

1
2 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

3
4 NACDL TASK FORCE ON RESTORATION OF RIGHTS

5 AND STATUS AFTER CONVICTION

6 WASHINGTON, D.C. WITNESS SCHEDULE

7
8 Day 3
9 Friday, February 22, 2013

10 National Association of Criminal
11 Defense Lawyers
12 1660 L Street, N.W.
13 12th Floor
14 Washington, D.C. 20036

15
16 The hearing convened, pursuant to notice, at
17 9:00 a.m.

18 BEFORE:

19 RICK JONES, Task Force Chairman

20 ANGELYN FRAZER, State Legislative Affairs Director

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

2 MR. JONES: All right. Good morning,
3 everyone, and welcome to Day 3 of our Washington,
4 D.C. hearings. We are pleased to have you all here.

5 As you may or may not know, we have been sort
6 of going across the country on a listening tour and
7 listening to folks of all stripes, stakeholders, in
8 the effort to learn as much as we can about the
9 obstacles and the hurdles for affected community
10 members who are trying to work towards restoration of
11 rights and status after a conviction. So we are
12 excited to hear from you all and we expect that this
13 will be a very fruitful and enlightening
14 conversation.

15 The way that we work is that we're going to
16 ask each of you to give us about five or ten minutes
17 by way of sort of background about who you are, the
18 work that you're doing, and the benefit of any other
19 thoughts that you might have that you think will be
20 helpful and useful to us, and then we've got lots of
21 questions for you, and the way that we do our
22 questioning is that one of us leads the discussion,

1 and then to the extent that there's time, and there
2 really never is enough time, the rest of us will get
3 involved in the questioning as well.

4 For purposes of this discussion, Chris
5 Wellborn is going to lead the conversation, and
6 unless you have questions, I will stop talking and
7 turn the floor over to you and I will leave it to you
8 to decide who will go first.

9 MR. CORTES: Would you like to go?

10 MS. GILL: Sure. I'll begin.

11 PANEL I

12 MS. GILL: Thank you so much. I would like
13 to thank the NACDL and the others who participated in
14 organizing this event. It's really an honor for me
15 to be here.

16 My name is Molly Gill. I'm the government
17 affairs counsel for Families Against Mandatory
18 Minimums. You may have heard of us as just FAMM. We
19 are a nonprofit, nonpartisan organization. We were
20 founded in 1991 to reform mandatory minimum
21 sentencing laws. We work primarily on drug and gun
22 laws as those have the biggest impact and are used

1 most often, but we are opposed to all mandatory
2 sentencing laws and work with Congress and State
3 legislatures to reform those. We currently have
4 projects in Massachusetts and Florida and our federal
5 work is of an ongoing nature.

6 We also have over the years had opportunities
7 to get involved in federal clemency efforts, and
8 that's primarily where my expertise lies and what I
9 would like to speak with you about today. We have
10 helped over the years various commutation applicants
11 find pro bono representation and have produced some
12 guidance materials for pro bono attorneys on how the
13 commutation process works at the federal level, and
14 that is part of my job, and what I do is helping
15 attorneys understand this process and understand how
16 it works, what kinds of arguments they should and
17 shouldn't be making, and basically help them navigate
18 the relationship with their clients as well.

19 So this has led to some really interesting
20 interactions with attorneys who aren't necessarily
21 criminal defense attorneys who may work in firms and
22 being doing this pro bono and may know absolutely

1 nothing about the federal criminal justice system,
2 and over the years, we've been very fortunate that
3 we've seen a lot of the prisoners that we've been
4 able to connect with pro bono attorney have received
5 Presidential commutations which have gotten
6 exceedingly rare over the last 12 years.

7 And today, I want to talk about some of the
8 problems that currently exist in the federal clemency
9 process and some of things that we've encountered and
10 some of the work that we're doing to reform that
11 process. I know you've heard from others about the
12 Pardon Attorney's Office and the process, people who
13 are actually far more qualified than I am. So I'll
14 try to keep this sort of general section brief.

15 Generally speaking -- I guess I should back
16 up a little bit. Part of the reason that FAMM got
17 involved in this is that we have a national
18 membership that is very large and includes a lot of
19 people who are incarcerated or loved ones of people
20 who are incarcerated, and so over the years, they
21 phone us a lot and say how can I get out of prison
22 early, how can my loved one get out of prison early,

1 and one of those mechanisms is a commutation from the
2 President. Unfortunately, it is a power that is
3 never used now. In the last 12 years, there have
4 been 12 commutations. President Obama so far has
5 granted only one. It went to a FAMM member named
6 Eugenia Jennings who was serving, I believe, a
7 24-year sentence for a crack cocaine offense, and she
8 ws dying of leukemia and she was released and so far
9 has not re-offended and is doing great and getting
10 the medical treatment that she needs and has reunited
11 with her three children.

12 So those are wonderful stories that, of
13 course, we love to share, but the stories I'm here to
14 share today are the stories of the thousands of
15 people who are not Eugenia, and basically what we
16 hear from our prisoner members is this is how
17 clemency works. If you even know what a commutation
18 is in the first place, which a lot of our members
19 don't, and if you can get your hands on an
20 application for it, which a lot of our members don't
21 even know exists, and then you fill it by yourself,
22 you mail it in to the Office of the Pardon Attorney.

1 It's a small office located within the
2 Department of Justice. It has seven attorneys and a
3 budget of about \$2.8 million, and then it sits there.
4 Many times, people don't even get an acknowledgment
5 that their application was received. Many times,
6 they don't even know what is going on with their
7 application, and we have known people to wait as long
8 as eight years before getting an answer on the
9 application that they filed.

10 Most of these people are just normal everyday
11 people. They don't know congressmen. They don't
12 know anybody at the White House. They have no
13 special connections to Washington, and so their
14 petitions sit there and languish and languish and
15 languish, and almost always, the answer is no.

16 Thanks to some investigative reporting from a
17 woman named Dafna Linzer with an organization called
18 ProPublica, we now know a lot more about how the
19 Office of the Pardon Attorney works and what some of
20 the problems are there.

21 To sum it up briefly, I would say that the
22 number one problem with the Office of the Pardon

1 Attorney is that it is captive to a prosecutorial
2 perspective. Being located in the Department of
3 Justice, it has traditionally been headed by people
4 who are career DOJ employees. They're not political
5 appointees. They're not selected by the President,
6 usually. I believe the last one who was was John
7 Stanish, who was selected by President Carter, and so
8 they are people who are very much of a DOJ mindset
9 that these are people who broke the law, these
10 sentences were correct, our prosecutors got it right,
11 we don't need to review these cases, we don't need to
12 let these people out.

13 And I think that there is some evidence that
14 supports my claim that there is that mindset as there
15 have been 11,000 rejections in the last 12 years and
16 only 12 commutations. There's also questions as to
17 efficiency and how thorough a review the cases are
18 receiving. Dafna Linzer calculated that there were
19 7,000 petitions denied over a four-year period and
20 she calculated that's a rate of seven per day.

21 So I don't know if you can do a full and
22 meaningful analysis of seven criminal cases in one

1 day and decide that this person is unworthy of a
2 second chance, but I certainly can't. I'm not that
3 talented, and we've just seen thousands and thousands
4 of applications denied which really raises some
5 serious questions as to whether they're getting any
6 kind of meaningful and objective review.

7 Dafna Linzer, most disturbingly, found a
8 racial disparity in the number of pardon grants and
9 she found that, basically, if you were white, you
10 were four times as likely to receive a pardon or
11 commutation, which is an incredibly disturbing
12 number. She looked at a lot of the recommendations
13 in cases and found that socioeconomic factors that
14 tend to correlate with race were being used to
15 determine the outcomes of whether people should be
16 pardoned or not. She found that similarly situated
17 offenders were treated differently based on their
18 race and were even spoken of differently by Office of
19 Pardon Attorney staff, depending on their race.

20 So an African American applicant who was a
21 single mother was not a single mother. She had a
22 child out of wedlock; whereas, a white applicant

1 would be referred to as a single parent or a single
2 mother or having a child from a previous
3 relationship. So these are very disturbing findings
4 that are currently being reviewed by the Bureau of
5 Justice Statistics, which is looking at her data to
6 make sure that it was done correctly. That report
7 from the Bureau of Justice should come, I believe, in
8 October of this year.

9 What FAMM has been doing to try to reform
10 this process is to raise awareness. So we've been --
11 last year, we had a Press Club briefing here in
12 Washington, D.C. We had Dafna Linzer, a former
13 Pardon Attorney official, and several family members
14 who were impacted come and talk about the process and
15 how it needs to be fixed.

16 We have helped draft and raise support for
17 sign-on letters from law professors, from former
18 commutation recipients, from various advocacy groups
19 around the city, and we have also spoken with members
20 of Congress and urged them to investigate the Office
21 of the Pardon Attorney to look into especially these
22 disturbing allegations about racial disparity, and we

1 continue those efforts, and right now, we're
2 currently trying to raise a coalition of former White
3 House counsels to present some solutions to the White
4 House and offer their expertise in the form of a
5 letter to the current President in the hopes that
6 there will be some reform there.

7 So I know I've spoken a while. I'm going to
8 stop now.

9 MR. JONES: Thank you very much.

10 MR. CORTES: I would like to defer to my
11 colleague, Richael, who has a lot more information
12 concerning the background in Virginia on
13 disenfranchisement.

14 MS. FAITHFUL: So thanks for having us this
15 morning. My name is Richael Faithful. I'm a
16 second-year equal justice works fellow at Advancement
17 Project. I'm the senior member of our Virginia
18 Rights Restoration Program.

19 Advancement Project is a national civil
20 rights organization founded in 1999 to support racial
21 justice work on the State and local levels using the
22 tools of communication, advocacy, and law. We often

1 refer to ourselves as community lawyers. So that's
2 what we try to hold ourselves to, and I'm from
3 Virginia, from Centreville, Virginia. I consider
4 Virginia home, reluctantly sometimes, and, also, my
5 background before becoming a lawyer was as a
6 community organizer. So that's kind the orientation
7 that our program tries to bring.

8 So my testimony as opposed to Edgardo's is
9 going to focus on the unique legal issues of the
10 felony disenfranchisement process in Virginia. So
11 I'm going to talk a little bit about the source of
12 law and legislative history through primary research
13 that I've been able to do as well as discuss the
14 rights restoration process through our actual legal
15 practice that we have at Advancement Project.

16 So Virginia is one of four States along with
17 Kentucky, Iowa, and Florida that permanently
18 disenfranchises its citizens after a felony
19 conviction. In Virginia, four civil rights are taken
20 away: The right to vote, the right to hold public
21 office, the right to be a notary, and the right to
22 serve on a jury, and the only way for citizens to

1 restore their civil rights is through individual
2 clemency petition.

3 The Government through the State Constitution
4 has unfettered executive discretion over petition
5 review as well as over the petition process itself.
6 There is a judicial review process that exists, but
7 the Circuit Courts merely establish a petitioner's
8 eligibility and require gubernatorial review within
9 90 days. So it's not a process that actually allows
10 courts to make decisions. It just allows them to
11 facilitate and streamline the process for the
12 Governor.

13 The 1850 Constitution was the first
14 Constitution in Virginia to contain a
15 disenfranchisement clause in its voter qualification
16 article, and there, the language that was used is an
17 infamous offense. The Governor's powers actually to
18 re-enfranchise individuals didn't come about until
19 the 1870 Constitution.

20 Virginia's 1902 Constitution is actually very
21 notorious because it was part of a number of States,
22 including Mississippi and Alabama, that had a

1 southern strategy that intended to target African
2 American men. So the way that was done was that very
3 specific crimes, what we call survivorless crimes,
4 were enumerated in the State Constitution so to
5 replace infamous offenses with petit larceny,
6 obtaining money or property under false pretenses,
7 and forgery, of which freed, recently freed, slave
8 men who were frequently accused and convicted during
9 reconstruction.

10 So the current law is from the 1970
11 Constitution where in 1968, the General Assembly,
12 delegated the constitutional review process to a
13 commission instead of a convention. So there, the
14 amendment was replacing these enumerated crimes with
15 the general description of a felony conviction.

16 The reality is that even though there was a
17 review process of the Constitution, it has very
18 little attention paid to the issue of
19 disenfranchisement. There are other issues such as
20 voting age and some of the other civil rights issues
21 of the day that actually gained a lot more attention.
22 So we should keep that in mind when we think about

1 the ways in which the Constitution was amended to
2 reflect what the current law is now.

3 So the current language is under the voter
4 qualification section of Article 2, Section 1 which
5 provides that no person who has been convicted of a
6 felony shall be qualified to vote unless his civil
7 rights have been restored by the Governor or other
8 appropriate authority. No one really knows what
9 "other appropriate authority" means, but the courts,
10 the Virginia Courts, and the Attorney General's
11 opinions and our analysis conclude that probably
12 includes the U.S. President, other States' Governors,
13 other States' correctional boards and now automatic
14 restoration of statutory laws in other States, which
15 explains by out-of-state residents or -- excuse me --
16 individuals with out-of-state convictions can
17 actually come into Virginia often and be eligible to
18 vote because their rights have been restored in
19 another State, the State of conviction.

20 Conversely, the executive clemency section,
21 which is Article 4, Clause 12 provides that the
22 Governor shall have the power to remove political

1 disabilities consequent upon conviction. So that's
2 the power, the blanket power, that the Governor has
3 to both restore the rights of individuals and create
4 a process or have no process for the right to
5 restoration for re-enfranchisement, and this is the
6 only constitutional language that grants any power of
7 re-enfranchisement in the executive section. So we
8 assume that the Governor has plenary executive
9 authority.

10 To date, an estimated 372,000 Virginians that
11 are not incarcerated -- so these are individuals who
12 are living in the community, paying taxes, working
13 and all of that -- are disenfranchised. That's about
14 seven percent of the Commonwealth's voting age
15 population that is missing. That also includes a
16 shocking one in every five African Americans that is
17 disenfranchised.

18 Keep in mind that African Americans only make
19 about 20 percent of the State population in total.
20 So to have 20 percent of African Americans, one in
21 five of African Americans missing is also a
22 significant number.

1 The current Governor, Governor Bob McDonnell,
2 he has a year left in office in his four-year term.
3 He has approved more applications than any other
4 Governor, which is a little over 4400 applications as
5 of early January, yet bear in mind that 372,000,
6 which means that only a little more two percent of
7 the disenfranchised Virginians have had their rights
8 restored through this process.

9 So often Governor McDonnell is commended for
10 the progress he's made, which we also try to applaud,
11 but try to keep perspective here that even if the
12 Governor approved an application every hour of every
13 day, it would still take him a little over 40 years
14 with the individuals who are not incarcerated to
15 re-enfranchise everyone.

16 So, clearly, the process itself is broken.
17 It's outdated. It's unfair and it's inefficient, and
18 that's what we try to elevate in our campaign.

19 A little bit more about the process: There
20 are nine very detailed eligibility criteria, and this
21 is where most people have difficulty navigating the
22 process. Among them is a requirement that a

1 disenfranchised citizen must complete all parts of
2 their sentence. That includes probation, but it also
3 includes all court-assessed costs, like fees, fines,
4 and restitution. The latter tend to be a very
5 significant problem for many of the people that we
6 work with and our clients, especially because
7 interest accrues over time. There is no uniform
8 collection process, and many people can learn many
9 years later that they owe money to the courts or
10 still owe money even though they thought they paid,
11 and this is something that we're trying to address
12 through our campaign as well.

13 So even though criminal debt is a huge issue,
14 the other big issue is very complicated waiting
15 periods. So even once you complete your sentence,
16 you still have to wait two or five years, depending
17 on the classification of your conviction, to even be
18 eligible. There is a distinction between nonviolent
19 and violent convictions. That is a distinction that
20 is solely made by the Governor.

21 The good news is that the current Governor
22 does provide a list, a public list of what those

1 crimes are. In the past, you had to guess, and these
2 are not necessarily intuitive lists. For example,
3 drug crimes get classified in either category. Drug
4 possession, for example, is a nonviolent conviction;
5 whereas, drug possession with intent to distribute is
6 a violent conviction, for example, and there are a
7 few other examples.

8 Further, there is a separate waiting period
9 that exists for driving while intoxicated
10 convictions, and that can be for a misdemeanor or a
11 felony conviction which adds an additional five
12 years, and then, lastly, if you have a subsequent
13 misdemeanor after your felony conviction, that
14 actually restarts your waiting period.

15 So there are many instances in which we work
16 with folks who will not be eligible for like a decade
17 or more.

18 So it's clearly a very technical process
19 that's administered by the Secretary of the
20 Commonwealth in Virginia on behalf of the Governor.
21 So once you're actually eligible, you have to choose
22 the right application. You have to provide very

1 accurate details about your conviction or your
2 probation discharge dates. You have to write about
3 your community service. That's technically optional
4 for the two-year application or the nonviolent
5 application, but it's required for your five-year
6 application or the violent application. All the
7 applications have to be notarized as well.

8 Also, it's virtually required for the
9 two-year and required for the five-year that each
10 applicant must provide certified sentencing orders,
11 receipts from the payment of their court-ordered
12 costs, discharge letters, again, from the district
13 probation offices, and the five-year application
14 requires that you have five -- excuse me -- you have
15 three letters of reference from non-family members in
16 addition to your own petition letter.

17 So we're talking about quite a bit of
18 information that is being asked of the applicant to
19 provide, many of which or at least all the
20 information and documents, you know, are in the hands
21 of other executive agencies or the courts which the
22 Secretary of the Commonwealth could easily obtain,

1 but does not.

2 So, technically, there is a 60-day review
3 deadline, depending on when an application is
4 considered complete. We learned through our advocacy
5 not too long ago that an application is actually not
6 complete until the Secretary receives a background
7 check from the Virginia State Police which takes
8 anywhere from five days to two months as it did with
9 one of our clients, which means that the 60-day
10 deadline is not as meaningful as we had hoped. It is
11 a deadline, but it does depend on a variety of other
12 circumstances that are outside the applicant's
13 control.

14 Applications may be denied for any or no
15 reason at all. There is no appeals process.

16 So for all of these reasons, we argue that
17 Virginia still remains one of the most cumbersome
18 rights restoration processes in the country, rivaling
19 that of Florida.

20 Let me give a quick story about Reverend
21 Harris, who is a person we worked really closely
22 with. He had a really difficult time with his

1 application even with working with lawyers and
2 advocates. He reached out to us about three years
3 ago. He actually thought his rights had been
4 restored because even though he had provided accurate
5 information on his voter application, his voter
6 registration application, and was given a -- was able
7 to register, he was not actually eligible.

8 So we were able to determine that for him, we
9 weren't sure about his eligibility because he had
10 subsequent waiting periods that overlapped with his
11 original waiting period. It took over two months to
12 get all of his documents, but Reverend Harris was
13 able to advocate for himself in a closed meeting we
14 had with the Secretary of the Commonwealth and four
15 of their advocates to kind of explain his story of
16 addiction and recovery that accompanied his
17 application.

18 Even after that meeting, his application was
19 threatened to be denied due to some confusion about
20 his -- there was a clerical error that mixed up his
21 records with another person with the Prince William
22 Court. So this other person had owed about \$10,000

1 in fines, which Reverend Harris did not. So we had
2 to spend quite a bit of time rectifying that issue,
3 because if he had fines, outstanding fines, he
4 wouldn't be eligible.

5 So his application was actually approved on
6 October 15th, which is the voter registration
7 deadline this year. So he was able to vote only by a
8 couple of hours and even with all the work that we
9 put in with him, and he continues to be an advocate
10 that works closely with us, helping other people
11 through their rights restoration process.

12 So I'm taking a lot of time. I'll just
13 shortly mention that what we do, we do provide
14 individual assistance, but we do that only if there's
15 not folks that can help locally. These are folks
16 that we've trained, either lawyers or non-lawyers, to
17 help people navigate the system. So we spend quite a
18 bit of time training individuals, creating self-help
19 tools.

20 An important piece of our work is actually
21 working with people who are formally disenfranchised
22 or currently disenfranchised and not eligible to help

1 them help other people, and so at this point, we have
2 a pretty deep network across the State of individuals
3 who are helping others. That's the role that we see
4 that we play.

5 We should acknowledge that there have been a
6 lot of legal professionals who have stepped up to the
7 plate in Virginia, including criminal defense
8 attorneys both in being trained and incorporating
9 this into their private practice. We have some
10 really active attorneys in Charlottesville and
11 Norfolk, criminal defense attorneys as well as public
12 defenders, who are actually creating clinics in their
13 volunteer time and they're also working with our
14 advocacy efforts.

15 We've also had criminal defense attorneys
16 help us with creating model trainings, because my
17 expertise is not necessarily in criminal law. So
18 it's been a great collaboration.

19 So, you know, Virginia's process continues to
20 be outdated. For us, we want to get to automatic
21 restoration. So we're trying to lift the floor to
22 get Virginia to where the rest of the country is to

1 move beyond our 1850 legal scheme here and, you know,
2 the Advancement Project continues to use executive as
3 well as legislative advocacy efforts to pursue this.

4 So I'll pass it on to Edgardo.

5 MR. JONES: Thank you very much.

6 MR. CORTES: Good morning. Thanks for the
7 opportunity to speak to you today. My name is
8 Edgardo Cortes and I am director of the Advance
9 Project's voting rights restoration campaign in
10 Virginia.

11 Just to give you a little background about
12 myself, prior to joining Advancement Project, I
13 actually worked for the Virginia State Board of
14 Elections. I have served as general registrar in
15 Fairfax County, Virginia and as deputy policy
16 director of the U.S. Election Assistance Commission.
17 I've also worked on field campaigns, nonpartisan
18 voter registration drives, and as I'm apt to tell the
19 other folks at Advancement Project, I am not an
20 attorney by training.

21 And so Richael talked a little bit about
22 Advancement Project and kind of what we do and the

1 approach that we take, and, you know, with almost
2 seven percent of the voting age population in
3 Virginia, in particular that 20 percent of the
4 African American population in Virginia is denied
5 access to the ballot box, for us, that's been the
6 primary motivator for Advancement Project getting
7 involved as part of our mission to achieve a just
8 democracy.

9 So what I'm going to do this morning is just
10 provide you a brief overview of what our current
11 campaign looks like to change the process in
12 Virginia. Advancement Project has actually been
13 working on this issue for about the past 10 years in
14 Virginia. We're now on our third gubernatorial
15 administration since starting that work.

16 The initial efforts in Virginia actually
17 focused more on kind of behind the scenes work,
18 trying to influence the two prior administrations,
19 both the Kaine and Warner Administrations, to get
20 them to issue an executive order establishing
21 automatic restoration in the State. Unfortunately,
22 both of those Governors left office without issuing

1 an executive order or, frankly, without substantially
2 changing the individualized process.

3 So learning from that experience now with a
4 new administration, Advancement Project sat down to
5 kind of re-evaluate what the approach was, executive
6 order still being the preferred method of making
7 change in Virginia. I'll talk about that in just a
8 second, as to why that is, but we basically chose to
9 implement kind of a more traditional campaign
10 structure to achieve our goals.

11 So in keeping in our community-based
12 approach, we've been working, number one, to connect
13 rights restoration advocates around the State and
14 create a network. What we have found is there is
15 actually a lot of support for automatic restoration
16 around the State and there are a lot of individuals
17 and organizations locally working on the issue, but
18 there hasn't been a lot of interaction or
19 coordination between those efforts and so they
20 haven't gotten a lot of traction.

21 In addition to that coalition building, we
22 have focused on directly engaging the Governor and

1 the State legislators, and then as Richael just
2 talked about, providing direct support for
3 individuals to navigate the process.

4 So the reason Advancement Project thinks that
5 an executive order establishing automatic rights
6 restoration is the way to go, and this year actually
7 marked the fourteenth year that the Virginia General
8 Assembly has had proposals to enact a constitutional
9 amendment to the State Constitution implementing
10 automatic rights restoration, and this was the
11 fourteenth year that they voted it down, and so we
12 think that rather than focusing on getting what is a
13 pretty conservative legislature to work on this, that
14 we should focus our efforts on one individual, the
15 Governor, who, as Richael kind of laid out, does have
16 pretty broad powers to take executive action to
17 implement an automatic system.

18 So to that end, we have focused a lot on
19 establishing a working relationship with the
20 Secretary of the Commonwealth whose office does
21 implement the current process and also whose cabinet
22 member has a direct line to the Governor on this

1 issue, and so this approach really is different. I
2 think in the past, there's been a much more
3 adversarial approach and relationship between
4 organizations working on this issue and the
5 Administration, in particular the Secretary of the
6 Commonwealth's Office. We've seen that in just a
7 short time, we yielded some considerable results
8 through this approach.

9 A primary example of that that I wanted to
10 tell you about is in the lead-up to last year's
11 Presidential election. We actually through our
12 efforts managed to get a meeting directly with the
13 Secretary and Deputy Secretary and four of our local
14 advocates and individuals that were currently
15 disenfranchised and going through the process. As a
16 result of that meeting and explaining kind of the
17 severity of the issue, our concern about the
18 timeliness of processing applications, the upcoming
19 voter registration deadline for the election, the
20 Secretary's Office actually agreed to add additional
21 staff to the processing. Their office has
22 historically had two full-time individuals working on

1 this process, which again, speaks to kind of how slow
2 the process is and how little they're able to handle.
3 They actually doubled the number of staff in the
4 lead-up to the election. Between the time we met
5 with the Secretary and the actual voter registration
6 deadline, which was a little over a month, they
7 actually during that time processed over 500
8 applications. It doesn't sound like a lot and,
9 frankly, in the grand scheme of things, it's not a
10 lot, but it actually at that point represented about
11 13 percent of the total applications the Governor had
12 approved during his entire term.

13 It was also about four times the amount of
14 the monthly average of approved applications up to
15 that point. So, you know, in terms of the pressure
16 being applied publicly and through our efforts in
17 getting that to add additional staff, we saw that
18 they were able to approve and review a lot more
19 applications.

20 In addition to kind of these efforts with
21 policymakers, we have focused on engaging
22 nontraditional allies on this issue. For instance,

1 one of the things we're working on right now is
2 reaching out to and we've been making a lot of
3 contacts with the law enforcement community, and so
4 we have recently started getting letters of support
5 for automatic rights restoration from police chiefs
6 and sheriffs around the State, a kind of public
7 safety perspective, and whenever this issue comes up
8 in the legislature, a lot of times in kind of a
9 public discussion in Virginia, it's about, Oh, why
10 are we letting felons vote, you know, what does that
11 mean, you know, they broke the law, why should they
12 be allowed to select the folks that write the laws if
13 they can't follow the laws themselves.

14 So there's kind of this mindset that
15 restoring people's voting rights, you know, has a
16 negative public safety impact, and so we've been
17 working with law enforcement communities to say, no,
18 this actually isn't true, restoring voting rights and
19 getting people actually fully integrated back into
20 the community after they have completed their
21 sentence, what that leads to is actually them holding
22 a stake in the community and them having a much more

1 active role and it makes it less they will re-offend
2 in the future.

3 So this really is the first coordinated
4 effort in Virginia that's been focusing on obtaining
5 this kind of law enforcement support. It's one of
6 the strategies we've been looking at in terms of
7 increasing the base of support around the State for
8 the issue.

