored and really can't be ignored.

15 For one thing, it is very unusual in that it
16 makes it a crime for a previously convicted person to
17 carry -- to engage in conduct which everybody else is
18 permitted to engage in and, in fact, has a right to
19 engage in, but if the previously committed person does
20 that, then that is a crime in and of itself.

21 It's sort of hard to think of another
22 example. This isn't just about the denial of a license
23 or something. This is about it becomes a crime with
24 the federal maximum punishment being ten years in
25 prison, and also, it's a state crime in every state as

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2 far as I know. So that makes it, I think, extremely
3 significant, and it's sort of the poster child for
4 collateral consequences.

5 It's also important because we're talking
6 here about an explicit constitutional right so that,
7 other than voting, I don't know that we have another
8 issue that tees up this situation of forfeiting
9 opportunities for a previously convicted person as
10 significantly as in the right to keep and bear arms
11 area. So this is a constitutional right, but it is
12 withheld from people who have been convicted, at least
13 of felonies.

14 It also turns out, I think, to be a very
15 important disability since many people who are
16 convicted want to keep -- want to possess and purchase
17 arms. Many of them already have arms. Some of them
18 committed crimes using arms, but probably, the majority
19 didn't. And so they have to give up the arms that they
20 have after they're convicted or be a felon in
21 possession, and not purchase any in the future.

22 That has implications, among other things,
23 in their right of self-defense when they live in a
24 dangerous neighborhood, and they know a lot of
25 dangerous people and may feel that they have a strong

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2 need to defend themselves, and yet you have a law that
3 denies them this kind of a defense of self and family,
4 which is available to everybody else.

5 So that strikes me as -- it makes it a very
6 important topic for you, and maybe you'll come up with
7 some stuff that will be very useful to me, as I have
8 struggled with what looks like an increasingly
9 important issue about collateral consequences. One
10 could say, look, this is a leading issue. We who care
11 about the rights of ex-offenders ought to really jump
12 on this because it is a very potent disability and also
13 its very high visibility at the present time,
14 especially given the culture wars over gun control.

15 And if you were to say that a previously
16 convicted person should not be disabled from exercising
17 their Second Amendment rights and that were to become
18 an accepted proposition, then a lot of other things
19 would seem like they would easily follow. Well, if
20 they are responsible enough to possess firearms,
21 they're certainly responsible enough to work in
22 pesticide areas.

23 Likewise, if we were to go the other way
24 around and say that this is so obvious, so obvious that
25 a person who's been convicted of a felony really is not

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2 responsible enough and can be presumed, even
3 conclusively presumed, ineligible from possessing a
4 firearm, then you might think, well, starting with
5 that, you might then go on and say, well, what other
6 kinds of presumptions can we make about the lack of
7 responsibility of a previously convicted person.

8 There's a lot of confusion in the law on
9 this topic since 1986 when the gun rights act of that
10 year passed and left restoration of gun rights to the
11 states so that each state can have its own laws and
12 procedures about restoring gun rights, and you can be
13 sure that there is a lot of action in every state. And
14 this is an area where there are interest groups, and
15 they are lobbying for changes.

16 And the states are all over the map. In
17 some places, you have an automatic restoration of gun
18 rights after your sentence is served, and in some
19 places, there's no way to get a restoration of gun
20 rights other than a pardon -- that's the federal law --
21 or you have to petition the court.

22 So I'm wondering whether you would think,
23 well, this is an area where we don't want to have
24 bright-line rules following. We're going to take it to
25 be your normal position. Every case should be judged

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2 on its own. Everything should be considered.

3 Well, who should do the considering? Should
4 it be any judge in the state? Should there be some
5 kind of special office, and who would be in a position
6 to litigate the other side and to oppose a petition for
7 the restoration of gun rights? The prosecutor who
8 originally prosecuted the case might even be a person
9 in a different state now. The person might have moved
10 since it was years before. Some kind of designated
11 prosecutor, statewide or countywide?

12 And what does the hearing look like? Should
13 there be a presumption one way or the other way?
14 Should the person have to prove themselves responsible
15 or should the representative litigating the other side
16 have to prove that they're irresponsible? How would
17 that be done?

18 It's just, to me -- I've written a lot about
19 guns as well, about gun control policy in the country.
20 So I know, as you do, that there are a lot of Americans
21 who think nobody is responsible enough to own and carry
22 a weapon, a firearm, and they're on the other side.

23 Substantial dissent from that position,
24 believing that there is an inherent right. Most
25 people -- everybody should be presumed capable, and

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even if there's a disability, they should be allowed to work their way back from the disability.

So I'm not going to give you an answer. I haven't worked out my answer to this problem, but I do want to just put it on the radar screen to say, I mean, for people who are focusing on collateral consequences and who see it pretty much as an easy issue and want to get as far as they can with normalizing the status of previously convicted people, this could be a hard issue for you.

MR. WIGDOR: Does the NRA state their position on it?

MR. JACOBS: The NRA, I think they do take the position that restoration of rights should be the presumption.

MR. JONES: Thank you, Professor.
Larry.

MR. GOLDMAN: Let me first say, Professor, I don't think honestly we really considered guns.

MR. JACOBS: I didn't think you would have. I thought you wouldn't have thought of it, and you really should think of it. More ex-offenders can probably carry guns.

MR. WIGDOR: And working at a bank. They

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should be able to work at a bank and have a gun.

MR. GOLDMAN: Criminal defense lawyers, I will say -- I will tell you this. Perhaps this is an eastern-western, blue-red dispute. A judge who spoke earlier, and we were talking about guaranteeing certificates of relief from disabilities, and when he denies it, he said, I denied one because the guy wanted to have back his gun collection, and that, he felt -- this is a very decent judge, but guns, he saw differently. But thank you for bringing this up.

I don't have any answers, and frankly, I don't think we've considered it. Criminal defense lawyers are frankly -- the Second Amendment is, I would say if we were taking a vote, our least favorite amendment.

MS. LOVE: Speak for yourself.

MR. JACOBS: If they can choose --

MR. GOLDMAN: No, no. I think frankly for political reasons, if nothing else, we should obviously consider this.

MR. JACOBS: Some people don't like the Fourth Amendment.

MR. GOLDMAN: Who likes the Fourth?

MR. JACOBS: Who likes the Fourth?

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MR. GOLDMAN: It used to be in the
Constitution.

MR. JONES: Is there a Fourth Amendment?

MR. GOLDMAN: I've read your list of
publications, and I've actually asked the state to give
you three CLE credits for this meeting. I see you've
written fairly recently about some comparison with the
European view toward sealing and records and the
American view. Unlike Justice Scalia, at least, I'm
kind of interested, and I think probably we all are.
In fact, I proposed a trip to Paris for this committee.

But could you give us an idea, fairly
briefly, how the European community views sealing,
restoration of rights?

MR. JACOBS: Well, this is really
interesting, and I've learned a lot about this. The
article that I published in Punishment & Society has
got so much interesting stuff about this comparing the
U.S. to Spain.

So, first of all, in Spain, you can't get a
hold of a criminal judgment. So if I wanted to know
whether Margaret Love had ever been convicted of a
crime, that information is not available. You can't
get it, either from the National Criminal Registry,

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2 which is sort of like our repositories, and you can't
3 get it from the courts.

4 You can't get it from the courts. What do
5 you mean? And my colleague from Barcelona says, well,
6 you can't just walk into a court and say you want to
7 see the case file or you want to see a judgment in a
8 criminal case.

9 I said, aren't your courts open to the
10 public? And she said, of course, they're open to the
11 public. You can go to the trial, but you can't find
12 out what happened at the end of the trial. Those
13 judgments are not even announced in open court, and
14 they're not published. So that is really interesting.
15 No one tells me anything. I've been teaching criminal
16 law for all these years.

17 So what happens when they publish an
18 opinion? She goes, well, then it has to go through the
19 Department of Anonymization. All opinions are
20 anonymized, the names and all of the identifying
21 information. So when the opinions come out, they have
22 no connection to the defendant. I didn't know that
23 there were departments of anonymization in Europe.
24 Again, no one tells me anything. I have to find out
25 everything myself. So I thought this was very

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2 surprising.

3 So criminal records are not available to
4 employers and even to government agencies, outside of
5 law enforcement and the courts very easily, except --
6 and here's the big exception, is that it seems like an
7 employer can ask a person to submit their criminal
8 record, their certificate, along with their employment
9 application, which would seem like it negates the whole
10 policy of not being able to ask people. It could
11 swallow up the whole rule, and people do have a right
12 to get a copy of their own criminal record.

13 But what the Europeans say is that that is
14 very, very rarely done, and it's not because it's
15 illegal. My colleague in Spain says it's because they
16 think it's illegal, and that seems very implausible to
17 me that employers would be misinformed about the law
18 and think it was illegal.

19 But we've done a lot of research on this,
20 and it does tend to bear out what she says. It's very
21 rare that a -- very, very rare that a private employer
22 asks about or asks a person to submit a criminal
23 record, and also, there are no bars in Spain, no
24 disabilities that come with a criminal record, at least
25 with respect to private employment. There is, however,

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2 almost a complete bar to working in public employment
3 to the extent that it's enforced, and we don't know
4 exactly to what extent it's enforced.

5 But that really is surprising and glaring
6 that it would be so different from -- here, you start
7 with this robust principle that people shouldn't be
8 disabled by their previous convictions in employment,
9 except for all of public employment. I mean, that's
10 what the law looks like on the books. They do a lot
11 less research on how it really works in action than we
12 do. So we don't really have a lot of empirical
13 information.

14 That's a long-winded explanation, but it
15 looks diametrically different in Europe than in the
16 U.S. And there are also restrictions on publishing
17 information about criminal records, posting criminal
18 records to the Internet, things that would be in stark
19 violation of the First Amendment here.

20 MR. GOLDMAN: Thank you.

21 Mr. Wigdor, let me ask you a couple of
22 questions. The Smith case was actually mentioned by
23 one of our earlier speakers who dropped by here,
24 Professor Zeidman, and he said it's one of the horror
25 examples of the three that he gave, and frankly,

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2 it's -- let me talk about the role of the defense
3 lawyer, and as I read the opinion over this morning, as
4 you recall, Judge Weinstein virtually -- I hope you
5 weren't her lawyer on the ACD.

6 MR. WIGDOR: No.

7 MR. GOLDMAN: And frankly, I have taken
8 dozens of ACDs, and up until I read this opinion, I
9 never told anyone, by the way, there are going to be
10 collateral consequences. I said for six months, your
11 record is around. Afterwards, it's dismissed, sealed,
12 nulled, expunged. You can lie and say you never were
13 arrested. And then I read this, and I changed that.

14 MR. WIGDOR: Maybe you should read that
15 sentence you read earlier because, I mean, I know what
16 sentence you're referring to where he basically said
17 the criminal defense lawyer was negligent.

18 MR. GOLDMAN: Yeah. Did you read it? You
19 didn't read it.

20 MR. WIGDOR: I didn't read it.

21 MR. GOLDMAN: Let me read it. That's a good
22 point. He talked about the lawyer's failure to tell
23 her about the adverse collateral consequence of an ACD
24 and the right to apply for a waiver from the agency.
25 "These were serious omissions by counsel," citing

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2 Padilla, "(counsel was constitutionally
3 ineffective...)" and then he says the preferred
4 practice. Then he talks about ACDs.

5 I don't know if you have given this any
6 thought. How can we say -- one of the things we
7 obviously want to do is make the defense lawyers more
8 effective in preventing of these collateral
9 consequences coming up sometime later in life. Is
10 there any suggestions you would have about how defense
11 lawyers handle that?

12 MR. WIGDOR: I think, practically
13 speaking -- I mean, I don't mean to be cynical about
14 criminal defense lawyers, but they want the ACD, I
15 mean, because it's going to get rid of the case. They
16 don't know about the collateral consequence.

17 So if the law is not changed, and let's say
18 judges started informing the individuals who were
19 charged with the crime or the lawyers were, I mean,
20 these cases are going to have to go to trial.

21 Prosecutors are not going to start dismissing in the
22 interest of justice. They're not going to start doing
23 170.40s. That's just not going to happen, right.

24 So there really is -- there's no practical
25 solution, but I think that the defense bar -- and the

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2 judiciary frankly -- need to be educated on the risks
3 that are inherent in taking an ACD. And I think that,
4 just as much as the criminal defense lawyer should be
5 advising his or her client about what could happen if
6 they take an ACD in the context of an FDIC-insured
7 bank, I think the judge should probably be doing the
8 same as well.

9 It might even be easier to have a judge
10 script down for all the judges that are now reading
11 before each ACD. The consequence, of course, is going
12 to be the criminal defendant saying I don't want this
13 deal. A lot of people might not want it, and then what
14 happens?

15 MR. GOLDMAN: Let me ask you a couple -- I
16 want to go slightly off topic, as I forewarned you
17 earlier, but the question of New York law and nullity.
18 New York law says that, if a case is dismissed, it is,
19 as you quoted, a nullity, and case law says very
20 clearly, if you're ever asked on an application have
21 you ever been arrested, you can legally answer no
22 without any fear of perjury.

23 I'm aware of one federal prosecution for
24 perjury for that, which is a problem, but
25 philosophically -- any of you, by the way, can answer

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2 this. We're going to come up with -- we're going to
3 make recommendations. Frankly, I'm a little bit
4 troubled by saying that states should enact a statute,
5 which allows someone to lie. Have you thought about
6 that at all? Would you like to comment, any of you?

7 MR. JACOBS: I thought about it when I read
8 Margaret Love's article about it. She doesn't like it.
9 She wouldn't allow people to lie, and therefore, I
10 wouldn't.

11 MR. JONES: There you go.

12 MR. WIGDOR: I think the way to tackle it is
13 not to have -- is tackle it from making sure that the
14 law provides that they don't have to disclose it. So
15 that way, they don't have to lie. That seems to me to
16 be the solution because -- you know, I didn't read your
17 article. I'm sorry. I will, though, but people
18 shouldn't lie. They shouldn't have to lie, and so the
19 law should be such that it doesn't put them in that
20 position.

21 MR. MAIER: Article 15 of the Executive Law
22 in New York State apparently specifically prohibits
23 inquiries about arrests. So that --

24 MR. GOLDMAN: But New York law should
25 cover -- thank you, but not every state.

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MR. MAIER: You can be arrested for anything. It's proof of nothing.

MR. GOLDMAN: I believe -- I know Margaret can answer this later. Some states -- I don't think every state prohibits a question about an arrest. Do they?

MS. LOVE: No, only ten. Ten do.

MR. WIGDOR: It may even be on the bar application.

MR. JACOBS: It is.

MS. LOVE: Oh, absolutely. They don't care if it's "expunged."

MR. GOLDMAN: You're not allowed to ask of anybody else, but let me ask you a question that's a little different from this.

We are trying to develop -- think of effective ways to eliminate the horrors that we've heard from so many people, lawyers, individuals community organizations, of collateral consequences, and some of these community organizations do wonderful jobs on individual cases, like that of Ms. Smith. I know you can't talk because of a settlement agreement, particularly about that case.

But as a practical matter, at least in New

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York, a lawyer who really wants to make a case financially, economically viable can sue for an individual; is that correct?

MR. WIGDOR: Yeah. Well, so to vindicate your statutory rights in the context of a violation of the New York Executive Law, it would be difficult to do so, a low-wage-earning single plaintiff, who maybe doesn't have that much to gain. So there are obviously ways of bringing class actions under the City and State Human Rights Laws.

The challenge that would be met with any such class action, given the Supreme Court's decision in Dukes versus Walmart, is that it would be challenged that each one of these are specific factual cases. So there won't be a group of similarly situated plaintiffs pursuant to a consistent policy because each criminal offense is going to be somewhat different.

Perhaps the pretrial diversion program issues might be different. You know, some person might do community service. Some person might have just gotten a straight ACD, where they got six months, and it's automatically dismissed.

So the defense would be certainly, you know, you have to look at each one of these individually.

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2 Therefore, they're not susceptible to a class action,
3 but that has not been litigated.

4 MR. GOLDMAN: You are assuming -- frankly,
5 as we look at American legal history, the fear of class
6 action suits have -- have been different to an extent
7 -- have certainly caused large institutions to act,
8 some of us would say, in a more favorable way. I'm
9 interested in how you expected or hoped to make this a
10 viable class action.

11 MR. WIGDOR: I'm just talking from my
12 general background here, not on any specific case, just
13 so I'm clear on that, but I believe that the large
14 commercial banks in New York or outside of New York are
15 either terminating existing employees or not hiring
16 employees on a very large basis based on either their
17 criminal convictions or arrests or ACDs. And I can't
18 tell you the numbers because I don't have that data.
19 Banks have that data.

20 But it will take a lawsuit that alleges a
21 class to get that data and to then -- the problem,
22 though, for the banks, though, is the statute that I
23 read to you is not discretionary. The statute, at
24 least in the ACD context, is a general prohibition. So
25 the banks are of the view, we have an obligation to

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follow this law. We have no choice but to follow this law, unless the person seeks a waiver. So it's a difficult situation.

The real answer, in my mind, is really getting -- at least in the ACD context, what I talked about, is getting Section 19 amended. I don't think Congress really understood when they put in pretrial diversion programs, the scope of what that would actually do.

MR. GOLDMAN: Mr. Maier -- by the way, thank you very much, all of you -- but thank you for your article, which made clear, to the extent that the law is clear because as you -- it's hard to get, you know, a black letter law out of it, but the defense lawyers, who frankly -- many of whom don't understand what a CRD is.

We've heard testimony from individuals, lawyers -- I guess the way I would put it is a conditional certificate of relief from disabilities is sort of like chicken soup. It can't hurt. You might want to take it. It might be a problem if you don't have it, but it's not going to get you very far. Do you have any disagreement with that?

MR. MAIER: I think that's correct based on

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2 the case law. There's a case, Bonacorsa, which was
3 interpreted by the Court of Appeals. The court in that
4 case dealt with each relationship between Section 752,
5 which sets forth the direct relationship and
6 unreasonable risk exception, and 753, which nominally
7 applies to both exceptions and lists all the factors to
8 determine whether it's an unreasonable risk.

9 And the way it turns out is, if it's a
10 direct relationship, you still could be disqualified --
11 if it's not a direct relationship, you can still be
12 disqualified based upon those factors, and the
13 certificate of rehabilitation, which gives rise to
14 presumption, is just one factor. So it doesn't -- like
15 you said, it's like chicken soup. It can't hurt, but
16 it's not a slam dunk.

17 MR. GOLDMAN: And really, officially
18 minimize the importance or the significance or even
19 symbolic role of the certificate.