9 The other perspective has been kind of the
10 strategic communications work we've been doing, which
11 is part of Advancement Project's model, but basically
12 to keep this issue in the news and to keep it
13 relevant. Last year was a key opportunity because we
14 had the Presidential election and, frankly, reporters
15 were looking for anything and everything that they
16 could do a story on that was somehow related to the
17 election, and so we were able to capitalize on that;
18 but, frankly, since the election, we've been able to
19 kind of keep that going, keep having stories of
20 affected individuals in the papers around the State,
21 op eds, public statements.

22 So we've been able to continue keeping a

1 highlight on this issue, and so one of the -- through
2 that work and through the partnership network that
3 we've established and this public pressure, we
4 actually hit what I think is a pretty substantial
5 milestone in Virginia, which is that Governor
6 McDonnell during his State of the Commonwealth
7 Address in January actually came out publicly in
8 support of automatic rights restoration for
9 nonviolent offenses. You know, while that, for us,
10 is not as far as we want to go -- we don't see why it
11 matters what type of offense it is -- it is a very
12 big step, particularly for Virginia for a
13 conservative Republican Governor to come out in
14 support of automatic rights restoration and to urge
15 the General Assembly to pass a constitutional
16 amendment and to get this done.

17 The Secretary's Office, Secretary of the
18 Commonwealth's Office, actually credited the contact
19 that they've had with our partners and kind of our
20 interactions with them in helping them kind of come
21 to this decision to do something publicly and take
22 this step. Like I said, even with the Governor's

1 support, the legislature this past session has once
2 again voted down the proposal for automatic rights
3 restoration, although we did even in terms of the
4 legislative process make big strides this year, which
5 is we got it through the senate on a 30-to-10 vote,
6 which is a pretty substantial bipartisan vote. The
7 Virginia Senate is split evenly, 20-20, and so we got
8 a 30-to-10 vote on the automatic rights restoration
9 proposal. It did not pass the house, but, you know,
10 these, in our view, are pretty big steps in the short
11 amount of time that we've pushing the really public
12 pressure on all of these policymakers.

13 So we do think we have a unique opportunity
14 this year to kind of capitalize on the work we've
15 been doing, on the efforts, on the media coverage on
16 this issue, and on the Governor's public support for
17 automatic right restoration, and that will hopefully
18 achieve an executive order by the end of this year.

19 So we're very excited about that and that's
20 all I have for you this morning.

21 MR. JONES: Thank you very much.

22 Chris.

1 MR. WELLBORN: The first question I have is
2 for Ms. Gill. We heard yesterday, among others, from
3 Mr. Morison who used to work in the pardon section of
4 DOJ, and one of his ideas, and I would like to broach
5 this to you too, that he thought might help the
6 process is he raised the same problem. We've got
7 this sort of cadre of very prosecution-oriented folks
8 who are involved in these things. It's like why we
9 should do any of this stuff, and he was fairly
10 diplomatic, but blunt about the fact that, basically,
11 he thinks they just have an engrained tactic and
12 culture to just stall and stall and stall and then
13 the President leaves and nothing happens and that's
14 their job, to just sit there and deny.

15 His idea was because there was nothing in the
16 law that required it to be in DOJ, to simply remove
17 it from the DOJ all together and have it placed in
18 its own separate executive office staffed by lawyers
19 that are -- that come in with a difficult culture and
20 that that might help the process and maybe still have
21 -- it might somehow help the process and give the
22 Presidents, whichever President, a little bit more

1 impetus, backbone, whatever it may be to actually do
2 something about this stuff.

3 MS. GILL: My personal opinion is that
4 removing it from the DOJ is absolutely necessary.
5 It's the fox guarding the hen house. You know, I
6 think -- I'm not saying prosecutors are evil bad
7 people. I actually worked in a prosecutor's office
8 for two years and have met a lot of great prosecutors
9 who are very fair minded, but it's asking a bit much
10 of them in an adversarial system to put people in
11 prison and then also let them out after a few years.

12 I would actually prefer to see an
13 independent executive office established by executive
14 order that is staff by wide variety of people who are
15 appointed by the President and perhaps even something
16 kind of mimicking a sentencing commission where they
17 serve limited terms, but they are hand picked by him
18 so they're politically accountable to him and you
19 have a wide variety of people on a board, you know,
20 former judges, former prosecutors, former defenders.
21 I'd even love to see one with some people who have
22 gotten commutations with some former offenders on the

1 board. I think that would be a valuable
2 contribution.

3 The President could do this quite simply.
4 The pardon power is not hamstrung by Congress or any
5 other branch. So I think it is feasible and I would
6 love to see him move in that direction.

7 MR. WELLBORN: To your knowledge, has anybody
8 suggested this either to the President or chief of
9 staff?

10 MS. GILL: I believe that the former White
11 House counsel for President Obama, Greg Craig, did
12 have an idea somewhat similar to that that he had
13 proposed to the President before he left the White
14 House, and I don't know how far that idea got or if
15 that idea is still being considered in the White
16 House Counsel's Office, but it has been suggested by
17 White House counsel that seemed to think it was
18 credible.

19 MR. WELLBORN: Thank you.

20 I wanted to ask a question of you, Mr.
21 Cortes, actually a couple. Number one, who in the
22 legislative branch of the Virginia legislature and/or

1 the Governor's office specifically can our task force
2 follow up with regarding letters or people to talk to
3 if we want more information about the process in
4 Virginia?

5 MR. CORTES: In terms of the actual -- you
6 know, the current process of rights restoration, the
7 Secretary of the Commonwealth's Office is really
8 where it's at. Her office has the full-time staff
9 responsible for processing these. She or the Deputy
10 Secretary actually personally review each application
11 once the staff has compiled it all together and they
12 will actually make a recommendation to the Governor
13 who then reviews it and, you know, either agrees with
14 the recommendation or not, but her office is the
15 place to get any detailed information about it.

16 MR. WELLBORN: Are you aware of what the ACLU
17 is doing that's supportive or in any way coordinating
18 with you guys on this voting rights issue in
19 Virginia?

20 MR. CORTES: Yes. We've worked with folks at
21 ACLU before. We've worked with Virginia New Majority
22 and the Civic Engagement Table in State, which are

1 some other kind of statewide organizations working
2 this issue both in the legislature, which the
3 legislative session has just wrapped up, and also
4 pushing for and calling for an executive order,
5 because, you know, like I said, with the way the
6 process works in Virginia, because the legislature
7 didn't approve it this year, at this point, the
8 earliest a constitutional amendment would come to be
9 would be the end of 2016 based on the schedule and
10 the process involved.

11 So that's why our focus is on executive
12 order.

13 MR. WELLBORN: Question for you,
14 Ms. Faithful: You were talking about completing all
15 parts of the sentence and a person would be eligible,
16 which would include fines, fees, interest, all that
17 stuff, and this is actually a two-part question:
18 Number one, is there also a child support
19 requirement, to be caught up on any kind support
20 obligations before you're eligible for commutation or
21 restoration of voting rights and other rights?

22 MS. FAITHFUL: No, actually. So that is --

1 and I believe that's the case in Kentucky. So that
2 is one benefit of the Virginia process. It's only
3 any fees, fines, or restitution associated with your
4 criminal conviction.

5 MR. WELLBORN: Second part, and that is that
6 are the fees and fines on all that stuff, do those --
7 are they tolled while one is incarcerated or do they
8 continue to accrue even though you're sitting in
9 prison and no possibility of effectively paying them?

10 MS. FAITHFUL: They accrue over time with
11 interest every year, and we've seen, I've seen, up to
12 -- it depends on the jurisdiction, actually, what the
13 interest percentage is. I've seen up to 14 percent
14 in some jurisdictions.

15 MR. WELLBORN: So it's all county by county?

16 MS. FAITHFUL: Yes.

17 MR. WELLBORN: They set their own interest
18 rates?

19 MS. FAITHFUL: Yes.

20 MR. WELLBORN: Are those waiveable by the
21 Commonwealth's judge or not?

22 MS. FAITHFUL: No. Actually, we are in the

1 process with a partner trying to actually assess what
2 the different procedures are in each locality, but
3 there is no waiveability. The only kind of
4 assistance that a person can receive is an option for
5 an installment payment.

6 There might be some limited discretion to
7 waive some of the costs once there's been significant
8 payments, but that is discretionary, not by the
9 courts, but often by agency that administers the
10 collections process, which tends to be, actually, the
11 Commonwealth Attorney's Office in most jurisdictions.

12 MR. WELLBORN: Then I guess the follow-up to
13 that, having heard that, at the time of sentencing or
14 after sentencing, following sentencing, does an
15 attorney representing a client or who has a client on
16 their own have the right to a restitution hearing
17 where they can challenge the amount of restitution.

18 MS. FAITHFUL: Not to my knowledge, there is
19 not.

20 MR. WELLBORN: All right.

21 MS. FAITHFUL: That's interesting.

22 MR. WELLBORN: That's something that might at

1 least help in some respect.

2 Are there any challenges that are pending
3 that anybody is aware of from a legal standpoint
4 regarding constitutionality of each county and
5 municipality setting their own interest rates?

6 MS. FAITHFUL: No. To my knowledge, I don't
7 see any constitutional problems. Virginia remains,
8 actually, still a Dillon's Rule State, but in light
9 of that, there's a lot decentralization in Virginia.
10 So that's not uncommon.

11 For example, even in terms of like record
12 collection, the Supreme Court of Virginia doesn't
13 administer that across the State. There are actually
14 three major jurisdictions that are not part of the
15 statewide program to report basic information about
16 defendants' convictions and sentences.

17 So it's not surprising at all that there is
18 this decentralized process for the payment of court
19 ordered costs. To my knowledge, there's no legal
20 prohibition behind that as well.

21 MR. WELLBORN: Well, thank you. That's all I
22 have.

1 MR. JONES: Margi.

2 MS. LOVE: Sorry. Yes. I apologize for
3 being a little bit late.

4 I would like to ask Mr. Cortes about the
5 procedures. The restoration of rights procedures, as
6 I understand it, has become to the extent that this
7 is a process that has to be gone through, this
8 current Governor has probably been more efficient and
9 responsive than any Governor that I can think of,
10 which is kind of interesting for a Republican
11 Governor; but I know that you explained that Virginia
12 is only one of only four States that makes people go
13 through this in order to get their right to vote back
14 and I also know how important the right to vote is.

15 There are many hundreds of other laws that
16 restrict what a person with a felony conviction or
17 any conviction can do in Virginia, licenses, jobs,
18 all kind of things like that. What provision is
19 there in Virginia, I'll ask both of you, to address
20 all of those other collateral consequences since, I
21 take it, that the restoration of rights procedure is
22 pretty narrowly aimed at the traditional civil

1 rights? How about all the hundreds of other
2 collateral consequences?

3 MR. CORTES: I think, unfortunately, for the
4 majority of them, it would be through legislative
5 process. I mean it would require legislation action
6 which the Virginia legislature is not apt to do.

7 It was actually very interesting. I went to
8 some of hearings on the rights restoration proposal,
9 and actually the Attorney General in Virginia also
10 came out in support of automatic restoration for
11 nonviolent felony convictions, and he was actually --
12 during his presentation, he was saying to the members
13 of the assembly how he knew this was a big step
14 because in his experience during the time he spent in
15 the legislature and as Attorney General, he has never
16 seen the assembly roll back any consequences or
17 anything related to felony convictions. They have
18 only increased over time.

19 This is the State Attorney General saying
20 this, and so I think, you know, for the majority of
21 those things, it would be up to the State
22 legislature, and the legislature in Virginia is just

1 not apt to reduce any of these consequences for
2 felony convictions.

3 MS. LOVE: Has anyone talked about the
4 Governor's pardon power?

5 MR. CORTES: In what respect?

6 MS. LOVE: Well, the usefulness of the pardon
7 power to avoid or mitigate these hundreds of
8 collateral consequences.

9 MR. CORTES: I think so with the exception of
10 the kind of restoration of civil rights. His other
11 kind of pardon powers have some limitation, I
12 believe, actually, even in terms of fines. For
13 instance, we were just talking about the issue of
14 fines and restitution. He actually has limitations
15 and even the Governor isn't able to waive the
16 majority of those fines and kind of costs that need
17 to be paid. He can choose to not take that into
18 account in the restoration process, but he can't, for
19 instance, forgive those penalties and costs and make
20 it so that the person does not have to pay them.

21 MS. LOVE: No, but what I'm talking about are
22 the laws that restrict employment and licensing.

1 That's what I'm kind of --

2 MR. CORTES: The Governor has been taking
3 some steps to kind of move in the direction. He's
4 established a Reentry Council bringing together
5 members from the Executive Branch from different
6 agencies, Department of Construction, you know, the
7 Employment Commission, all these different agencies
8 to talk about some of these issues. I think in terms
9 of employment, for instance, not at the State level,
10 but in some localities around the State, there have
11 been moves on at least the local government hiring
12 process to remove the question about felony
13 convictions from the application, and so I think it's
14 --

15 MS. LOVE: This is public employment?

16 MR. CORTES: For public employment, yes, in
17 some of the local jurisdictions.

18 MS. LOVE: So the Ban the Box?

19 MR. CORTES: Yes.

20 MS. FAITHFUL: There's some movements there.
21 I'll add that, to my knowledge, I don't think any
22 person has done a lot of legal research around the

1 Governor's clemency powers when it comes to other
2 collateral consequences which are statutory for the
3 most part.

4 Frankly, so the Governor's pardon powers live
5 in the same place as the rights restoration powers.
6 They're in the clemency section. They're very, very
7 specific. So it would surprise me that he would have
8 the ability to make a lot of changes to the statutory
9 laws.

10 MS. LOVE: Right. Yeah. I think it would
11 have to be on an individual case-by-case basis.

12 MS. FAITHFUL: Sure.

13 MS. LOVE: He actually does pardon people.
14 In his annual report, he's got a number of grants
15 that he's made, some with a larger thing.

16 MS. FAITHFUL: Right.

17 MS. LOVE: Now, it's kind of an unexplored
18 power we are discovering here. We talked to folks
19 from the District of Columbia yesterday and asked if
20 anyone had mentioned the President's pardon power as
21 part of an arsenal of restoring rights for D.C. Code
22 offenders, and apparently the subject had never come

1 up, which brings me to Molly, which I'm happy to ask
2 you a few questions about that.

3 MS. GILL: Sure.

4 MS. LOVE: I was wondering given the fact
5 that the President's power seems to have shrunk to
6 pretty much zero at this point, unfortunately, have
7 there been discussions of alternative mechanisms?
8 For example, Ohio enacted an alternative restoration
9 mechanism which takes a lot of the pressure off the
10 Governor's pardon power.

11 Have people talked about alternative,
12 probably statutory, but alternative mechanisms, and
13 if the President doesn't want to use his pardon
14 power, is this a useful sort of lobbying strategy in
15 approaching the White House that if he wants to get
16 the heat off what is now becoming a bit of an
17 embarrassment for him, what about alternative
18 mechanisms?

19 MS. GILL: Well, you know, that's a great
20 question, Margi, and I have not seen any legislative
21 proposals from Congress that would create other
22 mechanisms like that, although give just the

1 political realities around granting pardon and
2 commutations, it seems like an ingenious idea, like
3 you said, to take the heat off of him and give him
4 some other -- you know, offenders some other
5 mechanism for receiving relief.

6 I mean, for example, I'm glad you mentioned
7 D.C. offenders, because they're the ones who break my
8 heart the most. These are people who are in all
9 effects not committing federal crimes. They're
10 committing local crimes and they live in this strange
11 D.C. land where, you know, you have to turn to the
12 President to get a restoration of your rights, but
13 that means he has to grant you a pardon, which he
14 never does to anyone ever.

15 So, you know, it just breaks my heart that
16 D.C. offenders are in that position. You know, we
17 have not, FAMM has not, asked members of Congress to
18 consider introducing legislation like that. I think
19 my first thought is just sort the constitutional
20 ramifications of that, because the pardon power is an
21 enumerated power in the Constitution and I just am
22 not a constitutional law scholar. So I don't know

1 how we would begin to navigate that conversation as
2 to how much Congress could do without overstepping
3 its bounds and going into the President's turf.

4 MS. LOVE: Right. It would be kind of a
5 separate statutory track.

6 MS. GILL: Yeah. It's crossed my mind and I
7 do think it's a good idea and there's a place for it.
8 I'm not sure if it would require a constitutional
9 amendment or not. I just don't have that expertise
10 on the Constitution.

11 MS. LOVE: Thank you very much.

12 MR. JONES: Vicki.

13 MS. YOUNG: Ms. Gill, in terms of the
14 description that we got yesterday from Solomon
15 Morison in terms of the Office of the Pardon Attorney
16 being the funnel that you need to get through and you
17 weren't getting through, and so that the President
18 was getting a limited number of, you know, reviewed
19 applications or recommendations, do you have any
20 idea, and at least the way it's presented, it seemed
21 to be that it was the Pardon Office that was slowing
22 the process, but were you able to tell during the --

1 you know, prior to the Obama Administration, were
2 things being processed at the same rate or did it
3 slow down more, or do you have any idea of how that
4 was? Has it always been slow? If it's always been
5 slow, then people were just granting them faster?
6 I'm just trying to --

7 MS. GILL: Yeah. I don't think it's always
8 been slow. We saw a significant decline in the 1980s
9 beginning with the Reagan Administration, and Margi
10 has actually written about that a lot and about maybe
11 some of the reasons for that.

12 I mean, for a long time the President, you
13 know, had a Pardon Attorney, but he also relied
14 heavily on the Attorney General to advise him on
15 pardon grants, and so I think you had someone who was
16 a lot closer to the President who had the President's
17 ear, politically accountable to the President,
18 advising him on these cases.

19 In the 1980s, that got removed one step down
20 to the Deputy Attorney General who was quite busy
21 managing all of the line prosecutors of the
22 Department of Justice and who was not as close to the

1 President and can't just pick up the phone and call
2 him the way the Attorney General can, and I think it
3 showed a shift in priority, that this became a lower
4 priority issue, and I think that that has sort of
5 maybe created some of the malaise.

6 I know the Inspector General of the
7 Department of Justice did a report not too long ago
8 talking about -- looking at some the efficiency
9 issues with the Office of the Pardon Attorney and
10 getting at this issue of are they just really slow,
11 and what they did find is that there are significant
12 delays throughout the entire review process.

13 So normally, at some point, the Office of the
14 Pardon Attorney is supposed to consult the United
15 States Attorney in the district where the case arose
16 and ask that United States Attorney for an opinion,
17 and the Inspector General's report was finding that
18 OPA would sure enough send out for this opinion, but
19 then they'd be sitting around, waiting for sometimes
20 up to a year to hear back from the United States
21 Attorney, and they found other delays like that.
22 They would consult judges and not hear back as

1 quickly from judges. They would consult the Bureau
2 of Prisons and not hear back from the Bureau of
3 Prisons within a reasonable amount of time.

4 So I think it's the -- it shows how in this
5 entire system, it's just not receiving the priority
6 treatment that it's used to receiving, and to be
7 honest, I don't know if you would eliminate those
8 problems by creating a separate executive agency. I
9 don't know if that would solve it or not, but I would
10 hope that if it's an agency that is established by
11 the President, answerable directly to the President,
12 and, I mean, if the President sends you an
13 information request, hopefully, you will answer
14 rather quickly.

15 That would be my hope with an independent
16 commission.

17 MS. YOUNG: In looking or just basically
18 reading the press release when pardons are granted,
19 whenever those occur, and I have -- a lot of them are
20 very old cases. You know, everybody thinks it's more
21 like a clemency on a death penalty case where some,
22 you know, is immediate going on, but a lot of the

1 ones that are granted are five-, ten-, fifteen-year
2 old convictions or they've been out that long or
3 very, very long; and is there any -- the two, let's
4 say -- you referenced the most recent pardon or
5 clemency by President Obama and then Kemba Smith who
6 was associated with FAMM in her case. I'm trying to
7 see because there are so many in those particular
8 ones where women have been convicted of drug offenses
9 with mandatory minimums and usually it involved
10 through a partner, boyfriend, husband, but I couldn't
11 really tell, while very sympathetic, what would have
12 distinguished their cases from those thousands of
13 other women who are convicted and serving time in
14 federal prison that, you, I, and other federal
15 defenders have represented.

16 Was there something different or they just
17 caught someone's eye?

18 MS. GILL: Well, I think, and this actually
19 has been shown by Dafna Linzer's research, that the
20 thing that makes probably the biggest difference is
21 the support that you have, and if you can get
22 congressional support, you have a much -- I think

1 you're three times as likely to be granted clemency
2 if you have some kind of congressional support.

3 A lot of the cases that have been commuted of
4 drug offenders in particular were people who had a
5 lot of media support. I'm aware of one woman, for
6 example, who was profiled in, I think it was "Elle
7 Magazine" or "Grammar Magazine", and she's a very
8 attractive woman and very photogenic, and she had a
9 very sympathetic girlfriend story, but that rose her
10 case to a very high profile level that a lot of
11 average applicants just aren't able to do.

12 You know, that said, at the same time, I'm
13 also aware of a girlfriend case where this applicant
14 has now applied -- I believe she's on her third
15 application and the first two were denied, and for
16 years, she has had the support of the United States
17 Attorney, the judge who sentenced her, and a United
18 States Congressman, and she has been denied twice and
19 just re-filed for the third time.

20 So there is no sort of magic bullet which
21 really to me raises those serious questions of are
22 people getting an objective review at all or is this

1 office just existing to say no.

2 MR. JONES: Elissa.

3 MS. HEINRICHS: Ms. Gill, you mentioned that
4 you worked with pro bono attorneys. Is that locally
5 or is this a national effort? Where are the
6 attorneys located?

7 MS. GILL: Most of them are here in D.C. Our
8 national headquarters are here. So we have the most
9 connections here, but we have worked with attorneys
10 around the country too. Several on the west coast
11 recently have taken on pro bono cases.

12 MS. HEINRICHS: You mentioned that you have
13 the building coalition to lobby the White House. Is
14 that also a local effort or are you partnering with
15 other organizations nationally to achieve that.

16 MS. GILL: Sure. We specifically wrote and
17 got a sign-on letter that I think 25 or 26
18 organizations signed it and those tend to be national
19 organizations, so ACLU, I believe, and I believe
20 NACDL actually signed the letter. So most of our
21 work here is in D.C. and with national organizations.

22 MS. HEINRICHS: Is that information on line?

1 How I can get information about that? Can I talk to
2 you afterward?

3 MS. GILL: I can talk to you -- yeah. You
4 can talk to me afterwards.

5 MS. HEINRICHS: All right. That's all I
6 have.

7 MR. JONES: Larry.

8 MR. GOLDMAN: I must tell you that I don't
9 usually shock that easily, but if I heard you right,
10 11,000 applications for commutation in the Obama
11 Administration and one granted.

12 MS. GILL: No. In the last four years, there
13 have been 11,000 rejections -- I'm sorry. In the
14 last 12 years, there have been 11,000 applications
15 rejected and 12 granted, so one a year for the last
16 twelve years on average.

17 MR. GOLDMAN: But one commutation?

18 MS. GILL: No. Those are commutations, 12
19 commutations over the last 12 years.

20 MR. GOLDMAN: Well, I'm not good at math. I
21 mean, I agree with you there is a structural problem,
22 at least an appearance problem, of impropriety and

1 this being a Department of Justice agency, and I
2 agree with you that though I'm a past prosecutor and
3 I've often found that former prosecutors are the most
4 aggressive defense lawyers just as the sophomores in
5 college look at the freshman and wonder how young
6 they are, but I don't want to vet a man who is a
7 constitutional scholar, purportedly, the first
8 constitutional scholar President in certainly my life
9 and probably since the early nineteenth century.

10 What has been done, if anything, to get to
11 the President? Because I -- well, two questions,
12 essentially.

13 One, what, if anything, can be done to get
14 the President to say, Hey, there is this provision in
15 the Constitution that gives you this power; by
16 essentially not using it, you are really abrogating
17 the spirit of the Constitution?

18 Two, do we have any sense of these former
19 prosecutors? I know it's easy to blame the staff,
20 but do we have any sense of how many recommendations
21 get to the White House and how many are rejected? Is
22 it their fault that they are only recommending 12 or

1 so or is there a few hundred, say, coming out that
2 are just cut off by the White House?

3 MS. GILL: Well, that's very difficult to
4 ascertain for us because it's all --

5 MR. GOLDMAN: Could you get some, you know,
6 former attorney there who will spill the beans?

7 MS. GILL: Well, Sam Morison would be the
8 best person I know of to do that. So if he didn't
9 spill them yesterday, then I can't help you there.

10 MS. LOVE: I've got a few beans to spill.

11 MS. GILL: Of course, Margi Love would be
12 able to spill some beans too.

13 Yeah. I mean, it's difficult, and I actually
14 -- the first article I ever wrote about this was for
15 the "Federal Sentence Reporter" and it was called
16 "Into the Bottomless Black Box", because it is such a
17 clandestine process and you can't get good data from
18 the Office of the Pardon Attorney. They claim
19 executive privilege on everything, we can't tell you
20 how many people we recommended positively, we can't
21 give you the substance of our recommendations.

22 We don't know if their recommendations to the

1 President are the person's name with a no next to it
2 and that's it or if it's, you know, 10 pages looking
3 into all of the legal minutia of the case and all of
4 the sentencing disparity that may have existed and if
5 it's a really a thorough meaningful review. We can't
6 get that information from them and it's a major
7 problem.

8 One of the things we've been doing is
9 encouraging members of Congress to try to hold the
10 Office of the Pardon Attorney accountable to require
11 things like, you know, have an oversight hearing,
12 call them in and require them to present to you data,
13 you know, how many applications did you get this year
14 and how many of those did you deny, did you recommend
15 a denial on, how many of those did you recommend
16 favorable recommendations on.

17 MR. GOLDMAN: You do have some separation of
18 State powers issues, as you indicated.

19 MS. GILL: Sure. Yeah, but, I mean, the
20 Office of the Pardon Attorney is taxpayer funded. It
21 is accountable to the public in terms of what are
22 they doing with their money. You know, we're paying

1 \$2.8 million, which is nothing in terms of the
2 federal budget, but it is taxpayer money and Congress
3 can call them to the carpet and say we want to make
4 sure that we're not wasting our money on your office.

5 As far as -- I do appreciate that you don't
6 want to let the President off the hook, and I don't
7 want to either. I do think that at the end of the
8 day, this is his decision. We can improve a process,
9 but I have always believed that the President can do
10 whatever he wants, really, in this area, and if he
11 just doesn't want to grant anybody clemency, that is
12 completely his power and his prerogative, and we may
13 not like that outcome, but we have to live with it,
14 and I haven't seen, really, sadly, much personal
15 interest. I don't think he wants to be that guy who
16 grants a lot of clemencies and is known and
17 remembered for that.

18 MR. GOLDMAN: Has anyone, do you know,
19 questioned him or gotten the question and answer
20 about how limited his use of the commutation power
21 has been?

22 MS. GILL: Not in an open forum that I'm

1 aware of. I know one thing we did to encourage the
2 President directly was we had 16 people who received
3 commutations from previous presidents and, actually,
4 the one commutation he granted, she signed the letter
5 as well, and we had them send him a letter saying,
6 you know, we're doing great, we're out here living
7 these full meaningful lives, you know, we received
8 one of the best gifts we could ever get and we
9 encourage you to do the same for other people because
10 we left a lot of good people behind, and I don't
11 think that's had any impact on him, sadly.

12 MR. JONES: Penny.

13 MS. STRONG: Thank you. I have a question
14 for Mr. Cortes. When someone goes to register to
15 vote in Virginia, do they simply have to declare
16 whether or not they are disenfranchised or a felon
17 and then if they -- is there some type of background
18 check for each and every person who registers to
19 vote, or how is that process handled?

20 MR. CORTES: So the registration application
21 in Virginia does have a space where it asks if you
22 have been convicted of a felony and, if so, the State

1 of your conviction. As Richael mentioned earlier,
2 you know, for out-of-state convictions, they will
3 follow whatever the rule is, which in 46 other States
4 is automatic restoration of rights, but for Virginia
5 convictions, and it gets a little tricky here in
6 terms of the completeness of the data, but for all
7 Virginia convictions on a monthly basis, the State
8 Police actually transmits conviction information to
9 the State Board of Elections which maintains, within
10 their statewide voter registration database
11 maintains, a listing of everybody with convictions
12 and then they also receive updates from the Secretary
13 of the Commonwealth's Office indicating who has had
14 their rights restored for which conviction.

15 So when a local registration office gets the
16 form, they enter it into the statewide database.
17 They will actually -- whether or not the person has
18 indicated that they had felony convictions, if there
19 is a record in the State system showing that they do,
20 they will get a flag indicating that this person is
21 not eligible and so they will then send a rejection
22 letter to the individual indicating, you know, why

1 their application was rejected and they're not
2 eligible and indicating that if they believe there's
3 a mistake, they then have to contact the State Police
4 who is responsible for updating those records, and
5 that requires a whole other process if you've been
6 erroneously put on the list.

7 That's the verification that goes on in terms
8 of that, but the State, for instance, doesn't get
9 federal conviction data. It doesn't get data from
10 other States on convictions.

11 MS. STRONG: Do you have same-day
12 registration in Virginia or not?

13 MR. CORTES: No. There is no same-day
14 registration in Virginia.

15 MS. STRONG: Thank you. My next question,
16 which is kind of related, is for Ms. Faithful. In
17 terms of that process potentially engendering further
18 criminal charges, if a Virginia citizen somehow
19 escaped a check, was a felon whose rights were not
20 restored, and the individual registered to vote and
21 voted, is it a crime or some type of criminal
22 conduct?

1 MS. FAITHFUL: It is.

2 MS. STRONG: Independent of, say, a false
3 swearing or forgery, is there an independent crime of
4 voting when you're not entitled to and you are a
5 felon?

6 MS. FAITHFUL: Yes. There's actually several
7 statutory provisions, all which I believe are
8 felonies, Class 6 felonies, in fact. Actually, for
9 the 2008 election, there were some indictments back
10 in April of last year for individuals who had put
11 misleading information on their applications and were
12 approved and voted.

13 Part of the confusion, though, was that they
14 were told -- they were approached by unknown
15 solicitors and these solicitors gave them one or two
16 inaccurate statements, first, that the process in
17 Virginia had changed so that there was some sort of
18 automatic restoration. So they didn't include that
19 very basic information that Edgardo mentioned, which
20 was their felony conviction and the state of their
21 conviction.

22 The other information some people were told

1 were that, in fact, that the solicitor knew the
2 process and could have their rights restored by the
3 time they would have to be approved for the
4 registration process.

5 So these solicitors were never found, but
6 these individuals were since indicted. There were at
7 least a couple of dozen individuals across the State
8 who were indicted for election fraud.

9 MS. STRONG: Thank you.

10 My last question is for either Ms. Faithful
11 or Mr. Cortes, is when someone does have their rights
12 restored, do they receive some sort of official
13 certificate or something that is either like also
14 independently in the public files that the public can
15 access? What sort of documentation is there?

16 MR. CORTES: The individual does receive a
17 letter and an actual certificate from the Governor
18 indicating that their rights have been restored and
19 what conviction it's related to, and in terms of
20 public records, I mean, the Governor has provided on
21 an annual basis a report to the General Assembly
22 indicating all his uses of his, you know, pardon

1 powers, clemency powers during the year.

2 So those individuals' names would be included
3 in that report for the year and then, like I said,
4 the information is also transmitted to the State, and
5 just in terms of your last question, I actually
6 worked as a registrar in Fairfax County, Virginia and
7 was involved in some of these investigations that
8 Ms. Faithful talked about in relationship to the 2008
9 election, and one of the issues that has come up and
10 that has since been addressed was the lack of
11 information sharing between State agencies and the
12 fact that these checks that were in place to verify
13 that people, you know, were eligible, the State Board
14 of Elections, for instance, was not getting timely
15 information from the courts and from the State Police
16 which was leading to gaps in this process where even
17 though you entered them into the system that's
18 supposed to flag them, that wasn't happening because
19 they weren't getting the data.

20 Those issues have since been addressed, but
21 there's a whole host of issues related to how the
22 process works.

1 MS. FAITHFUL: Let me add to your recent
2 question. That's part of the problem that we
3 encounter, is that even though individuals receive a
4 certificate, there's really no real public file by
5 which employers, for example, can access that. So
6 it's incumbent upon the person who has been
7 re-enfranchised to represent that information to the
8 employer, to a potential landlord, or anyone else,
9 and that's a problem in our view.

10 MS. STRONG: Thank you.

11 MR. JONES: Jenny.

12 MS. ROBERTS: Thanks. Just a couple of
13 questions.

14 One, I think, Mr. Cortes, you were talking
15 talk about the ineligibility list and it being
16 forwarded by name. I'm just wondering what kind of
17 error rate there is on that, if you know, and I know
18 you talked a little bit about the process if there
19 was an error, but do we know what the rate of error
20 is?

21 MR. CORTES: I'm not sure of the specific
22 rate. I know in terms of information that's

1 transmitted, it will be the name and, actually,
2 Social Security number. Virginia is one of a handful
3 of States that has an exemption under the Privacy Act
4 and are able to collect and do require your full
5 Social Security number when you register to vote.

6 So in terms of information sharing, the full
7 Social Security number, name, date of birth, and then
8 the conviction date and information is all
9 transmitted. So there are several fields that get
10 matched in that process and then there is also -- I
11 mean, even though the initial check is done by
12 computer, what will happen is the Registrar's Office
13 will get on their screen a list and it will show kind
14 of a percentage match, you know, from a hundred
15 percent match to, you know -- I think nothing below
16 70 really gets flagged. Nothing below 60 or 70
17 percent gets flagged, but you will get that and so
18 somebody in the local Registrar's Office will
19 actually, you know, sit there and compare the
20 information and figure out if they need to contact
21 somebody else because they're not sure or follow up
22 with the voter.

1 MS. ROBERTS: Thank you.

2 Okay. I guess this question is for Richael.
3 You just mentioned people taking their restoration
4 document and showing it to a landlord or to an
5 employer. Is there any legal effect of that document
6 beyond the four civil rights restored that you
7 mentioned?

8 MS. FAITHFUL: Not particularly, and for some
9 people in Virginia, it's really important to regain
10 their firearm rights. So you do actually have to
11 restore your civil rights before you can even
12 petition a Circuit Court to consider a firearm
13 restoration application, but other than that, no.

14 We frequently get asked about expungements,
15 for example. Virginia has a very narrow expungement
16 law. So even if you are able to succeed in expunging
17 your record, all that entails is actually really a
18 notation, and this happens with the pardon as well, a
19 notation on your criminal record.

20 Some records are sealed, but with civil
21 rights restoration, there is really no legal effect.
22 You can say that you've been rehabilitated. You can,

1 you know, make every -- and we encourage folks we
2 work with to really leverage the fact that the
3 Governor has reviewed their individual petition and
4 restored their rights, but a legal effect is not
5 significant.

6 MS. ROBERTS: Thank you, and my last question
7 is about the role -- I guess this can go across the
8 panel -- the role and importance of the attorney in
9 this process, and from the defense attorney
10 perspective, have criminal defense attorneys been
11 involved in your efforts to organize around
12 representation for the individual Virginia petitions
13 or federal petitions? If not, what role could they
14 play?

15 MS. FAITHFUL: So I mentioned a little bit
16 that we worked really closely with members of the
17 private bar as well as public defenders with training
18 them to even make them aware that this process
19 exists. It's, unfortunately, something that folks
20 might be aware that exists, but not much more than
21 that.

22 So, fortunately, we've been able to form some

1 partnerships in the State, particularly in regions of
2 the State which are, you know, more urban, and you
3 have actual offices and bar associations that are
4 very interested in this issue.

5 So we've worked a little bit to train those
6 individuals, and like I said, there are a few
7 individuals who have led in their volunteer time some
8 clinics, but that's the extent that we've been able
9 to work with folks. I would love to have the
10 opportunity to train on a broader scale some
11 attorneys, criminal defense attorneys, especially in
12 terms of counseling individuals before convictions.
13 Right? And I'm not sure you all are involved with
14 the broad category of collateral consequences, but I
15 think rights restoration gets lost pretty easily.

16 There are some requirements in the State for
17 the Department of Corrections to inform people after
18 the conviction, usually upon discharge from probation
19 or incarceration, that their rights have been taken
20 away and there's a process to get them restored.
21 Frankly, in our experience, that either doesn't
22 happen or gets lost in the mix, especially because

1 you have waiting periods of two to five years at
2 least even after you are released from prison, for
3 example. So it's not very meaningful to get that
4 information at that stage.

5 So for us, it's another case for automatic
6 restoration, but that's the extent that we've done
7 some work with some attorneys.

8 MS. GILL: I would say in the federal
9 commutation context, there aren't a lot of attorneys
10 who understand that the relief exists. It's just
11 something that doesn't come up very much. Like I
12 said, a lot of federal prisoners don't even know that
13 this is an option for them.

14 Actually, filing a commutation petition isn't
15 a legal proceeding. So we always tell people you
16 don't need to go hire a lawyer for this, and this is
17 actually some -- we've had a little bit of trouble
18 with some sort of predatory legal activities, I would
19 say, people saying pay me \$5,000 and I'll file a
20 commutation petition for you and you'll get out, and
21 then people call and, you know, we can't tell them
22 how to, you know, determine their own legal status as

1 far as representation goes, but we do tell them the
2 stats about clemency and we tell them they can do it
3 themselves, and we do have a resource that allows
4 people to do it themselves and teaches them sort of
5 what to say and not say and, you know, how not to
6 shoot yourself in the foot.

7 I do know -- and I'm not even sure, actually,
8 how this came about, but my understanding is that
9 most federal public defenders that file commutation
10 petitions, it's not something they're funded for.
11 It's not included in the scope of their work, and yet
12 I do know at least one federal public defender in
13 Chicago who has filed for a client and filed a very
14 good petition for her, and I don't know how that came
15 about.

16 You know, I think it is an area where legal
17 representation can be tremendously helpful to the
18 applicant. I think if you have a lawyer, you're less
19 likely to be sort of ignored and shunted aside by the
20 Office of the Pardon Attorney and I think they will
21 return your phone calls and letters; whereas, if
22 you're not represented, they won't. That's been what

1 I've seen.

2 MS. YOUNG: Just on some informational points
3 on the federal, if you look, the federal public
4 defenders are funded under -- I think it's Title 18,
5 3006(a), and so it lists what the CJA and public
6 defenders are funded for, and commutation is not on
7 that list, but it could be that someone has done it
8 pro bono, but I'm just saying it's not under that
9 3006(a) list.

10 One other thing, and I don't have my computer
11 turned on because I'm not typing on it because it --
12 I thought that the probation office for the Northern
13 District of California, I actually think the
14 commutation, there is a link to here's the
15 commutation form, because they're supposed to advise
16 the client of it.

17 So I think the form is on line.

18 MS. GILL: The form is on line, yeah. It is
19 available at the Office of the Pardon Attorney's
20 website and it's not difficult to get. It's just a
21 lot of people don't know where to look and don't know
22 that it exists in the first place.

1 MS. FRAZER: Excuse me. We are running out
2 of tape.

3 [Pause to change the videotape.]

4 MR. JONES: We're back live.

5 MS. FRAZER: We're back on and we've got two
6 minutes.

7 MR. JONES: Do you want to finish your --

8 MS. GILL: Sure. Well, I was just saying
9 that one of the things we've tried to encourage our
10 contacts at the Bureau of Prison to do is to make the
11 application forms more available in like prison law
12 libraries, for example, because, of course, inmates
13 don't have internet access, and then anyone who
14 writes us and requests an application, we will print
15 it out and send it to them for free and just because
16 I just can't stand the thought of people being in
17 prison and not knowing that this option exists for
18 them.

19 MR. JONES: We are out of time.

20 Is it fair to say that the President has
21 commuted the sentences of more Thanksgiving turkeys
22 than he has human beings?

1 MS. GILL: Statistically, yes. I wrote an op
2 ed in the "Washington Post" one year called "Turkeys,
3 Two; Humans, Zero", and that was the first turkey
4 pardon of President Obama, and, unfortunately, the
5 turkeys are still winning.

6 MR. JONES: The turkeys are still winning.

7 Thank you all very much. This was helpful
8 and very useful for us. We appreciate your sharing
9 your time. Thank you.

10 We're going to recess for 15 minutes. We'll
11 be reconvening at 10:45.

12 [Recess.]

13 PANEL 2

14 MR. JONES: Welcome. It is nice to have you
15 here. We appreciate you being here.

16 You may or may not know that we are the
17 National Association of Criminal Defense Lawyers Task
18 Force on Restoration of Rights and Status after
19 Conviction, and we have really been going around the
20 country on a listening tour, bringing stakeholders
21 together of all stripes to sort of understand what
22 the issues are, what the obstacles are, what the

1 challenges are for folks who are returning to their
2 communities, to society, and trying to restore their
3 rights and their status after conviction.

4 And so we are pleased to have you here and to
5 engage in a dialogue with you. The way that we work
6 is that we want to give you 15 minutes or so to give
7 us an opening statement and the benefit of your
8 thoughts. Tell us a little bit about yourself, and
9 then we have lots of questions for you, and the way
10 the questioning goes is that one of us will lead the
11 discussion for each panel, and for this particular
12 panel, you drew the short straw because I'm going to
13 be the one who leads in that questioning.

14 So we are, like I said, pleased to have you.
15 We appreciate you being here and I'm going to stop
16 talking and turn the floor over to you.

17 MR. SHELTON: Well, thank you very much.
18 It's an honor to be with you.

19 I have brought both our written testimony
20 that's a little bit longer than the oral testimony
21 I'm going to present to you, and I'm excited always
22 about dialogue over monologue. There's something

1 very monotonous about monologue; but, nonetheless,
2 for the record, I will lay that out and just kind of
3 read that to you, and of course you have an
4 attachment as well.

5 Let me say again that our president and CEO,
6 Benjamin Todd Jealous, was extremely disappointed
7 when he had a real bump in his schedule for today and
8 asked me yesterday if I would come by here and speak.
9 I don't know if it's the fact that I'm his senior
10 vice president or the fact that my office is just a
11 block and a half from here, but in any which case, I
12 am here and honored to be here and delighted to be
13 with defense trial lawyers.

14 Let me say also that you have wonderful
15 people on Capitol Hill. I didn't get a chance to
16 raise that issue, but I get a chance to work with a
17 couple of your folks here. Kyle is also someone
18 we've worked with, that I know who is not in the room
19 today, on a number criminal justice issues very
20 important to the NAACP.

21 The limit of my testimony today is primarily
22 on the restoration of voting rights as you'll see as

1 I go into it, but by no means do I want you to think
2 that that is the only issue as we think about reentry
3 concerns that the NAACP is focused on, but it is the
4 one we wanted to spend this morning talking about.

5 Amen?

6 MR. JONES: Thank you. I may push you on
7 that a little, but that's okay.

8 MR. SHELTON: Good, good, good.

9 Good morning, respective members of the task
10 force. I appreciate the opportunity to talk with you
11 today about the issues that are very important to the
12 NAACP, ex-felony offenders and re-enfranchisement.

13 Let me begin by saying that I'm Hilary
14 Shelton and I am the director of the NAACP's
15 Washington Bureau and senior vice president for
16 policy and advocacy. The NAACP, of course, is our
17 nation's oldest and largest grass roots-based civil
18 rights organization with members literally in every
19 State in the United States.

20 I'm here on behalf of our President and CEO,
21 Benjamin Todd Jealous, who unfortunately was called
22 away at the last moment. He sends his regrets as he

1 was looking forward to talking with you about this
2 crucial issue.

3 To be abundantly clear, the NAACP supports
4 federal and State initiatives to re-enfranchise all
5 ex-offenders once they leave prison. At the heart of
6 this debate, Mr. Chairman, is, of course, the
7 rehabilitation, democracy, and fairness. Currently,
8 an estimated 5.3 million Americans across the nation
9 are denied the right to vote because the laws
10 prohibit and restrict voting by people with felony
11 convictions. Three-fourths of these Americans are no
12 longer incarcerated.

13 The question as to whether or not these
14 people should be allowed to vote is not a partisan
15 question. Since 1997, 19 States that are considered
16 both blue and red have amended felony
17 disenfranchisement policies in an effort to restore
18 voter eligibility. Felony disenfranchisement laws
19 have had a racially and ethnically disparate impact
20 on minority Americans in general and on African
21 Americans quite specifically.

22 Nationwide, an estimated 13 percent or one

1 out of every eight African American men cannot vote
2 because of a prior felony conviction. This is seven
3 times the national average. While the majority of
4 those Americans who are disenfranchised because of
5 prior felony convictions are Caucasian, African
6 Americans who make up about 13 percent of our U.S.
7 national population constitute about one-third, 33
8 percent of those disenfranchised.

9 In the last 30 years, due to the dramatic
10 expansion of our nation's criminal justice system and
11 the continuing racial disparities of those
12 incarcerated, former offenders disenfranchisement
13 laws have significantly affected the political voice
14 of the African American community. The so-called war
15 on drugs has had a disproportionate impact on African
16 Americans.

17 Between 1985 and 1995, there was an
18 unacceptably high incarceration increase of 306
19 percent for white Americans. Over that same period,
20 however, there was an unbelievable and completely
21 unacceptable increase of 707 percent in the number of
22 African Americans in State prisons for drug offenses.

1 African Americans are disproportionately
2 losing their right to vote. More than 60 percent of
3 the people in prison today are racial and ethnic
4 minorities. Of black males in their twenties, one
5 out of every eight, or 12.5 percent, is in prison or
6 jail on any given day. African Americans are
7 incarcerated at nearly six times the rate of white
8 Americans and Hispanics incarcerated and nearly
9 double the rate of white American.

10 Given current rates of incarceration, three
11 in ten of the next generation of African American men
12 can expect to lose their right to vote at some point
13 in their lifetime. In States that disenfranchise
14 ex-offenders, as many as 40 percent of African
15 American may effectively and permanently lose their
16 right to vote.

17 Felony voting restrictions are the last
18 vestige of voting prohibitions. When the U.S. was
19 founded, only wealthy white men were allowed to vote.
20 Women, minorities, illiterates, and the poor were
21 excluded. Most of these restrictions have all been
22 eliminated over time often with much debate, rancor,

1 and challenges.

2 People who have served their time and have
3 been released from prison are the last Americans to
4 be denied their highly cherished basic right to vote.
5 Furthermore, the fact that a majority of the States
6 with the most restrictive laws in terms of when an
7 ex-felon can vote are primarily in the southern
8 United States. Arguably, some of the most racially
9 and ethnically diverse regions of the nation make
10 these laws, their intent, and the end effect all the
11 more suspect.

12 As you know, election laws, even those that
13 govern federal elections, are determined by the
14 individual States, and so disenfranchisement law vary
15 significantly across the country. On one hand, some
16 States allow individuals to vote while they're
17 incarcerated. At the other extreme, 11 States
18 currently do not allow people to vote once they are
19 convicted of a felony offense even after they have
20 fully completed their sentences. This leads to
21 confusion and disparities.

22 Felony disenfranchisement also has an impact

1 on a community level. Voting is one of the ways that
2 people take responsibility for their lives and show a
3 sense of ownership or become stakeholders in their
4 city, their State, or this great nation. By
5 prohibiting an individual from participating in the
6 electoral process, we are decreasing the stake he or
7 she may have in his or her community.

8 In closing, let me just say that because the
9 right to vote is such an important element of the
10 democratic, it is simply wrong to predicate it upon a
11 system rife with racial disparities, and with voting
12 as such an integral part of becoming a productive
13 member of American society, the way forward for our
14 nation should be a new paradigm in which we encourage
15 ex-felons to vote, not prohibit them.

16 In my written testimony, I go into depth
17 about the initiatives of the NAACP's undertakings at
18 the State, federal, and international level to
19 support ex-offenders' re-enfranchisement. For
20 brevity sake, I will summarize them here, but I would
21 be happy to talk about it in greater length during
22 the discussion period.

1 At the federal level, we strongly support
2 legislation which will allow ex-felony offenders once
3 they have completed their incarceration to register
4 to vote in federal elections.

5 At the State level, the national NAACP is
6 working with our State units to address the issues,
7 but because States vary in their approach to
8 ex-felony offenders, we find ourselves tailoring our
9 approach to specific States. In some cases, we're
10 working with elected officials, and in other
11 instances, we are working through legislative
12 processes to promote ex-felony offenders'
13 re-enfranchisement.

14 At the international level, delegations from
15 the NAACP have traveled to Geneva, Switzerland on two
16 separate occasions, and we came back from our visit
17 with an agreement with the UN to raise the issues,
18 highlighting ex-felony offenders re-enfranchisement
19 in upcoming meetings, resolutions, and treaties.

20 Again, I deeply appreciate your holding these
21 hearings and inviting me to testify on behalf of the
22 NAACP. Ex-felony offenders re-enfranchisement is a

1 critical issue of the NAACP and a cause for which we
2 struggle at many different levels. I'm excited about
3 being here, again, and I look forward to the tough
4 questions you're about to ask me, Brother Jones, and
5 any other discussion we would like to have.

6 MR. JONES: Thank you very much for that.

7 MR. SHELTON: My pleasure.

8 MR. JONES: So I do want to start by talking
9 about some of the initiatives that I was able to find
10 that I know that the NAACP supports, the Smart on
11 Crime Initiative that I saw, and then you've got this
12 Misplaced Priorities.

13 MR. SHELTON: That's right.

14 MR. JONES: We talk about three things,
15 essentially, which sort of lead to this revolving
16 door that you guys talked about, you know, coming out
17 and going right back in. Voting was one of them. We
18 had some folks here yesterday from the affected
19 community who talked about the importance of being
20 able to vote and what it meant to them and to their
21 families, housing, the crucial need for people to be
22 able to find housing and to find decent places to

1 live when they return to society, and then
2 employment.

3 MR. SHELTON: Absolutely.

4 MR. JONES: So what I would like you to do,
5 if you would, is just talk a little bit about the
6 NAACP's initiative in each of those areas, voting,
7 housing, and employment, and then I've got some
8 follow-ups.

9 MR. SHELTON: Let me start with employment
10 and kind of work my way backwards. One of the things
11 that we became very clear on as we polled, quite
12 frankly, some of the NAACP's economic supporters was
13 some of larger industries, whether it's the telecom,
14 even Wal-Mart for that matter. As controversial as
15 their position is on my issue, this is one of the
16 issues that they agree with us on and have actually
17 provided a great deal of leadership.

18 The initiative we launched in that area was
19 something called Ban the Box. Ban the Box is simply
20 removing the issue of whether you've been formerly
21 incarcerated from the front part of the application
22 to the last stages of the hiring process. We are

1 convinced that a number of people that are quite well
2 qualified for positions are disqualified at the front
3 end of the process, in essence before the potential
4 employer has the opportunity to see what kind of
5 skills they bring to the table, what their
6 possibilities are.

7 Simply because they checked that box, they're
8 concerned about their liability. So they initially
9 write them off right away.

10 Certainly, as we had these discussions, we
11 knew that there were some positions that people
12 simply would be disqualified from at the later
13 stages. So, for instance, if you have somebody, like
14 most Americans who are in prisons now and coming out
15 after serving time for a nonviolent offense, mostly
16 drug related, something that would not affect you one
17 way or another if you were a sales clerk, if you're
18 sweeping floors, if you're providing other services
19 for that matter; however, we've had those people as
20 well being not considered at the earlier parts. So
21 the employer wasn't able to really consider hiring
22 them.

1 That being said, after talking to Wal-Mart,
2 they were willing to very quietly do it and they did
3 do it. They've changed the process and they've begun
4 hiring more felony offenders than we've seen in any
5 other entity, quite frankly, in the United States. I
6 guess it also helps that they are the largest
7 employer in the United States of America, probably
8 other countries as well. They actually hire more
9 African Americans than any other employer as well.

10 That's proven to be helpful and, of course, I
11 think you also heard from our friends at the EEOC
12 talk about what we consider a companion initiative as
13 they looked at issues surrounding the liabilities
14 that corporations and, quite frankly, the
15 responsibilities of the companies and corporations
16 and employers have to adhere to. We think that's a
17 good initiative. We're hoping to knock down more
18 walls and artificial barriers.

19 You've probably seen some of the stacking of
20 unnecessary provisos that one has to have for
21 consideration for hiring, background checks, economic
22 checks as well, but the issue of criminal justice

1 checks is one that we're moving in the right
2 direction on and have to continue pushing.

3 On the issue of housing --

4 MR. JONES: Well, let me stop you before you
5 get to housing. On the employment, one of the things
6 that I saw that's in your literature, you talked
7 about bringing in these broad-based coalitions, and
8 one of the groups that you talked about being
9 imperative in making real change was the business
10 community.

11 MR. SHELTON: Absolutely.

12 MR. JONES: And you just talked about
13 Wal-Mart and you said you quietly talked to them and
14 they changed. I want to know what you said. When
15 you quietly talked to them, what was it that you said
16 that convinced them to begin to the extent that they
17 do hire folks.

18 MR. SHELTON: Well, it was helpful to have a
19 conversation with our friends from the EEOC, some
20 friends from the Justice Department and some friends
21 from the Congress, Congressional Black Caucus, very
22 specifically sitting in the room as well, all giving

1 nod to how productive and positive it would be for
2 them to move in this direction.

3 What we were able to explain to them is many
4 of the liability concerns, of course, that the
5 concerns were not founded, at least in this
6 situation, that, indeed, if they're careful about who
7 they're hiring -- and, again, it doesn't exclude the
8 process of a back-end screening for criminal offenses
9 and whatnot, but it does stop them from precluding
10 them, those who were concerned.

11 I think when they looked at it in those terms
12 and realized that this is an employment pool that
13 were helpful to the community in which they're
14 serving not only as they're moving to inner city
15 areas -- as you know, part of Wal-Mart's game plan
16 now is to move more smaller Wal-Mart stores into
17 inner city areas where they've been relegated for the
18 most part in the past to much more rural areas, the
19 super centers and super stores. They actually have
20 three planned for right here in Washington, D.C. as a
21 matter of fact.