20 MR. MAIER: I think it shows that one factor
21 has been satisfied to be able to demonstrate that there
22 is no unreasonable risk.

23 MR. WIGDOR: Can I say one thing as well?
24 They consider the civil remedy as well, which, I guess,
25 would be in Human Rights Law, the City Human Rights

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2 Law, for violations of that because that's what it
3 makes reference to.

4 MR. MAIER: You can also sue in court.

5 MR. WIGDOR: Under what statute?

6 MR. MAIER: Human Rights will give you the
7 right to.

8 MR. WIGDOR: Yeah. That's what I'm saying,
9 yeah. So the Human Rights Law is the vehicle by which
10 you pursue a civil remedy. It only applies to
11 employers with five or more employees, so not a huge
12 point, but there are plenty of employers out there who
13 have less than five employees who could, on their face,
14 say I am not hiring anyone who's ever been convicted of
15 a crime, and there would be absolutely no civil remedy
16 for that person.

17 MR. MAIER: Whether that's right or not,
18 that's not unusual in some of the cases I'm talking
19 about.

20 MR. WIGDOR: That's true. That holds true
21 for discrimination as well. You can say I'm not hiring
22 a disabled person or a black person or a woman.

23 MR. GOLDMAN: And, Mr. Maier, I reviewed the
24 case from the article. I think every one, am I
25 correct, involved a governmental agency?

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MR. MAIER: Pretty much.

MR. GOLDMAN: And, I mean, it just doesn't pay frankly.

MR. MAIER: I don't think -- I couldn't find any cases directly that were handled by the Human Rights Division, and then they took it to court to confirm it, for example. They were all -- I think there might have been one case, but they all pretty much dealt with the context of public sector employers.

MR. WIGDOR: The Human Rights Commission did bring a case against HSBC, and that was the case that I ultimately cited with Judge Sweet. HSBC ran into court to try and get the whole thing thrown out, and Judge Sweet issued that opinion. That case was originally brought by the -- I'm not sure if it was the City Human Rights or the State Division. I'm not sure.

MR. GOLDMAN: Let me just ask this, my final question, of perhaps anyone who wants to answer. Assuming the goal was to have a meaningful certificate of relief from disabilities, the way some judges see it -- saw it and some lawyers saw it, and many people would hope it to be, is there any way to rewrite it that any of you could suggest to put some teeth into it?

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2 MR. JACOBS: It seems to me you cannot have
3 a meaningful certificate which is also automatic or
4 which is presumptive or which is easy to get. I mean,
5 if it's going to be meaningful, then I think it ought
6 to have a lot of requirements in there in order to get
7 it, and then it might have meaning out in the
8 community. If everybody gets it, then it won't have
9 any meaning.

10 MR. GOLDMAN: So you would prefer a more
11 limited, somewhat more rigorous --

12 MR. JACOBS: Yeah, I would because
13 otherwise, I think it will just mean -- it will mean
14 nothing. I mean, what would it mean to me? A person
15 says I've got a certificate. Yeah, so does everybody
16 else who finished their sentence. You automatically
17 get it. It means nothing.

18 MR. MAIER: That's a good point. Maybe if
19 you had a dichotomy following the statute. There would
20 always be a direct relationship exception, but if after
21 five years, you got a certificate of rehabilitation --
22 after release, five years later, you get a certificate
23 of rehabilitation, then the only basis upon which there
24 would be a way to take that criminal conviction into
25 consideration is if there is a direct relationship

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2 between the crime and the job for which you're
3 applying.

4 MR. WIGDOR: I mean, I don't have anything
5 to add. I think that sounds right.

6 MR. GOLDMAN: Thank you all.

7 MR. WIGDOR: Thank you.

8 MR. JONES: Margie.

9 MS. LOVE: I'm really interested in this
10 idea of class actions. I think it's a fascinating
11 idea. I was just reading the FDIC law, which is very
12 confused. Section 19 is very confused. They exempt
13 anything that's been expunged but not something that's
14 been pardoned. I mean, it's all higgledy-piggledy.

15 There is also -- and I think that the
16 banking community is a huge offender. We actually were
17 trying to get somebody from the banking community in to
18 talk to us. We never were able to snare them. There
19 is at least a stated willingness on the part of the
20 federal government, through the Justice Department, to
21 take a look at collateral consequences that are
22 irrational, unhelpful.

23 How would you go about getting a coalition
24 of people, group of people, that could approach maybe
25 the Justice Department, maybe the Senate Judiciary

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2 Committee or the Banking Committee or something, to try
3 to get a hold on what's going on in the banking
4 industry?

5 I agree with you. It's a really serious
6 problem, and if there's an opportunity for a waiver, I
7 have a lot of clients who have gotten waivers. But
8 it's easier to get a waiver to work in a high-level
9 position than it is to scrub the floors downstairs in
10 the cafeteria.

11 So how would you go about addressing this
12 problem, if somebody gave you that as, you know,
13 that's -- you're hired to earn a lot of money, and this
14 is your problem. How do you do it?

15 MR. WIGDOR: Well, I'm hired to bring
16 lawsuits, not to lobby them, I mean, but the way I went
17 about it or we'd go about it would be to challenge it,
18 to try and challenge it legally, and try and put the
19 pressure on the bank because, you know, I don't think
20 that the New York ACD statute is a pretrial diversion
21 program as it's defined under Section 19 in the Federal
22 Act.

23 I think that the opinion letter written by
24 who knows who, probably pretty quickly, doesn't make
25 much sense, is wrong, and ultimately, it was just given

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2 a level of deference that I don't think it was entitled
3 to. But for me to think about how to get the Justice
4 Department or a Senate Judiciary Committee, I think
5 what you really need are people who have been affected
6 by it.

7 The banks aren't going to be on your side.
8 In other words, you're not going to be able to get
9 coalitions that would include the banks because, as the
10 banks see it, they're not going to hire Joe Smith, who
11 got an ACD or had a criminal conviction. They're not
12 concerned about Joe Smith. There's plenty of other Joe
13 Smiths without a criminal conviction or an ACD they can
14 hire.

15 So you need to find affected -- good,
16 upstanding people who have been terminated from banks
17 or didn't get jobs at banks to sort of bring this to
18 the forefront, how inequitable it is.

19 MR. GOLDMAN: Or we can find that Jamie
20 Dimon has an ACD somewhere.

21 MR. WIGDOR: If it's involving dishonesty,
22 yeah.

23 MS. LOVE: How about Title VII? Is there a
24 possibility to use Title VII now that we've got this
25 new, beefed-up EEOC guidance?

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MR. WIGDOR: So that's a very good question, and I thought about that because I do believe that the law, Section 19, has a disparate impact on people of color because I do believe that there is a disproportionate number of people of color who obviously are taking ACDs or who are being convicted of crimes. So that is certainly -- if you have a client who is a person of color, that would be a good avenue to go about it, yes.

MR. JONES: Vicki.

MS. YOUNG: I guess one question is that, after the case -- because I seem to remember reading something about your case in the newspaper or something. Maybe I'm wrong, but I seem to remember that.

Did you get any interest, whether by nonprofit or, you know, any organizations in terms of locating other people that may have been affected by this statute to see whether there was any possibility of any action? Did it raise any interest or did you not really hear much?

MR. WIGDOR: So, again, I'm not here talking about any particular case. I'm just going to talk about -- delve into the life of an employment lawyer.

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So generally speaking, in cases such as the cases that we're discussing, the issues that we're discussing, low level of interest.

MS. YOUNG: Because I read the articles, and then you see about the disparity. Somebody has been at the bank for 25 years, and nobody ever ran a check back then. And then the new regulations come out, and people lose jobs. So a number of those stories make the newspaper. So I was just wondering whether there had been much interest in addressing that, but I guess you're saying it wasn't that much.

MR. WIGDOR: Yeah, I'm saying what I said.

MS. YOUNG: Okay.

MR. JONES: One more. Penny, last one.

MS. STRONG: I have a quick question on the settlement that your attorney general reached with Quest Diagnostics and whether anyone is familiar with that litigation, whether it was done purely under New York law or whether also under the new EEOC guidelines.

MR. WIGDOR: I'm not familiar with that. So what is it about?

MS. STRONG: Your attorney general brought what appeared to be a class action based on a complaint that Quest had a blanket policy of barring anyone with

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2 a record seven years or previous from being considered
3 for any employment.

4 MR. WIGDOR: I didn't see that.

5 MR. MAIER: I wasn't aware of it. One
6 thing, I guess, you'd have to consider when you're
7 making recommendations from the employment perspective,
8 every year, unfortunately, some employment location
9 gets shot up by some crazy employee. There's no other
10 way of putting it. So when you're talking about
11 reintegrating people into the workforce, I think that's
12 a question somebody might have.

13 MR. JONES: We are out of time, but I'm
14 getting the high sign from Jenny to ask one last
15 question.

16 MS. ROBERTS: It's quick. I just wanted to
17 ask Jim because you're the only person really who's
18 talked to us about the comparative aspect here that
19 you've brought up with respect to Spain. Is there
20 anything you can state more generally about European or
21 other countries or regions of the world, approaches to
22 criminal records sort of more broadly beyond Spain?

23 MR. JACOBS: Well, I think this is a real
24 example of American exceptionalism. There is no
25 other -- I take that back. The civil law countries, I

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2 mean, are just completely different in the way they
3 view criminal records. They view them as personal
4 data, and it's personal data that is protected under
5 their personal data protection laws. And so they would
6 treat it the same way as health data or close to the
7 same way. I mean, it's truly radically different.

8 I stepped back from saying no other country
9 in the world because I think the other common law
10 countries, and certainly Australia and the UK and
11 Canada are more like the U.S., but in those countries
12 as well, the criminal records are not as disclosed as
13 they are here. They're not as open. They're not as
14 disseminated, and there is no private, commercial
15 industry of vendors selling records.

16 That's unheard of in Canada, and I don't
17 think it exists in Australia either. Maybe there are
18 bits of it that are appearing in the UK, but it's
19 nothing like it is here. I mean, students from other
20 countries are amazed when you tell them that there are
21 private information vendors. So our situation really
22 is exceptional in this area.

23 MS. LOVE: Has there been anything
24 written -- good question, Jenny. If you have any
25 citations or information that we could have that would

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sort of document policies and practices in other countries, it would be extremely helpful for us.

MR. JACOBS: You should look at my articles, two on -- well, there are several of them comparing the U.S. and Europe, and then there are a lot of cites in there. I think I pretty well covered Europe, and I think South America is the same just in terms of the law. I don't know about the practice in South America.

MR. JONES: Gentlemen, thank you. You have given us much food for thought, and if it's not lunchtime now, I quit. Thank you very much.

(Whereupon, a lunch recess was taken.)

MR. JONES: I hope everyone had an opportunity to respond to phone calls and e-mails and text messages and get food and do all the things that needed to be done in the really short hour that we had for lunch, but now, we are happy to have you all here for our afternoon session and to learn what it is you have this afternoon to teach us about the -- I'm not going to say the wonderful world of, but the world, let's just say, of restoration of rights and status after conviction.

I think that you have seen at least some portion of sort of how we work. You know, this is

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2 really sort of a conversation and an informal one at
3 that, and we are going to give you all -- you know,
4 we're not only videotaping but also transcribing. So
5 we're recording you in every possible way. We're going
6 to ask you to take maybe ten minutes or so and just
7 give us your opening thoughts, tell us a little bit
8 about yourselves and the work that you're doing, and
9 then we have, as you can see, lots of questions.

10 And the way that we do the questioning is
11 that one of us is going to lead the discussions, and
12 for the purposes of this conversation, that person is
13 Chris Wellborn. And once he has had his fill of
14 questioning you, then the rest of us will have an
15 opportunity to do so as well. So I think that's enough
16 from me. And I will turn the floor over to you, and I
17 guess we'll start with you.

18 MS. JIMENEZ: Good afternoon, everyone. I'm
19 Angela Jimenez, and I am the Deputy Commissioner for
20 the Department of Corrections and Community
21 Supervision. The part that's Community Supervision was
22 formerly known as the Division of Parole until April
23 2011 when we were merged. I have been with the
24 organization at parole and now corrections for 30
25 years, and it's been exciting. And as most of you

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2 know, in the last ten years or so, the focus on
3 criminal justice has kind of shifted from punishment to
4 reentry and transitioning our offenders out of the
5 system as seamlessly as we can back to the communities
6 to do what they must do.

7 I've been asked to speak specifically about
8 certificates of relief from disabilities and
9 certificates of good conduct. So I'll start with the
10 certificates of relief from disabilities. Those are
11 certificates that are issued to anyone who has one
12 felony conviction. They can be issued in one of three
13 ways. The sentencing court can issue the certificate
14 of relief at sentencing. That's usually for folks who
15 will be getting probation terms, not for folks who are
16 going into the state prison system.

17 If the judge does not on the sentencing
18 minutes say, I am giving him or her a certificate of
19 relief, he can make a statement about I will defer the
20 certificate of relief for X amount of time until the
21 person has known positive adjustment in the community.
22 Also, the offender can petition the court to get the
23 certificate of relief if while during the period of
24 probation supervision, it comes that he needs the
25 certificate, whether it be for employment or for

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2 housing or for lifting a bar on a license or anything
3 of that nature. The offender himself can actually
4 petition the court.

5 The next way that someone can get a
6 certificate of relief is someone who is actually
7 sentenced to a state term of incarceration. Prior to
8 the merger, the Board of Parole had the sole authority
9 to issue certificates of relief at the point when the
10 offender was in front of them for their parole board
11 appearance.

12 Since merger, that has been changed, and the
13 authority to issue the certificates of relief now fall
14 under the Commissioner of the Department of Corrections
15 and Community Supervision or their designee, and I am
16 that designee. So I sign all the certificates of
17 relief and certificates of good conduct.

18 And I know I referred you guys to our
19 website, and when I read it in preparation for today, I
20 realized don't read the website. It's outdated. It
21 hasn't been brought up-to-date, but I will refer you to
22 New York Correction Law Article 23, Section 700 through
23 Section 705, which deals specifically with certificates
24 of relief from disabilities.

25 So the second way that -- since the merger,

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2 we have changed one of the ways. We have taken the
3 board out of the mix. The board has no say in issuing
4 certificates. Now, what we are doing is -- and this is
5 all in an effort to assist the reentry process. People
6 who are serving sentences and are getting ready to come
7 out may now get a certificate of relief right at the
8 door on their way out so that they have that one piece
9 of paper in their hand that might help them upon
10 leaving to secure employment, to secure housing, to
11 secure other things that they may need. That's the
12 second way of getting a certificate of relief.

13 The third way of getting a certificate of
14 relief is someone who is already in the community, may
15 be on supervision, may not be on supervision, but finds
16 a need for a certificate of relief, and then they would
17 apply to my office for the certificate. The problem
18 with that phase of it is that it involves a very
19 intense investigation, and the other two phases do not
20 require an intense investigation.

21 The reason for the investigation is because
22 this person is now in the community, and we don't know
23 what they've done. What are they doing? Are they
24 showing rehabilitation? Because a certificate of
25 relief comes with a presumption of rehabilitation. So

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2 when we get a request from someone who is in the
3 community already, we want to see what have you done
4 towards that rehabilitation stage.

5 Now, one of the things that you should
6 understand is that there are four things that a
7 certificate of relief will not restore to an offender.
8 All right. It will not restore any violations of
9 specific sections of public health law, nor vehicle and
10 traffic laws. It cannot permit a convicted person to
11 retain or hold public office. It cannot permit any
12 judicial, administrative, licensing body, board of
13 authority, anything of that nature from counting on the
14 conviction when they make a determination about
15 licensing. The authority to issue licenses always
16 remains with the agency, authority, board or panel that
17 issues the license, and lastly, it does not remove any
18 legal obligation, such as child support, sex offender
19 registry, things of that nature. Those are imposed by
20 law, and a certificate of relief does not forfeit any
21 of that. You have to still comply with those things.

22 I know my time is short. So I'll go through
23 it quickly. The certificates of relief that are issued
24 prerelease do have some grounds for us to not issue
25 them at the time before they are released, and that's

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2 predominantly anyone convicted of a B or C felony sex
3 offense will not receive a certificate of relief prior
4 to release. If the offender has logged any good time
5 during the time that they have been incarcerated, the
6 superintendent may or may not wish to issue them a
7 certificate of relief. And if the person has been in a
8 special housing unit for any time during 24 months up
9 to release, the certificate of relief may not be
10 issued, but it's a "may." The superintendent has the
11 last and final call as to whether they issue it or they
12 do not issue it, and that's the certificate of relief
13 pre.

14 The certificate of relief post-release, like
15 I said, you have to request it. You request it in
16 writing. There's a lengthy application that has to be
17 filled out. There is a gathering of documentation,
18 which is lengthy, three years of income tax, personal
19 references. Sometimes we will request a mental hygiene
20 background. So the request from folks in the community
21 is a little bit daunting simply because the application
22 is lengthy, and the documentation that has to come with
23 the application is lengthy.

24 And I've actually been working with the
25 Legal Action Center in trying to streamline that

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2 process so that -- you know, again, if you go into the
3 reentry mode, that's a daunting process for anyone
4 trying to get a certificate, particularly if you need
5 it quickly because this process takes time. So we're
6 trying to work out a better process, where we cut down
7 that application. We cut down the required
8 documentation, and we get down to very basic
9 information required so that we can issue the
10 certificate of relief a lot quicker.

11 Now, certificates of good conduct are for
12 people who have one or more felony convictions. It can
13 also be a string of misdemeanor convictions. It can be
14 a federal conviction. It can be a conviction that may
15 have occurred in another state, but you need the
16 certificate to do something in this state. The
17 Department of Corrections and Community Supervision do
18 all of those investigations for all of those agencies.

19 Certificates of good conduct requests come
20 to us, but the difference in the certificate of good
21 conduct and certificate of relief is there has to be a
22 time in the community where you have not had any
23 arrests nor any problems or anything of that nature.
24 For misdemeanors, it's a year from the date that you
25 were no longer on supervision or from the day you were

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2 released from prison and all local custody. For the A
3 and B felonies, it's five years. For the C, D and Es,
4 it's three years from the time you came off of
5 supervision or left the correctional facility without
6 supervision.

7 And it's the same thing, same application
8 process, very lengthy, a lot of documentation, but we
9 not only gather that application and that information,
10 we actually go out to the home. We have to do a home
11 visit. We have to talk to the references that you have
12 provided, and then my staff, my parole officers in the
13 field, will put together a recommendation as to whether
14 or not the certificate of good conduct should be
15 issued.