22 I think with that guise and the lens of the

1 NAACP sharing with them that we want to be partners
2 in something like this, they're seeing the positive
3 applications of something along those lines.
4 Frankly, even a nod from our friends in Congress that
5 we could look at an opportunity to actually provide
6 additional economic incentives as they're going in
7 this direction.

8 One of the premier economic incentives that
9 we're looking at now is those who are long-term
10 unemployed. As a matter of fact, we actually put a
11 provision in the Hire Act that passed in the 111th
12 Congress that provided additional incentives for
13 corporations to hire those that have been unemployed
14 the longest period of time.

15 We also attached that initiative coming from
16 the White House itself in which the President not
17 only wanted to provide those incentives, but also
18 wanted to provide some deterrents for those who won't
19 hire those that have been long-term unemployed.

20 Those who have been in prison, as you can
21 imagine, clearly fall into the long-term unemployed
22 category, and so as such, they're provided additional

1 incentives. So I think the combination of looking
2 for some very positive things to show in the
3 community, recognizing that we have about 600,000
4 people that roll back out of jails and prisons every
5 year to the communities they came from, and
6 understanding that these are people that have
7 families and responsibilities, and if we do this, we
8 can cut recidivism. They liked the idea.

9 MR. JONES: Let me move you into housing.

10 MR. SHELTON: Sure. The housing issue has
11 been a big issue. What we learned in the housing
12 concern, of course, is -- maybe you've heard the
13 stories about those who are turned away because
14 they've had a drug offense on their record. There's
15 a misunderstanding at the local level of what the
16 restrictions are from the Department of Housing and
17 Urban Department around public helping. There are
18 really only two drug-related offenses that will
19 preclude you from moving to a public housing
20 facility.

21 One is methamphetamine and the production
22 thereof on premises, and apparently, and I have not

1 witnessed this, but I'm a big fan of "Breaking Bad"
2 and apparently it's a very smelly process. It's kind
3 of toxic. So that's one of the exceptions.

4 Another exception is if gun violence was
5 involved in a drug-related offense. They can
6 actually disqualify people there. Many of the local
7 authorities for some reason took that way out of
8 context and actually put a provision that if your
9 grandson got busted with a marijuana cigarette on his
10 way to a party, because he lives with the grand-mom
11 in the public housing unit, the grand-mom can get
12 kicked out. That is not a federal position. That's
13 a local enforced position that we're moving to change
14 as well.

15 We recognize there are number of obstacles
16 and also that the vast majority of those that come
17 out of prison are the poorest of the poor. As a
18 matter of fact, it's more compounded and access to
19 public housing is crucial for us and crucial for them
20 if we want to prevent recidivism and all the other
21 challenges we find being homeless.

22 MR. JONES: When you say you're moving to

1 change those locals, talk a little bit about that.

2 What's the initiative? What's the action plan?

3 MR. SHELTON: The initiative was first to
4 reach out to the Attorney General of United States,
5 and Eric Holder is a long-time friend of the NAACP
6 and its agenda. We spoke to him about some of these
7 challenges, and he put his folks to work on it right
8 away.

9 Believe it or not, the Attorney General
10 actually sent a letter to every public housing
11 authority in the country explaining the two points
12 that I just shared with you and explaining that
13 anything beyond that is inconsistent with the law and
14 needed to change.

15 So we're seeing those provisions and part of
16 that, of course, is educating those who are in those
17 communities. We have 2200 membership units in every
18 State in the country and in most local communities
19 and an awful lot of rural communities throughout the
20 country as well, particularly where there are larger
21 and even smaller parts who are African Americans.

22 We use that education to move -- we've

1 actually provided information to our local units to
2 also share and utilize the public forum, that is
3 whoever they're talking with, radio stations,
4 newspapers, internet, most of them maintain major
5 list serves of their members throughout their area
6 and also maintain a relationship in the area of
7 housing as well as criminal justice. As you can
8 imagine, those are a couple of crucial issues for the
9 NAACP, and as such, those working groups of our local
10 branches have been reaching out as well.

11 We also have legal redress committees and
12 we'd love to have every lawyer who is a member of
13 your association to become active with us as well at
14 the local level in each of those branches and each of
15 the 30 in-state conferences.

16 Just for clarification, I told you we had
17 units in every State in the country, but there's some
18 States we have so few units that we combine them with
19 other States. A good example is Alaska, Washington,
20 and Oregon. Believe it or not, we have only three
21 membership units in Alaska. We do have three
22 membership units in Alaska, and we only had nine

1 units in Washington State and only eight units in the
2 State of Oregon. We've combined those in one State
3 conference. They are also utilizing their mechanisms
4 through the discussions that they have with their
5 elected officials as well as those that are
6 responsible for carrying out services like public
7 housing to make sure they're very clear on the issue
8 as well.

9 We just did an op ed to help drive this issue
10 home just a little bit louder. Gil Kerliske, as you
11 know, is the Drug Czar. Gil just spent two arduous
12 days with the NAACP National Board of Directors in
13 New York City.

14 Let me say as a sideline point on that, I
15 believe it will end up being in his memoirs that he
16 had fried chicken, greens, and sweet potatoes at Bea
17 Smith's in New York with the NAACP National Board of
18 Directors; but, nonetheless, it was a very robust
19 conversation and engaged. They are truly engaged,
20 strongly engaged on this issue as well.

21 So their outreach throughout the country will
22 help us with this housing piece.

1 MR. JONES: Once last piece on the housing:
2 We learned yesterday from a representative from HUD
3 about the lifetime ban on sex offenders if people are
4 required to register under the Sex Offender
5 Registration Act. What is the NAACP's position on
6 that and how are you going about, you know,
7 combatting that?

8 MR. SHELTON: At this point, we know we have
9 to be very careful with some restrictions and, of
10 course, some are around registered sex offenders in
11 the areas that are close to children. As you know,
12 not all public housing is limited to larger
13 tenements. There are smaller units that don't
14 necessarily put you in that position.

15 We think it's too broad a stroke to have such
16 a broad stroke restriction against former sex
17 offenders along those lines, and as you know, even
18 sex offenders are a very, very broad range too. They
19 consider a 17-year-old kid that had a sexual
20 relationship with his 15-year-old girlfriend as a sex
21 offender as well.

22 So that kind, I think we have to be a little

1 bit more stringent in our assessment of who these sex
2 offenders are and what the offense was and look at
3 what kind of restrictions will be good common sense
4 to actually help there. Right now, we do believe
5 it's too broad.

6 MR. JONES: So let's talk about voting.

7 MR. SHELTON: Voting, on the voting issue, as
8 you know, most of the issues are time, place, and
9 manner which elections are carried out are in the
10 power of the States. You also know that there have
11 been Supreme Court decisions that have made very
12 clear that States have the authority to determine
13 which crimes one would be disenfranchised for and
14 what processes, if any, that they will be
15 re-enfranchised.

16 So we know the primary power is with the
17 States. The leverage for us is, of course, federal
18 elections. As such, we've introduced in the last
19 couple of Congresses and plan to introduce at this
20 one as well an initiative to actually re-enfranchise
21 former felons as they walk out the door to be able to
22 participate in federal elections.

1 As you know, it's that kind of leverage that
2 we've used in the Federal Government over the years
3 that have proven very helpful to us. Most States and
4 jurisdictions don't want to do separate election
5 processes.

6 So there's a tendency as we leverage the
7 necessity for federal elections to work out the way
8 we'd like to, of course, re-enfranchising felony
9 offenders at the point of exiting the prisons. Then
10 they'll be able to change the rest of the laws to
11 address those concerns as well.

12 We're also introducing legislation in all the
13 States, and I mentioned a little bit about this in my
14 testimony. We would create for each State, depending
15 on their process for re-enfranchisement, an approach
16 that actually makes sure that everyone upon walking
17 out of camp -- there are couple of ways they would do
18 it. The easy way is, of course, they'll
19 re-enfranchise anyone. There's nothing on the books
20 that actually requires this or grants the right to
21 it, but in most States, at the very least, the
22 Governor has the power to re-enfranchise as well. We

1 think that creates a hodgepodge and is problematic
2 and as such, we've created legislation to address
3 those concerns walking out the door.

4 A point about this for just a minute as well,
5 we had some very eye-opening experiences during the
6 2000 election as we held hearings in Dade County,
7 Florida and that debacle of the 2000 election. One
8 of the things we learned is that even as much as the
9 laws in our minds as we read them are very clear, the
10 enforcement is very fragmented. So we had -- even
11 though the law in Florida at the time was you had to
12 complete probation and parole before you could
13 register and vote again, we had people that were
14 asked if they were those who were on the purge list
15 because they didn't use enough unique identifiers to
16 determine that a Catholic Priest by the name of
17 Jefferson who was African American went to the polls
18 to vote and because he had the same name as someone
19 that had been disenfranchised, even though he went in
20 full collar, he was not allowed to vote.

21 The poll worker asked him the question of
22 aren't you this one. He said, No, I'm not. He said,

1 As a matter of fact, I've never been convicted of any
2 offenses and whatnot; I go down to prison, but it's
3 usually to counsel to the weary as they spend time
4 trying to get out of those prison cells and whatnot.

5 What we also found is that they were asking
6 every African American male that came to certain
7 polling sites if they had felony offenses on your
8 record, no one else, just African American men,
9 because again, the presumption in these circumstances
10 is that African American men are the ones who are
11 going to have the records even though we're
12 disproportionately represented. We're not the
13 largest proportion of society that's disenfranchised
14 along those lines.

15 We still have those challenges ahead of us.
16 We believe it's simpler and clearer at the time you
17 step out of prison, you can vote right away and,
18 again, if you look at the disparities, I love to
19 compare Virginia to West Virginia. In West Virginia,
20 when you walk out, you don't worry about probation.
21 You don't worry about parole. You just go and
22 register and begin voting again. It is an automatic

1 restoration.

2 On the other hand, in the State of Virginia,
3 right next door, that's not the case. In the State
4 of Virginia, the Governor has the power to the
5 re-enfranchise, but that's if the Governor feels like
6 he wants to re-enfranchise, which means it is not a
7 given right. It's simply a protocol in which this
8 particular Governor has been very friendly on, but
9 you still have to wait for probation and parole to be
10 completed, and in some cases, in some States, you
11 have to pay for any restitution prior. States that
12 require victims compensation, require you to complete
13 that victims compensation as well prior to
14 reauthorization or re-enfranchisement.

15 So we know we have a number of challenges.
16 We've got some sample bills that we've been
17 introducing and just starting to introduce in those
18 States where they make sense so we can get to one
19 protocol, but the truth be told, we'd rather see
20 States not disenfranchise at all. There is no good
21 reason for it. We cannot find anything in which this
22 creates any form of deterrent, has any additional

1 punishment that in any way helps correct the actions
2 that happened prior to that person being convicted.
3 There's no good reason for it.

4 We have two States that don't do it and we --
5 well, we kind of cynically laugh that it's in two of
6 the whitest States in the country, but nonetheless,
7 we appreciate what they're doing along those lines.

8 Just on that point, this is an interesting
9 story: I'll never forget the first time I went to
10 Senator Patrick Leahy, who is the chair of the
11 Judiciary Committee, and asked him to support our
12 re-enfranchisement bill. He and I walked across the
13 street from his office building to the Capitol
14 Building. As a matter of fact, when I asked him, he
15 laughed at me first and he said you have no problem
16 with me on this one. He said I'll support you. He
17 said I'm in a State that we don't disenfranchise. As
18 a matter of fact, I go into prisons and campaign for
19 reelection.

20 As defense lawyers, think about the political
21 dynamic that would create in the States in which you
22 practice with politicians having to go before those

1 people who are in many ways the response to the
2 criminal justice laws they voted into place. It's
3 interesting.

4 MR. JONES: I want to shift gears just
5 briefly because I want to get the rest of my
6 colleagues in on this conversation, but the one thing
7 that we'd be remiss if we didn't talk about, we heard
8 from Former Government Ehrlich --

9 MR. SHELTON: Yes, sir.

10 MR. JONES: -- who said that, basically, you
11 know, the work that you all are doing is nice and I
12 hope you put out a glossy report, but it doesn't
13 really matter, because it's all about the media, and
14 in today's world, if you're not in the press, you're
15 nowhere. Right?

16 And I can tell you that my great grandfather
17 lived to be 90 years old and was a lifetime member of
18 the NAACP. My grandparents were lifetime members of
19 the NAACP, and any time the president of the NAACP
20 spoke, particularly when television came around, I
21 knew where to find them, right there in front of the
22 TV.

1 The civil rights community and particularly
2 the NAACP has a voice, and you had a section in your
3 report about getting your voice heard and I saw where
4 your president talked about getting in people's
5 faces.

6 MR. SHELTON: Well, in a nice way.

7 MR. JONES: In a nice way, but getting your
8 voice heard, and so, you know, I told my wife -- I
9 live in New York -- the last couple of days that
10 every morning, I was waking up with our first vice
11 president of the NACDL because he's on TV every
12 morning talking about this case that's happening in
13 South Africa. Right?

14 And I was watching this morning and Solidad
15 O'Brien virtually jumped out of her chair when she
16 thought that they were about to hear from the judge
17 with a decision on bail in this case. Right?

18 How do we get that kind of traction for these
19 kind of issues? How do we get Solidad O'Brien to
20 jump out of her chair around the fact that the
21 President has not pardoned one person in his five and
22 a half years and his pardon apparatus is essentially

1 broken? How do we get that kind of attention? How
2 do we partner up with folk who have that kind of
3 access and get the message out about the real -- you
4 know, talk about the new Jim Crow. It's not that new
5 and it's probably worse than Jim Crow. Right? How
6 do we get that message out in a meaningful way and
7 how are you all doing it?

8 MR. SHELTON: Let me say a couple of things
9 to that. One is we're sort of trying to take every
10 opportunity that we can. We've sat with Solidad
11 O'Brien on a number of occasions to talk about this
12 issue among others. We utilize our breadth and depth
13 of our communications network to get this information
14 out to our folks on a regular basis.

15 We've got about 326,000 NAACP leaders across
16 the country that receive updates and information from
17 us on regular basis and the idea, the hope, is that
18 it will channel out beyond that. We also have a
19 website that's won a few awards that helps get that
20 information out, but that's not enough.

21 In our estimation, one of the things that
22 will be helpful in that for us is to find additional

1 friends to help elevate these issues and push them
2 forward. One of the things we're convinced of is
3 that re-enfranchisement of felon offenders is also a
4 tool that helps combat recidivism and, quite frankly,
5 as those who represent so many whose lives are
6 challenged with the possibility of incarceration and
7 even represented those who aren't incarcerated, even
8 as they're coming out of prison, your voice is
9 extremely helpful and strategically postured to help
10 resonate even further along these lines.

11 So we're using every tool we have. I've
12 testified before the U.S. Congress, both the House
13 and the Senate on his issue on several occasions.
14 Again, for the record, they know who we are and what
15 we're trying to do along those lines, both the Rules
16 and Administration Committee as well as the Judiciary
17 Committees of the House and the Senate. It's the
18 House Rules Committee or Administration -- Committee
19 on Administration that handles those issues on the
20 House side.

21 MR. JONES: Let me ask you specifically about
22 the President and the commutation power and the

1 pardon power. In effect, the last witness told us
2 that he's pardoned more Thanksgiving turkeys than he
3 has human beings.

4 MR. SHELTON: That's right.

5 MR. JONES: Is there anything that you all
6 are doing in that regard?

7 MR. SHELTON: Yes. As a matter of fact -- my
8 hesitation is because we're actually in communication
9 and dialogue with the White House. I was in a
10 two-hour meeting yesterday on this very issue.

11 Without going on the record, if I can go off
12 the record for a minute, I'd be happy to answer that
13 question. Of course, I'll have to swear you all to
14 secrecy.

15 MR. JONES: Okay.

16 [Discussion held off the record.]

17 MR. JONES: I'm going to turn the questioning
18 over to Vicki.

19 MS. YOUNG: I had a question, but I forgot
20 it.

21 Oh, wait. No. When we were in Chicago --
22 now, this is my memory because that was about a year

1 and a half ago, I seem to recall that one of the
2 local people was talking about the fact that -- I
3 thought it was Wal-Mart was willing to hire people,
4 individuals with records, but at least that store or
5 that district wasn't that willing to be that public
6 about it.

7 MR. SHELTON: That's right.

8 MS. YOUNG: Is that still --

9 MR. SHELTON: It is still the case. They are
10 concerned, and rightfully so, that in a time of
11 economic downturn and, quite frankly, record high
12 unemployment, to show that kind of deference to those
13 who are considered errants in our society when you
14 have so people who are also unemployed, it can
15 misconstrue and can be utilized in a very challenging
16 way against them.

17 As you can imagine, a corporation like
18 Wal-Mart has a lot of enemies. You know, some of the
19 enemies are my friends, as a matter of fact, but
20 nonetheless, Wal-Mart is my friend on this issue. So
21 they are concerned about that being exacerbated. The
22 practice is underway. We've sat down with them on

1 several occasions since they began instituting this
2 particular policy and it is working for them.

3 So they are still moving ahead and doing it
4 and having -- actually, the EEOC came out with their
5 guidance after Wal-Mart had begun to implement it.
6 So for Wal-Mart to actually speak to the EEOC on
7 something that they weren't being brought in for
8 misbehavior, but being a trailblazer in moving ahead
9 of this issue was something very attractive to
10 Wal-Mart as well.

11 So I think there are those concerns. They
12 don't want to talk about it very loudly. You
13 probably saw they blew the whistle very loud as they
14 talked about making sure that every veteran that came
15 before them would be hired and have a job. Well,
16 this is one that they're really pushing a big
17 initiative around as well, but they don't see the
18 public relationships aspect as being as helpful to
19 them as what they're doing with veterans.

20 MS. YOUNG: Are there other organizations in
21 the business community that have shown interest in
22 working in this area?

1 MR. SHELTON: We're talking to a number of
2 our big corporate friends. They're showing interest
3 and, of course, they're going through the process of
4 reviewing their liabilities and, of course, how
5 they're viewed in the public and other things along
6 those lines.

7 Some of those that we're in conversations
8 with and are looking into it are Verizon and AT&T.
9 We're very happy with AT&T, our conversations with
10 some of the unions. As a matter of fact, AT&T is
11 probably the largest unionized company in our country
12 right now. So we're very pleased with that side of
13 things and their interest along those lines.

14 Some of the large department stores chains
15 are looking into these issues as well. So we hope to
16 continue to push as well as the tourism industry. It
17 becomes a little tough in many ways because it is so
18 public services focused, that is they're interacting
19 with the public and there are still those stereotypes
20 about those coming out of prisons and not necessarily
21 being the face you want to put on your corporation,
22 but we're talking with them. They're being

1 responsive, and we're also talking to the Department
2 of Labor about these issues.

3 There's a really interesting juxtaposition
4 around the concerns when you're talking about H(2)(B)
5 visas for seasonal workers.

6 MS. YOUNG: I live in Silicon Valley. I know
7 who gets them.

8 MR. SHELTON: You know who gets them. Very
9 good. Very good.

10 So there's a leverage and an angle along
11 those lines that we're still working through, but we
12 are going corporation by corporation, friend by
13 friend and really advocating in this direction. Any
14 time you have a constituency that is so heavily,
15 again, under the care one way or another with the
16 criminal justice system, these obstacles become
17 crucial.

18 MR. JONES: Elissa.

19 MS. HEINRICHS: No. He just addressed my
20 question.

21 MR. JONES: Larry.

22 MR. GOLDMAN: Nothing.

1 MR. JONES: Penny.

2 MS. STRONG: I just have a quick question. I
3 was on your website. It looks excellent, Mr.
4 Shelton. So you have a petition process within the
5 NAACP. Is that something that your board does?

6 MR. SHELTON: Petitioning is something that
7 we do as a tool primarily on our website to get more
8 people engaged and moving. We use the petitions. We
9 do letter campaigns. We do testimonial filings, but
10 coordinated in much the same way.

11 In this case, the petition campaign is
12 because this is such a national issue that it's not
13 federally focused, although there is a component
14 there as well, but it's a national issue because most
15 of the concerns around this actually get played out
16 at the local level.

17 So we thought a petition campaign along those
18 lines is more helpful. Then we can isolate those
19 petitions based on geographic areas in a State and
20 utilize that for leverage in those particular places.

21 MS. STRONG: And has the NAACP taken an
22 official petition, and I apologize if I missed your

1 remarks on this, officially approving the Ban the Box
2 initiatives that have been largely done by public
3 entities?

4 MR. SHELTON: Oh, yes. Yes, very much so,
5 and we've held them up as an example to establish
6 that they, indeed, can and do work, and even our
7 public entities are able to utilize them
8 successfully. We've always utilized the public
9 sector to leverage the private sector, whether it's
10 through contracting or other means, and certainly
11 that's exactly what we did with the EEOC, utilized
12 that public entity of the EEOC to provide that
13 additional regulatory leverage toward these companies
14 and corporations. We think it's a good idea.

15 MR. JONES: Chris.

16 MR. WELLBORN: I would like to go back to the
17 federal broken nonexistent pardon system.

18 MR. SHELTON: Yes, sir.

19 MR. WELLBORN: We've heard from most people,
20 people in Families Against Mandatory Minimums, people
21 who are ex-pardon attorneys in the Justice
22 Department, and they've all been giving us the same

1 information, which effectively is you've got a group
2 of prosecutors that's in the hands of the Justice
3 Department and they have a very -- a culture of
4 simply summarily denying or who knows, because it's a
5 star chain. Nobody knows what's going on there.

6 But there have been some exposes, among other
7 things, which ought to be extraordinarily disturbing
8 to the NAACP or anybody with a conscience that there
9 seems to be a disparate view in terms of the language
10 used, depending on whether a person is white, black,
11 Latino, or however they may be in the description of
12 people even they are in the same circumstance
13 factually in terms of family background, single
14 mothers, whatever it may be; but the fix from what
15 we're hearing from everybody is very, very easy and
16 it's simply the President making a decision to take
17 it out of the hands of the Justice Department and
18 create his own format.

19 So here's my question: Because this is an
20 area that, especially given the huge disproportion in
21 the rate of incarceration in the federal system of
22 African Americans and people of color, along with

1 having the meetings at the White House, is the NAACP
2 doing anything to put direct pressure on the
3 President to simply act like a President and say,
4 Okay, fine, let's do something about it, because
5 quite frankly, it's not just the one pardon in the
6 twelve years, but also disturbing is from what we
7 understand, there have been 11,000 commutation
8 requests that have been denied over the last 12
9 years, 12 granted, 12, which is absolutely stunning.

10 MR. SHELTON: Absolutely.

11 MR. WELLBORN: And that's the President
12 making those decisions or consciously choosing not to
13 make the decisions, and it seems to me, with all due
14 respect, that this President in particular ought to
15 be somewhat receptive or at least not tone deaf to
16 the problem.

17 So, again, my question is what can the NAACP
18 along with other interested allies do to get the
19 President to act like a President on this issue and
20 say, Fine, I'm simply going to take it out of the
21 hands of the Justice Department and we're going to
22 set up our review and we're actually going to start

1 doing something about it other than I'm going to
2 think about it and then just back-burner it and leave
3 it for the next President?

4 MR. SHELTON: For clarity purposes, what I
5 described off the record speaks to a part of that.
6 That is a separate track other than the normal pardon
7 process that actually is administered by Justice
8 Department. We're having those conversations now,
9 but we haven't talked about any permanent
10 restructuring of the process and, quite frankly, it
11 is something that we would love to see happen.

12 When I'm in the White House or on Capitol
13 Hill or in the Justice Department having those kind
14 of discussions, you end up with kind of a balance of
15 two types of concerns that's working here in
16 Washington. One is the straightforward bureaucratic
17 legal concerns of the process that we know is rather
18 broken. The other is the political dynamic that
19 surrounds it which is probably the reason it's broken
20 in the first place.

21 As you can imagine, after the Haley Barbour
22 situation in Mississippi, most politicians are not in

1 a hurry to put themselves in the posture of having
2 more independence as they move towards this or even
3 having a public appearance of greater independence
4 along those lines. That's never stopped us before.

5 So in this case, I think we do have to push
6 for a new construct in which these pardons are
7 reviewed and more consistently granted.

8 MR. WELLBORN: To follow up on that, there
9 seems to have been some sort of model and, granted,
10 I'm not saying it's the perfect model, but some model
11 that we heard from Bob Ehrlich that was created in
12 Maryland, and I don't know what, if any, support Bob
13 Ehrlich got from the NAACP for introducing that
14 process, but evidently, it was a process that got a
15 lot more people who needed to be dealt with dealt
16 with.

17 That was a regular process that was set up
18 that to some extent politicized or at least attempted
19 to politicize it, but this is evidently very doable
20 because there is no constitutional bar that requires
21 the Justice Department to have total control over
22 this process and it's all the stroke of the

1 President's pen.

2 So, again, it's something that if the
3 President is interested in, he could actually do
4 something about it. So then the question comes what
5 can we do in conjunction with the NAACP to maybe get
6 the President to be interested.

7 MR. SHELTON: Let me say we're absolutely
8 excited about a partnership with you guys working on
9 an issue like this. I know that we were very strong
10 supporters of Ehrlich when he moved that in Maryland.
11 As you know, Maryland is also kind of our home State.
12 It's where our national headquarters is located.
13 There were a few issues that we supported and worked
14 with him on. This is one of them, absolutely.

15 So I don't want to leave this too quickly.
16 We would be delighted to have those conversations and
17 looking to see how the Maryland model would very well
18 fit into the national and the federal structure.
19 We'd be delighted to do that, and you've got some
20 great staff people. So we would be happy to sit down
21 with them and begin that process.

22 One of the things I can say about this

1 Administration is we have a pretty open door with
2 them as well as the Justice Department. So I'm sure
3 those that are -- those politicians at the very least
4 in those positions would be happy to sit down with us
5 and have this conversation as well.

6 So let's agree on that construct and move it
7 forward. The short answer is yes.

8 MR. JONES: Margi.

9 MS. LOVE: Thank you for being here. I'm
10 very pleased to hear of the interest of the civil
11 rights community in these issues. I read Michelle
12 Alexander's book with great interest and pleasure.

13 MR. SHELTON: And trepidation.

14 MS. LOVE: Her sort of approach to this new
15 cast-like system, if you will, is one that has
16 concerned me for a long time and it does involve more
17 than voting, and in most States, voting is not a
18 problem. In fact, it's really only a problem in
19 about a handful.

20 So the general concern about removing these
21 legal barriers and the stigma is what we are
22 interested in. I was interested and I'm very happy

1 to hear about Wal-Mart. That's great, although I
2 want to echo Rick's point. I think it was his point
3 about that, I mean, if we don't know about it, you
4 know, how can they exercise leadership and be a
5 trailblazer if we don't know about it?

6 So it might be nice to find an employer who
7 was willing to be a little more upfront about the
8 commitment. In that regard, I saw in the "New York
9 Times" this morning, there is an article about the
10 carmakers in Detroit hiring, a big push to hire. I
11 was wondering if the NAACP, whether you were aware, I
12 should say, and whether you knew of any discussions
13 going on with the carmakers about what their hiring
14 policies are going to be if they're pushing to hire a
15 whole bunch more people. Are you aware of what their
16 policies are?

17 MR. SHELTON: Yes, absolutely. As a matter
18 of fact, the UAW sits on our Board of Directors. So
19 these conversations for us along those lines in
20 hiring and employment primarily have been through the
21 unions since we see them as being a very important
22 partner as we move to break down these walls as well.

1 The short answer is we're talking to the
2 representatives of UAW that handles Chrysler, the
3 ones that handle Ford, the ones that handle G.M., and
4 those are the three we talk to the most often.
5 They're also the three that also happen to sit on our
6 Board of Directors.

7 We've been able to move this issue forward to
8 even have greater conversation about it. As you can
9 imagine, with the deterioration of Detroit as they're
10 moving now to begin rehiring, but not just Detroit, a
11 few other States as well, we're finding ourselves
12 needing to leverage because we're finding that more
13 of our people are ending up with criminal records as
14 they've gone through this big economic downturn for
15 one reason or another, again, mostly drug related,
16 mostly self-medication, if I can use those terms;
17 but, nonetheless, the end up finding themselves being
18 in a position of being locked out of those
19 opportunities at important car manufacturers and the
20 like.

21 So the short answer is yes. Most of the
22 conversations we're having now with the union

1 themselves, the unions are having some preliminary
2 conversations with the employers, but the discussion
3 is going on.

4 MS. LOVE: You said "locked out". Now, do
5 you mean that because they have a record, they can't
6 be hired?

7 MR. SHELTON: It's more difficult. It's much
8 more difficult.

9 One of the things that has happened is we're
10 also seeing artificial uses of criminal records by
11 those that are in the position to hire at time when
12 jobs are tighter than ever before. We have a lot of
13 laid off employees that don't have records that are
14 trying to find their way back to those living wage
15 paying positions, but they're also finding that there
16 is a secondary level of discrimination that happens
17 around these concerns too.

18 MS. LOVE: Yeah. I appreciate that, and I'm
19 sure that that kind of low level -- and it may be
20 that a more sort of public policy that is
21 communicated to managers, H.R. people, down the line
22 would be helpful so that they won't proceed from kind

1 of biases, but I would hope that you all could
2 continue to talk.

3 MR. SHELTON: Absolutely.

4 MS. LOVE: And continue to encourage
5 employers to come out of the shadows.

6 Starbucks has been a trailblazer because it
7 has spoken out about what it does, and that's the
8 real kind of trailblazer. I hope that the NAACP will
9 be a trailblazer.

10 MR. SHELTON: Oh, yes, ma'am. We love
11 screaming these things out loud. The challenge is
12 working with others. One is their comfort factor
13 isn't there. If they're doing what we're asking them
14 to do on one hand, we're hoping to get to a point
15 they feel comfortable really raising up and louder.
16 They have to allow us to do what I just did today,
17 that is show people in these kind of meetings,
18 whether a meeting with government officials or
19 others, to say that they're doing these things. For
20 some reason, they'd rather not promote them all too
21 loudly.

22 I don't think they're running from them

1 either in many ways, but I don't think they're quite
2 ready to promote the way we'd like to see them
3 promote.

4 MS. LOVE: I understand the delicate balance,
5 but I'm just -- my balance is between comforting the
6 afflicted and afflicting the comfortable.

7 MR. SHELTON: Oh, yes, ma'am.

8 MS. LOVE: And when you speak about trying to
9 get people to feel comfortable, I'm wondering whether
10 the afflicting the comfortable aspect of the balance
11 needs a little jacking up. It's not directly
12 institutionally, at least by other people who might
13 speak.

14 MR. SHELTON: Absolutely. Let me just make
15 one point of clarity. We do send other corporations
16 to Wal-Mart to talk about their experiences, and
17 Wal-Mart is very comfortable playing that role as
18 well, showing what has worked, why we can do this,
19 how helpful it is, and the real liability is that you
20 do it and do not ask.

21 There's another side of this that I didn't
22 talk about that is important for us and everyone else

1 too. As I mentioned before, there is some disconnect
2 in the understanding of the real policies around
3 those with former felony on their records and public
4 housing. There's an education factor that is very,
5 very important as we're talking to those potential
6 victims of this misunderstanding so they know exactly
7 what their right are and they know what the law
8 really is and aren't going with the local folklore.

9 So you're right. There are two sides to it,
10 and one side is we don't want former felons to feel
11 that shouldn't even bother going to Wal-Mart or some
12 other place to ask for a job with a presumption that
13 they're going to be turned away because they have a
14 record.

15 MS. LOVE: Right. I have another little
16 series of questions, one or two.

17 MR. JONES: One. We're against the clock.

18 MS. LOVE: I know that you all, that the
19 advocacy community has been concerned about the
20 prison population issue and the commutation aspect of
21 the President's pardon power. He has pardoned 22
22 people that are not -- who are not in prison, and I

1 wondered if you have been talking to whoever it is
2 that you talk to about using the power not for
3 prisoners, but to restore rights and status, which is
4 actually our mission here.

5 MR. SHELTON: Absolutely.

6 MS. LOVE: Has that aspect of the pardon
7 program --

8 MR. SHELTON: Yes. Yes, it is. As a matter
9 of fact, when you talk to Kemba later this afternoon,
10 you'll see that that's exactly what we're trying to
11 establish for her as kind of the poster child of
12 someone in which those who are not serving, she'd
13 still be pardoned.

14 MS. LOVE: Okay. So putting a human face on
15 it is very, very important and we've heard that sort
16 of balance between statistics or data and a human
17 face.

18 MR. SHELTON: Yes.

19 MS. LOVE: The very last thing I want to say
20 is are you familiar with the case of Clarence Aaron?

21 MR. SHELTON: I'm not sure I am.

22 MS. LOVE: Clarence Aaron?

1 MR. SHELTON: No, I'm not.

2 MS. LOVE: You're not. Okay. Maybe we'll
3 talk later then.

4 MR. SHELTON: I'd love to.

5 MR. JONES: We are -- this sessions are
6 always too short and we always run out of time.

7 Bill Tatem, who you may have known, used to
8 be the publisher of "The Amsterdam News" would always
9 tell me that to make sure in situations like this
10 that I would always practice retail politics. So I'm
11 about to practice a little bit of retail politics.

12 We are holding our next set of hearings in
13 New York and the focus of those hearings is largely,
14 we're hoping, are going to be on the business
15 community and employers and those other folks who are
16 harder to get to the table, and so to the extent that
17 you have relationships with Wal-Mart and Verizon and
18 AT&T, here is the perfect opportunity for us to
19 partner up, and to the extent that you can be helpful
20 in getting those general counsels and appropriate
21 folks to come and testify in New York, we'd like to
22 work with you on that.

1 MR. SHELTON: I'd be delighted to do it. We
2 have a lot of good folks in New York. You probably
3 know Hazel Dukes as well and some of those NAACP
4 troublemakers. We love every one of them. They're
5 also very well connected and we'd be delighted to do
6 it.

7 MR. JONES: Great.

8 MR. SHELTON: Wal-Mart is in several beds
9 with them along with some of the other companies. I
10 will call Hazel on the way out and tell her to look
11 forward to it. I hope it's that you're a lifetime
12 member too, and I think you are.

13 MR. JONES: I certainly grew up on the
14 crisis. I will tell you that.

15 MR. SHELTON: Excellent. Excellent. And
16 that's an invitation I want to extend to everyone
17 sitting at this panel, a little pressure there and
18 whatnot, and perhaps the next time you hold a hearing
19 like, for one reason or another -- I know time is
20 always crucial. There's a great place around the
21 corner called Stan's Bar and Grill. If you'd like,
22 the meetings there seem to go more smoothly.

1 MR. JONES: We appreciate your time and we
2 appreciate you being here and many thanks.

3 MR. SHELTON: It's my pleasure. Many thanks
4 for having me.

5 MR. JONES: All right. We are going to take
6 a break and reconvene at noon.

7 [Recess.]

8 PANEL 3

9 MR. JONES: Welcome. It is very nice to have
10 you all here. As you probably know, and if you
11 don't, I'll tell you, we have been sort of going
12 around the country on a listening tour and bringing
13 in folks of all stripes and various stakeholders to
14 talk to us about the challenges, the obstacles, and
15 the issues that confront folks who are trying to
16 restore their rights and their status after
17 conviction.

18 This is our third day of very, very
19 productive hearings in Washington, and we're looking
20 forward to this conversation. The way that we
21 operate is that we want to give each of you five or
22 ten minutes or so to tell us a little bit about

1 yourselves, a little about the work that you do, and
2 give us the benefit of whatever other thoughts you
3 might have that you think will be helpful to the work
4 that we have to do, and then we have lots of
5 questions for you all, and the way that we ask
6 questions is that one of our number will lead the
7 discussion, and then to the extent that there's time,
8 and we find that there never is enough time -- we
9 always run long -- the rest of us will also have an
10 opportunity to ask you some questions as well.

11 Okay. So for the purposes of this
12 discussion, Elissa Heinrichs is going to lead the
13 questioning, and at this point, unless there are any
14 questions -- now, let me just also say that the mikes
15 don't amplify your voice. They just direct it to the
16 camera. So you need to speak in a good loud voice,
17 but other than that, I will stop talking and I will
18 turn it over to you and I will leave it to you decide
19 who wants to go first.

20 Ms. Frazier, I think they're all pointing at
21 you.

22 MS. FRAZIER: Sure.

1 MS. HILLERY: We're friends. So yes, please.

2 MS. FRAZIER: My name is April Frazier
3 Kamara, and I am attorney at the D.C. Public Defender
4 Service and I direct the Community Reentry Program.

5 At PDS, we provide legal representation and
6 services to our clients from the point of initial
7 arrest until successful reintegration in the
8 community. I want to point out that the services
9 that D.C. Public Defender Service provides is very
10 unique and actually one of the few offices in the
11 country that allows clients to have access to --
12 low-income clients access to attorneys
13 post-adjudication, whether your case is dismissed,
14 you're convicted, and so it's a very unique model and
15 kind of practice that I enjoy on a day-to-day basis.

16 I want to first provide you with some
17 background of my previous experience before I started
18 working at PDS, because its really shapes my
19 viewpoints on the issues. Prior to joining PDS, I
20 was at the Legal Action Center for one year as the
21 deputy director of the National Hire Program which
22 was aimed at policy reform to increase employment

1 opportunities for people with criminal records.

2 Prior to joining the Legal Action Center, I
3 actually spent about two years at the American Bar
4 Association with Margaret Colgate Love under her
5 direction studying these issues.

6 MS. LOVE: The best staffer ever.

7 MS. FRAZIER: I wanted to give a shout-out to
8 Margi, but I think, more importantly, the reason why
9 I highlight that is that I came at this work out of
10 law school, starting in policy work, looking at what
11 can be done to increase rights for people with
12 criminal records. I always had-- my passion for
13 reentry grew out of representing people in clinic at
14 Howard University when I was a third-year law student
15 and I saw the myriad of issues facing them by doing
16 parole revocation hearings, and so we saw a full
17 range of -- we had misdemeanor clients, but we also
18 had parole clients who were coming back into the
19 system.

20 So I share all of that with you to let you
21 know that my viewpoint now is shaped by studying
22 these issues, but now seeing on the ground what

1 really works, what really is the reality for people
2 the criminal records, but also decisionmakers who
3 really hold a lot of power about whether or not a
4 person is going to be given an opportunity to get a
5 job, to get into public housing, to attend college,
6 and I think we really have to shape these
7 recommendations around the reality of what we
8 experience on the ground.

9 At the Public Defender Service, we have what
10 we call duty day. So at our downtown office, Monday
11 through Friday, anyone can walk from the street to
12 meet with an attorney about legal issues. A lot of
13 people, 70 percent of the people, that we see coming
14 into our office come in for records sealing and
15 expungement, and I think that speaks volumes, because
16 we do see people who come in about police brutality
17 or my son was arrested last night, how do I track him
18 down; but the overwhelming majority of people that we
19 see through our duty day process are people that are
20 trying to get their records sealed or expunged.

21 So we have a downtown location and I work in
22 the Northeast Community Office, and we see the same

1 reality, and I think that speaks volumes about the
2 enormous difficulties that people have once they are
3 stamped with a criminal record, whether it's an
4 arrest record or a conviction record. Often times, I
5 tell my law clerks if people take the time out to get
6 out of the bed, and often times are clients are poor,
7 to get the bus fare to come down to the office to
8 meet with somebody at PDS, it's because their
9 criminal record is really serving as a barrier in
10 their lives. We're not seeing people who don't have
11 anything else to do.

12 And through doing the intake process, we're
13 able to see what the legal barriers are and the
14 reason why people are trying to get the record
15 sealed, and the number one issue facing the people
16 who come through the door is employment, and usually
17 they come to get records sealed because the employer
18 told them that you need this off of your record
19 before I can hire you.

20 So we continue to see that employment is
21 being the a number one issue facing people.

22 I'm very excited that NACDL along with the

1 ABA is taking a look at these issue and have been
2 taking a look at the issues for really long time,
3 because one point that I would like to make is that
4 the response in the United States to reentry has been
5 very one-sided and one-sided from the perspective of
6 social services.

7 There's very legal little conversations about
8 what does the legal system owe to people once you
9 either bring them into the criminal justice system or
10 stamp them with a criminal record, and I think one
11 point that really has to be made is that the legal
12 system, the criminal justice system has a
13 responsibility.

14 Within our local community in D.C., in trying
15 to create a certificate program or trying to expand
16 records sealing, we constantly get pushback from
17 criminal justice stakeholders about taking on this
18 additional responsibility of developing relief
19 mechanisms and having them involved on the back end
20 of the criminal justice system, and I think that's
21 the important thing that needs to be addressed, that,
22 you know, prosecutors, defense attorneys, judges, we

1 have a responsibility to people after their sentence
2 given the enormity of the consequences facing people
3 as what I would like to refer to as civil death,
4 which are the civil laws and penalties that's imposed
5 on people with criminal records.

6 So one point that I would like to make is to
7 reinforce the notion of the responsibility that we
8 have, that front-end players have to take
9 responsibility for what's happening to people on the
10 back end, and we can't think that it's just the
11 responsibility of probation and parole.

12 Another important issue that I wanted to
13 highlight is, I guess, what I title beyond collateral
14 consequences, and the reason is I think it's very
15 important to highlight that the rapid discrimination
16 that people face just from having a criminal record.
17 The definition of collateral consequences is being
18 statutory and administrative regulations that
19 restrict opportunities for people with criminal
20 records. It only gives you a glimpse into the full
21 story of what people are facing when you have a
22 criminal record, because often times, even when there

1 is no laws in place, there is no statute that says
2 you can't hire the person, you still face
3 discrimination simply because the decisionmaker, the
4 stigma of having a criminal record brings along with
5 it a sentence of permanent lawful discrimination
6 against you for the rest of your life, and I think
7 that's where when we talk about relief mechanisms and
8 restoration of rights, unless people are given an
9 opportunity to be fully restored back to equal
10 citizenship, the criminal record, despite what the
11 statutes are, brings with it a lawful form of
12 discrimination that decisionmakers can use.

13 And I just wanted to share a client's story
14 because I think it tells the story best. This is an
15 actual client who came into our office for
16 assistance.

17 Mr. B is a person who lives in the shadows
18 with a frequent reminder of his criminal record.
19 He's actually a principal with 20 years of experience
20 working in the classroom and in school
21 administration; however, he was recently called into
22 the Human Resources Office to ask him questions about

1 a criminal background check.

2 They were doing, his school district was
3 doing, a routine criminal background check. In the
4 education field, it's every two years, and a pick
5 came back on his FBI report, and the offense in
6 question actually occurred during his youth. He was
7 sentenced in D.C. under the Youth Rehabilitation Act,
8 which allows people if you're 22 years or younger to
9 be sentenced and once you complete our sentence, for
10 your conviction to be set aside; however, Mr. B's
11 conviction was still showing up because it was an
12 administrative error. The court record was not
13 properly sealed because the paperwork was not
14 transmitted from probation and parole to the court to
15 properly set aside the convictions.

16 So he was forced to answer questions about
17 this 30-year-old conviction that happened in his
18 youth despite his years of service with the School
19 Board, and although we were able to correct the
20 criminal record and explain to the employer the
21 error, he was still at the mercy of the School Board
22 to determine whether or not he was going to be able

1 to keep his job, because he had no legal protections
2 to protect him from being fired despite his proven
3 track record, his years of service, and the fact it
4 was 30 years ago.

5 So I share his story because there's no laws
6 in D.C. that prohibited his particular offense or
7 conviction which will bar him from being employed by
8 the school system, but it was the discretion of the
9 School Board that ultimately decided whether or not
10 he was going to be able to keep his career. I think
11 when people think about reentry, people don't think
12 about actually how long a criminal record continues
13 to haunt people. You think about the person who's
14 five years out, seven years out, but there's a lot of
15 people who are living in the shadows.

16 You may wonder why they're not applying for
17 promotions at your company or why they are hesitate
18 on moving jobs, because they know there's this thing
19 in their past that my come up that continues to serve
20 as a hindrance and there is no legal protection to
21 say that a person cannot consider this information
22 after a certain time period.

1 So I share his story to say we have to
2 develop solutions that go beyond the statutory and
3 administrative barriers and really look at legal
4 protections and relief mechanisms for people to
5 restore them to equal citizen ship.

6 I'm going to end on the note of saying, and
7 perhaps I should start my conversations by saying
8 that we cannot come up with solutions to this issue
9 without confronting race and poverty. To have a
10 conversation about the stigma of criminal convictions
11 or criminal records or relief mechanism without
12 talking about race, I think is not productive. It
13 may be more comfortable, but it's definitely not
14 realistic, because you do have to begin to question
15 whether or not a lot of these practices, statutes,
16 and regulations are actually designed to keep a
17 segment of the population that was marginalized
18 relegated to permanent second class citizenship. I
19 just want to share a few numbers about the District
20 of Columbia, because there are two D.C.s, the part
21 that you sit in now and the part that's east of the
22 river that people refer to as Wards 7 and 8.

1 The overwhelming majority of people in D.C.
2 that come into the contact of the criminal justice
3 system live in Wards 7 and 8. These are primary
4 African American communities with some of the highest
5 poverty and unemployment rates in the country.

6 Specifically in 2010, one in three residents
7 at Wards 7 and 8 lived below the poverty line,
8 surviving on less than \$22,000 a year for a family of
9 four. With limited access to good education and
10 employment, obtaining a job that provides a livable
11 wage proves difficult for many people in these
12 communities even before you get stamped with a
13 criminal record.

14 Once you levy a criminal record against these
15 communities, it's virtually impossible for them to
16 escape the vicious cycle of poverty, hopelessness,
17 and the cycle of crime and dependancy on government
18 services. So I think it's one thing to talk about
19 the permanent nature of a criminal record and what
20 that means for a person, but you have to begin by
21 looking at what does it mean for a person who already
22 came from a poor and marginalized community and

1 already had limited educational opportunities.

2 So when you think about solutions, you can't
3 come up with solutions without first taking a
4 realistic look at the segment of American that we're
5 stamping with criminal records.

6 So thank you and I'm happy to answer any
7 questions.

8 MR. JONES: Thank you very much.

9 MR. THORNTON: Good afternoon. I'm Charles
10 Thornton and I'm the current director of the Mayor's
11 Office of Returning Citizens Affairs.

12 MS. LOVE: Could you speak a little bit more
13 into the microphone?

14 MR. THORNTON: Yes, I can. I'm going to
15 speak up, but I don't know how. As I continue to
16 move in this arena, my voice is getting lower and
17 lower.

18 But in any event, what I was saying is I'm
19 the current director of the Mayor's Office of
20 Returning Citizens Affairs in the District of
21 Columbia, and I'm going to start -- I want to echo
22 some of what Ms. Frazier was talking about when she

1 mentioned poverty and also the communities that are
2 being impacted the most by individuals with criminal
3 backgrounds.

4 You know, so to start out, I'm a third
5 generation Washingtonian and I grew up in public
6 housing the wards that she was just speaking about,
7 and, you know, I faced all the obstacles that she
8 talked about, you know, coming up poor. You know,
9 funny thing, I did not know I was poor until I got to
10 a certain age. I was told I was poor. Okay. While
11 I was growing up as a youth, you know, I never knew
12 what poor was, what poverty was. I enjoyed the
13 friendship of friends, played in the alley, never saw
14 a hungry day, but I was told I was poor later on in
15 life.

16 Now, I bring that up because what I see right
17 now, today, in some instance is the same situations.
18 You know, I want to be real clear because it is a
19 huge issue in these communities that we're talking
20 about, and I know because I lived it firsthand and I
21 stay directly involved in those communities today. I
22 didn't see hunger as being one of them. I really

1 don't see hunger as being one of them.

2 Now, one of the things that I can assure you,
3 I came through, you know, the District public
4 education system, and it's probably no different than
5 most urban systems in these communities that we're
6 talking all around the country. Now, the one thing
7 that I want to stress most, and I remember it like it
8 was yesterday and this is personal to me, so I have
9 to talk from a personal standpoint, now, I went
10 straight through elementary without any blemishes in
11 terms of staying back, grades. I was always -- you
12 know, I never really reached full potential. I did
13 enough to get by, got involved in a lot of things
14 that most individuals do whether you're in an urban
15 school or not. You know, sometimes you get involved
16 in things.

17 When I went to junior high school, I
18 graduated from the junior high school, and there were
19 papers given out during the time you get your
20 certificate, and you had to write your name on your
21 certificate. Up until my ninth grade year, I was
22 spelling Benjamin incorrectly. I found this out when

1 I was walking across the stage to my get my junior
2 high school certificate. When I gave the paper to
3 the person that called my name, they said you don't
4 spell Benjamin like that. I said that's how I spell
5 it, that's how it's on my birth certificate, and I
6 challenged them, but the whole time, I knew they were
7 correct.

8 And I say that to say, you know, that the
9 problem really wasn't me, you know, as I see it. The
10 problem was, you know, that an individual could be
11 allowed to go through, pass classes, English, math,
12 pass these courses without really learning the clear,
13 you know, content that would truly enable me to
14 continue on in life and have the opportunity that
15 everyone else in America has.

16 So there was a problem there. Now, whether
17 that problem still exists today or not, I'm not sure,
18 but what I can say is that there is probably, you
19 know, someone right now that -- as a matter of fact,
20 I'm going to take it a step back, because again, this
21 is personal to me. I have the pleasure today of
22 raising my grandson, you know, again, as a result of

1 collateral consequences. Like so many other
2 grandparents in these communities, you know, as a
3 direct result of your kids getting involved in
4 sometimes the criminal justice system, substance
5 abuse, whatever it is, grandparents wind up being the
6 ones that have to raise siblings, I'm no difference.

7 I'm the father today of a 35-year-old, and to
8 take a step backward, I also was a teenage parent.
9 So I deal with all of these issues firsthand.

10 Now, my grandson is a bright young man.
11 Today, you know, he's been on honor roll all the way
12 up until the sixth grade. He's in the seventh now.
13 Because of -- you know, and I'm not looking at any
14 excuses. I'm raising him really as a single parent
15 and it's not about excuses, but what I want to stress
16 is that I just recently, you know, was contacted from
17 the school that he failed a class. I almost fell
18 out, because I had been up to the school at least
19 five times this semester, and not one of those times
20 did the teacher -- and I met with this teacher. I
21 met with this teacher, and it was never pointed out
22 to me, and, you know, I play a major role in that and

1 I understand that, you know, because that was the
2 purpose for me going up there, but at the same time,
3 you know, there is a role that the teacher plays in
4 that.

5 And today, I'm trying to figure out what
6 happened, where was the communication dropped at, why
7 didn't we understand that I'm here because I'm
8 concerned about this child getting what he needs to
9 continue on in school, and those issues are apparent.
10 It's not just my grandson and it's not, you know,
11 just that school. This is things that are happening
12 consistently, you know, and I think everyone in here
13 probably is aware that it's right around third and
14 fourth grade that the decision of where you are going
15 is made. If you're not keeping up in third grade, by
16 the time you get to fourth grade, another prisoner is
17 being built and we need to be real clear on that.

18 So, you know, these issue are personal for
19 me. Now, today, I'm in my twenty-third year of
20 reintegration, and for all practical purposes, I
21 would say this has been a successful reintegration
22 and it's successful because there is no need

1 whatsoever for me to commit a crime, and what I'm
2 here today to really talk about is solutions.

3 You know, I'm ecstatic about the attention
4 that reentry has all of a sudden gotten and I think
5 it's a great thing. The one thing that causes great
6 concern to me is that the solution, you know, to
7 successful reentry and reintegration -- and that's
8 what I'd like about. You all are attorneys. You all
9 can deal with, you know, all the attorney stuff, you
10 know, all the laws changing, but successful
11 reintegration is not just about changing laws. You
12 know, we really have to begin to look at the
13 individual.

14 You know, this recidivism, that's a word and
15 I've been involved in reentry for over 20 years.
16 When recidivism came out and replaced revolving door,
17 I was one who thought of that, you know, and gave it
18 a nice term. As opposed to revolving door, we say
19 recidivism now.

20 A question why is recidivism measured by, you
21 know, how long a person -- how long it takes for a
22 person to return back to incarceration. So what I'm

1 saying is that recidivism is measured by the -- and a
2 number was picked, three years, and in the District,
3 it's around -- you know, close to 50 percent, and
4 what that means is that 50 percent of the people who
5 are released in the District are returned back to
6 incarceration within three years, and that three-year
7 number is interesting for me.

8 You know, from my role at the Office of
9 Returning Citizen Affairs, we don't measure
10 negativity. We measure success. We take that same
11 three-year term and look at -- and it's amazing,
12 because it's right around that time that a person
13 really -- if you stay out three years, in most cases,
14 you have connected. You have restored relationships.
15 You are doing something positive, whether it's
16 education, employment, you're on your way. After
17 that three-year period, it seems like individuals are
18 on their way. They have no problem.

19 I'm not understanding why we don't study
20 success, why we continue --

21 MR. JONES: I'm going to have to stop you on
22 that point and let's get to Ms. Hillery and we've got

1 more questions.

2 MR. THORNTON: That's fine.

3 MR. JONES: Thank you very much.

4 MS. HILLERY: Thank you. It's very
5 interesting to follow April and Charles because,
6 clearly, they put the human interest face on these
7 very important issues. One of the things that I like
8 to do in being last and being from the Brennan Center
9 is to put the policy wonk face on these issues,
10 because I truly believe that the way that we actually
11 find solutions is through a combination of these
12 things.

13 We have to deal with the personal stories,
14 because that is what is at the heart of these issues,
15 but then we also have to figure out what does all of
16 this mean and how does this resonate with
17 policymakers and how do we make them understand that
18 the human interest story is important and make them
19 understand that issues that are also of concern to
20 them, like dollars and cents, like community safety
21 are intertwined with the human interest story, and I
22 think once we come to the point of understanding the

1 nexus between all of these things, that's when we're
2 going to get to the point where we can start figuring
3 out real solutions.

4 My name is Nicole Austin Hillery and I'm the
5 director and counsel of the Washington Office of the
6 Brennan Center for Justice. The Brennan Center, as
7 many of you may know, is what we like to call a part
8 think tank, part legal institution, research, and
9 advocacy organization, and we like to take all of
10 those prongs in order to approach our efforts to make
11 our systems of democracy and justice work better.