16 Certificates of relief and certificates of
17 good conduct do not get denied. They get deferred. So
18 if I'm uncomfortable about issuing it, I can defer it
19 for up to 24 months as many times as I choose, but they
20 do not get denied. The person can continue to request
21 a certificate of relief or a certificate of good
22 conduct.

23 Again, I already told you what bars are not
24 lifted. I can tell you the most recent thing that
25 we're finding is that, since gun control law became

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2 very popular in the last couple of months, our requests
3 for certificates of good conduct for the purpose of
4 possessing handguns, long guns and hunting rifles has
5 shot up. So we're doing a lot of certificates of good
6 conduct for people who wish to carry weapons, and that
7 was expected when there was a possibility of gun
8 control becoming very, very strict.

9 Most of the deferrals I make -- I make a lot
10 of deferrals for guns. Depending on the subject's
11 background and their mental health state, I will defer
12 those, and I do defer many of them sex offenders
13 because they're asking them for such things as licenses
14 to drive buses and things of that nature.

15 So those are kind of the standard deferrals
16 that I make, but I do let them come back. And I do let
17 them reapply, and at some point in time, I will grant
18 the certificate of good conduct. So that's my spiel.

19 MR. JONES: Thank you very much.

20 MS. JIMENEZ: And I'll wait for your
21 questions.

22 MR. JONES: Thank you.

23 Ms. Gaynes.

24 MS. GAYNES: Good afternoon. I didn't get a
25 lot of guidance, and I feel like, if this is the second

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2 or third day, you've probably heard enough about
3 banning the box and those kinds of things.

4 And the Osborne Association, that I've led
5 for almost 30 years, does a wide variety of pretrial,
6 alternative to incarceration, prison and jail services,
7 as well as reentry. So I could be led astray, but I'd
8 like to focus on a couple of areas that I think might
9 have not been as focused on.

10 Our oldest program in the time that I've
11 been there is our court advocacy services, which is
12 defender-based, advocate-based. We work with assigned
13 counsel who are not in the -- not a legal aid, not in
14 the public defender system, but are assigned individual
15 cases to provide forensic social work services, to
16 advocate in court for alternatives.

17 This really came out of my -- I'm a
18 recovering defense lawyer, and I found it hugely
19 disappointing that when you've won a case, this person
20 with all these problems sort of got out, nothing
21 happened, no acknowledgement of harm caused and no
22 support. And if I lost, then they went to prison,
23 where there would be no acknowledgement of the harm
24 caused, no support and not much happening.

25 So I've actually been much happier in my

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2 post-lawyer days, but while I was a prisoners' rights
3 staff attorney, saw an awful lot of efforts at appeals
4 that suggested the same thing we were seeing in New
5 York courts, which was, in very many cases, lawyers
6 were driving people toward pleas, where they thought
7 that because they were getting probation and no time,
8 that they were not really concerned about the kind of
9 collateral consequences that came along with it, and
10 sort of framed it for clients like this was a win.

11 And so a lot of the cases, even though our
12 defender-based advocacy is limited to people where
13 there is at least an offer of prison or jail time, our
14 goal is either a non-incarceration sentence or a lesser
15 sentence. So we may get people at the time of
16 sentencing after they're convicted on a homicide -- and
17 there is a range. They can get 15 to life or 25 to
18 life. So we may be focusing on mitigating factors that
19 would shorten the minimum sentence, but in cases where
20 there's a possibility of an alternative, we do that.

21 We also try to really educate the defense
22 lawyers we're working with about some of the
23 consequences of the convictions. Many defense lawyers
24 believe that they have control over where the person is
25 going to serve time, which -- I know some of you are

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from other states, where it may be different, but in New York, it is a myth. There is no corrections department that is bound in any way by what a judge says or a lawyer says.

We try to get people to sign the commitment papers for recommendations, but essentially, lawyers mislead clients in my experience about, don't worry, you'll get out after this time, they tell them. They're misinformed about how parole works. They're misinformed about how conditional release works. I don't want to demonize defense lawyers, but they are misinforming people a lot of the time about the consequences. So that's one area, a large area, of our work.

Another piece that is really core to the way Osborne approaches things -- and we do a lot of workforce development, get people jobs, work with employers. We've kind of gotten away as much from finding people jobs that already exist and working on creating new businesses that will hire folks right from the beginning and actually trying to create jobs that are designed that way, and to get people like us and really like anyone, to ask the question continually of anyone who provides services to us, whether they hire

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2 people with criminal records.

3 We're about to do a slightly huge project.
4 The governor is giving us a closed prison. We've
5 closed 11 facilities in New York, which we're very
6 proud of. Our population has gone down, and one closed
7 prison in the Bronx is going to be transferred to the
8 Osborne Association to turn into a community reentry
9 facility. And everyone, from the contractors that we
10 are going to have do the reconstruction to the
11 incubator businesses that we're going to put into the
12 building, all of it has requirements that they will
13 make sure that they will hire people. So this is not
14 just like Ban the Box, but sort of aggressively, we
15 just don't do business with people who won't hire
16 people on the basis of records.

17 And we have two businesses that we run. One
18 is catering, where we have a culinary arts program on
19 Rikers Island. We train people to cook, and they come
20 and work in our kitchen, and we deliver 10,000 meals a
21 week to other treatment programs that don't have
22 kitchens. And we have a janitorial maintenance
23 business that pays prevailing wages. People start at
24 \$18 an hour, plus benefits, cleaning city buildings.
25 And that's kind of what I wanted to say about the

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2 employment perspective because I'm sure you've heard a
3 lot about it.

4 For Osborne, though, our key that
5 distinguished us to some degree from other
6 organizations that do reentry is a very strong focus on
7 family, and particularly on the impact of crime and
8 incarceration on children. And we've tried to frame
9 children of prisoners as a rights issue. Any of you
10 from San Francisco, it's the only other place where
11 they're really focusing on this issue in this way.

12 But I just want to share because I want to
13 move along, that from our perspective, even though the
14 Supreme Court's decision, for instance, on visiting and
15 the right to visit is terrible, but it's from the
16 perspective of the prisoner. And what we've been
17 trying to shift the conversation to is the rights the
18 children have. So there's a Children of Incarcerated
19 Parents Bill of Rights. I'll just give you an idea,
20 and you sort of see how, if this were implemented, it
21 would also have an impact on how we defend and process
22 criminal cases.

23 One is I have the right to be kept safe and
24 informed at the time of my parent's arrest. Two, I
25 have the right to be heard when decisions are made

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2 about me. Three, I have the right to be considered
3 when decisions are made about my parent. Four, I have
4 the right to be well cared for in my parent's absence.
5 Five, I have the right to speak with, see and touch my
6 parent. Six, I have the right to support as I face my
7 parent's incarceration. Seven, I have the right not to
8 be judged, blamed or labeled because my parents are
9 incarcerated, and eight, I have the right to a lifelong
10 relationship with my parent.

11 I'm sure you're aware of all the places
12 along the way, starting at arrest, when those rights
13 are not respected. An issue that we have in front of
14 the New York legislature now is a bill around
15 child-sensitive arrest, where it would require police
16 officers, A, to give additional phone calls to people
17 to be able to make arrangements for their children at
18 the time of arrest, for efforts to be made to handcuff
19 parents out of the presence of their children, to ask
20 appropriate questions to find out if the person being
21 arrested has an elderly person or a child dependent on
22 them, and to have a system for being able to make
23 arrangements for children other than dumping them into
24 a child welfare system, being able to educate police,
25 school guidance counselors, mental health practitioners

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that are associated with the court and family court judges on the impact of crime and incarceration on children so that the decisions don't end up severing relationships, moving people far away.

We have a bill pending in the legislature around proximity that relates to where people are incarcerated following a decision to incarcerate that requires the corrections systems to take into account the relationship with children.

We also have something that we are hoping will not require legislation, which is to change our pretrial sentence investigation system to require a family impact statement so that probation and frankly defense lawyers are required to ask certain questions about a person's family relationship and people that are dependent on them, and support, emotional and financial, that they are providing to others, and to take that into account when making sentencing decisions.

We stole the family impact statement from, I believe, San Francisco or Alameda County. There are states that are doing this. We have gotten no opposition whatsoever from either the New York City Department of Probation or Upstate.

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On child-sensitive arrest, we've gotten nowhere with the New York Police Department but have gotten tremendous cooperation from the New York State Association of Chiefs of Police, and our collaboration that's coming up with all these great ideas is actually housed in the Brooklyn District Attorney's office.

So one of the benefits of looking at collateral consequences through the eyes of children is that many people who don't understand this issue from the perspective of caring about the bad guys seem to be able to, after some work, think through whether or not the decisions they're making are unintentionally having a harmful effect on children.

I think I've probably used enough time, and we can do questions. But I do want to talk a little bit, one more minute, about a program we do called Long-Term Risk for People Incarcerated for Very Long Periods of Time.

From the time that you, as defense lawyers, tell people to not talk about the crime, until the time 20 years later when a parole board asks them to describe the crime, mostly they have never done so. They have been -- they are taught to see themselves as victims and to look away from the harm that they've

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2 caused, and there is no safe opportunity to discuss
3 that.

4 And so we've been doing a lot of work with
5 people with long sentences, homicide-related offenses,
6 to begin a process of thinking about what does remorse
7 mean, what does it mean to make amends; not to put it
8 together to what you say to the parole board, but
9 actually who to be for the parole board.

10 I think it's a tremendous denial of people's
11 humanity to not recognize that people who have caused
12 great harm somewhere know that they have, and we give
13 them no opportunity -- they're not allowed to contact
14 the victims. There's not much permission in prison to
15 talk about what you did. There are no programs in
16 prison that asks the question, except for sex
17 offenders. Those tend to be the only programs where
18 people talk about their crime.

19 And I think, because of the stigma around
20 very violent crimes, what we're seeing in New York, now
21 that New York no longer incarcerates a huge proportion
22 of drug offenders, the majority and increasing number
23 of people in prison in New York are people that are in
24 on very long sentences for violent crimes. And, in my
25 view, the length of sentence and extreme punishment is

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2 probably the next issue that I hope the defense bar
3 really holds onto and runs with because it's really a
4 crime.

5 MR. JONES: Thank you very much.

6 Mr. Fisher.

7 MR. FISHER: How are you doing? Anthony
8 Fisher, president and CEO of Anthony's
9 Janitorial/Maintenance Service, also a former
10 incarcerate. I was released from prison in 2007,
11 formed my own company in 2010, but I wanted to speak a
12 little something about what you were saying about not
13 having programs inside a prison that actually speaks
14 on, you know, the crimes.

15 When I was at Greene Correctional Facility
16 in -- I believe it was like 1996. I can't remember
17 what year, but it was a couple years back. I actually
18 started counseling for an ASAT program, and one of my
19 core curriculums there was going to the counselor and
20 asking the counselor, how can we implement, you know,
21 us to speak about our crimes and stuff like that. And
22 they said, if I was able to come up with a curriculum
23 where we could establish that, then I could start
24 having group counseling things there, and I was
25 actually able to do that.

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And Albany sent one of their -- I guess, I call them scouts from Albany -- questioned me about, you know, what was it that I was doing, what was it that I was trying to change and everything like that. And, you know, I just gave him my thoughts and my ideas, and I guess they were thinking about taking this statewide into other jails because it seemed to be working in Greene Correctional Facility.

But my thing is, when I did come home, I was in situations where I couldn't get a job, you know, because of my background. And to me, I didn't feel I had to lie of something I did years ago when I was a kid. I was 19 years ago when I committed a felony, violent felony, you know, sentenced, went away, came home. And I had to actually sit here in front of a parole board and convince the parole board why they should have to let me go because at the time that Pataki was in office, there was a rule that you had a violent crime, you weren't getting let go.

Eighty five percent of the people that had violent crimes to 90 percent were not being let go on the board when they went to a board, even though you did your crime, you did everything that you needed to do, and you showed and proved that you actually

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changed. It was all about politics because Governor Pataki was pressing the board members so much, like, listen, I don't care. I don't want no violent crimes returning back.

So I actually sat there and had to speak on why was it a situation where I can be let go and was I going to be returning back to the streets and come back to prison and stuff like that. And it's kind of ironic because it's like I'm sitting here now in front of a parole board like I'm trying to say -- you know, convince you guys to say, okay, well, these are the reasons why we should be restored our rights because there are some of us or a great deal of us who do come home and have the commitment to change, you know.

And I speak in volumes to me, and I also have my partner over there, who is also an ex-former incarcerate, Marcus Thomas, you know. And we try to go out and get a bunch of guys who are also formerly to run their own business and do what we do. It's not like, you know, you want a job? Well, just try to create employment. That's what we're doing.

Like I said, I have a janitorial maintenance company, and to me, it's not just about cleaning up houses, cleaning up offices. It's also about cleaning

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2 up yourself, and that's how I look at it with the
3 maintenance company. You know, we trying to do things
4 also for ourselves and individuals that are out there
5 committed to change. I mean, I don't have too much to
6 say but, you know...

7 MR. JONES: That was plenty. Thank you.
8 Chris.

9 MR. WELLBORN: Thank you. Ms. Jimenez, I
10 understand that one of the opening admonitions was
11 don't look at your website. I looked at the website,
12 and what I would like you to do -- and not committing
13 you to the exact language of the website, and
14 recognizing that it is -- the last update that I saw
15 was 2010, but I was curious. When I looked at this,
16 the first thing that I saw was this letter from your
17 predecessor, I believe, Ms. Evans.

18 MS. JIMENEZ: She's the Chairwoman of the
19 Board of Parole.

20 MR. WELLBORN: All right. And it indicated
21 in her letter that the first and foremost concern,
22 which makes sense, is public safety. Would you agree
23 with that?

24 MS. JIMENEZ: Absolutely.

25 MR. WELLBORN: Would you agree that the

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secondary concern, after public safety, is helping turn -- she uses the term "offenders." Presumably, we would use something else, like returning citizens or people -- but into tax-paying assets to their community.

Now, perhaps not the most diplomatic language, but would you agree that people who are returning to the community, the goal is to have them be successful, have them be connected and invested and vested in their community? Would you agree with that?

MS. JIMENEZ: Absolutely.

MR. WELLBORN: Then, obviously, the flip side of that is what we're really looking for is not only public safety but to make sure that people coming back to the community, as quickly as possible, are contributors and not people who are having to be contributed to, and again, to put a very, very crude term in it, a burden on those of us that are paying taxes.

MS. JIMENEZ: Mm-hm.

MR. WELLBORN: Okay. That said, addressing the public safety side, how much support or involvement -- and I would ask any of you the same question -- how much interest are you getting from

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2 those people that are charged at a community level with
3 public safety in making sure that the people who are
4 returning citizens are successful?

5 And I'd kind of like to go down the list.
6 Do you get input, support, suggestions from police
7 officers and police chiefs, and if so, can you describe
8 what that is?

9 MS. JIMENEZ: Actually, we have taken on a
10 concept of very, very strong collaboration, as you can
11 see from our county reentry task forces. There are 17
12 in the state, and represented on the county reentry
13 task force is the D.A., sheriff and/or local police
14 chief. Program providers are on there, as well as the
15 Department of Corrections and Community Supervision.

16 We've also taken a look at -- we're actually
17 instituting the Meares model and the Kennedy model. I
18 don't know if you guys know what that is, and it's two
19 different things. One is for guns, and the other one
20 is for gangs, where we actually invite gangs and known
21 gun carriers into a setting where the district attorney
22 is there, the local chief of police is there, we are
23 there. And we just talk about what brought you here,
24 why are you here, and this is what you might face in
25 the future if you don't change the way you do business.

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So we have always collaborated -- and we have our differences, of course. You know, the more parole violators we lock up, then we get the local county jails yelling at us that we're filling up their bed spaces, and they should be in the state system.

So we have -- in the 30 years I've been in the Division of Parole, we have always had good working relationships with the police, with the district attorney, by all means, as well as the Department of Criminal Justice Services, which kind of leads the state in its criminal justice policies.

MR. WELLBORN: Let me be more specific. Do you have -- for instance, in some areas that we visited, there is a decision that's been made by either police chiefs or the mayoral staff of a city that the police officers are going to be actively involved in the reentry process.

For instance, when they go out on their beat and they knock on doors, they're going to give people what they need and say, hey, look, here's where you can go to look for housing. Here's where you can go to get counseling. Here's where you can go to help with -- if your family is having trouble, where you can get some family services, and they're actively involved in that.

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That sounds like -- and it's nice that everybody is on a board and a task force, but actually, on the street level, where police officer A is meeting person B, that's, I would think, where the rubber really meets the road as opposed to somebody sitting on a task force, not that there's anything wrong with a task force. Obviously, we're all on one.

But perhaps, Ms. Gaynes or Mr. Fisher, is that something that you see, either currently, and if you don't see it currently, is it something that you feel would be perhaps somewhat effective?

MS. GAYNES: Well, my concern is that -- my experience is what happens is -- what's happening with the police and how they relate to parole is that, at lineups, they are told which parolees -- they say "parolees." I say "people on parole," but who have been recently released and show their pictures. That does not sound welcoming to me. So I'm just saying. That's not our experience with parole officers, by the way, who I think, in quite contrast, are.

The police, at least in this city, in my view, have not been open to carrying one extra piece of paper. We tried -- we have a 311 jail release number that we got established in New York City so that if

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somebody comes out of jail, they should be able to call 311, which is our information about stuff available. And there is a jail release, and we've done that. It's not as big as it should be.

And we wanted police to be willing to have cards that, when they arrest someone, they could leave with the family, just something really small about who they should contact to be able to either get help with their kids, finding a place for the kids, how they find the person that's just been taken away.

And we've been told that's too much work for them to have to hold onto another piece of paper. So I'm not expecting them to be going around handing out leaflets anytime soon. In this city, I feel like every agency, except the police, has been very supportive around reentry issues.

MR. WELLBORN: So again, do you feel, if the police force, as we understand in at least some select municipalities in the country, were perhaps more open to being involved in, for lack of a better term, the welcoming process, that that might be more effective in success for the returning citizens and accomplish the goal of becoming taxpayers as opposed to tax burdens?

MS. GAYNES: Sure. In Upstate, actually --

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you know, this really has to do with relationships. People coming home to communities where they're known and to police that live in the same communities where people are returning to, I think that it's useful and helpful, and that ritual makes some sense.

As I said, just because I don't see it in New York City doesn't mean I don't think that it would make a lot of sense. I live in Hastings-on-Hudson, New York. The police know everybody, and I think they probably do have parties when people come home. But that's probably not --

MR. WELLBORN: And I don't mean this to be a one-off welcome home, pat on the back thing. I'm talking about a repeated -- the officer walking the beat because I think most police chiefs now have bought into the concept of community policing as a pretty good model for knowing who's in the neighborhood and who's doing what, but are repeatedly coming by and just checking on somebody saying, how are you doing? Do you need anything? I'm here because they've built that relationship, and I perhaps should address Mr. Fisher because you directly experienced this concept of returning home.