12 We are very committed to the issue of ending
13 mass incarceration through our justice program. That
14 is one of our primary institutional goals, and
15 everything that is related in an ancillary way to
16 that goal is what we care about, which is why I'm
17 very pleased to be here today to talk about barriers
18 to reentry.

19 I want to talk about two very important parts
20 of barriers to reentry. First, I'd like to talk
21 about employment barriers and what it means when we
22 institutionalize using an individual's past criminal

1 convictions as a way to keep them from employment.
2 That's really the justice angle on this, but from the
3 democracy angle, because I think that's equally
4 important, the Brennan Center is very focused on
5 restoration of voting rights for the formerly
6 incarcerated. We believe and lots of study show and
7 we've done some of those studies that when
8 individuals are reinstated into our society, that
9 they have to feel that they are full-fledged members
10 of our community. The way in which we all come
11 together once every two years for midterms elections,
12 once every four years for our national elections, the
13 way in which we all together as a country feel that
14 we are on the same equal footing is in the ballot box
15 by casting that vote.

16 We also know that within our own families
17 when your children watch you take an interest in
18 politics, when the watch you go to the ballot box and
19 show that you are committed to being part of the
20 democracy, that has many effects that go beyond
21 simply pulling that lever or touching that
22 touchscreen on election day. So for those reasons,

1 we are very focused on those two prongs.

2 I'd also like to share a little bit about my
3 own personal background even before I came to the
4 Brennan Center. My role as the director of the
5 Washington Office is really to be our chief advocate
6 in Washington. So I'm the liaison with Congress,
7 with the Administration, within the various agencies
8 and I advocate on behalf of these issues that we care
9 about from a policy standpoint.

10 Before coming to the Brennan Center, I
11 actually was a plaintiff side civil rights employment
12 litigator. I represented individuals who worked for
13 major corporations in class action litigation. So I
14 have had the pleasure of going up against some of the
15 nation's largest corporations and dealing with
16 people's glass ceiling issues, dealing with people's
17 issue of outright race baiting and race
18 discrimination in the workplace. So these issues are
19 of particular concern to me personally as well as in
20 my role at the Brennan Center.

21 One of the things that we did recently, and
22 many of you probably know the EEOC recently issued

1 guidance in an effort to limit how employers can use
2 information about an individual's past criminal
3 convictions. The Brennan Center submitted comments
4 on that. I think I was delinquent because I'm always
5 running all over the place -- we always joke that we
6 should we clone me. I'm submitting to you all copies
7 of our comments. I brought them here today because I
8 think it's important that you see them, and what we
9 really stress in those comments is not simply that
10 it's fair and just for an individual to be considered
11 on the basis of their talents and skills, but we
12 wanted to look at what is the cost-benefit analysis
13 when we don't provide opportunities to individuals,
14 when we simply judge people based on these past
15 criminal convictions.

16 So that's what I want to highlight today and
17 urge you all as you continue with this work and
18 you're looking at barriers to reentry, think about
19 ways to look at those economic barriers and what that
20 means to lawmakers and the other policymakers who
21 have to make decisions on these things.

22 One of the things that I've found in my work

1 at the Brennan Center in dealing with lawmakers is
2 that even though, obviously, they want to hear the
3 human interest stories, what matters to them, what
4 matters to their constituents back in their
5 districts, they need to be able to tell these people
6 here's how we can save you money, here's how we can
7 make your communities safe, here's how we can make
8 your kids feel safe and here's how we can make you
9 feel like everybody in your community is in this
10 together.

11 So those are some of the things that we think
12 are important to highlight. So I'm just going to
13 focus on just four of those major issue areas and
14 just talk to you a little bit about each of them.

15 One is that barriers to employment have
16 negative fiscal effects. That's something that we
17 just don't talk about very much. When a community
18 has needs when it comes to employment, say, if an
19 industry in a particular jurisdiction has to hire
20 people if there's a new company that's coming to town
21 and they need to fill their job workforce needs, if
22 you are limiting the number of people that you are

1 even interested in hiring based on one's past
2 criminal convictions, you are leaving out a broad
3 segment of our communities, because we know the
4 numbers.

5 A large of Americans have some form of past
6 criminal history, whether that be something that
7 happened when you were in your twenties, something
8 that happened in the workplace later in life. There
9 are numerous Americans who have some kind of
10 interaction with the criminal justice system.

11 If we are using that as a barrier to even
12 consider individuals for work, that has a trickle
13 effect. That means companies can't fulfill their job
14 needs. That also means that individuals within our
15 communities aren't able to fully participate as
16 citizens. If they don't have jobs, they're not
17 paying taxes. That means our parks aren't being
18 refurbished. That means our schools don't have the
19 monies that they need to provide the necessary books
20 and materials for students. It also means that
21 individuals can't necessarily buy homes and be
22 property owners and feel like they are taking part

1 again in being community members.

2 So this is vitally important as we look at
3 what are the real consequences of limiting
4 individuals based on their past criminal histories.

5 Also, barriers to employment decrease public
6 safety. It was interesting, Charles, in that you
7 mentioned that, you know, you a person who has a past
8 criminal background, you have no reason to commit a
9 crime, and I think you're absolutely right. There is
10 no reason to commit a crime, but you know what? The
11 reality is this. If there is an individual who has a
12 household that he or she has to take care of, they
13 very well may find themselves in circumstances where
14 they have no choice or where they may feel that they
15 have no choice but to resort to something that goes
16 against our justice system.

17 We as a society have to understand that we
18 are putting people in those situations. If we don't
19 provide them with real opportunities for gainful
20 legitimate employment, we are putting people in
21 positions where they may have to make other choices.
22 Again, this goes against our need to provide a good

1 economic foundation and it goes against our need as a
2 society to provide basic public safety in our
3 communities.

4 And, finally, we need to understand that
5 barrier to employment also harms society in other
6 ways. You know, I mentioned earlier in talking about
7 how important it is for individuals to be a part of
8 our democracy by voting. Well, guess what? If your
9 children don't see you working, if they see that you
10 cannot take care of your family, that has a trickle
11 down effect too. That impacts the offspring in the
12 household. That also impacts others in the household
13 who very well may have to pick up the slack because
14 you as the person with the past criminal conviction
15 cannot find gainful employment and cannot then
16 contribute to the sufficient needs of the household.

17 So it's important, again, when talking to
18 lawmakers, when talking to advocates about this that
19 we put these issues in front of them because dollars
20 and cents matter to them, and it's really funny. You
21 know, sometimes we have what we call unlikely
22 partners in working on these issues at the Brennan

1 Center. You know, we work with organizations like
2 the Cato Institute on these issues. You know, we
3 work with folks who are both sides of the aisle,
4 because when you put it terms that everybody
5 understands, dollars and cents, safety in your
6 communities, protecting your children, making your
7 communities better, everyone understands that.

8 So I would urge us to put that spin on how we
9 talk about these issues and really delve into how we
10 can make those connections. To that end, here are my
11 two main recommendations: Number one, the Brennan
12 Center clearly applauds the efforts by the EEOC to
13 limit the use of criminal records in employment and
14 we urge that anything that can be done to further
15 those limitations and putting those in place, indeed,
16 be done.

17 And then we also encourage State and local
18 governments to do what they are to adopt similar
19 policies to remove unfair and irrational barriers to
20 employment for people with criminal records. You
21 know, one of the things, again, I know working on
22 Capitol Hill that I'm faced with all of the time,

1 when I go to policymakers or to lawmakers, rather,
2 with solutions, they often want to say, you know,
3 what do I tell my folks back in the States, what
4 about the State lawmakers, what about this issue of
5 federalism. Well, we don't need to have a federalism
6 argument here. These are steps that can be taken not
7 only the federal level, but on the State level, and I
8 would even argue that it may be more important for
9 the State and local governments to take steps to try
10 to limit the impact of these barriers on one's
11 employment, because it is really at the local level.
12 You know, we know all politics are local, and it's
13 really at the local level where people understand how
14 policies really manifest themselves in their daily
15 lives. So we urge that.

16 Then, finally, I want to talk about the issue
17 felon disenfranchisement. You know, even the
18 President now has made an big issue of voting. We,
19 obviously, at the Brennan Center are very happy about
20 that. On the night he won reelection, he talked
21 about the fact that we have barriers to people
22 participating because we have these long lines. He

1 it said again on inauguration day, and to our
2 amazement and glee, he said it during the State of
3 the Union, that we have to do something about things
4 that make it harder for Americans to participate in
5 our democracy, and to that end, he has established a
6 commission to look at our voting system and to look
7 at what we need to do to fix it.

8 The Brennan Center spends a lot of time
9 looking systemically at how we mix that broken
10 system, but equally important for us is figuring how
11 we get every American to engage in that system. One
12 of the things I tell policymakers all the time, you
13 know, last year we spent a lot of time dealing with
14 this issue of vote suppression, and you all heard
15 about it. It was in the news. Photo ID was required
16 in many States, and I said to some of these
17 lawmakers, You know what, the issue of what people do
18 at the polls is not so much the problem; it's getting
19 people to the polls. It's getting all American
20 interested in being a participant in our democracy.

21 If you say to individuals that have paid
22 their debt to society that, you know what, you've

1 paid your debt and when you come out, we want you to
2 be a taxpayer, we want you to follow the laws, we
3 want you to be a good citizen, but guess what, we
4 don't want you to participate in the biggest example
5 of how we engage in our democracy, that is a
6 travesty. Again, it has the same trickle down
7 effects as those that we see when individuals are
8 limited in employment.

9 To that end, we are engaged on both the
10 federal level and on the State level with lawmakers
11 to get them to change the laws. Right now, there's a
12 bill that the civil rights icon, Congressman John
13 Lewis has introduced called the Voter Empowerment
14 Act. It has lots of other issues and prongs
15 involved, but one of the key things that he put in
16 that bill was that he wants a law passed that says
17 once you have completed your incarceration period,
18 your right to vote in federal elections is
19 immediately restored. Whether you're on parole,
20 whether you're on probation, we as a society have to
21 welcome you back in and have to tell you that we
22 think it's important for you to reengage in this very

1 important democratic practice.

2 So those are the things that I wanted to
3 offer. Again, those are the two ways that we as the
4 Brennan Center want to contribute to help create more
5 opportunities for the former incarcerated to be
6 reengaged in our society. Again, we care about
7 making these system work, not just because we care
8 about it from a policy and wonkish point of view, but
9 because we know that if we can explain to people how
10 systemically we can make these changes, it then will
11 make a difference in how people individually in their
12 daily lives get to experience our justice and
13 democracy and we think that is what this is all
14 about, making every American feel like they have a
15 stake in this game.

16 Thank you.

17 MR. JONES: Thank you. Thank you all.

18 Elissa.

19 MS. HEINRICHS: I want to keep you on the
20 conversation about the legislation. Is that the same
21 bill that was the Democracy Restoration Act? Is that
22 the former name?

1 MS. HILLERY: No. Actually, the Democracy
2 Restoration Act was a second bill that was introduced
3 last year by Senator Cardin and Mr. Conyers in the
4 House. Mr. Lewis wanted to introduce an omnibus bill
5 that was all encompassing. So he wanted to make the
6 Democracy Restoration Act part and parcel of the
7 voter empowerment Act.

8 Mr. Cardin is also planning to reintroduce
9 the Democracy Restoration Act as is Mr. Conyers in
10 the House. They want to try to take this
11 multifaceted approach to getting that legislation
12 passed with the idea being that the Voter Empowerment
13 Act may be harder to pass because it has other
14 ancillary issues involved; whereas, the Democracy
15 Restoration Act is solely focused on the felon
16 enfranchisement issue.

17 MS. HEINRICHS: Are you able to speak about
18 the other aspects of it or is it not relevant to what
19 we are talking about?

20 MS. HILLERY: Of the Voter Empowerment Act?

21 MS. HEINRICHS: Yes.

22 MS. HILLERY: Yes. I can tell you quickly

1 the Voter Empowerment Act seeks to, one, modernize
2 how we register voters in this country. Again, going
3 back to 2011 and 2012, you know, there were lots of
4 assumptions made and accusations made, mostly by
5 folks on the right who said that we have this issue
6 of voter fraud, and many of these laws that were
7 passed in these States had a negative impact, mostly
8 on communities of color.

9 So in order to address that, the members said
10 we want to figure out a way to get the fraud issue
11 off the table. Modernizing voter registration is a
12 way to do that, and this is actually, I have to tell
13 you in all honesty, this is a Brennan Center policy
14 proposal that we convinced the members to adopt and
15 include in this legislation, and what it basically
16 says is once a person is registered to vote, it will
17 follow them no matter where they live in their
18 community so that if you change your name, like I did
19 when I got married, and you become a hyphenated
20 person, that's not going to screw up the system. If
21 you move from -- you know, I'm from Harrisburg,
22 Pennsylvania. If I were to move from Harrisburg to

1 Philadelphia or Pittsburgh, it would follow me. My
2 registration would be portable, again, making it all
3 easier on the voter. That's one.

4 Another aspect of the bill is to deal with
5 practices. You know, one of the biggest deceptive
6 practices cases was two years ago in the State of
7 Maryland during the gubernatorial race where the
8 Republic Governor's party or -- I'm sorry - folks
9 were calling Democratic -- people who were Democratic
10 and they were leaving them messages saying your guy
11 won, you don't have to come out and vote or they were
12 leaving messages to the effect that, you know what,
13 the election was yesterday, it's all done, you don't
14 have to come out.

15 So the bill seeks to ensure that voter are
16 not duped, and then, of course, it includes a piece
17 about the Democracy Restoration Act and, finally, a
18 piece to deal with early voting, because we know --
19 Brennan Center has done studies. Early voting makes
20 a difference. It makes a difference in terms of
21 eliminating lines. So that's what really all of the
22 pieces of that bill encompasses.

1 MS. HEINRICHS: I want to you a little about
2 the EEOC guidelines. We had Todd Cox on a panel
3 yesterday and he spoke about, based on some questions
4 that were asked of him, I had asked him, actually,
5 about the piece that includes arrest records and how
6 employers are allowed to consider conduct, not the
7 arrest record, but the conduct, and he discussed how
8 that could play out in different scenarios.

9 I'm wondering what the Brennan Center's
10 position is on that. I understand there were a
11 few -- I don't want to say drafts. I'm not really
12 referring to the two prior guidelines. I'm not
13 referring to that, but as these change were being
14 proposed, it appears that that aspect of it might
15 have caught some people off guard, maybe not.
16 Everyone here is a part of process.

17 Do you have concerns with the arrest records
18 being included in the guidelines and are you
19 satisfied with how the guidelines explain it? What
20 are your thoughts on that?

21 MS. HILLERY: Okay. I will tell that we have
22 not been as focused on that aspect of the guidelines

1 as we have been on some others. I will say that with
2 respect to some of our internal conversations about
3 this as we've been brainstorming and strategically
4 thinking about the guidelines, we have a problem with
5 the fact that arrest records are considered.

6 Again, if they are being used in a disparate
7 way to make negative judgments about potential
8 employees, then that is a problem. So anything that
9 is going to be considered that we think could be used
10 discriminatorily against a candidate, we have a
11 problem with.

12 The way in which the guidelines handle that,
13 I have to say I haven't been as focused on that. So
14 I don't feel as comfortable talking about that. I am
15 happy, though, to go back and review that and follow
16 up with you in written format to provide you with a
17 more substantive Brennan Center opinion on that.

18 MS. HEINRICHS: And, finally, my question to
19 you, you talked about unlikely partners. I'm glad
20 you did, because I'm interested. You mentioned, you
21 know, the dollars and cents and public safety.
22 Within -- I guess looking at public safety first, but

1 I also want you to address the dollars and cents,
2 those two aspects, that we bring in those who we may
3 not assume are allies.

4 What your recommendations to us? When we --
5 at the end of this process, we're going to have a
6 report and we want to make it as useful and as
7 powerful as possible. Who would our unlikely allies
8 be and who are our realistic unlikely allies?

9 MS. HILLERY: There is a group called Right
10 on Crime. I can't remember if they were here as part
11 of panel lineups at any time. Right on Crime is a
12 group. It's a coalition made up of people from
13 traditionally conservative and right wing
14 organizations, but who feel that they have a vested
15 interest in being engaged in how we make reforms to
16 our criminal justice system, and they have
17 particularly been focused on the economic aspects of
18 criminal justice reform, and there have been
19 opportunities within the last two years where this
20 coalition has actually worked with some of the more
21 progressive and liberal coalitions on a host of
22 issues.

1 I would urge you to look at the makeup of the
2 Right on Crime Coalition and to reach out to some of
3 those individuals.

4 The Cato Institute, I already mentioned. I
5 would specifically say go to some of the law
6 enforcement organizations. Particularly with respect
7 to the felon enfranchisement issue, the Brennan
8 Center has been particularly successful in having
9 members of law enforcement be a part of our
10 coalition. We actually have a broad-based coalition
11 working on restoration of voting rights. It includes
12 the faith-based community. That would be next on my
13 list too. It includes the traditional civil rights
14 organizations, but it also includes law enforcement.

15 We have the Sheriffs Association that's a
16 part of our group. We have the National Association
17 -- and I know I'm going to get the acronym wrong, but
18 the executive organization of black and minority
19 police officers. They are a part of it, and these
20 organizations, clearly, they have understand the
21 whole concept of crime and punishment and they
22 understand what their jobs are as members of law

1 enforcement, but they also understand that if they
2 can get individuals more invested in their
3 communities, that will make their jobs easier.

4 So I would say talk to Right on Crime. Talk
5 to Cato. Talk to law enforcement and, again, talk to
6 faith-based organizations. These are some of the
7 partners that, again, you don't necessarily always
8 see around the table together, but we've been able to
9 find some meeting of the mind on these issues.

10 MS. HEINRICHS: And what about the business
11 community?

12 MS. HILLERY: You know, the business
13 community for us, particularly, with these issues
14 hasn't been as engaged. I know, however, that with
15 respect to some of the employment issues overall that
16 some members of the business community have worked
17 with some of the civil rights organizations on other
18 employment issues, like, for instance, when the Lily
19 Ledbetter law was passed, I know, for instance, the
20 Leadership Conference on Civil and Human Rights, they
21 had some corporate partners who were actually at the
22 table with them talking about why it's important for

1 them from a business perspective to provide fair and
2 equal pay for men as well as women.

3 So I know within those contexts, there have
4 been business partners. There haven't been as much
5 for us in the felon enfranchisement context or in the
6 context of us working on the comments, but I would
7 urge you to reach out to some of those folks who have
8 worked with other groups on those issues.

9 MS. HEINRICHS: Great. Thank you.

10 Mr. Thornton, could you talk a little bit
11 about the services that you provide to Returning
12 Citizens -- it's Affairs Office?

13 MR. THORNTON: Absolutely.

14 MS. HEINRICHS: Returning Citizens Affairs?

15 MR. THORNTON: Right.

16 MS. HEINRICHS: I just wanted to make sure I
17 have the correct name.

18 MR. THORNTON: Office of Returning Citizens
19 Affairs.

20 MS. HEINRICHS: Okay.

21 MR. THORNTON: Absolutely. One of the things
22 when she was mentioning the disenfranchisement for

1 voting rights, one of the things that the office --
2 our primary goal at the office is to be advocates for
3 returning citizens in the District of Columbia. I
4 also advise the Mayor on all reentry issues.

5 So as relates to the voting rights, for
6 example, in the District, you know, I would say that
7 everything she mentioned, and I echo and I agree with
8 everything she said, it's been done in the District.
9 Right now, in the District, if you're on patrol,
10 probation, supervised released, you do not get up
11 your right to vote. Okay. Even if you're
12 incarcerated, serving time on a misdemeanor, you
13 still vote.

14 We have been going as an agency inside of the
15 Department of Corrections, the District jail and not
16 only registering people, but making sure that
17 individuals who wanted to participate in the local
18 elections got an opportunity while incarcerated to
19 participate.

20 So we have lines in jail, people serving
21 time, who are voting for potential candidates in the
22 local elections, and that's one of the things that

1 the office does, is being an advocate. You know, I
2 would say that this office is the only mandated,
3 legislated mandated office for reentry in the nation,
4 and it starts there.

5 When you take it and put it at that level,
6 then you are able to, you know, do some of the things
7 that you talked about systemically. You know, for an
8 example, this agency being mandated, you know, by
9 Council, it's a cabinet agency. So when there's
10 cabinet meetings, the agency is in the room with all
11 the other cabinet members from the Mayor all the way
12 down, Deputy Mayors, all the agency directors, and
13 you're able to move things in that sense from, you
14 know, that perspective as opposed to trying to get
15 things done as a program.

16 You know, now, you're actually doing things
17 as a representative of the Mayor, and I think that is
18 key, and it's surprising that this is the only, you
19 know, locality where it's done that way. There are a
20 lot of other reentry programs, reentry things that
21 are in place in other jurisdictions, but none of them
22 mandated legislatively and are at that level.

1 So that, you know, creates a lot of things,
2 and the other thing that we do is we're the hub. So
3 we are the place where people are directed to go for
4 services. When you finish up your parole time, when
5 you are released back into the District, the District
6 is unique in that we do not have a prison in the
7 District. So what that is, what that does, is it
8 allows all of our residents who are convicted of
9 felonies, all our D.C. Code felons are spread all
10 over the country. So they may be anywhere from --
11 you know, the shortest distance away is two hours,
12 and you might be in California.

13 So there is no connection to the local
14 services when you're in those places. So having a
15 hub, a place to come to once you're released and
16 being back reconnected with the services that you're
17 seeking is what this agency is all about, what it's
18 been set up for. So it's a direct link to social
19 services. We also have partnerships with PDS and a
20 lot of the other faith community, other, you know,
21 institutions within the District that we have
22 partnerships with, and we link people up with those

1 services as they come.

2 Again, you know, having a place to come to
3 for something as simple as getting a driver's
4 license, you know, it's just insurmountable.

5 MS. HEINRICHS: Okay. I have a question for
6 you. I want to go to the voting rights, the voting
7 registration. I'm looking at your 2012 annual report
8 and I see that you're tracking the clients who you
9 are servicing, and I guess for 2012, you saw over
10 5,000 individuals, 5200.

11 You also track the voter registration. You
12 have 1,375 as the number of individuals who you
13 registered, and you just answered part of my question
14 by explaining that those with misdemeanors can still
15 vote while they are incarcerated.

16 So my question really is as far as data,
17 because you said at the end of your presentation we
18 need to measure success. So I like the fact that
19 you're tracking numbers. I encourage your office to
20 track success and to look closely at these number,
21 perhaps having a category for those were invited to
22 register who haven't registered prior to

1 incarceration and declined to register.

2 The reason I think that number is useful is
3 because the service you are providing is important.
4 The part of that -- I think part of the service could
5 be, and perhaps it is, stressing the importance of
6 voting. So, initially, the numbers look like it was
7 less than a quarter of who you were servicing, but I
8 that that's not an accurate interpretation of it.

9 So I guess if you could find other ways
10 within your agency to measure success, which was your
11 recommendation, then we're all tasked with that. You
12 know, we could also figure out ways.

13 The other thing I wanted to ask you -- no. I
14 think, actually, I --

15 MR. THORNTON: Can I add something?

16 MS. HEINRICHS: Yes, you can.

17 MR. THORNTON: One thing, I think this is
18 important also for you, even where we're at in the
19 District in terms of, you know, being able to
20 exercise this right, one in two people who were
21 involved in the criminal justice system know that
22 they can still vote. You know, it's not unusual to

1 talk to someone who has been involved in the criminal
2 justice system and because they have a felony in the
3 District, and it could be someone who hasn't been in
4 prison in 10 years, they still feel that they can't
5 vote.

6 You know, so education is so important on
7 that standpoint. We really have to educate these
8 people, and that's one of the things we are
9 constantly doing now, is continuing to educate
10 because we're finding that, you know, even, you know,
11 with it already being taken care of in the District,
12 and a lot of it is because of what -- is
13 miseducation. You know, what's going on in Maryland
14 and Virginia is trickling down and people are having
15 conversations about trying to restore rights in
16 Virginia and people in the District aren't
17 understanding that it don't apply to them, you know,
18 especially men and women who have been involved in
19 the criminal justice system

20 MS. HEINRICHS: Ms. Frazier, I wanted to find
21 out from you how your agency is helping with the
22 sealing process. You have a summit annually; is that

1 right?

2 MS. FRAZIER: Um-hum.

3 MS. HEINRICHS: And then you mentioned the
4 duty day. If you could just expand on that. Also,
5 you mentioned, I think, the office being in two
6 locations. If you could explain a little more about
7 how your office is placed and how you reach out and
8 assist those who are seeking expungement sealing and
9 other mechanisms that are, in theory, available.

10 MS. FRAZIER: Sure. So the Public Defender
11 Service, we have two locations, our main office
12 downtown and we have a Community Defender Division
13 which I work in in Northeast. The majority of people
14 we serve come in through duty day, Monday through
15 Friday, nine to five. We have attorneys assigned
16 every day to provide consultations.

17 We first determine whether or not people are
18 eligible to get the records sealed. Seventy percent
19 of people are not because felony convictions in D.C.
20 not eligible to be sealed, and we also have a very
21 restrictive law where if you have been convicted of a
22 felony or ineligible misdemeanor, it makes you

1 ineligible under the general record sealing statute
2 to file to get anything off your record, even if you
3 have arrest records.

4 So we have a very limited statute. The
5 people who do quality to get their records sealed, we
6 have actual pro se motions that we can provide to
7 people with a cover sample to tell you how to fill it
8 out, and in D.C., there's no fee to file a motion in
9 court. So we provide people with free legal advice
10 on how to complete the process pro se. We pushed
11 really hard when the record sealing statute was being
12 put in place for it to be a process that people could
13 access pro se.

14 But we also represent people in record
15 sealing motions, and it's a determination that we
16 make based on the facts in the case, whether or not
17 the person actually needs to be represented. So the
18 more complicated cases, we actually open those cases
19 and we represent people and file the motions on their
20 behalf.

21 Typically, those would be actual innocence
22 motions where we're actually arguing the facts of the

1 case and proving innocence, that you need the trial
2 transcript. You need to pull together evidence. You
3 may want to request a evidentiary hearing. In the
4 District of Columbia, no hearing is required for
5 record sealing motions. You can request one, but the
6 statute allows for the person to file, the government
7 to respond, and a judge to rule on the papers.

8 So we probably see hearings in about 10
9 percent of the cases, and it's the discretion of the
10 judge whether or not they want to hold the hearing or
11 if the person who's filing want to request one.

12 So we have the pro se legal advice component.
13 We all represent people who have more complicated
14 issues, and those people come into our office. We
15 also go out into the community and we do workshops
16 everywhere from employment training programs. Next
17 week, I'm scheduled to go to the Veterans
18 Administration. They have a work therapy program
19 that works with the homeless veterans.

20 So we get a lot of requests from
21 community-based providers to come out and talk to
22 people about record sealing. We also have a

1 partnership with UDC TANF program, Welfare to Work,
2 because we see a lot of women who had contact with
3 the criminal justice system who are required under
4 D.C. law to find employment and transition from
5 public assistance to self-sustainability within five
6 years, and a lot of these women cannot because of
7 their criminal records.