MR. FISHER: And I want to definitely

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elaborate on that because, for instance, I live in an area that's high profile with crime and stuff like that, and I also know a few officers who are lieutenants and stuff like that.

And we had a couple of conversations, and they say, you know, the thing is there needs to be some liaison between the community and the police because, for instance, you know, I'm a young black guy walking the street, you know, stuff like that. Police sees me late at night, runs up on me, asks me for ID. I don't have ID. Now, they want to check me, run me through the system and stuff like that, which is all, to my understanding, harassment.

So there's, like I said, no liaison. Whereas, if I see the officer who's, you know, for my safety, I should feel comfortable, but when I see him, I feel threatened by him. And that's no good, you know. So having some type of liaison working between the police precincts and community, and, you know, when there's a lot of guys that do come home after incarceration, you know, I think it would be a lot better if there was some type of, you know, agenda that way.

MR. WELLBORN: Going back to the website, I

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2 noticed that there used to be what was described as a
3 core mission, and the core mission talked about
4 preparing people effectively to come back into the
5 community. So I'd like to address that with you for a
6 moment.

7 First of all, presumably, preparing them
8 would prepare them in some way educationally to be able
9 to find jobs; would prepare them for what they're going
10 to face in terms of potential barriers, burdens,
11 disabilities; would prepare them perhaps to find
12 counseling and housing.

13 So taking these in order, what preparation
14 do you guys give for returning citizens while they're
15 still in the corrections department to later find
16 housing? What do you give them as far as finding
17 housing?

18 MS. JIMENEZ: Well, we have a process called
19 the Community Prep Process, where we sit down with the
20 offender before he or she is going to the parole board,
21 and we ask the question and we look through the file
22 and say, what do you have waiting for you? What's out
23 there? Who's your family? Where are your friends?
24 Where did you live in the past?

25 There's this process with housing, and we go

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2 through this process. And there are times when the
3 easiest response from them is -- because there is this
4 belief that if I say I don't have anywhere to go,
5 they'll release me on my legal date to a shelter, and
6 then I can go home.

7 So we've created this process where we don't
8 allow that any longer. We say to them no, we're not
9 sending you to a shelter, and we will literally go down
10 his visitors' list, his mail list, cell phone calls,
11 everything in his folder, and call, and try to make
12 contact with someone in the community to say he's
13 getting ready to come out.

14 We go as far as to say -- there are people
15 that will tell us, family members that will tell us no,
16 those bridges are burned, but we'll go as far as to
17 say, give him one more chance. You'll have the
18 assistance of the parole officer if anything goes
19 south, and you can call the parole officer to help you.
20 It doesn't always work.

21 You know, it's very difficult for those who
22 have served very lengthy prison sentences who have no
23 one back there, and so what we do is we have contract
24 beds that we pay for. So it's almost like a
25 transitional bed. Let's put him in one of our

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2 transitional beds.

3 The program piece will include
4 re-acclimation to the city, taking someone -- actually
5 escort someone to the city to buy a MetroCard, what
6 train do you get on, you know, where's your program,
7 and we do that with the contract beds that we have.

8 But that's not to say that we don't have a
9 lot of people who we can't find. We do. We have
10 people in the New York City shelter system, and we have
11 people in missions and shelter systems all over the
12 State of New York. And I would say the hardest to
13 place, of course, are the sex offenders. Nothing new
14 for any state, I guess I would say.

15 But we also have what we call emergency
16 housing funds, and these are for the very, very, very
17 difficult to place. We have no legal grounds to hold
18 them any longer, but we have to let them go. And what
19 we will actually do is put them in hotels and motels
20 and pay for it until the Department of Social Services
21 picks up the tab for their return. They return to
22 their counties. These are the children of the
23 counties.

24 We cannot cross county lines with someone
25 from Erie going to Monroe. We can't do that. DSS will

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not accept it. These are the men and women who were born and raised in those counties, have a right to return to those counties, and DSS has an obligation to provide services for them.

MR. WELLBORN: I'd like to talk for a moment about the certificates of relief because you mentioned a couple of things that I found interesting. One was that, as I recall, to get a certificate of relief, you had to provide -- if you were already released, you had to have three years of tax returns?

MS. JIMENEZ: That's the application process, yes.

MR. WELLBORN: Right. So let's say hypothetically someone is released. They come back to their community, and as might be expected, they have a little bit of trouble finding a job because of their history.

Even though there is this state law that says it shouldn't be considered, everybody knows it's all being considered, and because they can't get licensure for whatever it was they were doing because they don't have that certificate of relief, they may not be able to find work. And if they can't find work, what are they providing in the way of documentation for

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the tax returns so they can get the certificate of relief to find work?

MS. JIMENEZ: That's not grounds for denial of a certificate of relief. There's a couple of things. Have you been on welfare? Has DSS been supporting you? Do you have SSI? Is it something that your family is doing for you? Then we would request a statement from the family.

We won't deny a certificate of relief because someone has -- we know what's out there, what's the reality they're returning on. So we won't deny for any of those major factors. We don't deny the person who is living in a shelter because perhaps that's all he or she has been able to find, but we do want to keep the file, have the record that the person applied, this was the circumstances under which they applied, and, yes or no, we either grant it or deny it.

MR. WELLBORN: As I recall, you were mentioning that when someone is incarcerated and they're seeking a certificate of relief because they can be -- as you mentioned, they can come at three different junctures; one is at the point of sentencing, one is while they're incarcerated and one is post-incarceration.

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But while they're incarcerated, it seems to be sort of at the discretion of the person who's running the facility; is that correct?

MS. JIMENEZ: The Commissioner has the sole authority, but his designee in the facility is, in fact, a superintendent.

MR. WELLBORN: So, effectively, it goes to the warden or the assistant warden or whoever they designate, and it's at their sole discretion. Is there any particular reason policywise that that has been chosen as the model versus the court model, which is effectively presumptive, that they're just handing them out at sentencing?

And all of a sudden, post-sentence, when we're in the incarceration sentence, suddenly, it's just a "I like you," "I don't like you," whatever reason I choose, it's at my discretion. Is there any particular reason that that model was chosen?

MS. JIMENEZ: We actually -- we laid out the ground rules for deferring it very, very clearly. Again, sex offenders, you've been in the SHU, you've had disciplinaries for the last two years. Let me try to be clear. The superintendent still has some discretion, but within those three items, not outside

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2 of them.

3 So our numbers of certificates of relief
4 issued at the door have more than tripled in the last
5 two years since we changed the policy. So it swung --
6 and the people in the field appreciate it because the
7 whole investigation doesn't fall on the person in the
8 field, and you also have to understand it's a temporary
9 certificate until the person finishes supervision.
10 When the person finishes supervision, then it becomes a
11 permanent certificate.

12 MR. WELLBORN: One last question sort of in
13 this period of incarceration. Does child support
14 continue to accrue in New York State while somebody is
15 in jail?

16 MS. JIMENEZ: Yes.

17 MS. GAYNES: They can apply to have it not.
18 We've changed the law in two areas that's been
19 important. One has been around termination of parental
20 rights. They've extended the time. It's no longer
21 required within 18 months, and because Osborne has had
22 parenting programs and children's centers in a lot of
23 prisons, we've had people transfer to be able to make
24 sure that the court understands that they're doing
25 everything they can within the prison system to

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2 maintain a relationship with their children.

3 And they can apply -- if they don't do
4 anything about their child support when they're
5 incarcerated, this is an area where defense lawyers
6 frankly could do a better job, which is to advise
7 people -- to ask their clients when they're going to
8 prison, are you paying child support? Because it would
9 be very easy at that point to have whatever that is
10 when you stop it for that period of time, but they
11 often don't tell them that, and they don't tell them
12 it's possible. It's actually the Department of
13 Corrections that is primarily helping people stop their
14 child support from accruing. It's legally available.
15 It's just people aren't often told about it.

16 MR. WELLBORN: And is that something that
17 perhaps, if it's not already, and perhaps it is, that
18 the Department of Corrections could also advise folks
19 because, as we all know --

20 MS. GAYNES: They do. They show them movies
21 in reception about it. We made two of them. We made
22 two videos that explain in great detail what you have
23 to do to not lose your parental rights, what you have
24 to do to stop your child support. I think the
25 Department of Corrections is honestly doing what

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2 they're doing. I just wish the courts would.

3 MS. JIMENEZ: The only problem with this is,
4 the way it is now, the responsibility falls on the
5 offender to file. It's hard.

6 MS. GAYNES: It's hard.

7 MS. JIMENEZ: You know, if you're outside of
8 the legal process, you got to go to family court. It's
9 not that simple.

10 MR. JONES: Elissa.

11 MS. HEINRICHS: I wanted to ask Mr. Fisher,
12 if you could just provide some background on -- I was
13 just looking online for your company information. It
14 says that you had experience in commercial cleaning,
15 and then you opened your own business. And that may
16 partially answer my question, but I wanted to know what
17 your experience was upon being released, and what were
18 your challenges as far as starting your own business?

19 I'm interested in the financing aspect of
20 it, and if you needed funding, if you already had the
21 equipment. I'm interested in how do people get the
22 funding. I know that there are services out there for
23 helping small-business owners or entrepreneurs develop
24 a business plan and work to take their dream into a
25 reality with a business. So if you could talk about

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your experience and address just some of the issues I've raised, it would be a great help.

MR. FISHER: To start off, there was no funding for me, no loans, no money basically. I mean, I started actually this business going to Home Depot, renting a buffer, going to a few spots, just asking people just to let me come in and show them what I can do, you know. I didn't have the right resources because, like I said, trying to find a job and keep a job because of my crime, no one was hiring me.

You know, I had a few construction jobs. That was probably like the best thing I ever had because of the fact that I was getting union pay. So that was like an incentive to start helping me acquire some of the equipment that I needed to.

But anyway, to make a long story short, it's been a journey. It still is a journey, you know. I'm not in a situation financially fit or anything like that. I mean, I'm still struggling, you know, but I'm out here, you know. And I'm given a chance, and when I'm given that chance to go in there and show what I can do, I give it my all. And it's starting to turn into reoccurring services and stuff like that.

I bring in other individuals who was

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2 formerly incarcerated, teaching them, showing them what
3 it is, what it takes to put in hard work and stuff like
4 that, and never give up because I'm figuring, if you
5 was up north in a prison doing 15, 20, 30 years, that's
6 patience. Little do you know, that's patience.

7 And for you to come home and be faced with
8 some of the challenges that you feel you got to go back
9 out and do the wrong thing is pure insanity. I say
10 that because life is beautiful, you know, once you
11 really look at it and humble yourself. A lot of people
12 don't humble themselves, don't know what it is to have
13 humility, and when you humble yourself and you start to
14 think, for the next person, you know, what it's like,
15 then you start to see and understand.

16 But I guess I'm going off the topic a little
17 bit, but what I'm trying to say is that it's been a
18 challenge, and I'm here for the long run, for the
19 duration of it. I know there's many programs out there
20 that probably can help, but you got to go through so
21 much, you know. If you don't got this or you don't got
22 that, they're not helping you. You know, it's like
23 when you first come out of prison -- and I don't mean
24 this in any disrespect, you know. It's like having a
25 Bible. A Bible has many different ways to live your

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2 life. There's many different religions that come from
3 a Bible.

4 So coming out of prison, we're handed these
5 packages that tell you this is what you got to do, but
6 you got to remember, most people who come out of prison
7 or go to prison doesn't even have a high school
8 education, you know. So handing me something and
9 telling me to read or something like that, my
10 concentration level might not be only about two
11 sentences. So for me to go through this book and
12 stuff, the rules, understand what it is, I'm not going
13 to do it.

14 So what happens is that place me back in a
15 situation of not knowing the resources that's out
16 there, not being able to find what I need, and idle
17 hands bring trouble. So I start finding myself back in
18 a situation where I'm under pressure. I need to
19 support my family. I'm having a baby. My girlfriend
20 is stressing me. You know, just living life in
21 general, you know, make guys want to go back and do
22 things that they shouldn't do. Even women, you know,
23 because it's the same thing we all have. So we commit
24 more crimes and stuff like that. Like I said, most of
25 us don't even have a high school education.

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So, with me, I found that commitment and dedication was my only thriving. You know, if I wasn't committed and dedicated to myself, I wouldn't be where I'm at right now. I'm committed to changing. I'm committed to helping others change if that's what they choose to do, and with that, that's what keeps my business striving, you know.

MS. HEINRICHS: I have one last question for you. What program or programs were either provided to you while you were incarcerated or you feel could have been provided to you while you were incarcerated that would have most prepared you for reentry and for running your business?

MR. FISHER: Well, the program that was provided to me was the BBM program, you know, maintenance, building maintenance. I did every program in the system. I'd been to college before Pataki stopped the college program. I took every program, full service because I myself wanted to change, you know.

It's like this. Most people who are incarcerated are not leaders. Basically, we're followers, you know. We do what the trend is. I have a friend out there that's selling drugs. I start

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selling drugs. So now, when I'm caught up in this situation and I'm placed in prison, what is there for me? So there's a lot of gangs in prisons and stuff like that.

So inside of that, we're not getting what we need to say, okay, let me do this. Let me take this on. So this way, I can be ready to change. So I can come home and do what's right. Like I said, when I was doing the ASAT program and stuff like that, where people can actually talk about changes in the system, I think that by itself is starting to have a lot of guys that do come out and start having different mindsets of really changing.

You know, they got to begin inside because nothing -- there's not a lot of programs inside that's committed to actually helping people change and actually helping you see what you did, you know, and that's what they need to have in prisons, some type of program to help the guys understand I am not the victim, you know, because like -- I don't know which one was saying that, but we do place that on ourselves. I'm the victim. I'm really the victim here. You know, we don't look at the crime that we did because it's always justified. I did it because I needed the money.

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2 I did it because, if I didn't shoot him, he was going
3 to shoot me, but we don't look at the fact that what
4 placed us in that position in the beginning, you know.

5 So like if we had some type of programs
6 inside the prison that would help each guy or each
7 person, as an individual -- not as a group but as an
8 individual -- understand his personal crimes or his
9 personal self, I think there would be a lot of changes.

10 MS. GAYNES: Can I just follow with one
11 thing, which is -- I think that this is really
12 important because I think it's really easy to get stuck
13 on certificates of relief. We place 500 people a year
14 minimum in jobs other than the people that we employ
15 ourselves, and honestly, the certificates and the fact
16 that they have a record is much less of an issue than
17 whether prison is preparing them to stand on their feet
18 eight hours a day to do the job and where they are
19 mentally. We have more jobs that we can put people in,
20 found employers that will hire people with records. We
21 are aware of the certificates of relief. We'll use
22 them.

23 But for us, the bigger issue is that work in
24 prison is not modeled after work in the community. We
25 have all of these food service jobs, and restaurateurs

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2 continually tell us that these guys can't work eight
3 straight hours because jobs in prison are not eight
4 straight hours. You buff, right, for four hours, and
5 then you say that's good. So your whole job for the
6 whole day is, you know, this much (indicating) space.

7 And New York, by the way, has probably more
8 programs than anyplace. I just spent a day at Greene
9 and a day at Cossackie. I was in every single shop,
10 and they've got graphic arts and bricks and all of
11 these -- they're amazing. The reason I went was
12 because I want to make sure that what we're doing snaps
13 onto what people are coming home, but it is not a good
14 match.

15 But it's so easy to just say I can't get a
16 job because of my record. People can't get jobs
17 because they've never worked before. We get jobs for
18 people. They can't keep them because they're angry.
19 They're upset. Their families are falling apart, which
20 is why we now focus on families with domestic violence
21 and all of the other issues that distract people from
22 working because they get pissed off because their boss
23 told them what to do. And what does he think, he's my
24 parole officer? Yes, well, he's your boss. That's
25 what bosses do.

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There are a lot of reasons why people have those problems. So it's great to deal with licensing and certificates and all those kinds of things, but I think it's really important to focus on what people bring to this and how we build people up because it makes a huge difference. The skills are so important, but we get people coming out with skills all the time. And they think that what they learned in prison is going to carry the day, and it does not.

MR. JONES: Geneva.

MS. VANDERHORST: My questions actually are pretty limited and focused for Ms. Jimenez, but I did want to make a note to Ms. Gaynes regarding child support stays.

In Washington, D.C., where I practice, we developed a form, maybe a year and a half ago, maybe two years ago, that judges review at the time of sentencing. And the judge asks the question, do you have any child support orders? The judge fills it out, hands it to the clerk, and it goes straight to the clerk's office so that whoever has the family case --

MS. GAYNES: It goes to a different court? It goes to family court?

MS. VANDERHORST: It goes to family court.

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Everything in our courtrooms now is computerized. So it goes into the family court case file, and whatever judge is handling that calendar knows where that parent is and has a stay that's already been filled out. They just have to acknowledge it on the record.

I don't think that's -- I've talked about this before over the last two years in other hearings that we've had. It's very easy to get. Just contact one of our judges in D.C. Superior Court. I'm sure they'd send it to you or the clerk's office will send it to you.

But for Ms. Jimenez, we've had some issues in how to deal with sex offenders when we come to post-release, as well as status issues after conviction. I wanted to get your opinion on categorizing Romeo and Juliet, Jack and Jill type cases from the more predatory type cases.

And I'd like to hear from you on who should actually decide what those categories are. Should it be judges, legislators or parole board? And while you're thinking about it, I'll tell you yesterday we had the Chair of the Connecticut Board of Pardons and Paroles here, and I asked her the same question.

MS. JIMENEZ: In New York State, there's a

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separate board that imposes the category system. It's the Board of Examiners of Sex Offenders. It's not the Board of Parole. It consists, though, which is interesting -- one of the members happens to be a parole officer. It consists of people from different areas of the state.

In response to your Jack and Jill, personally and honestly, I think it's a disgrace that they apply the category system to two young kids who -- you know, we've all been there, and to treat a young man as a sex offender. I have one right now who got sentenced in New Jersey. He's got a lifetime registry. Really? I just think that there should have been some thought to how you affect a teenager's life because you impose this sore status on them. I mean, I just think it's a travesty.

MS. VANDERHORST: But who do you think should be responsible for that? Is that a legislative role or is that a judicial role or do you think that's a Board of Parole role?

MS. JIMENEZ: I think the reason why we went to the board system is because the board was considered someone who would look at the case with fresh eyes as to a judge if he's heard the case and seen the

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2 evidence, and everything else may be skewed a different
3 way. The board system, these are people who don't
4 know. You know, they're just looking at the file.
5 This is what the file says, and therefore, this is what
6 the registry level should be.

7 Somewhere, we got lost with the registry,
8 you know. The registry level should have been for
9 predators, for pedophiles, you know, for that kind of
10 criminal, not for, you know, two kids who fell in love
11 when they were 14 so.

12 MR. JONES: Jenny.

13 MS. ROBERTS: I just want to follow up on
14 the comment that Ms. Gaynes made about certificates
15 being helpful but sort of not the main issue, and I
16 guess I want to ask if you would differentiate or if
17 you're really applying that through the lens of what it
18 sounds like your organization is largely focused on,
19 which is people who are coming out of prison and maybe
20 having spent a long time in prison because I know,
21 Mr. Fisher, you were nodding in agreement, you know, at
22 the comment on the need for more work on the skills
23 front.

24 So would you differentiate people who were
25 not incarcerated, maybe just have one minor misdemeanor

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2 conviction? Would your position still be that there
3 the certificates and other mechanisms for relief aren't
4 as helpful?

5 MS. GAYNES: I don't mean to say that we
6 shouldn't have lots of ways of expunging and sealing
7 and certificating, anything that has -- that can
8 contribute. I'm just saying that people traditionally
9 say all the time I couldn't get a job because of my
10 record, and in my experience, for many people, that's
11 not actually the only reason or the main reason that
12 they weren't able to get work. In this economy, it can
13 certainly be an added burden when you're competing with
14 so many people.

15 So, of course, anything you have, but
16 honestly, I think I'd rather see them have -- it's more
17 important for them to have a diploma than a
18 certificate. It's more important for them to have a
19 trade than a certificate.

20 So I just meant that I think it's too easy
21 to lean on the -- to kind of go with these things as
22 the solution on the assumption that it's really just
23 the record that's keeping people from full employment.
24 Not that we shouldn't have them, make it easier, and
25 more widespread and all of that.

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You know, we have the capacity to get bonds for people, and we think it is a big deal. We can get tax credits for employers. We can get bonding for people. We can provide wage subsidies.

The employers that don't want to hire people with a record will not care whether you have a certificate or wage subsidy or anything else, and the ones on the other side that are willing and helping, what they really want is somebody like this, who's going to actually work hard eight hours a day, prove themselves and do that kind of thing, and then they kind of don't care about it.

So, of course, defense lawyers should be able to inform people about these rights and argue for them and get them and have them. I just find too many people who say I couldn't get a job because, you know, my record. Well, did you actually apply for any jobs?

MR. JONES: Larry.

MR. GOLDMAN: Ms. Gaynes, you have really triggered a thought in my head, which is fairly hard to do. I have never thought of this in a formal sense. Although, I personally kind of do it, and frankly, my practice usually is people who I am not particularly worried in the same sense that I have to say a lot of

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2 things. But I'm thinking of a formal, semiformal kind
3 of exit interview for the last time the lawyer
4 pre-prison, pre-probation sees the client.

5 What kind of things -- and I'm also thinking
6 of recommendations we might make. I don't think
7 Congress is going to put an expungement law because we
8 say so. Sorry. But I do think we can set forth some
9 suggestions for the defense bar as the things -- for a
10 whole lot of reasons. I mean, frankly, we're focused
11 on the sentence.

12 I literally go to a federal sentence where
13 you can ask a judge to recommend a prison. I write it
14 down immediately because I want to remember after my
15 client is sentenced. I don't want to say it before my
16 client is sentenced because I don't want the judge to
17 think I expect the client to go to jail. I want to
18 say, Judge, will you recommend a certain prison? I
19 write it down because I'm frankly catatonic over the
20 sentence.

21 Could you give me some suggestions of
22 things? We should perhaps suggest a list, what the
23 defense lawyer should say at the exit interview. For
24 instance, start thinking of what you did, really.

25 Defense lawyers often -- I do -- or a lot of

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defense lawyers for kind of murky ethical reasons, as far as I'm concerned, never actually ask the clients what they did. Their theory is, I guess, if your client testifies, if they never told you what they did, the lawyer has no fear he's putting someone on the stand who's not going to tell the truth. I think that's lousy lawyering, but some very good people disagree with me.

Let me ask you for some suggestions in this kind of exit interview, and you've been there so, you know, feel free to tell me.

MS. GAYNES: This is only an exit interview if they're just going to prison or no matter what, if they get probation, too?

MR. GOLDMAN: Both.

MS. GAYNES: One is I do think that lawyers should tell them before they plead, after they plead and after they're sentenced what the collateral consequences are, what it means for their right to vote, whether it's going to affect their ability to live in public housing. All of those consequences, I think, would be helpful. I think lawyers should spend a little more time in prison and actually know what it is that people are going to go for.

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I got a request today from a person who -- a lawyer who wanted to know how am I going to get my client into Shock Incarceration? And I said well -- I actually said call Terry Knapp-David, who's the commissioner in corrections who's in charge of classification and movement because that's who's going to make the decision. They don't have a relationship with corrections. They don't read the -- they don't understand the PSI.

MR. GOLDMAN: I'm going to interrupt you. I want to tell you corrections isn't so good to lawyers either. Frankly, I call corrections. No one wants to talk to me.

MS. GAYNES: Funny, they always talk to me.

MR. GOLDMAN: You're not a defense lawyer anymore.

MS. JIMENEZ: They keep calling me.

MS. GAYNES: They keep calling you. But no, seriously, for one thing like the PSI, lawyers let things go, not realizing that when the person goes to the parole board, that's the first thing and almost the only thing they're going to see is that description.

Lawyers should make sure that they write in a separate presentence memorandum that is saying what

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2 they think should be said, requesting that the judge
3 attach it to the commitment papers so it doesn't get
4 lost. The defendant should see it, should know what's
5 in it, should have an opportunity to really be involved
6 in being able to get statements and letters from
7 people.

8 Why people let somebody walk into a
9 sentencing without support letters from the pastor and
10 everybody in the neighborhood, I have no idea. I don't
11 understand how lawyers walk in that way. I'm sure you
12 don't, but that's what they need to do. And they can't
13 be just sending people off without a written package
14 from the lawyer, both telling them what the
15 implications are, when should you start trying to then
16 get letters from the community to support you at the
17 parole board, what are the kinds of things, the
18 programs in prison that you can take that will make a
19 difference, encourage them to know that --

20 A lot of guys, they're in five years before
21 they start doing their first program, and they only do
22 that because some guy who's been in five years pulls
23 them off the yard and says, schmuck, this is not going
24 to get you out. Also, exploring with alternative
25 programs, mediation programs, seeing where there is an

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2 opportunity to bring people together in a healing
3 circle with the victim, either before or after.

4 In places like New York State, there's an
5 apology board, where you're not allowed to contact the
6 victim, but you can write a letter to the victim that
7 is put on an Internet site, and victims can go and
8 check. You can have your -- well, you can't contact
9 the victim's family, but a lawyer can.

10 A lawyer can remember that he sent this
11 guy -- I don't mean the lawyer sent him to prison, but,
12 you know, lawyers send people to prison just as much as
13 anybody else does. And they can remember when that is
14 and begin to be able to reengage and to say maybe now
15 would be a time to contact the victim's family and say,
16 while he's been in, I just want you to know that he's
17 gotten a GED. He's enrolled in college. He finished
18 three programs. He's got a certificate in bridge
19 building or something like that, and he really has a
20 lot of remorse and would be interested -- you'd be
21 amazed at how many victims support people getting out
22 and being returned to the community, and we don't even
23 see that as a possibility, giving people an opportunity
24 to write those things.

25 So there's a long list of things that

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defense lawyers can do before, at and really after sentencing, and then don't forget about these guys. This isn't just about an appeal. He's yours.

MR. JONES: We're out of time, and I'm going to give Mr. Fisher the last word.

MR. FISHER: It's a situation like this, right. If I'm not paying the lawyer, there's really no trust for me to a lawyer. So a lot of times, when, you know, a person is like -- for instance, you pick up a gun, right. You go outside your house. You get arrested. You go to court. Now, you sitting in court, you know. You picked the gun up, which is illegal, number one, but when you sitting in court and they come back with this indictment, it's like, okay, I did one thing, but there's 20 different charges on this thing. It's like what is this here? See, a lot of us doesn't understand the law. So when you have no idea what the law is, that's when you put yourself in a situation.

Now, you sitting inside your cell, and the lawyers come. Here comes the lawyer. To me, if I haven't paid you, you working for the system. That's the mindset of how we think. Now, here you coming in here and explaining to me, to tell me to tell you the truth when I really don't trust you anyway. So you

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telling me, oh, what happened? Explain to me what happened.

So I'm going to lie. So therefore, you don't have the proper defense to defend me, you know. So to be able to -- for me to collaborate and understand, there should be somewhere a packet or something where a lawyer should have more insight with their clients. That way, they can make them understand I'm working for you. What you tell me doesn't go to the D.A., doesn't go -- you know. It should be some type -- we don't understand that confidentiality. That's the situation. So a lot of times people aren't as open with their lawyers like they should be.

MR. JONES: Trust building 101.

MR. FISHER: There you go.

MR. JONES: Thank you all very much. This was very helpful. Thank you. We're going to take a 15-minute break and reconvene at four o'clock.

(Whereupon, a short recess was taken.)

MR. JONES: We have traveled many miles.

MR. WERTS: Yes, you have.

MR. JONES: And spoken with many, many, many people. I suspect we have probably had in excessive of 50 panels and probably 200 to 300 people who have come

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and testified. Maybe more, somebody is telling me. I can tell you from firsthand experience that we have tens of thousands of pages of testimony, and it all leads to you. Here we are. That's right. The last panel on the last day of our last hearing.

MR. WERTS: We are honored.

MR. JONES: So you are special, and we are happy to have you, pleased to have you and interested in what you have to share with us. The person for this particular panel who's going to do the questioning is Geneva Vanderhorst, who's down there somewhere. There she is.

And I am, as I'm sure everybody will be pleased, going to stop talking and turn the floor over to you. You should give us about ten minutes or so of opening thoughts, opening statement, a little bit about yourself and the work that you're doing and the things that you have to share with us. And then we will start with questioning and just make this last panel a party. All right. So I'll stop talking and turn the panel over to you guys.

MR. WERTS: Ladies go first. I'm old school.

MS. RAJAGOPAL: Good afternoon. My name is

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2 Runa Rajagopal, and I am a supervising attorney and
3 team leader of the Civil Action Practice at the Bronx
4 Defenders. So the Bronx Defenders enlists a holistic,
5 interdisciplinary, team-based approach to public
6 defense.

7 What does that mean? So when we are
8 appointed counsel in the Bronx and appointed as counsel
9 in criminal cases, what we work and strive to do is
10 address both the causes -- and mainly, my practice
11 focuses on the consequences of that case, namely that
12 arrest.

13 And so, in terms of team-based, what does
14 that mean? We lawyer in teams. Each team consists of
15 criminal defense attorneys, family defense attorneys,
16 who are appointed counsel when children are removed.
17 We have general civil attorneys, which I am one of
18 those. We have immigration attorneys, investigators,
19 parent advocates, general civil advocates, all
20 occupying a place on one team, servicing each client,
21 and so we work collectively and collaboratively to
22 identify the legal needs of our particular clients.

23 The Civil Action Practice is now in its 13th
24 year, consists of, as I stated, general civil attorneys
25 and immigration attorneys, as well as advocates, and in

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2 the general civil practice, we're general in the sense
3 that whatever civil needs arise from the arrest or the
4 removal of children, we work to address, to mitigate
5 the impact or address the impact in the criminal court
6 case, as an example, to promote reentry and
7 reintegration into the community, and then to work
8 alongside with the client in the concurrent or
9 subsequent arising civil proceedings.

10 So as a practical matter, what we end up
11 seeing mainly is the impact it has on housing through
12 eviction prevention and accessibility of affordable
13 housing, federally subsidized housing, the impact it
14 has on employment, accessing employment, but mostly
15 mitigating against the loss of employment and then
16 licenses, sustaining income, mainly public benefits
17 like public assistance, UI, unemployment insurance
18 benefits and Social Security benefits, mitigating
19 against the forfeiture of property by the DEA, by the
20 D.A.'s office and by the property clerk in New York,
21 and a hodgepodge of other issues like consumer and the
22 like. And so we work in this civil/criminal
23 collaboration, and work that has chronicled that it is
24 really the arrest that gives rise to these consequences
25 and not convictions.

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So a powerful tool that I know you've heard a lot about that we focus on -- we work with criminal defense attorneys to get our certificates of rehabilitation because we've seen and know that they're important and helpful and useful in a whole host of different ways for our clients in the civil arena, and what we focus on is obtaining particularly certificates of relief from disabilities at the time of sentencing.

So we work collaboratively with the criminal defense attorneys to assess whether our clients are eligible for them and really work to obtain them for a variety of reasons. And then after, if we're successfully able to get them, use that along as the other cases develop, if they do, and if we're unable to obtain them at the time of sentences, we work to then apply for them and get them subsequently.

I'm not going to -- I was going to go into CRDs, but I know you all know about them. You've heard about them. You probably have heard about when they're issued, how they're issued and what they are, right, and I know we're, as you mentioned, the last panelists.

So I just wanted to note the challenges around getting -- the challenges we've had around getting the CRDs. We've had many in the Bronx, and

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2 though we work very hard to explain why they are
3 important tools and that there are -- for some clients,
4 we have specific examples of how the arrest has
5 impacted them, like unemployment, for example, or
6 housing.

7 As a matter of practice, we push to get them
8 where our clients are eligible, and what we found is
9 tremendous pushback from the courts, not district
10 attorneys. Mostly, we observed that they don't take a
11 position either way in opposing or promoting someone to
12 get a CRD as part of a sentence, but from judges, we
13 found that judges typically don't consider giving them
14 at all without any opportunity for explanation of why
15 there's a need for a CRD.

16 We found that many judges won't consider
17 them until there is compliance with the sentence, so
18 where there's some kind of conditional discharge or
19 probation. One judge, as an example, has said that, as
20 a matter of course, she will not issue them until one
21 year after compliance with the sentence, even if the
22 person is on probation for three years. One year, for
23 whatever arbitrary reason, is the measure for that
24 particular judge.

25 It's the sentiment that the CRDs have to be

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earned, not that they're a tool, which you heard from the commissioner of probation, who has done great work around pushing for CRDs. So not this idea that CRDs are tools to help promote rehabilitation, but that's something that you have to work for, that you have to earn.

We found that, even where probation recommends that a CRD should be issued in the report, the investigation report, that judges deny that request, even where D.A.s consent to them, and tend to say you have an opportunity to either recalendar the case to make a request for a CRD or that you can go through probation for them.

And where we've seen success is where we're able to very specifically say, in this case, this person will lose their job if they don't have this or where the offense is so -- or the impact is so grossly disproportionate, let's say, for a violation in New York, will cause the person's eviction or lead to the person's eviction or job loss. We've seen success in obtaining CRDs.

And so those are some of the things where we found -- we regularly in the course of our representation push to obtain them, and then, as I said

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2 over and over again, they are very important, vital,
3 useful tools, though they have their limitations, and
4 that any package with respect to the restoration of
5 rights should include the issuance of CRDs at
6 sentencing. Thank you.

7 MR. JONES: Thank you.

8 Mr. Werts.

9 MR. WERTS: Good evening, everybody. My
10 name is Tyrone Werts. I'm from Philadelphia,
11 Pennsylvania. I actually am an ex-offender. I
12 consider myself a lifer because I served close to
13 37 years in Graterford Prison in Pennsylvania. I've
14 been home for about two years.

15 Right now, I'm working at Temple University
16 for a program called the Inside-Out Prison Exchange
17 Program, a program I helped start, which is now an
18 international program. I also work for the Public
19 Defender Association as a consultant in the homicide
20 division, as an assistant mitigator, assisting in
21 mitigation work, and just recently, I was just awarded
22 a Soros Fellowship to initiate a program -- another
23 program called Lifers Public Safety Initiative that I
24 initiated in Graterford. So that's kind of what I've
25 been doing since I've been home. I also sit on the

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2 Mayor's Commission on African American Males in
3 Philadelphia.

4 MR. JONES: So you're about 39 years old?

5 MR. WERTS: Say again. So I've been quite
6 busy. I really had no life. You know, I spent 37
7 years in prison, and when you talk about reentry and
8 people kind of look at me. I am not the poster boy for
9 reentry. My circumstances are vastly different, you
10 know.

11 When I was in prison, I was fully engaged.
12 I went to school. I graduated with a bachelor's
13 degree. And as president of the Lifers organization
14 20 years, I was able to meet some extraordinary people
15 over the course of my time there, and those people
16 coalesced and came together to help and assisted me to
17 get out.

18 Actually, if you think about Pennsylvania, I
19 mean, if you look across the country and you look at
20 criminal justice, Pennsylvania actually is the worst
21 state in the country. People talk about New York and
22 Texas and California. Pennsylvania houses the largest
23 number of people sitting on life without parole in the
24 world. They have the largest number of juveniles
25 sentenced to life without patrol, and so in

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2 Pennsylvania, it's really, really difficult to get out.
3 I'm telling you it's a miracle that I'm even sitting
4 here. I never expected to have this extraordinary
5 opportunity to be free, but, you know, Governor
6 Rendell, based on the support I had in the community,
7 commuted my sentence just before he left.

8 And, you know, for lifers in Pennsylvania,
9 the process is very, very difficult. Prior to 1995,
10 lifers could -- only way they could get out if they
11 lost all their appeals was to go through the
12 commutation process. There's five people that sit on
13 the board; the lieutenant governor, who's the
14 chairperson, the attorney general, the crime victim, a
15 corrections expert and a psychologist. And prior to
16 '95, you needed a majority vote to get out. So that
17 gave the two politicians the opportunity to refrain
18 from voting in case their opponent runs against them
19 and says they're soft on crime so.

20 But in 1995, as a result of a lifer getting
21 commuted, and he came up to New York and raped and
22 killed two or three people, they changed the law
23 because of that, and now, it takes a unanimous vote.
24 And that kind of killed all the hope, if I had any
25 hope; a lifetime in prison. I mean, I used up all my

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2 appeals in the year 2000. I kind of settled into
3 Graterford and realized this is going to be my life,
4 but miracles do happen. I'm sitting here.

5 So getting out, you know, when your life has
6 really been good to you because I had a lot of support.
7 So I started working two jobs a week after I got out of
8 Graterford, but like I said, I am not the poster boy
9 for reentry because, you know, when I was in prison and
10 guys used to come back for parole violation, I used to
11 be very, very critical, you know. I didn't understand
12 why would a man forfeit his freedom two, three times in
13 a row, but since I've been home, I certainly understand
14 the difficulty you have, what it takes to reintegrate
15 back into the community when you don't have the
16 necessary support.