8 So the majority of people are coming to our
9 office through court referrals or previous
10 relationships, but we also do a lot of community
11 outreach and host workshops and have follow-ups with
12 community-based service providers.

13 MS. HEINRICHS: Thank you.

14 MS. FRAZIER: And the summit, and we serve
15 about six to eight hundred people on one day at the
16 Convention Center in D.C.

17 MS. HEINRICHS: With how many attorneys?

18 MS. FRAZIER: Our whole agency. It's an
19 agency-wide event and we also have pro bono attorneys
20 who volunteer on that day. So we have about 60 to 70
21 attorneys. We do civil legal services, parole
22 consultations, record sealing consultations, and we

1 have a really big resource there that our Social Work
2 Division pulls together with over 50 to 60
3 community-based service providers, and Margi has been
4 involved in doing pardon workshops for low-income
5 people to explain the federal pardon process and to
6 encourage more D.C. Code offenders to apply for
7 pardons.

8 MS. HEINRICHS: I'm sure there are many more
9 questions.

10 MR. JONES: Larry.

11 MR. GOLDMAN: Let me ask Ms. Frazier just a
12 couple of things.

13 One, as you deal with these people, how many
14 of them, if any, were aware at the time they took a
15 plea that their lives were going to be affected
16 forever?

17 MS. FRAZIER: That's a great question.

18 MR. GOLDMAN: I'm afraid of the answer.

19 MS. FRAZIER: Yeah. You should be, because
20 it's a constant battle. I would say I think the
21 majority of clients who plead or are found guilty of
22 felony convictions understand just generally and that

1 a felony conviction is a big deal, just from the
2 standpoint -- they may not understand the specific
3 legal barriers, but I think they understand that it
4 is a stamp against them; however, a lot of people
5 that we see who come in misdemeanor convictions and
6 they don't understand and people really think, Oh,
7 I'm just taking a plea to a misdemeanor and those
8 people facing misdemeanor convictions and even
9 low-level felony convictions, like drug offenses,
10 don't understand how severe the consequences are.

11 So we haven't done a poll, but the majority
12 of the complaints that we hear is that, you know, my
13 defense attorney didn't tell me that I was going to
14 kicked out of public housing or I was going to lose
15 my job. We hear those complaints.

16 At the Public Defender Service, our trial
17 attorneys talk to our clients about this and, of
18 course, I'm there, but PDS, we only represent people
19 in a small percentage of the cases are before D.C.
20 Superior Court. We have a CJA panel which is
21 court-appointed attorneys.

22 So it's really -- it's something that I'm

1 really hoping to do more awareness about, and with
2 the ABA study coming out, defense attorneys will no
3 longer have the excuse that I didn't know where to go
4 for the information. I think a part of it is we have
5 to make sure that really busy, overworked public
6 defenders, defense attorneys, also have the
7 information before them where they can advise people.

8 MR. GOLDMAN: If you would -- and I'm mindful
9 of the Supreme Court's ruling a couple of days ago
10 which essentially said a level of standard practice
11 is the level until the Supreme Court changes the law
12 of the land.

13 If you could -- keeping in mind that the
14 court systems or rushed and lawyers are rushed and,
15 frankly, don't have a lot of time, if there were
16 another 30 seconds worth, say, of advice that
17 attorneys should give their clients before they plead
18 guilty, warnings, would what would they be?

19 MS. FRAZIER: I think the process has to
20 start -- you talk about -- in D.C., we don't have
21 pleas at arraignment. So I'm not dealing with New
22 York City who, you know, New York City, a lot of

1 people plea at arraignment. That's a whole other
2 issue, but I think when you first meet your client in
3 lockup and you do the initial intake, that's our
4 opportunity, especially if you have concise
5 information about the major barriers. People are
6 concerned about employment, whether or not they have
7 a license to be a security guard, a license to be a
8 plumber, am I going to lose their license. People
9 are concerned about housing, can I go back home to
10 live with my mother. People are concerned about
11 their parental rights.

12 There's some areas that are -- and, of
13 course, immigration, but those are some key areas
14 where the severity of those consequences will
15 completely alter your life. People should have that
16 information. You should be giving it out the same
17 way you're giving out your business card when you
18 meet the client in lockup so you can have a
19 conversation before you enter into the plea
20 negotiation component, because, also, it's a way for
21 you to advocate for the client and get the best
22 result, because you need to understand what the full

1 consequences are.

2 So I think with the information being
3 available, it needs to be condensed to something that
4 clients can understand, but it needs to be a starting
5 point, something you get a client and say think about
6 this before I come back over to the jail to meet with
7 you where we can talk about, you know, the facts and
8 how to proceed in the case.

9 MR. JONES: Chris.

10 MR. WELLBORN: Nothing.

11 MR. JONES: Margi.

12 MS. LOVE: I have two questions for April.
13 One is this: Moving to the kind of stigma-type
14 consequences other than the legal barriers, just this
15 general reluctance to hire mostly, but deal with a
16 person with a criminal record, what would you say is
17 the -- what legal solutions? You talked about the
18 legal system. There is an educational component, of
19 course, also and a leadership component, which I will
20 return to in a moment, but what is the legal solution
21 that you would recommend?

22 MS. FRAZIER: I no longer believe in the

1 notion of certificates to restore people's rights. I
2 think you have to limit access to information.

3 What I would think of as a solution is the
4 Fair Credit Reporting Act, the federal law that says
5 after seven years, ten years. It can be a scale
6 based on the level of offense, but decisionmakers
7 should not have access to information after a certain
8 period of time, and you can come up with exceptions.
9 You can exempt School Boards. You can exempt nursing
10 programs, whatever, but I'm a firm believer -- and
11 I'll give you an example.

12 Recently, I just handled a case regarding a
13 Federal Government security clearance for a client
14 with a sex offense that occurred, you know, over
15 20-something years ago. I'm talking to a person who
16 works in a security office at a federal agency and
17 trying to explain what the federal rules for
18 suitability and how to weigh the information. I
19 cited, you know, Alfred Blumstein's study about
20 employment and the risk. I did everything I could
21 possibly do, but at the end of the day, it's their
22 decisionmaker who probably has had very little

1 training in how to weigh that information, and those
2 are the people that's on ground making these decision
3 every day. It's not judges. It's not people who
4 understand due process and, you know, civil rights.
5 All of these issues that we talk about from an
6 academic standpoint, that's not going through the
7 person's mind.

8 Unfortunately, I think that this person will
9 not be able to move past an offense that happened 30
10 years ago simply because it may be personal bias or
11 just their lived experiences, and we have to do
12 something about that. I don't think people can
13 handle the information or they're not educated in how
14 to weigh the information enough. I think after a
15 certain time period, people should be assured that
16 they can put their criminal record behind them.

17 MS. LOVE: So you would limit access?

18 MS. FRAZIER: Limit access.

19 MS. LOVE: The second question that I wanted
20 to ask you, you said that it's so important to make
21 the -- to have that uncomfortable conversation about
22 race. I would like to have the uncomfortable

1 conversation about leadership and race, and I'm
2 wondering -- we have our first black Attorney General
3 and we have our first black President.

4 What is the problem here that we are not
5 getting more interest and conversation about these
6 issues from the highest level of government and what
7 can we do to change that?

8 MS. FRAZIER: I really think it's a sensitive
9 conversation. Even when you have conversations about
10 collateral consequences and what defenders should be
11 doing, I think most people are reluctant to take a
12 very critical look at their systems and what they're
13 doing and what the results.

14 I think it's human nature and specifically
15 the legal community is very reluctant to take look a
16 what we're doing, and so I think the conversation
17 about leadership and having these difficult
18 conversations, you really have to start at the
19 premise and kind of shake the foundation, and most
20 people, for whatever reason, is not willing to do
21 that, but the foundation of the criminal justice
22 system is built on race and class and very few people

1 want to kind of start with those very hard
2 conversations.

3 MS. HILLERY: Margi, may I add something to
4 those two questions?

5 MS. LOVE: Sure.

6 MR. JONES: Before you do that, we are
7 officially out of time, but with your permission, and
8 I know there are a couple other questions, we'd like
9 to extend it maybe five minutes or so if that's okay.

10 MS. HILLERY: That's fine. That's fine.

11 MR. JONES: All right.

12 MS. HILLERY: And this is going back to my
13 employment litigator days. So I have a response to
14 both of those.

15 One of the big things that we looked at in
16 the employment litigation field was when you're
17 dealing with discriminators that you not only have to
18 put in place the legal solution. You also have to
19 put -- it's a carrot stick thing. You also have to
20 put some barriers in place to make it harder for them
21 or to disincentivize them from doing these things in
22 the first place.

1 So not only --I love the analogy with the
2 Fair Credit Reporting Act, but then there also has to
3 be some consequences built into that law or a similar
4 law that says and if you do this, and if you fail to
5 adhere to these guidelines, this is what will happen,
6 again, dollars and cent.

7 When you hit corporations and organizations
8 in the pocketbook, that has a way of resonating in a
9 way that other things simply do not.

10 Then with respect to the leadership and race,
11 you know what? I've got to take my Brennan Center
12 hat off for this one. I do. This is my Nicole
13 Austin-Hillery, a civil rights lawyer for all of her
14 career hat that I'm putting on. We are not going to
15 change what leadership does until white America stops
16 beating black folks over the head for having those
17 conversations. You know, when the President --
18 leadership is afraid to have those conversations. I
19 personally am not happen with the fact that
20 leadership is afraid to have those conversations, but
21 they are. That is because when the President says
22 something as innocuous as, you know, Trevon would be

1 my son, when white America uses that to say, There he
2 goes, there he goes focusing on that race stuff, that
3 is the most innocuous comment. So unless and until
4 black leaders and brown leaders feel like they will
5 not be beaten over the head for engaging white
6 America in these very honest conversations, they will
7 not have those conversations.

8 Again, in my employment context, we used to
9 have the same issue. Nobody wants to be called an
10 "ist", a sexist, a racist, and the problem in this
11 country is whenever we have these conversations, the
12 people who are not in those minority groups feel like
13 they are being labeled and folks have to stop feeling
14 like they're being labeled and understand that what
15 we need is a real conversation, that we're not
16 casting aspersions, we're not passing judgment. We
17 simply have to provide an open forum in which to have
18 the space, you know, very similar to the truth and
19 reconciliation exercise that, you know, they went
20 through in South Africa even though there are pros
21 and cons to that, but that's what we have to do. We
22 have to remove the labels, remove the accusations so

1 that we can clear the way to have open and honest
2 conversations.

3 Now I will put my Brennan Center hat back on
4 for four additional questions.

5 MS. FRAZIER: And one thing I would suggest
6 to people in the District of Columbia, if you want to
7 see race and class, go sit in C-10, the courtroom,
8 arraignment court in D.C. Superior Court. It just
9 blows my mind how 98 percent of the people that goes
10 through there are African American when the changing
11 demographics of our city is very much a diverse
12 population.

13 So just to literally sit in a courtroom in a
14 State Court, not Federal Court -- go in a State Court
15 and go to arraignment, and you sit there or you go to
16 a misdemeanor docket and you see who's being herded
17 through the criminal justice system and then when you
18 come back to these tables and come up with solutions,
19 for you not to talk that, I think is just ridiculous.

20 MR. JONES: There is never enough time and we
21 greatly appreciate you coming here and spending your
22 time and sharing with us as honestly and as frankly

1 as you have.

2 I would encourage you -- we are now going to
3 lunch. I would encourage you to stay. You're
4 welcome to stay for lunch and continue these
5 discussions, but if you can't, we understand, and
6 once again --

7 MR. THORNTON: Is it possible to make one
8 more comment?

9 MR. JONES: Absolutely.

10 MR. THORNTON: I wanted to go back to the
11 likely partners, you know, and it's amazing to me how
12 the most likely partners are turning out to be
13 unlikely. I'm talking about the men and women who
14 have gone through the system and come out on other
15 side and truly the hope that the people need to
16 understand that you can do this.

17 You know, I would strongly, strongly
18 encourage you to reach out to the successful
19 reentrant, the successful person, the person who has
20 put their lives back together.

21 I was at the signing of the Second Chance
22 Act. Nowhere on the stage was there a person -- a

1 returning citizen, very few in the audience, if any,
2 you know, and I was there and it's just amazing to me
3 that, for whatever reason, this population has been
4 locked out of the conversation, and I'm saying it
5 that way because that's the way I see it. There are
6 -- you know, there are returning citizen lawyers,
7 returning citizen legislators, especially in the
8 District, chief of staffs and Council people who want
9 to be involved, but don't know how to get involved
10 and there's not systematic reaching out on, going to
11 them.

12 We get a few panel discussions. We get a
13 panel here and a panel there, but we're really not at
14 the table involved in the discussion, and we want to
15 be the key to the answer. So that's, you know, my
16 last.

17 MR. JONES: That's a great way to end too.
18 Thank you very much.

19 We are going to stand in recess for an hour
20 and reconvene at 1:15 after lunch.

21 MS. FRAZER: 2:15.

22 MR. JONES: 2:15. Thank you.

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[Whereupon, at 1:21 p.m., a lunch recess was
taken, to reconvene at 2:15 p.m. this same day.]

1 A F T E R N O O N S E S S I O N

2 [2:16 p.m.]

3 PANEL 4

4 MR. JONES: Welcome. We are pleased today to
5 have you here and look forward to an interesting
6 conversation. You may or may not know that this task
7 force has been sort of going around the country on a
8 listening tour, listening to folks of all stripes,
9 various stakeholders with respect to issues around
10 restoration of rights and status after conviction,
11 and we are in the second half of our third day in
12 Washington.

13 I was just telling somebody over the break
14 that each panel has been more interesting than the
15 last. So you guys have a lot of pressure.

16 Let me just tell you that the way that we
17 work is that we will give each of you five or ten
18 minutes or so to tell us about yourselves, a little
19 bit about the work that you're doing, and then give
20 us the benefit of whatever other thoughts you think
21 might be useful to us and then we have lots of
22 questions for you.

1 The way that we do our questioning is that
2 one of us leads the discussion, and to the extent
3 that there's time, and there often isn't, to the
4 extend there is time, the rest of us will have an
5 opportunity to query you as well.

6 For the purposes of this discussion, Margi
7 Love is going to be the person who leads the
8 discussion, and unless there are question -- oh, let
9 me just say one last thing. The microphones are not
10 voice amplifiers. They simply direct your voice to
11 the camera. So you should speak in a good loud voice
12 so that everybody in the back can hear, and unless
13 there are questions, I will stop talking and turn it
14 over to you, and maybe, Ms. Ginzberg, you should
15 start.

16 MS. GINZBERG: Sure. My name is Janet
17 Ginzberg. I'm a senior staff attorney at Community
18 Legal Services in Philadelphia. Let me just off just
19 saying I've got a bit of a cold. So please let me
20 know if you can't hear me back there and I'll take a
21 big sip of tea and try to speak louder.

22 I'm with the Employment Unit at Community

1 Legal Services, and for those of you who are
2 unfamiliar with our program, we are Philadelphia's
3 largest legal services provider. The Employment
4 Unit, specifically, represents low-income
5 Philadelphians in a broad variety of the
6 employment-related issues, such as discrimination,
7 wage claims, Family Medical Leave Act, Welfare to
8 Work, disabilities right, and barriers to employment.

9 Among these barriers to employment, the most
10 significant barrier is criminal records. Every year,
11 our represents or tries to assist hundreds of
12 ex-offenders who are trying to obtain or keep
13 employment, but whose records, many as old as five,
14 ten, twenty years old are preventing their ability to
15 do so.

16 The number of people who are being barred
17 from work because of criminal records is increasing,
18 has been increasing drastically. I always give the
19 statistic when I started at CLS about 14 years ago,
20 the Employment Unit was getting about 450, 460 cases
21 a year. Last year, I think we got 1500, and the
22 increase has been predominantly, almost exclusively

1 in criminal records-related issues, and this is due
2 to a number of different factors. There are
3 certainly a big bump-up after 9-11, not like
4 background checks would have prevented it, but people
5 tend to have a reaction that if something happens, do
6 background checks.

7 There are more and more laws being passed at
8 least in Pennsylvania and I know in other States as
9 well restricting where people with criminal records
10 can work, and I think the largest factors in this
11 increase has just been the accessibility to records
12 has increased drastically. A lot more records are on
13 line now.

14 As a result of the proliferation of criminal
15 records, the Employment Unit has developed expertise
16 in the civil legal problems being faced by
17 ex-offenders. We provide individual assistance to
18 people both in terms of helping them clean up records
19 where we can, but also advocating or bringing claims
20 against employers who are unlawfully using criminal
21 records in their employment decisions.

22 We do systematic advocacy through legislative

1 and policy work and also class action work, and,
2 finally, we do community education. We go to
3 ex-offenders group and people coming off of welfare
4 and talk to them about what their employment right
5 are.

6 The increasingly unregulated access to
7 criminal history information has emerged as a
8 fundamental threat to millions of U.S. workers
9 screened every year for employment as well as one of
10 the most important civil rights issues of our time.
11 At the same time that access to criminal information
12 is increasing, a staggering share of Americans, one
13 in four adults, now has a serious misdemeanor or
14 felony record that will show up on a routine criminal
15 background check no matter the age of the offense.

16 In some States, in Pennsylvania, for
17 example, since the records have gone on line, all
18 court records, arrest records even if they didn't end
19 in conviction also now fully available for anybody to
20 look at.

21 Over the last seven years or so, we've seen a
22 marked rise in individuals facing employment barriers

1 because of criminal records that are incomplete,
2 inaccurate, or accurate being unlawfully
3 disseminated. More and more employers conduct
4 criminal background checks, engaging the services of
5 private background companies, the credit reporting
6 agencies or CRAs that use technology-based tools for
7 gathering criminal background information, storing
8 it, formatting it, and reporting it out to customers.

9 The Fair Credit Reporting Act is a federal
10 statute. Many States have State equivalents. It
11 imposes a number of obligations on the CRAs in order
12 to protect individuals whose backgrounds are being
13 checked. It also imposes a number of
14 responsibilities on the employers who are using these
15 background checks.

16 CRA are not permitted to report, in many
17 cases not permitted to report, arrests that over
18 seven years old. Those are only for jobs that are
19 less than -- going to make less than \$75,000, but, of
20 course, that's the people who are coming to us.

21 Conviction used to be regulated. They used
22 to not be able to be reported past seven years, but

1 that has changed and now convictions can be reported
2 by CRA forever. It requires them to use reasonable
3 procedures to ensure maximum possible accuracy. So
4 it's not a strict liability rule. It's not that if
5 something is incorrect on a background check the CRAs
6 are automatically liable, but they are going to have
7 to show that they took these reasonable procedures.

8 There are some notice requirements. For
9 example, if an individual -- individuals have to
10 authorize a private background check being done on
11 them. That's not true, for example, if an employer
12 is doing a background check through the Pennsylvania
13 State repository and many other State central
14 repositories or going on line. Employers can just do
15 that without the job applicant knowing, but if the
16 employer is going to use a private background
17 checking company, they must get authorization from
18 the individual.

19 Finally, there has to be a dispute process.
20 Individuals have to be notified that there's adverse
21 information that might affect their ability to get a
22 job and the CRA is required to have a process whereby

1 somebody can say, Hey, this is incorrect or that's
2 not me or something like that.

3 However, certain problems despite these
4 requirements arise with some regularity, including
5 inadequate matching leading to false positives. It
6 is not unusual, although I will say we've seen, I at
7 least have seen, a decrease in this. It was
8 certainly not unusual seven years ago for Adam Smith
9 to come with a record that was really a different
10 Adam Smith and, you know, it partly depended on where
11 the CRA was getting that background from and what
12 kinds of screen they were using.

13 We regularly see reporting of obsolete
14 non-convictions, so arrests that are older than seven
15 years old, confusing and prejudicial formatting as
16 well as repetitive entries of the same case. We've
17 got clients who come into our office who, in fact,
18 only have one conviction and the report that comes
19 back is pages and pages and pages long, often because
20 of the way the CRA is either receiving the
21 information or the way they are disseminating it.

22 We see many cases of where the CRAs are

1 reporting dispositions that are not up to date. So
2 an individual gets arrested. At some point, the case
3 gets dismissed, but that is not necessarily reflected
4 in the criminal background, that the case was
5 dismissed.

6 Finally, one of our more frustrating things
7 that we see is that the dispute process is hard to
8 navigate. I can't tell you how many times I have
9 tried to find out how to dispute someone's background
10 and, you know, I'm pretty computer savvy and I know
11 what I'm looking for, and sometimes I can't even find
12 anywhere how the person is supposed to dispute the
13 record.

14 Our organization has attempted over time to
15 explore ways in which to ameliorate the harmful
16 consequences of background checks that don't conform
17 to FCRA, Fair Credit Reporting Act. We regularly
18 assist individuals in filing disputes regarding
19 incorrect or misleading information. We advocate on
20 their behalf with employers who make adverse hiring
21 decisions base on that information. We file lawsuits
22 in an attempt to address the significant injuries

1 that individuals suffer by way of these violations
2 and yet try to effect practice changes. We've
3 managed to get people back to work. We've managed to
4 get people damages often, but we've also on occasion
5 been successful in getting the CRAs to make some
6 changes in how they are conducting their procedures.

7 Finally, we've actively engaged with the Fair
8 Trade Commission's Division of Privacy and Identity
9 Protection with the goal of significantly raising the
10 level of education and FCRA enforcement; however, as
11 court records have become more accessible and as
12 employers have increasingly turned to private
13 background check companies whose profits depend in
14 part on quickly churning out vast quantities of
15 information and data, it's becoming increasing
16 apparent that this problem is not getting much
17 better. We've been working with a relatively new
18 Consumer Financial Protection Bureau and taking some
19 steps to curb the misuse of unlawful data in
20 background checks and we will continue to work
21 through whatever avenues we can to work through to
22 try to help people whose livelihoods are at stake

1 when they're to apply for jobs with backgrounds.

2 Thank you.

3 MR. JONES: Thank you.

4 Ms. Miller.

5 MS. MILLER: Good afternoon, and I appreciate
6 the opportunity to be here today.

7 My name is Montserrat Miller. I'm a partner
8 with Arnall, Golden, Gregory. I'm part of the
9 Privacy and Consumer Regulatory, Immigration, and
10 Government Affairs Practice Groups, and with respect
11 to my privacy and consumer regulatory practice, I
12 assist clients with privacy and data
13 protection-related matters, including compliance
14 under the Fair Credit Reporting Act and other
15 consumer protection laws.

16 My practice includes a special emphasis on
17 background screening company, whether it's credit or
18 criminal history, and their compliance with the Fair
19 Credit Reporting Act, Title 7 of the Civil Rights
20 Act, and State laws which impact the use of
21 background check, and I'm also the Washington counsel
22 of the National Association of Professional

1 Background Screeners, which is an association of
2 employment and tenant screening companies, but I do
3 want to say that today, I just want to be clear that
4 my testimony is mine and mine alone and is not being
5 made on behalf of the National Association of
6 Professional Background Screeners.

7 So I wanted to lay out a few things for our
8 discussion today which I hope you will find helpful,
9 but in the interest of the time, I'm going to really
10 condense this and go quickly through some important
11 points regarding the use of criminal history
12 information for employment screening purposes.

13 First, background screening companies operate
14 under the Fair Credit Reporting Act which provides
15 significant protections for consumers such as job as
16 job seekers as well as spelling out the rules for
17 consumer reporting agencies, otherwise known as
18 background screening companies. So they're actually
19 defined as consumer reporting agencies, not credit
20 reporting agencies, and they are separate from the
21 credit bureaus, which are the big three, Equifax,
22 Transunion, and Experian.

1 So to be clear, employers do fall outside of
2 the Fair Credit Reporting Act. The Fair Credit
3 Reporting Act is meant to regulate and control the
4 activities of consumer reporting agencies, which are
5 the background screening companies as well as the
6 bureaus.

7 Background screening is actually highly
8 regulated, including by the Federal Trade Commission,
9 the Equal Employment Opportunity Commission, the
10 Consumer Financial Protection Bureau as well as State
11 AGs and State agencies. So background screening is
12 actually a highly regulated industry.

13 Screen are conducted with individuals'
14 consent and job seekers are afforded rights with
15 respect to challenging the accuracy and completeness
16 of background reports, and this is done through the
17 adverse action notice, which is actually a two-step
18 if criminal history information is going to be used
19 as part of a screen and that report -- sorry. If
20 that report includes criminal history information and
21 in whole or in part is going to be used in the
22 employment decision-making process, the individual

1 must be given a what's called pre-adverse action
2 notice at which point they would be given a copy of
3 their report as well as a summary of their rights
4 under the Fair Credit Reporting Act, and then at a
5 later date, they would also be given an adverse
6 action notice if, in fact, a decision is made that
7 impacts their employment.

8 So it's a two-step process that they are
9 given the opportunity to challenge the accuracy and
10 completeness of the report. Employers must then,
11 separate from the Fair Credit Reporting Act, operate
12 with the parameters set out the EEOC's revised
13 guidance which was issued last year on the use of
14 criminal history records for employment screening
15 purposes, and with that, any use of criminal history
16 information must be shown to be job related and
17 consistent with business necessity as well as
18 conducting an individualized assessment of the
19 individual's criminal history. Again, that is
20 separate from the Fair Credit Reporting Act
21 requirements which apply to consumer reporting
22 agencies.

1 Then, finally, there are limitations at the
2 State level as well as to the use and/or reporting of
3 criminal history information by employers, and a
4 recent example of that is the ordinance that passed
5 in Newark that limits the use of criminal history
6 information in employment job advertisements and
7 housing as well.

8 With respect to collateral consequences and
9 relief mechanism for individuals with a conviction, I
10 would humbly offer the following: We should seek
11 ways to encourage employers to hire ex-offenders
12 and/or provide protections to employers that's
13 certainly a concern that I hear, is that employers
14 would like to have some protections, and I think this
15 should be done rather than limiting the flow of
16 information as doing so limits an employer's ability
17 to make an informed hiring decision, which is the
18 purpose behind a criminal history check, or if were
19 you to do any of type of a background check as an
20 employer, I believe that the goal is that you're
21 trying to make an informed hiring decision.

22 In terms of hiring ex-offenders and providing

1 protections, we certainly have examples now, but
2 perhaps they could be more robust, such as tax
3 credits or certificates of rehabilitation. We have
4 the WATSI credits. You have some State credits, and
5 then certainly certificates of rehabilitation if they
6 are robust and, I think, provide protections for
7 employers.

8 The other idea is to consider a central
9 database for expungements. Certainly the issue of
10 expungements and reporting of expungements and sealed
11 records is listed, and so the consideration -- it's
12 not a new idea. I can't take credit for this as
13 being my brilliant idea -- is a central database for
14 expungements that rather than relying on the
15 individual State Courts or the individuals or their
16 advocates to confirm the expungement, this would be a
17 way in which if you had a central clearinghouse, the
18 State Courts would report that or others could report
19 that information and then the private sector criminal
20 databases would be made aware, if you will, of the
21 fact that there is, in fact, an expungement since not
22 all State Courts make that information public, and

1 the key would be to ensure that private vendor
2 criminal databases aren't also including those
3 expunged records, so just a suggestion, and that's
4 all I have look. I look forward to your questions.