17 I think the woman before me talked very
18 powerfully. She's really, really true. A lot of
19 times, guys can't get jobs, not just because of their
20 record, but sometimes they don't have the discipline
21 and the skills necessary to work an eight-hour day.
22 But, you know, on the other hand, I do know a lot of
23 guys who had that experience, had that commitment to do
24 the right thing, want to reintegrate, but, you know,
25 everywhere they go, doors are slammed in their faces.

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And I tell guys all the time, the two words you need to take out of your vocabulary is "F it," you know, because the frustration that they feel, the difficulty they feel, reintegrating, getting support for a job, I mean, when they really want to do the right thing. Sometimes they just say F it, and they just go back to what they do.

And the other thing for me again, I think, that makes it really difficult -- you know, we talk about public safety. We talk about reentry, got to get reintegrated. I don't know what the parole board of New York is or anywhere else, but I know, in Pennsylvania, they operate as a military police force, you know.

I was really struck when I went there to see my parole agent and she came out the door with a Tazer, handcuff, billy club, big, bad bulletproof vest. I'm saying what the hell. She bugged me out and made me all nervous again. And we were sitting in a room with a group of 30 guys waiting to see their parole agents, you know. I think all this stuff cause frustration.

When I hear a guy tell me that he has to pay the \$30 supervision fee -- they got this thing in Pennsylvania where you got to pay all your fees, prior

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tickets and all that kind of stuff. So she sent me down to traffic court and get all my tickets. And I'm on a 25 a month payment fee with tickets, and I don't have a job. If I don't pay this, it's a violation. Those kind of things -- these are the kind of things that cause frustration and cause guys to say, F it, and they go on the run.

So that's my story. I mean, I'd be willing to answer any questions. I talked a little bit about what it takes for a guy to reintegrate, and when we talk about public safety, we really need to create a situation where guys are supported and helped as they try to reintegrate into the community, instead of all these barriers and hurdles that they have to jump through. That's a major problem, and I'm going to end there.

MR. JONES: Thank you.

MR. WERTS: You're very welcome.

MR. JONES: Geneva.

MS. VANDERHORST: Thank you. I want to start out talking about something that Ms. Rajagopal said in her comments, particularly mitigating the loss of employment and licensing for some of your clients with the Bronx Defenders because we've heard a bit

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2 about folks who've never been employed, have records,
3 and then they're trying to get licensing. They're
4 establishing careers.

5 But can you tell us a bit about the process?
6 Is the process different for folks who have worked, who
7 have licenses, and then have convictions and are trying
8 to get reinstated in, say, a nursing field or a
9 barber's license or something similar to that?

10 MS. RAJAGOPAL: Sure. What we see is that
11 once you're licensed, that the arrest could give rise
12 to a suspension of that license, and so what we've seen
13 for a security guard -- we see a lot of those for
14 clients who have those licenses. That, one, you have
15 to be informed when accepting a plea obviously, and
16 that, depending on what the quality of -- the type of
17 plea that they take could have an impact in that the
18 state will terminate their license, and then they lose
19 their livelihood.

20 And we have many examples of working with
21 clients to get the best plea possible, assuming that
22 they take a plea in their particular case, and then
23 obtain a CRD, and also have to work towards getting
24 other support to show that they've been rehabilitated,
25 and they can continue to work as, let's say, a security

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2 guard, as an example.

3 And so, I mean, obviously to do that on your
4 own, to navigate all these systems that -- like in the
5 employment context or any other civil context, all of
6 this tends to happen around the same time. Actually, I
7 take that back. That's not true. I mean, it
8 happens -- it can happen at the same time. It can
9 happen at the same time, and then a year afterward in
10 terms of the impact of the actual arrest or the case.

11 But where we've seen clients who are able
12 to -- like, in our experience, the clients that we work
13 with who were able to get certificates, as an example,
14 and access to navigate the rights they have to
15 challenge the termination, we've seen not 100 percent,
16 but a lot of success in explaining the context of the
17 arrest, of the case, of having something like the CRD,
18 and then other letters in support or other things that
19 contextualize what has happened. Most of our
20 clients -- like in the Bronx, we're talking about
21 low-level offenses, people arrested for quality-of-life
22 crimes. Am I answering your question?

23 MS. VANDERHORST: You are. Let me just say
24 where I practice in D.C., for instance, a low-level
25 crime, something as simple as a DUI, for instance, a

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2 person, in addition to whatever happens in the criminal
3 court -- and for that matter, even if the criminal case
4 gets diverted, and eventually, the person is allowed to
5 withdraw their guilty plea, and technically, the case
6 is nolle after certain conditions.

7 They still have to go through a suspension
8 hearing, which really isn't a hearing, with DMV. DMV
9 says, okay, your driving is going to be suspended three
10 months, six months, a year, whatever, but when you're
11 dealing with -- you know, they can take Metro if they
12 have to, but if they have a CDL, then that is a
13 completely different process because that's their
14 livelihood, even though the offense was something that
15 came out of a personal issue.

16 Does the process take longer for folks who
17 have had licenses and are then trying to get
18 certificates or is the process different from folks who
19 have never been licensed before? In your opinion, is
20 the process considered different by the
21 decision-makers, and is it longer for your clients?

22 MS. RAJAGOPAL: Is it longer for our
23 clients? I actually -- you know, we work with our
24 clients in a specific context. So how it compares to
25 other folks, you know, I don't know or don't think that

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2 the timing is necessarily different. It's usually in
3 terms of the client's background and the intent around
4 getting the certificate, as an example.

5 But -- actually, but I will also backtrack
6 and say I think what we've seen in getting like the
7 CRDs at sentencing, when we don't have a specific
8 context to say we know unequivocally that if we don't
9 get a CRD in supporting or promoting the
10 rehabilitation, this person is going to lose their job
11 with Somers School District, who has a CDL, and is a
12 bus driver, and wants to get back to work, and took
13 this violation on a DUI charge -- a violation, not a
14 crime, but know that that may effectively prevent that
15 particular person from continuing to work as a bus
16 driver, which he's been for 20 years -- I'm pulling an
17 example of a client that we have -- and find that it's
18 more effective at sentencing for that client than it
19 would be for a person who doesn't have a job and wants
20 to get a job and thinks that --

21 We have this where we have young people who
22 say I think I might want to go into the academy. I
23 want to be a police officer, firefighter. I
24 think people who don't know -- they're young -- but may
25 effectively be prohibited from any of those careers and

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2 so --

3 I'm sorry I don't have numbers for you, but
4 I think it is different for people who don't have jobs
5 than what we've seen in terms of success rates of
6 actually being able to get them a CRD, as an example,
7 because we've gotten pushback from judges. Some judges
8 who say how are they -- how is this person affected by
9 this plea that they're taking or this charge?

10 So I think it -- I don't know that the
11 process is different afterwards, but at sentencing, I
12 think we've seen, in our experience in the Bronx, when
13 we make the request, that there is a difference if it's
14 not a specific request, and even in some instances
15 where it is a specific request, it's still denied.

16 MS. VANDERHORST: In the circumstances where
17 you have success stories and certificates are granted,
18 are you finding that clients will come back and say
19 I've got my certificate, and I answered the questions
20 on the application properly, but they Googled my name
21 or they did a background check, and what was supposed
22 to be expunged shows up, and I didn't get the job.

23 How do you advise clients in situations like
24 that or do you even have clients who come back with
25 those kind of scenarios?

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MS. RAJAGOPAL: Right. I mean, so in New York, a CRD is not an expungement. It's not a pardon. So it's only -- I know in terms of institutionally our clients and generally the difficulties around getting employment when you've had contact with the system and the ways around -- you know, even where people have successfully gotten their case dismissed and it should be sealed and it's not, and that information is somehow accessed in a whole host of ways outside of the employment context.

I can only say that we try to work -- it's harder if someone is applying for employment, and I think our experience is more with people trying to prevent job loss. So I don't have an example for you around specifically what you're asking. We know that happens.

MS. VANDERHORST: Mr. Werts, yesterday and even in other hearings, we've had some testimony about folks who have gone through hoops and battles to get degrees, certificates, program acknowledgements, who have gotten back on the streets, and one of our witnesses yesterday literally used the term they simply give up on reentry because doors keep closing in their face. Can you tell us a bit about how you got past

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2 that?

3 MR. WERTS: Like I said, my situation is
4 vastly different. You know, I always tell people there
5 were three main reasons why I think my particular
6 reentry was so successful. One, I was fully engaged
7 when I was inside. I mean, I knew what was going on in
8 the world. I read newspapers. I was meeting with
9 people. I was computer literate.

10 I mean, back in 1989, '90, I wrote to the
11 administration to seek permission to get a computer for
12 my education, and surprise, surprise, they approved it.
13 That was back in the day before -- I had a
14 top-of-the-line computer for \$2,000. It was a 40-meg
15 hard drive and 21 megahertz, you know, worked with the
16 DOS prompt C:\. So young people will say what is that?
17 You know what I mean? So I was fully engaged. So that
18 was one thing.

19 The second thing was I had enormous
20 community support. A lot of people supported me just
21 based on some of the work that I was doing, and the
22 third thing, I had strong family support. I mean, for
23 the 37 years I was in prison, my family came to visit
24 me every 90 days. I mean, when my parents passed, my
25 sisters and brothers continued to see me. So they were

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2 there to greet me.

3 And then, like I said, I had a couple of
4 jobs waiting for me. So, I mean, it was easy for me,
5 but like I said, most guys I do know -- I know a lot of
6 guys who have actually made that transition, where they
7 want to do the right thing, but, you know, I don't know
8 if Everett Gillison told you this yesterday, but as you
9 can see, he passed this policy -- the mayor put this
10 policy in place where there is a \$10,000 tax credit for
11 any company that hires an offender, and I don't think
12 anybody has taken him up on it yet, you know, so.

13 And that just makes it even more difficult
14 when the guy wants to do the right thing, and, you
15 know, people are going to slam doors in your face.
16 And, like I said, you just say, F it, you know. And,
17 you know, you take that together with the parole board,
18 the parole situation, and you got all these pressures.
19 And, you know, it's very, very difficult, and I've seen
20 it happen.

21 Like I said, when I was in prison, I was
22 very critical. And once I got on the street and really
23 saw what was going on, you know, a lot of the things
24 the guys coming back saying proved to be true that, you
25 know, we got to get over this stigma of hiring people

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2 with criminal backgrounds, and I don't know how you do
3 that, but, you know, a lot of companies just will not
4 give guys opportunities.

5 And, I mean, even in this economy, I
6 understand that there are a lot of people with certain
7 skills, college background, never had a criminal
8 record, it's tough to get a job, but there are a lot of
9 jobs those people won't do that ex-offenders will do,
10 and they can't get those jobs also.

11 MS. VANDERHORST: Did you have any issues
12 with folks dealing with background checks as to whether
13 or not you got different positions?

14 MR. WERTS: Who, me?

15 MS. VANDERHORST: Yeah.

16 MR. WERTS: No. Like I said, my situation
17 was different. I didn't have any struggles because I
18 had so much support. A lot of people knew me, and I'm
19 going to be honest with you. I think a lot of it has
20 to do with trust, you know. People -- as the woman
21 said before me, it was about people demonstrating
22 conscientiousness, that they can be trusted, that they
23 have integrity, that they are going to be on time.

24 I mean, for me, people knew who I was. I
25 already had those kind of characteristics, and so, I

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2 mean, any job I would apply for, I think I would have
3 been successful. But, like I said, I'm not the poster
4 child for reentry because my circumstance was vastly
5 different, and most guys, when they go through a
6 background check --

7 And it's been very successful. I mean, just
8 as I was getting out, they were very successful in the
9 Ban the Box movement. You know, they got the box off
10 the thing, but the way I hear it is, although they
11 passed that policy, there's still a lot of applications
12 with the box on there. You know, you got to check this
13 box.

14 So those are the hurdles and frustrations
15 that most guys who even want to do the right thing
16 face, you know, background checks. As soon as they
17 hear -- somebody hear you're an offender, that kind of
18 destroys your credibility.

19 MS. VANDERHORST: Tell us a bit about the
20 Inside-Out Prison Exchange Program that you're involved
21 in at Temple.

22 MR. WERTS: Anybody here want to hear about
23 the Inside-Out Prison Exchange Program? Oh, you do?
24 Okay. The Inside-Out Prison Exchange Program -- first
25 of all, in order to explain that, I need to give you a

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2 little bit of my background.

3 When I was in elementary school, I wanted to
4 be an astronomer, right, because I had a guy -- this is
5 a little long story. I'm going to give you the quick
6 version. I had a guy on my way to enroll in college
7 who taught me about astronomy, and when I had this
8 assignment in school, all the kids had to write a
9 little paragraph, come back Monday morning and talk
10 about what they wanted to be when they grew up.

11 And, you know, as they called each child up,
12 they said I want to be a doctor, lawyer, fireman,
13 policeman, the usual stuff. I get up there and say I
14 want to be an astronomer. This crazy teacher told me I
15 wasn't smart enough to be an astronomer, told me I was
16 dumb, right, and so that kind of affected me.

17 So by the time I got to Graterford, I was
18 reading at a second grade reading level, but this guy
19 took an interest in me. He said, look, although your
20 scores are very low, your IQ is above average. You can
21 do this work, and he signed me up for ABE class, and I
22 went there. I did really well, passed the GED.

23 Even though I passed the GED, I thought I
24 failed it. I went down there to ask him. He said,
25 Tyrone, you passed the GED. You got the highest score

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2 of anybody, and the first thing I thought about was,
3 hell, if I passed it and got the highest score, anybody
4 who took the test must be dumb as hell. You know what
5 I mean? Because I knew I was dumb so. But I passed
6 the test and went on to Villanova, and I graduated, you
7 know.

8 So I just give you that as a context so that
9 when this woman named Lori Pompa comes to me and talks
10 about Inside-Out is a program where she brings college
11 students into prison, and they take the college course
12 side by side with the prisoners for the whole course,
13 and it's different than usual college courses because
14 you don't need to meet any requirement. That is you
15 don't need a GED, high school diploma. You need to be
16 able to have the intellectual necessities and all the
17 discipline to be able to do college-level work because
18 she realized that this program, once a guy gets in it,
19 he will find some things out about himself.

20 When I heard about that, I'm saying wow.
21 What I knew intimately was there were thousands of guys
22 in the criminal justice system or in the prison system
23 who were smart, but they didn't know it; who could do
24 academic work, but didn't see the value of it. And so
25 I thought this would give them an opportunity.

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So I helped her write the proposal, submit it to the administration, which I didn't think the administration would ever allow undergraduates to come into a max security prison for 15 weeks and sit side by side with prisoners and take a course, but they approved it.

And so they doubled their courses, and now, it has grown into an international program. We have trained close to 400 instructors in the United States, Canada. We got some people coming from England, Brazil, and they get trained to do this course. And we are constantly expanding.

And this is why I love the program so much because it is giving guys inside an opportunity to see that education is important, that they can do this work. They can compete with college students, and it gives the outside students an opportunity to go in and talk to people they would never have an opportunity to talk to.

I mean, what's been fascinating for me over the years is when people come into the prison system and we have these conversations, and they say, oh, y'all are so smart. Y'all are human beings. I say what you thought we were?

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So, on that level, because a lot of these students are going to be the future leaders of this country, so going into the prisons is very important because it gives them a better perspective. You kind of break down the stereotypes and misconceptions about who's behind the wall because I always say the wall is not there just to keep us in. It's also to keep the public out so nobody know. People think you got these animals, these monsters. They come in and say, all right, y'all are human beings, you know, which I find fascinating. So that's Inside-Out.

MS. VANDERHORST: I want to at least close out my part with telling you a challenge that we have as a Task Force is developing best practices for lawyers, and I do my version of holistic defense. So I'd like Ms. Rajagopal to talk to us about holistic defense from the Bronx Defenders' point of view.

And I'd like both -- Mr. Werts, I'd like you to tell us what do you wish your attorney had told you about collateral consequences before you got to the point you had to decide whether to take the case to trial.

MR. WERTS: Yeah. Okay. Actually, I was offered a deal to plead guilty, eight to 20. And I

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2 know lawyers don't want to cross the line, right, but I
3 don't think my lawyer really explained to me all the
4 options available to me, all the consequences down the
5 line. He just said the district attorney wants you to
6 plead guilty to murder, give you eight to 20 years.

7 I said I ain't pleading guilty to murder
8 because I didn't kill nobody. He said you turning down
9 the deal? I said yeah. He went back. He said, well,
10 if you won't take the deal, when the jury comes in,
11 we're going to trial. So I said, well, I'm not
12 pleading guilty to murder because I didn't kill nobody.

13 And that was the extent of the conversation
14 that I had with him. He never explained to me -- and I
15 think that if he would have kind of laid out a broader
16 picture, I might have, would have took that deal, that
17 eight to 20 years. I'm glad I didn't, but he didn't do
18 that. He didn't tell me about -- he didn't talk to me
19 about all the ripple effects and collateral
20 consequences of me going to trial.

21 And so I think lawyers -- you know, I work
22 for the Public Defenders Association in the homicide
23 division, and one of the things that I used to do when
24 I was in Graterford was -- and I knew a couple of
25 lawyers. I knew a couple of mitigators and a couple of

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2 lawyers, and they was having a really difficult time
3 with clients.

4 So they came to me and asked me would I be
5 willing to write guys letters to kind of bridge the gap
6 between the cultural issues and the trust issues, you
7 know, because -- I think Mr. Fisher spoke a little bit
8 about it. Because there's no investment, there's no
9 trust. I mean, even when I was in prison, I had this
10 negative view of public defenders. You kind of felt
11 like, well, whether I win or lose the case, I'm going
12 to get paid anyhow, and that was the image. And so
13 when I went to go work for the Public Defenders
14 Association, I'd seen this thing in operation. It
15 really changed my perspective.

16 So what I do, I go to the county prisons,
17 and I engage guys in conversations about their options,
18 you know. They can trust me at a different level than
19 they can trust a white attorney because of the cultural
20 differences, and I can talk to them in a language that
21 they fully understand. And I've been very successful,
22 especially when there's deals on the table, when
23 there's a 15-to-30 deal as opposed to facing the death
24 penalty or life in prison. I'm able to get those guys
25 to take those deals because -- especially when the

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2 evidence is clear because I read all the discovery. I
3 read the whole case, and if I put myself in the place
4 of a juror and how I would decide the case, I tell
5 them, you know -- I give them my opinion.

6 And so I've been very successful in getting
7 guys to look at other options, talk about their
8 families, and one day, they're going to have an
9 opportunity to go home. You know, the fact that
10 they're looking at me, a person that served close to
11 37 years in prison, that resonates with them.

12 And so when we talk about best practices, I
13 really believe that a lawyer should incorporate people
14 like me in there, you know, hire a consultant to bring
15 them in, beginning to build a level of trust because
16 there's a lot of distrust, and there is cultural
17 differences that kind of breaks down that level of
18 trust so.

19 MS. VANDERHORST: Do you think -- because
20 you said you might have reconsidered the plea if
21 your -- if the attorney had told you about the
22 collateral consequences. That really is a fine line
23 for attorneys to not put that kind of influence and
24 make sure the client's decision is the client's
25 decision alone. Do you think that you could have made

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a decision that was right for you with having all of the information of --

MR. WERTS: Yeah.

MS. VANDERHORST: -- what the possibilities are now or do you think you would have felt like your attorney was telling you to take the plea because you're going to lose?

MR. WERTS: No. I think that he would have shown the level of concern, right. I mean, like you said, it is a fine line, but I think that if he would have talked to me not so much as a client but as a human being, as an equal person, another human being -- well, not a human being but as -- you understand what I'm saying? Not as a client but as an equal, as a social -- you know, relate to me in that way, I probably would have understood that, you know.

But, you know, for me, I'm from the streets of North Philadelphia. I did a lot of things. So by the time I went to prison, you know, I didn't care about much, but for one thing, that six months into my incarceration and the thing that made it possible for me to be sitting here today is because six months in, I thought about the collateral consequences. That's what flipped me. That's what flipped the switch in my head,

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and I realized I had to do something different. You know what I mean? Probably, if I would have known that, if I had had that explained to me prior to that, maybe things would have been different.

MS. VANDERHORST: With that, I'm going to ask if Ms. Rajagopal could answer, and then we'll introduce Mr. -- or Dr. Pryor.

MR. JONES: Go ahead.

MS. RAJAGOPAL: Yeah. I think that what you said really resonates, and we strive to work towards essentially client-centered services. So from our perspective and at the core of what we do in terms of holistic defense is our clients, and the communities that we serve dictate and tell us what's important as attorneys. We don't say your criminal case and what happens in your criminal case is what's important.

We've been told time and time again that there's a turnstile jumper trespass charge. There are lots of those in the Bronx, but that offshoots or gives rise to loss of a home that you've had for 30-plus years, I mean. And we know that -- you look at the consequences, and I know that we talk about them as collateral, but we know in our practice and experience that they are enmeshed, direct and devastating and

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2 often anything but collateral.

3 And also, as we work alongside of our
4 clients and go into the civil arenas, the proceedings
5 that, you know, the arrest tends to give rise to are
6 very, very different from a criminal court case. You
7 have no right to counsel. There are the lowest burdens
8 of proof, right. It's usually a preponderance for most
9 of these proceedings. You often don't have the right
10 to a jury and issues like discovery. And what we've
11 seen also is that like a housing case, for example, in
12 the Bronx moves a lot faster than a criminal case does
13 in the Bronx.

14 And so for all of those reasons and for more
15 importantly, what you talked about, is the heart of
16 holistic and interdisciplinary work has to have our
17 clients and the communities that we serve in the middle
18 telling us what's most important. Thank you.

19 MR. JONES: We have been joined by
20 Mr. Pryor, and it is divine to heaven. If you would
21 just take ten minutes or so and tell us a little bit
22 about yourself and then about NuLeadership, that would
23 be wonderful.

24 DR. PRYOR: Sure. Good afternoon, and thank
25 you so much for inviting me. My name is Dr. Divine

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2 Pryor. I'm the executive director of the Center For
3 NuLeadership on Urban Solutions, which is the world's
4 first and the world's only public policy research
5 advocacy and national training center created,
6 developed, designed and run by formerly incarcerated
7 professionals representing every discipline from law to
8 medicine.

9 And as the executive director, my primary
10 role is really to ensure that we have funding and
11 resources, but most of all, to provide oversight and
12 supervision to the now 13 staff members and four
13 consultants that comprise the center. And in that
14 role, I'm also responsible for articulating many of our
15 public policy positions, both on the federal, state and
16 city level, as well as charting the course for where
17 that policy should be taking us in terms of marrying
18 theories with practice.

19 Some of the other work that we're doing
20 involves community education, where we provide
21 education and resources, both written as well as
22 electronically through our information dissemination
23 system, to what we call community and systems
24 stakeholders that are community precinct councils,
25 community boards, to prosecutors' offices, defense

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2 attorneys, to the judiciary and to any other people who
3 work in the criminal justice division.

4 We are now fortunate also to be providing
5 direct services. So we are the civic restoration
6 center for the City of New York, and basically, what
7 that means is that we are responsible for helping
8 individuals get fingerprints so that they can acquire
9 their rap sheets, and then help them review those rap
10 sheets, repair those rap sheets and ultimately apply
11 for a certificate of relief from disabilities or
12 certificate of good conduct, depending on which one
13 they qualify for. And then we help them develop a
14 personal portfolio so that when they go before housing
15 or college admissions officers or employers, they're
16 able to articulate their criminal record in a way that
17 minimizes the damage.

18 And with regards to me personally, I spent
19 ten years in prison from 1980 to 1990 for robbery
20 charges of which I was guilty, and during that time, I
21 acquired my GED, my bachelor's degree and a dual
22 master's degree while in prison, and returned home in
23 1990, and completed my doctorate work at the State
24 University in Albany, and the last leg of it at the
25 Suffield University Distance Learning Program.

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Since that time, I've done quite a bit of writing, done quite a bit of speaking. I've traveled nationally in the last three years. I spoke at the University of Amsterdam. I spoke at The Hague, but also, I spoke everywhere from state pen to Penn State. And I think that I have been able to bring some new, innovative ideas into the field.

When I say "innovative," I basically mean ideas, positions, strategies, methodologies that are informed by the collective experience of individuals who have spent time in the system, who have since then acquired academic degrees and have integrated most of that experience, academic experience, with a new way of thinking and approaching these problems.

So some of the examples, for instance, the way that we look at crime, we look at crime in a very different way than most traditional criminologists because we know there are a lot of antecedents to crime. We know that people are not born criminals. We know that anybody can be defined as a criminal, depending on whether or not they've been caught or not.

We won't ask for a show of hands because we know that there are many people who are professionals today, who had they, you know, gotten caught, would be

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2 defined as a criminal. We don't think that the
3 criminal act defines your total person. We don't think
4 that a person who commits a crime is a bad person, but
5 simply a person who did something not so good.

6 But we actively recruit individuals, such as
7 gang leaders and gang members, specifically for the
8 purpose of helping them identify that they do have a
9 skill set, and that skill set could be used more
10 constructively, and that they, in fact, can acquire the
11 leadership that they're seeking, but they can do it in
12 a way that they are productive instead of destructive.
13 And if we can help them take those skill sets and
14 transfer them into areas where they can become true
15 leaders in their community, then they can actually
16 acquire the same satisfaction without ever having to
17 break the law.

18 Some of the other things that we do, we
19 approach the law both from a historical and a
20 contemporary perspective. So we understand that a lot
21 of the applications of law today have historical
22 precedents, and we understand that a lot of what we see
23 in terms of crime and violence are symptomatic of some
24 much deeper issues, such as historical trauma that have
25 not yet been looked at, and so we, you know, try to be

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2 innovative in our approach.

3 One of the things now I'll talk about and
4 then we can go on to whatever questions you have is
5 that we have impacted a number of areas. So we provide
6 consultation, as I said, to prosecutors' offices, not
7 only in New York but throughout the country to the
8 judiciary, but we also provide direct technical
9 assistance in consultation to government agencies.

10 One of our most recent contracts is one with
11 the New York City Department of Probation, where we're
12 actually providing consultation and technical
13 assistance to help them do community engagement work.
14 Probation is decentralizing. They're co-locating in
15 communities, particularly to seven neighborhoods in the
16 City of New York with the highest crime rates.

17 And in doing so, they're attempting to not
18 only be located in the communities, but they want to
19 actually develop genuine and true transparent
20 relationships with the community. They want to share
21 responsibility for public safety in the community, and
22 so we are helping them do that, and I think that we've
23 been quite successful, at least in the six months we've
24 been working so far.

25 So that's just a very brief introduction

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2 about the center and myself. I'm certainly open to any
3 questions that you might have.

4 MR. JONES: That was great. Thank you.

5 Geneva, do you want to ask him a question?

6 MS. VANDERHORST: I do. Just really
7 quickly, Dr. Pryor, I asked a question of your fellow
8 panelists on the issue of working with people who have
9 been licensed and who have to go through the process --
10 or who have been suspended or lose their licenses and
11 then are trying to get the certificates. Can you tell
12 us particularly what your experience has been with
13 folks with professional licenses?

14 DR. PRYOR: Well, unfortunately, individuals
15 who have licenses at the time that they are
16 convicted -- this is assuming that the defense attorney
17 who represents them in court is aware that they
18 actually can petition for that individual to have the
19 certificate granted at the sentencing, assuming that a
20 certificate of relief, which is only those individuals
21 who have one felony or any number of misdemeanors,
22 actually can be granted a certificate of relief at
23 court.

24 For whose individuals who are being
25 sentenced and they have two or more, then

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2 unfortunately, they are not eligible for a certificate
3 until after they've completed their sentence, and after
4 they've been discharged from prison, three years out or
5 five years out, depending on the severity of their
6 conviction, is at the point at which they can actually
7 apply for a certificate of good conduct.

8 We raised some very serious questions about
9 that because if the person needs their license as a
10 part of their livelihood, then the fact that they would
11 have to wait three or five years after leaving prison
12 presents a very serious burden, and, in fact, we're
13 developing a strategy to challenge that because what
14 that actually says is that any rehabilitation or
15 intervention that they may have engaged in while in
16 prison are not counted.

17 And that, I think, smacks in the face of
18 what corrections is supposed to be about. It's
19 understood that corrections is supposed to provide a
20 rehabilitative environment. So to say that anything
21 you engaged in in prison doesn't count towards
22 rehabilitation kind of contradicts the whole notion.
23 So we want to raise some of those questions.

24 Our experience has been that individuals who
25 have licenses at the time of convictions automatically

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2 lose their license. In fact, what we're finding in
3 New York, very interesting, individuals who work for
4 the Department of Education and have any kind of
5 certification, any kind of licensing or any
6 registration involved, automatically lose it. We don't
7 know of many individuals who had those licenses
8 restored after losing it, and that's just for being
9 arrested. That's not even for being convicted.

10 We have cases right now where individuals
11 were falsely arrested, and it was proven that they were
12 falsely arrested, and they still have not been able to
13 have their licenses restored. This is in DOE. I
14 assume that that happens in a number of other areas as
15 well.

16 The other thing that we're finding, and this
17 is really interesting, with people who are on parole,
18 people on parole who require licenses are sometimes
19 allowed to even apply for the license in cases even
20 when they have a certificate by the parole officer.
21 It's determined by whether or not the parole officer,
22 for whatever criteria they're using, deems them worthy
23 of applying for their license.

24 So there are more obstacles than just the
25 administrative or administrative and regulatory

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2 barriers. There are also some systemic issues that
3 individuals have to face, and that has a lot to do with
4 the stigma that's associated with individuals who have
5 criminal backgrounds.

6 So we're running into a lot of turbulence on
7 many different areas, the least of which is the fact
8 that a lot of community members are not as informed as
9 they could be, and we're not really understanding that
10 employment, education, housing equals public safety.
11 We somehow have relinquished the responsibility for
12 public safety to law enforcement, believing that if we
13 add more cops to the street, that makes our community
14 safer when, in fact, research is now telling us that
15 nothing could be further from the truth.

16 Law enforcement does have a role. They have
17 a very important role. The law enforcement role is to
18 enforce the laws that have been established. Community
19 safety is a totally different animal, and community
20 safety only happens when the community takes it upon
21 themselves, and they're going to monitor their
22 behavior, that they're going to respect their own
23 rights, that they're going to respect each other's
24 property, and they're going to share in collective
25 goals and bargaining and share responsibility. And

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when that happens, then we have community safety.

MS. VANDERHORST: I'm going to open it up to my other task members.

MR. JONES: Margie.

MS. LOVE: Yeah. I just want to ask a couple of questions sort of in a broader sense around the certificates. Maybe, Runa, I'll ask you first.

We've been struggling as a Task Force with this sort of notion of reintegration through a kind of more open forgiveness kind of process, the total reintegration, certificates, perhaps some other more formal ceremony on the one hand. On the other hand, whether it ought to be through a sealing or expungement, sort of forgetfulness, if you will, forgiveness/forgetfulness, I mean, that's the 50-, 60-year discussion.

Do you at Bronx Defenders -- I know you've been at this Civil Action Practice -- you, perhaps not personally, but McGregor and all are there quite a while. Have you all formulated any general philosophy of how -- the best way to accomplish full reintegration past the immediate certificate, get rid of a particular barrier approach and toward a more full reintegration?

MS. RAJAGOPAL: I don't know the answer.

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2 MS. LOVE: I'm going to ask all three of
3 you.

4 MS. RAJAGOPAL: It's hard to answer that
5 question in terms of the more immediate issue that
6 arises because how our clients come to us is in this
7 emergency context, and we are providing direct legal
8 services. So our approach with our clients is both,
9 and we push.

10 We want to push for the best where people
11 are taking pleas, the best plea possible, with time
12 served as much as possible and any sort of sealing, if
13 applicable, and that's generally the philosophy towards
14 taking a plea, and then any sort of rehabilitative
15 options available, certificates. So it is both. We
16 take an approach to access both, if possible. And, of
17 course, it's not always possible, and there are a
18 number of challenges around getting either/or.

19 In terms of a general philosophy beyond -- I
20 think we can only look at our clients as, you know,
21 wholly as they identify what their concerns and issues
22 are. So it tends to just -- we focus on, in terms of
23 civil consequences, those issues that they alerted us
24 to and additional social services. We have the
25 institutional support and resources to do that, and I

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2 think our approach is to identify -- to work with our
3 clients to identify what those needs are and access the
4 resources and benefits that are around.

5 So it may be directly related to another
6 sort of putting out a fire, and it may be broader.
7 What am I entitled to, what am I -- working with our
8 clients to educate ourselves collectively to what are
9 we entitled to beyond just this case.

10 And then, a larger idea, we do have, you
11 know, in terms of working with our larger community,
12 organizing and addressing issues related to
13 overpolicing and community safety and empowerment in
14 the community and this larger -- so we do have this
15 multipronged approach in terms of looking more broadly
16 at how folks have contact with the criminal justice
17 system and policing and issues related to safety.

18 MS. LOVE: Yeah, I think that's a good
19 answer because -- I mean, it's an appropriate answer
20 for what you all do, for what your job is. And
21 so maybe it's really fairer to ask Mr. Werts and
22 Dr. Pryor, who have been out for a while, to see what
23 your thought is about a kind of ultimate gesture of
24 reintegration.

25 What should it be? Should it be expungement

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or should it be a pardon, for example, for you or nothing or doesn't it matter?

MR. WERTS: Well, it matters because as long as -- we talk about expungement and pardon, right. Personally, I don't know how you do that, especially if a guy is a repeat offender, got two or three. You're talking about expunging everything on his record?

MS. LOVE: Yes. I mean, that's the goal. I mean, the two approaches that have been suggested to us is ultimately to try to expunge everything so that no one will find out or this sort of pardon thing. You come from a state where there actually is a functioning pardon system.

MR. WERTS: Yes.

MS. LOVE: And you availed yourself of it through the commutation authority, and governors in Pennsylvania do pardon.

MR. WERTS: Yeah, but -- they pardon, but they don't -- they pardon 30 years out. Like if you were a teenager or you were 21 years old and you got a case, and now, it's 30 years later, you kind of get the security job, they may pardon you then. But they're not pardoning you if you're in prison or you're getting out of prison.

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MS. LOVE: No, no. That's right. But you get out, and it doesn't have to be 30 years. But it's a period of time --

MR. WERTS: Yeah.

MS. LOVE: -- where you demonstrate your rehabilitation.

MR. WERTS: I mean, that would be great if that worked. I think that we should push for expungement and pardon after a period of time because -- I'm going to be honest with you.

Pennsylvania is really, really tough. I mean, I have to report to my parole agent every month, right.

You know, I got a friend who was a lifer, did 16 years, you know, and he got out because he had a really screwed up case and, you know -- so there was a lot of support in getting him out, but he's been out 21 years. He runs this huge program in Frankfort -- Frankfort section of the city. He has two sons in college. He has a master's degree, and he got to see the parole agent every 60 days and pay \$30 fee, you know.

So even with a guy like that, who's been out 21 years, and he still -- he tells me. He said every time I go down there, I get nervous. I got to pay for

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this harassment. You know what I mean? And so just to give you some perspective on how they do things in Pennsylvania, here's a guy 21 years out.

MS. LOVE: Has he applied for a pardon?

MR. WERTS: No. I told him. I said, Steve, I don't know why you didn't apply for a pardon, but because of the politics of it, you know. We have a governor, Corbett, who's a lifelong prosecutor. It's all he knows. He made a deal to never vote for a lifer to get out of prison, and he's just not in a position right now. I mean, I just don't see him pardoning anybody, especially with a criminal with a violent offense.

But I definitely think that the lawyers should push for more pardons and expungement when they can have it because this stigma carries forth in every facet of one's life, housing. I mean, I think they can reverse some of it. You got a guy getting out of prison. You got a drug offense. Their family is told no, you can't live there, which is absolutely stupid. You know, to get a job with this stigma of --

And so wherever we can do expungement, wherever we can do pardons, to get that opportunity, especially when they've demonstrated for five, six,

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seven years that they've fully integrated back into the community, I mean, because Pennsylvania --

 You know, I've known guys who come back to prison after being out five years, working, raising a family and all that, for smoking marijuana. I mean, why would you put a man back in prison who's demonstrating -- okay. He smoked some marijuana, but damn, he's working. He's taking care of his family. He's not committing any crimes. So that's what we're faced with in Pennsylvania.

 I think there should be some movement to push for pardoning where appropriate, push for expungement as often as possible when people have demonstrated that they can be fully reintegrated back into the community.

MR. JONES: Thank you.

MS. LOVE: Oh, I was going to ask you.

MR. JONES: Oh, I'm sorry. You didn't get to answer. Go ahead. I'm sorry.

MS. LOVE: Sorry.

DR. PRYOR: For me, I have to approach it in a number of different ways. First off, as far as I know, not unless things have changed, we rely on the system of jurisprudence to meet our justice. We rely

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on the court of law. We rely on the decision of the judge or jury, depending on who is the person who's going to impose the sentence, that once that sentence is imposed, and that the person completes their sentence, and they have fulfilled their obligation, that their debt is paid in full.

So there is no other justification, no legal justification. There's no regulatory -- no justification that I can think of that an individual should have to do anything beyond their sentence. There's nothing that can justify any of the collateral consequences that attach themselves. Although, we know based on the operation of the law, that the collateral consequences are kind of outside the kind of judicial realm and kind of attach themselves, and that's something we have to approach structurally.

But in terms of just on the basis of the conviction and sentence, the person serves their time. When they get out, they owe no one anything, and so from that point on, there should be no barriers. There should be no kind of obstacles, and I think this is where -- they should be able to resume what we call a normal lifestyle. Unfortunately, this is not the case.

So what do we do about it? Well, there are

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2 some basic things that we can do, and it really starts
3 with the language. About ten years ago, my
4 organization launched a language campaign, which is why
5 we don't refer to people in prison as prisoners or
6 convicts. We simply refer to them as people in prison
7 because that's who they are. They are incarcerated
8 people.

9 And when they get out of prison, we simply
10 refer to them as formerly incarcerated people. We
11 don't refer to them as inmates, offenders, convicts,
12 ex-convicts because all of those terms are void of
13 humanity. They're degrading. They're demoralizing
14 terminologies, and what they do is perpetuate this kind
15 of negative stigma that's already associated with the
16 criminal record itself.

17 So by using a human language, a language
18 that kind of humanizes a group of individuals that have
19 been dehumanized, we already changed the very context,
20 and we changed the fiber of the discussion. And it
21 lets everyone realize that we're really talking about
22 our fellow human beings. We're talking about fathers
23 and mothers. We're talking about neighbors, sons,
24 daughters. And, you know, anyone, like I say, can be
25 placed in a situation and commit an act that can later

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2 be criminalized. And, you know, I know many
3 professionals, myself, across the country and outside
4 the country, who have committed acts and have been
5 convicted of crimes, but by no means would I consider
6 them a criminal.

7 And, you know, it's really unfortunate that
8 the term "criminal" is applied to some and not to
9 others, right. We all know that Martha Stewart was
10 convicted of a crime. She spent time in prison. Never
11 once have you ever heard Martha Stewart referred to as
12 an ex-con, as an ex-inmate, as an ex-offender, nor will
13 she be. And that's because, I think, society
14 understands the power of the stigma being placed on
15 them. So there is a powerful dynamic. Then the other
16 thing --

17 MR. WERTS: There's a money dynamic, too.

18 DR. PRYOR: There's a money dynamic. Well,
19 that's part of the power. That's part of the power.

20 And then the other thing is that I don't
21 think that, you know, we're a very forgiving society.
22 I think that we really have to educate, you know, our
23 fellow human beings about the power of forgiveness and
24 that everyone deserves a second chance. In fact, a lot
25 of folks who find themselves entangled in the system,

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2 and upon close examination, we find that they never had
3 a first chance. So they can't be given a second chance
4 if the first chance never came.

5 But assuming that they did get a first
6 chance, I think if they, you know, caused some kind of
7 act that was defined as criminal, I think that everyone
8 deserves a second chance. God knows how many of us
9 have been given second, third, fourth and fifth
10 chances, and so if we are talking about that just on a
11 human perspective, I think those things can be done.

12 In terms of legal, I think there's a
13 practice now in the judiciary that if I commit a crime
14 and there's ten years in-between the commission of the
15 two crimes, then when I return to court, that I can't
16 be charged as a predicate, right. I'm charged as a
17 person who committed their first offense. Well, if
18 that's the case and we're using ten years as the mark
19 in terms of criminal activities, then why can't we
20 apply it across the board?

21 Why couldn't that be, if a person has been
22 in society for ten years, that the record is totally
23 expunged, that the individual should not have to face
24 any kind of administrative or regulatory, statutory
25 barriers to anything? Because the reality is that

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2 we've had a recidivism rate in America -- well, we all
3 know this so. So this is kind of academic, but the
4 recidivism rate in this country for the last 30 years
5 has hovered anywhere between 60 to 70 percent. If you
6 go with the 60, it's six out of ten. If you go with
7 the 70, it's seven out of ten.

8 If we were manufacturing automobiles and six
9 out of ten of our automobiles came off the assembly
10 line defective, we would stop the assembly line. We
11 would say this is unacceptable. That's too high, and
12 certainly, the 70 percent would be insane. But we have
13 somehow accepted a 70 percent recidivism rate, a
14 recycling of individuals in and out of the system at
15 exorbitant costs, and we're not even going to talk
16 about the human cost. And if you like numbers, we can
17 get into the fiscal cost, hundreds of millions of
18 dollars, and we cannot really show any substantial
19 increase in public safety, which is a whole nother
20 measure.

21 So for me, I think that we need to get much
22 wiser, and we really need to come to the realization we
23 can't incarcerate our way out of social problems, and
24 that the way to really make our communities safer, make
25 them better is to do everything we can to ensure that

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everyone is as productive as they can be, that they have access to education and to housing and vocational skills and to social services and healthcare so that we can have both public health and public safety be the measure of a high quality of life.

MR. JONES: Vicki, did you have a question?

MS. YOUNG: I think they've said everything far better, but a question that came up either yesterday or the day before is somebody was saying that when someone is convicted and sentenced in court, that that's a big event, that there's a ceremony to the being sentenced.

And now, two of you have served your sentence, are both clearly doing very well, and I'm asking you because the psychologists believe that there is value to having a separate ceremony to acknowledge either your return or your expungement or something. And could you speak to, you know, what would the value to you be of a piece of paper or a ceremony or is there any?

MR. WERTS: I can't. I mean, I don't see any value personally. I mean, he may see value in it, but I think that most guys who come out of prison just need an opportunity. I think that is the value, that

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2 is the ceremony because anything other than that, you
3 know, some ceremony to recognize, without the
4 opportunity to do the right thing, the opportunity to
5 take care of your family, to be productive citizens, to
6 reintegrate into society, to be accepted as a
7 full-fledged, productive human being, anything other
8 than that is gesturing.

9 DR. PRYOR: Yeah, I concur. I don't think
10 there would be any value in the paper. I think the
11 value is the recognition that an individual, you
12 know -- you exercised poor judgment, made a mistake,
13 did something that was inappropriate and had to go
14 through some process that was, I guess, what the court
15 deemed necessary to address that, and then after doing
16 so, given a chance to just get back, you know, on their
17 feet and resume a normal life. And I think that that's
18 the value.

19 But I'll tell you, interestingly enough,
20 something new has been happening recently. I find this
21 quite interesting as I -- you know, I speak quite a bit
22 around the country. Lately, in the past couple of
23 years, as I'm speaking -- you know, I've made a
24 commitment that at some point, I'm going to
25 self-disclose. I just feel that it's necessary to do

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2 so, and it doesn't make a difference. And I've spoken
3 at the American Bar Association. I've spoken at the
4 Harvard Club. I've made my rounds.

5 But lately, in the last few years, what I
6 have noticed is that when I self-disclose, what folks
7 have said to me -- and in a very polite way, they say
8 that they feel that I'm being less than forthright. In
9 other words, they think that I'm lying, that there's no
10 possible way that you could have spent time in prison.

11 And I -- initially, when this happened to
12 me, I was offended, you know, but then as I thought
13 about it, I said to myself, you know, it makes sense
14 that they would have to respond in that manner because
15 if a person thinks that they know what an "ex-con"
16 looks like, they know how he talks, they know how he
17 walks, they know everything about him, yet this
18 gentleman stood before us, gave us an address, you
19 know, knew his facts, you know, was very articulate,
20 you know, well-dressed and handsome, I might add, and
21 then at the end of this, this person drops this load on
22 us. I have two choices. I either have to reject
23 everything I thought I knew or I have to accept
24 something that I only heard for the last 45 minutes as
25 truth of a greater value of what I thought I knew all

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1 my life.

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3 So it's easy for the rejection because
4 people already have it built in their mind. They have
5 this picture. You know, when you say "criminal," that
6 they're usually thinking of a man who's probably black.
7 He might have on baggy pants. I mean, there's this
8 image that automatically comes to mind, and certainly
9 not a person who can read and write and think, you
10 know, and be analytical. I mean, you know, that's just
11 way over the top, you know, and then you're talking
12 about a person who has an advanced degree, who's a
13 homeowner and says he has a passport and travels out of
14 the country.

15 Now, you're just playing games with my head,
16 and this is the kind of attitude, you know, that you
17 get because people don't think it's possible for there
18 to be a life after prison. Even people who have done
19 time in prison can't see a life after prison. They
20 just cannot see it.

21 So when I speak to men and women in prisons,
22 and I like more -- mostly speaking in the women's
23 prisons because every time I go, I get about a dozen
24 wedding proposals. I have to turn them all down, of
25 course, but I do get them. I identify in a different

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2 way with women because I grew up in a house with seven
3 sisters, and I understand that when you incarcerate a
4 man, you incarcerate a person, but when you incarcerate
5 a woman, you incarcerate the entire family. And
6 there's a whole nother set of issues that go with that.

7 But I think that there needs to be far more
8 individuals who are formerly incarcerated, who are
9 professionals self-disclosing, and there are. And we
10 actually have individuals who work in law offices. We
11 have individuals who work in courts. I know of a
12 sitting judge here in New York who has a criminal
13 conviction. I'm not going to give any names, but I
14 know people in many, many, many very high-profile
15 positions, and you know many in Congress, in the State
16 Assembly, and lately, it seems like there are many of
17 them who need applications from us.

18 MR. WERTS: Yeah, I think D.L. Hughley said
19 something, but we can talk about that.

20 DR. PRYOR: Yeah, but we need to create
21 critical mass so society understands that, yeah, a lot
22 of them are people who have made some mistakes, but
23 have since then done some extraordinary work and are
24 making great strides and have every reason to be
25 treated like anyone else.

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MR. WERTS: I just want to jump in. I just want to echo everything Mr. Pryor just said because, I mean, actually, that's the work I'll be doing in Philadelphia with my fellowship is to begin to pull these people out of the woodwork because I think people have a particular image of who a criminal is, and there are thousands. We got 300,000 ex-offenders going on here, and a lot them are doing very well.

DR. PRYOR: You mean formerly incarcerated people. We're going to get it right.

MR. WERTS: I understand about the humanization and all that, but sometimes I like to call a thing what it is, you know, because sometimes you get into the euphemisms, and it's 1984 kind of thing, like prison, correctional facility. No, it's a prison. They're housing people against their will. So, I mean, but I'm definitely with you on the returning citizens and formerly incarcerated. I mean, I definitely understand that.

But basically, there are 300,000 people who were formerly incarcerated in Philadelphia, and a lot of them are doing very well. They run programs. They're vice president of this. They got their own businesses. Nobody knows who they are, and so I want

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to be able to pull these people out of the woodwork to really humanize, you know, because he said something really powerful.

And I dress like this every day. I stay sharp because of racial profiling, you know. I can't go back to prison, you know. It ain't going to be anything that I do, but I understand racial profiling. I mean, like, I don't want to be walking down the street and something come on the radio, a six-foot-two black man just robbed 7-Eleven. I'm hoping the police drive past me and say, well, he didn't do it. You know what I mean? I mean, I got to think about all these kind of things.

I mean, everywhere I go, I don't use cash. I use a card. I mean, I'm very cognizant of the society that we live in. Any accusation can put me back in prison for the rest of my life. So I don't use cash. I use a card everywhere I go to keep a record of when I was in there. Every time I go to the store, I make sure I get on the camera, all those kind of things, you know. That's how it is, I mean.

But we really got to really recognize that there are a lot of people who have committed crimes and who are back out in the community doing very, very

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2 well. And sometimes we just focus on that percentage
3 of guys in prison, and it kind of spreads out
4 throughout the community, and we want to stigmatize
5 those guys. They don't know better. Their neighbor or
6 this guy who owns the store, the guy who's a plumber or
7 the guy that hung Sheetrock at your house is an
8 ex-offender -- or returning citizen. I got to get that
9 right.

10 DR. PRYOR: It's all right, bro.

11 MS. STRONG: I have a question for
12 Ms. Rajagopal, and it's a little pedantic, but how much
13 extra work is it to apply for the CRD in the context of
14 doing a regular sentencing? I'm just kind of curious
15 because I do a lot of defense work.

16 MR. WERTS: Can I ask you a question? When
17 you say "certificate," is that a New York thing about
18 getting a certificate?

19 MS. LOVE: Yes.

20 MS. STRONG: It is.

21 MS. LOVE: Yes, it is.

22 MR. WERTS: I wish somebody explained that
23 to me. I don't get it.

24 MS. STRONG: And then the second part of
25 that is, do you have a tangible example of somebody you

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2 or someone in your office has represented for whom the
3 certificate process actually brought a job or a real
4 opportunity?

5 MS. RAJAGOPAL: Yeah, sure. The process is
6 not much more extensive if it's at sentencing. We have
7 a template. It's basically one form that the judge can
8 sign off on, either it can be generally for -- general
9 in terms of disabilities and forfeitures or it can be
10 specific to employment or housing or for a specific
11 purpose, and, of course, if you have to apply after
12 sentencing, then it is a different process. It is more
13 work in terms of submitting additional paperwork in
14 support of rehabilitation, and it takes longer to
15 obtain.

16 And we have lots of examples where CRDs have
17 been effective and helpful in the employment and
18 housing context specifically, you know. Examples that
19 come to mind are clients who are applying for public
20 housing for New York City Housing Authority, and with
21 the housing crisis in New York City and lack of
22 affordable, accessible housing, it's a major issue and
23 crisis.

24 It's important for many of our clients to be
25 able to access housing through NYCHA, and so with

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2 obtaining a CRD at sentencing, let's say as an example,
3 we have a lot of issues that come up related to drugs,
4 drug sales, drug use or not even for NYCHA. If someone
5 gets a disorderly conduct, which is a violation and not
6 a crime, they can be presumptively excluded from
7 eligibility, and so the CRD helps to rebut that.

8 And we have, in my practice, as an example,
9 using the CRD in an application -- usually the
10 application is denied outright, and you have to pursue
11 the process and ask for a hearing. But at a hearing
12 for eligibility, as an example, with the CRD and
13 letters in support of rehabilitation or family members
14 or other support a person may have in their lives, have
15 successfully made someone eligible for public housing,
16 as an example.

17 On the other end of that, in the housing
18 context, termination proceedings. CRDs can be helpful
19 in the same way. I had mentioned security guard
20 hearings, licensing hearings, as an example for CRDs,
21 and we really push for professions and licenses where
22 we've identified we do better when the consequence or
23 the effect of the arrest is if the person is suspended
24 right after arrest versus, in some professions,
25 licenses we'll wait to see what the disposition is, so

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2 we can get the best disposition possible.

3 But even if it's a violation or misdemeanor
4 or whatever it may be, even with the best possible
5 disposition, the CRD is going to be helpful at the
6 hearing to challenge any kind of termination. I can
7 think of many examples. Security guards is prime in
8 that respect.

9 MR. JONES: We are running out of time, but
10 before we go, I wanted to just for one second come back
11 to this notion of a ceremony because the way -- the
12 context in which it came up was that the moment when
13 you stand before a judge and are sentenced to life
14 without the possibility of parole or ten years or
15 whatever it is, we were told it is a very powerful
16 moment in a person's life, a moment that you don't ever
17 forget, right.

18 And so the thought was, what about on the
19 other end when you had done your time, when you had
20 paid your debt to society? What if you were brought
21 back, and someone at that point said to you, you're
22 done, you've paid your debt, right? But not just that.

23 What if, with that ceremony, came and here's
24 your voter ID card, so as soon as you walk out this
25 door, you can vote or what if that ceremony came with

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and here's the document that says you have a right to go back and live with your family in public housing, right, or you have a right not to be denied public housing? What if that ceremony came with that? Would that make you think differently about the ceremony or would you still --

DR. PRYOR: That's not a fair question, a lot of what ifs, but I get what you're saying. Assuming that those were realities, then I think that that ceremony would be one that would be substantive, and it would be a worthwhile ceremony.

I think the entire family should be there. I think that the community should be there. I think that we should go back to some of the traditional and cultural practices that many of us know, particularly coming out of Eastern cultures and African cultures, that everything was done in front of the community.

And I think that if we had that ceremony as a part of the community function and all of those things came with it, then I would be the first to promote that ceremony because you're right. It would be something to remember, but it would have teeth because the reason why the absence of that doesn't make the ceremony something worthwhile is because if that

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ceremony were to happen in the absence of those other things and the person walks out on the street, and they're still an outcast. They still don't have access to anything. So it takes away from the value of what the ceremony is about.

I like the idea. All ceremonies are good, you know. We see our children baptized or wedding ceremonies, graduation ceremonies because we want to promote something good. I think that a person paying their debt back in full is something worthy of a ceremony, right. If I lend you \$10,000 and you pay me back all my money, that's a ceremony. I want to celebrate the fact that you paid me back my money.

But I think that you raised an excellent point, Rick, and I appreciate you raising it because I think it's something that deserves further exploration and I think -- the only caveat I would have to that is that somehow that ceremony had to be -- I'm real reluctant to keep anything within the purview of the judicial system. So we would have to work out some details of how that would work, but I like the idea. Thank you for the question.

MR. WERTS: That's good. I mean, in further explanation, I definitely -- we would always believe

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that -- we used to say 12 people put you in, and 12 people should let you out, that kind of issue, right, bring it more to the community. And I also thought there should always be community oversight, you know, that people are coming back to your community. Communities should have some say, some involvement when people come back to the community.

So, I mean, I've always said that, but I didn't think about it as deeply as you just mentioned it. So that kind of ceremony and Mr. Pryor expanding on it by giving a broader context to it by integrating the community, community members into that process, I think that would be worthwhile. I think a guy may see that he is being welcomed back home without the stigma. So I think that could be very, very useful in that context.

MR. JONES: Well, listen, that's it for us. That's a wrap on this journey across the country. Now, our work really begins, but I just want you to know that there was no better way -- really no better way that we could have ended this panel that we have right here. So thank you.

(Whereupon, at 5:33 p.m., the hearing was adjourned.)

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C E R T I F I C A T E

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 2013.

HELEN SHUM

**Transcript Edits
New York Hearing
Day 3**

Philip Maier

Page 3, line 16, “representation” should be “reputation.”

Page 9, line 12, “proper” should be “private.”

Elizabeth Gaynes

Page 199, line 18-19, “Long-Term Risk for People Incarcerated for Very Long Periods of Time” should be “Longtermers Responsibility Project.”