5 MR. JONES: Thank you very much.

6 Mr. Campbell.

7 MR. CAMPBELL: Good afternoon. My name is
8 Frank Campbell. I'm CEO of Highland Strategies, LLC,
9 a Washington, D.C.-based security consulting firm
10 with expertise in background screening resources. I
11 previously served as a Deputy Assistant Attorney
12 General for Legal Policy at the U.S. Department of
13 Justice and an Assistant General Counsel with the
14 FBI.

15 During my 14 years in government, I had
16 significant responsibility for issues relating to the
17 use of criminal history information for screening. I
18 helped stand up the FBI's gun background check
19 system. I was the advisor to the National Crime
20 Prevention and Privacy Compact, which is a body of
21 State and federal officials appointed by the Attorney
22 General to make rules relating to the use of criminal

1 history information in the national FBI system for
2 non-criminal justice purposes, and I also authored a
3 major report to Congress in 2006 called "The Attorney
4 General's Report on Criminal History Background
5 Checks" that addresses the issue broadly of criminal
6 background checks as it relates to access to the FBI
7 information.

8 So I appreciate your inviting me to speak
9 here today about restoration of rights and status
10 after conviction. I approach it from the perspective
11 of the importance of having good sources of
12 information when a criminal background check is done
13 on an employment applicant.

14 Criminal history background checks, I think,
15 is a legitimate step that employers and volunteer
16 organizations take to protect their customers,
17 employees, asset, and the public. The employers ask
18 applicants about criminal history in order to make
19 informed hiring decisions. In some States, how and
20 when that question is asked is subject to
21 restrictions, but in all States, some form of
22 criminal background screening is permitted for

1 employment purposes.

2 When asking the criminal question, most
3 employers will also seek information on whether the
4 applicant's response is truthful and complete, and so
5 greater certainty on whether the applicant has a
6 criminal record relevant to the position can only be
7 gained through a criminal background check.

8 Good sources of information help make
9 criminal background checks complete, accurate, and up
10 to date. This is important both to the employer who
11 does not want to miss relevant information, and the
12 individual who does not -- who wants to be sure that
13 wrong information isn't reported to the employer, but
14 existing sources of criminal history information vary
15 in scope, completeness, accuracy, and accessibility.
16 There is no one source of complete criminal history
17 information in the United States.

18 Most employers turn to commercial background
19 screening companies and data vendor to retrieve
20 criminal history information from court records
21 systems or private databases using the applicant's
22 name, date of birth, or other biographical

1 information. Typically, court records are limited to
2 place -- excuse me -- court record checks are limited
3 to places of known current or past residence or place
4 of employment that's been self-reported by the
5 individual or found through a credit check. These
6 services, as mentioned, are regulated by federal and
7 State fair credit reporting laws.

8 Another major source of criminal history
9 information are the Criminal Justice Information
10 Repositories maintain by the State and the FBI.
11 State records are obtained from law enforcement
12 agencies in all jurisdictions within the State and
13 are typically supported by fingerprints obtained from
14 the individual at the time of arrest.

15 The FBI's national system is a repository
16 fingerprint supported criminal submitted by all State
17 repositories and federal law enforcement agencies.
18 The FBI's system is the largest biometric database in
19 the world, currently containing fingerprint files on
20 over 70 million unique individuals and is the most
21 comprehensive single source of criminal history data
22 in the United States.

1 The FBI and State repositories were created
2 primarily to serve criminal justice purposes;
3 however, non-criminal justice fingerprint checks have
4 grown to be at least as equal -- to at least equal
5 the number of criminal justice checks.

6 Fingerprint checks in the FBI national system
7 cover all jurisdictions in the United States and
8 provide positive identification of fingerprints.
9 This is in contrast to what a consumer reporting
10 agency can do. They typically limit it to individual
11 reports in places of known residence or employment
12 and they have to use a name check only type of
13 checks. The fingerprint checks reduce the security
14 risk of having a false negative where if you miss a
15 record using the name only check or the privacy harm
16 of the false positive when you associate someone
17 else's record wrong with the applicant based on the
18 name check.

19 While a significant percentage of the arrest
20 records in the FBI and State systems are missing
21 final disposition information, I think for the FBI,
22 it's around 50 percent of the arrest records are

1 missing final disposition. For the States, they are
2 more complete, ranging anywhere from, I think, from
3 70 to 80 percent at the State level. At a minimum,
4 those records provide leads to more complete
5 information and rules governing the access can
6 require disposition retrieval to update the records
7 and can also impose limits on the dissemination of
8 non-conviction information private users.

9 Now, the report that I wrote to Congress
10 titled "The Attorney General's Report on Criminal
11 History Background Check" responded to a provision in
12 the Intelligence Reform and Terrorism Prevention Act
13 of 2004. Congress was interested in developing a
14 more uniform and rational system for accessing FBI
15 criminal history records for purposes of employment
16 and risk assessments.

17 The existing approach requires enacting
18 separate State statutes or federal statutes that
19 authorize access for only particular employers or
20 industries. This has created a patchwork of statutes
21 allowing access inconsistently across States and
22 across industries. The vast majority of private

1 sector employers still cannot access the FBI system.

2 For example, while the banking and nursing
3 home industries have access authority, the
4 pharmaceutical and chemical industries do not, and
5 while private security guard companies can get FBI
6 checks done in some States, in other States, they
7 cannot.

8 The report discusses in detail many issues
9 bound up in the question of how criminal history
10 checks should be done to account for the different
11 sometimes competing interests involved. The bottom
12 line is the report recommended that when employers
13 can lawfully ask whether an applicant has a criminal
14 record, information from the FBI's national system
15 should be one of the sources available when they do a
16 criminal background check.

17 It also recommended that given their role in
18 delivering screening services to the private sector,
19 consumer reporting agencies that meet certain
20 requirements specified by the Attorney General would
21 be allowed access when acting on behalf of an
22 authorized employer.

1 To protect the interests of the individual,
2 the report recommended a number safeguards in
3 connection with expanded access. For example,
4 privacy features would be included such as consent
5 and an opportunity the for individual to see the
6 information provided to the employer, limits on the
7 information's use and requirements for keeping the
8 information secure.

9 Missing disposition information would have to
10 be retrieved before information could be reported, a
11 role that could be played by consumer reporting
12 agencies. Repository records would have to be
13 screened in accordance with the federal and State
14 consumer reporting laws that limit access to certain
15 criminal records for employment purposes. Those
16 limits were adopted in order to mitigate the
17 long-term negative impacts a criminal record can have
18 on the person's employability.

19 Employers would have to acknowledge their
20 obligations on the use of the information under
21 federal and State equal employment opportunity laws.
22 The report also recommended that Congress consider

1 providing employers guidance on suitability criteria
2 to be used in criminal records screening such as
3 appropriate time limits that should be observed when
4 specifying disqualifying offenses and on allowing an
5 individual the opportunity to seek a waiver from the
6 disqualification.

7 We didn't make specific guidance
8 recommendations in the AG's report because it was
9 beyond what we were required to address, beyond the
10 scope of what we're required to address, and that
11 would have required us to seek additional input from
12 stakeholders. Since that time, the EEOC has
13 addressed the issue in its April 2012 guidance on the
14 use of criminal records information in employment
15 decisions, and while that guidance did not specify
16 time limits on disqualifying offenses, it did state
17 that targeted criminal screens should be narrowly
18 tailored based on a demonstrably tight nexus to the
19 position in question.

20 The guidance also states employers should
21 allow applicants the opportunity to respond to
22 records and to do individualized assessments when the

1 applicant seeks a waiver from qualification.

2 There's more work to be done on the question
3 of how to mitigate the effect of a criminal recording
4 acting as an unreasonable barrier to employment. The
5 recent and continuing research on the risk of
6 recidivism -- I think you're probably aware of
7 Professor Blumstein and Professor Holzer and others
8 -- can help employers in deciding when a criminal
9 record is relevant to a job by providing empirical
10 guideposts on the likelihood of an applicant
11 re-offending, depending on such factors as age at the
12 time of the offense, the nature of the offense, the
13 amount of time that has passed since the last
14 offense, and the nature of the position.

15 The research can also inform legislators who
16 are deciding how to draw or redraw lines on how far
17 back the background check can go in providing records
18 to employers. The Fair Credit Reporting Act
19 originally limited consumer reports on convictions to
20 seven years, but that was amended in 1998 to provide
21 no limit on the age of conviction information. This
22 allows decades old convictions of a person who has

1 been crime-free since to be included in a consumer
2 report. The recidivism research may allow us to
3 develop a more nuanced lookback matrix based on time,
4 nature of offense and the nature of the position.

5 My final observations concern the importance
6 of providing a clear and consistent legal environment
7 in which criminal history background checks can take
8 place. The legal rule should aim to facilitate
9 efficient access to accurate criminal history
10 information, clearly state what information providers
11 can report to employers, allow CRAs' access to
12 identifying information such as Social Security
13 numbers and court records to help avoid mistakes in
14 identification, provide clear guidance to employers
15 on their obligations for using criminal history
16 information regardless of the source fairly and in
17 compliance with the equal employment laws, provide
18 liability protection for employers who adhere to a
19 national set of fair use guidelines, and not unduly
20 burden or discourage the use of criminal background
21 checks in the public safety purpose they serve.

22 Thank you very much. I'm glad to answer

1 questions.

2 MR. JONES: Thank you very much. Thank all
3 of you.

4 Margi.

5 MS. LOVE: Well, wow. You certainly have
6 given us a full plate of pretty hard -- and by hard,
7 I mean legal kind of issues. We have not always had
8 those.

9 In the interest of full disclosure, I should
10 tell my colleagues that Mr. Campbell and Ms. Ginzberg
11 colleague, Sharon Detrick, are the authors of
12 chapters in our new collateral consequences book on
13 criminal records.

14 MR. JONES: Otherwise known as the bible.

15 MS. LOVE: They are not co-authors. I am
16 enjoined by both Ms. Detrick and Mr. Campbell to urge
17 that they are not coauthors. We got along pretty
18 well though in your respective halves of chapter.

19 This is a tough legal area and I don't know
20 that we'll -- I commend our chapter of both Sharon's
21 part of it where she talked about the Fair Credit
22 Reporting Act in sort of general historical

1 background and then talked about the Fair Credit
2 Reporting Act and then the other half that Frank did
3 about the FBI records system and the possibility of
4 using it more constructively.

5 But let me start with Janet, Ms. Ginzberg, to
6 be formal. I am wondering whether -- I would like to
7 know, first of all, what your reaction is kind of
8 from an on-the-ground practitioner dealing with
9 people who have these criminal records problems is to
10 the perhaps somewhat -- I don't want to say
11 idealized, but kind of a reasonable best practices
12 description of the law that Ms. Miller and Mr.
13 Campbell have given.

14 Is this working for your clients or is there
15 a disconnect?

16 MS. GINZBERG: Well, of course, we're seeing
17 the cases where it didn't work. Our officers are not
18 getting swamped by the people who are coming in and
19 saying look what a great job this criminal background
20 company did in my background check.

21 So from our perspective, it's not working.
22 We just so many of these cases where it's clear to

1 us, at least, that reasonable procedures were not
2 followed or where background checking companies are
3 not taking steps to ensure that the reports are easy
4 to follow and not misleading.

5 It's not that we think there is anything
6 nefarious going on with the background checking
7 companies. It's just that, again, they are trying to
8 pump out huge quantities of data and they're trying
9 to do it very quickly because that's how they make
10 their money, is by providing information that
11 employers want and employers need and they're trying
12 to do it in as fast a way as possible, and from our
13 perspective, they are missing a lot of steps.
14 They're not taking reasonable steps to ensure that
15 the reports that they're issuing are being done
16 accurately.

17 And, again, I will say our frustration with
18 how difficult the dispute process is, I know that
19 it's been cited that it is required to have a dispute
20 process. FCRA requires them to. FCRA does not set
21 forth how that dispute process has to be done or how
22 it has to be accessible, just that it has to be

1 conveyed to an individual that there is -- that they
2 can dispute the report and that there must be a
3 process and, you know, if you all have free time,
4 sometime in your computer, go to a major background
5 checking company and see if you can find how to file
6 dispute of a record.

7 MS. LOVE: That was the question that I
8 wanted to ask. The dispute is with the background
9 checking company and not with the employer?

10 MS. GINZBERG: Well, yes. I mean, the
11 background checking company has to provide a process
12 to fix mistakes or to dispute a report, although the
13 employer is supposed to give the individual a
14 reasonable amount of time to come to them and to say,
15 Hey, this adverse information is either really not me
16 or this was actually expunged.

17 So both, actually, but the employer and the
18 background checking company actually have some
19 requirement, some different requirements, to give the
20 individual an opportunity to correct the problem.

21 MS. LOVE: Let me ask you about this
22 expungement issue. I know Pennsylvania enacted an

1 expungement law a couple of years ago, but it doesn't
2 apply to very serious offenses, but it's something.

3 Are you seeing any of your clients' records
4 show up that did go through a court expungement
5 procedure?

6 MS. GINZBERG: We do see -- in Pennsylvania,
7 expungements can be done for a couple of different
8 things. The recent law that you're talking about
9 allows individuals to get summary convictions after
10 they've been arrest-free for five years. Summary
11 convictions are the lowest grade there is. They're
12 basically the same level of parking tickets, but they
13 do show up on the criminal background checks and they
14 are used by employers in hiring decisions.

15 I don't know that we've seen those come up on
16 background checks after they've being expunged. The
17 law is still relatively new. It's only a couple of
18 years old. What we do see, though, is arrests that
19 have been expunged. So arrests that don't in
20 conviction under Pennsylvania law can be expunged and
21 have been able to be for decades.

22 It's not unusual for us to see records that

1 have been expunged, sometimes by us, come up a couple
2 of years later, and what we understand is that some
3 of the larger background checking -- there's lots of
4 different ways that background checking companies get
5 their data, and some of them either maintain
6 databases or buy their information from databases.
7 Those databases are not always kept up to date.

8 So we do see that.

9 MS. LOVE: I know the Pennsylvania Courts
10 have all of their records on line. Once a record is
11 expunged, is it supposed to come out of that online
12 data?

13 MS. GINZBERG: Yes. It is supposed to. In
14 our experience, as long as the person doesn't owe any
15 costs or fines to the court, that is done pretty
16 well. Things do come off the online records.

17 MS. LOVE: How about pardons? You're one of
18 the few States that have a pretty active pardon
19 program, several hundred every year, I believe. How
20 do they show up on the records?

21 MS. GINZBERG: Once an individual is granted
22 a pardon from the Governor, that's a very long -- now

1 it's a four- or five-year process. They then have an
2 absolute right to get that record expunged. They
3 then have to go file an expungement petition, and
4 then the court will take it off the record.

5 I am aware of one case in which a pardon case
6 that was expunged has shown up in a background check
7 report, but I don't think it happens often.

8 MS. LOVE: Okay. Well, then just my last
9 question before we'll go to that particular issue,
10 we're dealing with sort of the mechanisms for
11 restoration of rights and status and the whole
12 variety of how does somebody sort of close the loop,
13 take that final step in their criminal case so it is
14 no longer a millstone around their neck.

15 If you had to develop an approach for the
16 Pennsylvania system that would be ideal and saleable,
17 what would you do?

18 MS. GINZBERG: Well, I would certainly expand
19 the expungement process. Despite there being some
20 mistakes with background checking databases,
21 expungements help our clients enormously, being able
22 to get rid of arrests.

1 Now, in Pennsylvania and in most cases under
2 federal and the EEOC, employers are not allowed to
3 consider arrests, but of course they do. So for our
4 clients to be able to get rid of arrests, it's
5 enormous even with the occasion error made. If I had
6 my choice, the expungement process, and I testified
7 to this to the Pennsylvania judiciary, would be
8 expanded. More things would be expungeable.

9 I know that law enforcement is very concerned
10 about that because they want access to the records.
11 So even if there were a sealing process where there
12 was an expanded -- expanded kinds of cases being able
13 to get sealed and not able to be disseminated to the
14 public either through the website or a private
15 background checking company, I think that would also
16 help a great deal.

17 MS. LOVE: Is there fairly good communication
18 between the court records system, the State records
19 repository, and the FBI -- because I guess the FBI
20 gets their records from the State repository.

21 MS. GINZBERG: Right.

22 MS. LOVE: So do the court records, are they

1 mirrored in the State repository?

2 MS. GINZBERG: It's not great. The further
3 away you get from the source, the less reliable it
4 is. So we definitely see cases that the expungement
5 goes to the State Police. They are very backlogged
6 now. So it's taking them four or five months to
7 expunge from their records something that a court has
8 ordered expunged and errors are made. I think there
9 was a report made about the Pennsylvania State
10 repository a number of years ago in which they
11 announced with great pride that their records were 70
12 percent accurate.

13 We, of course, did not think of 70 percent
14 accurate as being something to open champagne for,
15 but I think they've gotten better at that and I think
16 once you do that other step, once there's another
17 step of communication, it gets even worse and we see
18 lot of errors on FBI records where the communication
19 just hasn't gotten to them from the Pennsylvania
20 State Police.

21 MS. LOVE: Thank you.

22 Ms. Miller, hello, Montsesrrat. Nice to see

1 you again.

2 MS. MILLER: Good to see you again.

3 MS. LOVE: I want to find out if the
4 background screening companies, do they give -- when
5 they deliver the records to an employer or whoever
6 asks for it, do they give any sort of guidance or
7 standards or assistance in how to read a record and,
8 further, not just how to read it, but how to treat
9 it?

10 Is there any sense of the sort of suitability
11 criteria that Mr. Campbell mentioned? What kind
12 advice do the CRAs give, if any?

13 MS. MILLER: Right. So as a general rule, I
14 would say that CRAs do not offer legal advice, and as
15 a general rule, they report the information per the
16 specifications of the employer or the volunteer
17 agency, whoever it is that's requested the report.

18 There are some that may ask them to apply an
19 adjudication matrix, if you will, but that's at the
20 request of the end user, and I think that's perhaps
21 what Frank was speaking about with respect to
22 suitability; but as a general rule, they provide the

1 information.

2 Now, I will say that the CRAs that I work
3 with in my private practice, because there are
4 restrictions on the use at the state level in terms
5 of what an employer can either use or what can be
6 reported, they are funnel. They will screen that, if
7 you will, for lack of a better word, for the end user
8 so that do not use information records they should
9 not be using.

10 MS. LOVE: So they are in a sense making
11 legal judgments about what to report and what not on
12 a State-by-State basis?

13 MS. MILLER: On a State-by-State, they're
14 looking at what the requirements are in that
15 particular State and then they would apply those so
16 that that information is not erroneously pushed down
17 to an end user who made them use it against State
18 law.

19 MS. LOVE: Right. Right. So I want to ask
20 you about the provision that several of you have
21 referred to that was in the Fair Credit Reporting Act
22 until 1998, which was the prohibition on reporting

1 any sort of criminal history data that's older than
2 seven years, and I'm kind of curious whether your
3 organizations, the organizations that you represent
4 or you personally whatever you want, have any thought
5 about whether it might be on balance a good idea to
6 restore a provision like that.

7 MS. MILLER: You probably won't find this as
8 a shocker that I'm going to say no, but only because
9 I think it's an issue of information to employers in
10 allowing them to make informed decisions. So as
11 general screen, you might do seven -- you may only
12 look back seven years, and then depending upon the
13 position, the level, etc., then you may do a broader
14 search.

15 There are different types of searches that a
16 company can request and that a background screening
17 company can do. So does everybody ask for the
18 Cadillac of searches and says I want you to look
19 everywhere, employment references, go back as far as
20 you need to, all the counties they lived in, etc.?
21 No, not necessarily. So it depends upon the product
22 that's requested.

1 But as far as doing away or going back to the
2 seven-year restriction on convictions, I think that
3 many would say that there is research out there on
4 recidivism that suggest that, perhaps, we should. I
5 think that research is in its infancy. It's growing.
6 More needs to be done. I know we've all talked about
7 greater research in this area, but I think to say
8 based on the studies by Professors Warren, Blumstein,
9 and Bush on two studies, I don't think that you can
10 say that we have clearly defined a point at which
11 someone is less likely to re-offend and, therefore,
12 therefore you would set some marker at this point. I
13 think it's premature.

14 MS. LOVE: Is it your sense that the risk of
15 re-offending is the main concern of employers or is
16 there something else going on?

17 MS. MILLER: In my opinion, no. I think, in
18 my opinion, the reason that people ask for background
19 checks is twofold, one, because they want to make
20 informed hiring decisions and they want to know who
21 it is they're hiring and what their background is,
22 whether it's for public safety, whether it's because

1 that individual is working with vulnerable
2 populations like the elderly, children, whether it's
3 because there's a State requirement that says they
4 must do so or whether it's because of a federal
5 requirement that says you must do a background check.

6 I mean, there's many reasons why one does a
7 background check, and I think those are the main
8 issues that they are seeking, is whether it's risk
9 mitigation public safety concerns, or they're
10 actually required to do a check.

11 MS. LOVE: But the fact is that there is a
12 limit on reporting arrest records when there is not a
13 limit on reporting other kinds of records, and that
14 seems to be okay?

15 MS. MILLER: I'm glad you bring that up,
16 because I just wanted to respond really quickly to --
17 you know, the companies that I work with, I have yet
18 to find one that says they wholesale provide arrest
19 records to all employers in each instance. There is
20 a time and a place for an arrest. For instance,
21 domestic violence, that would be a situation in which
22 you may not have a conviction, but yet if that

1 individual has a pattern, that would appear in their
2 arrest history, and for a variety of reasons, they
3 may never go to trial, those types of cases. If
4 there's an individual who has a history of arrest,
5 you may consider that as a part of the overall
6 picture on that individual, but as we know from the
7 EEOC's guidance and certainly when I tell my clients
8 and anyone who is willing to listen, you should never
9 us an arrest standing on its own. I mean, that is
10 just an enormous red flag and an arrest is not a
11 conviction.

12 So it is not a wholesale practice, I would
13 say, that arrest records are reported and, like I
14 said, most companies do not as a practice report
15 arrest records because of the dangers associated with
16 using those.

17 MS. LOVE: I'm going to move to Frank,
18 although I'm sure --

19 MS. MILLER: And can you come back to me? I
20 just wanted to respond to a couple of comments that
21 Ms. Ginzberg made about some of the background
22 screening companies. You can come back to me.

1 MS. LOVE: Let me come back to you, yeah.

2 Frank, if you assume, if I may, Mr. Campbell

3 --

4 MR. CAMPBELL: Yes. Call me Frank.

5 MS. LOVE: My coauthor here.

6 If you assume that the cat is kind of out of
7 the bag here and that there is an appetite for
8 information that is going to be hard to squelch, if
9 you will, and there were a variety of reforms
10 suggested in the Attorney General report. If you had
11 to pick three things that would be the most valuable
12 reforms in the current way of accessing criminal
13 history information, what would they be?

14 MR. CAMPBELL: Well, I think it is important
15 to introduce greater certainty into the
16 identification of records within individuals and also
17 to broaden the base of information available when
18 doing a check. So that's sort of a general idea of
19 one of the advantages of being able to check this
20 national repository, is that it would be based on a
21 positive identification of fingerprints and it will
22 check records from all States; whereas, a consumer

1 reporting agency as Montserrat just mentioned
2 generally have to make decisions about which
3 jurisdictions they are going to look, whether it's by
4 sending someone to the courthouse or checking their
5 databases, and it's not necessarily national in scope
6 and comprehensive.

7 So there may be something out there you're
8 missing, and the same thing is true when you have a
9 common name, as Janet was mentioning, where you have
10 someone's report that is being associated with
11 someone else, and so I think those are very valuable
12 additions and if we could build that into, the
13 availability of that, into the broader background
14 check scene, that would be a big step forward in
15 improving background screening in America.

16 There are certain companies now that get that
17 kind of service. When you're a federally-insured
18 financial institution, banks now, they employ
19 hundreds of thousands of people and they are doing
20 background checks that include fingerprint checks,
21 and they also merged them with the work done by CRAs.
22 So they sort get the best of both worlds. They have

1 the fingerprint check, national fingerprint check,
2 and what can be found by a CRA. Sometimes a CRA can
3 find information that's not in the FBI system because
4 usually it's non-serious offenses which weren't
5 reportable to the FBI for many years.

6 So I think that's one of the most important
7 things, but there are certainly other kind of
8 procedural things that were the AG's report which I
9 think might also be something we should consider.

10 MS. LOVE: How the issue of suitability
11 criteria?

12 MR. CAMPBELL: Well, as I mentioned, we saw
13 that as something that needs to sort of be -- that
14 ought to be considered. We didn't -- we noted that
15 there at least two federal laws out there included
16 that in the law that will required background
17 screenings for port workers and for HAZMAT licensees,
18 and they figured out a timeline, and I can't remember
19 exactly why I think they're different, and there's
20 also the Private Security Officer Employment
21 Authorization Act, 10 years for felonies and I think
22 it was seven years for the port workers, and so I

1 think that they did some work and they came up with
2 some kind limits.

3 Now, I know that, you know, you can't sort of
4 do a one size fits all for all of the employers in
5 America and we think that would be very
6 inappropriate, but on the other hand, I think that
7 certainly as this research goes further, there might
8 be comfortable levels that everyone can agree on
9 where, you know, if you have a 20- or 30-year-old
10 misdemeanor drug conviction, does that really need to
11 be reported? That the kind of thing where maybe we
12 can form some agreement about.

13 Now, I think the other thing is that a lot of
14 it not just time. It's also the nature of the
15 offense and the nature of job. So the research sort
16 of looked broadly, just looking back on time, on kind
17 of how that graph dropped in terms of recidivism, but
18 if you're looking at someone who has, let's say, a
19 violent offense working with, you know, an elder
20 population, you know, is that really going to be the
21 same? Maybe someone who has that kind of a
22 background, you know, more than 10 years later might

1 re-offend because they're in position to take
2 advantage of somebody.

3 Those are the kinds of more difficult nuances
4 that I think you probably more research to make those
5 decisions on. The IQuery system that was recently
6 developed in Massachusetts, I think basically did a
7 general lookback limit of 10 years, although if you
8 are re-offend, then I think, you know, you can go
9 back --

10 MS. LOVE: All bets are off.

11 MR. CAMPBELL: Right, but still I'm not sure
12 that that's really the complete answer, because you
13 may have to look at certain kinds of offenses and
14 certain kinds of positions where you might not want
15 to just draw the line at 10 years.

16 MS. LOVE: What kind of comfort would you get
17 out of the relief mechanism like a certificate of
18 relief from disabilities or a pardon, some sort of
19 judgment? There is a law in Illinois where the court
20 issues a certificate of good conduct where they have
21 to sort of assert that you are fully rehabilitated,
22 and that's what they've defined, and pardons, whether

1 State or federal law, are generally thought to be
2 sort of a certification of good character.

3 MR. CAMPBELL: I think the States have
4 certainly -- some States have spoken on the question
5 of whether you can report, and you guys probably know
6 better than I do, report a pardon offense. I would
7 think they'd generally say no.

8 MS. GINZBERG: In Pennsylvania, under case
9 law, people do not have to report.

10 MR. JONES: Keep your voices up.

11 MS. LOVE: Well, they may not have to report
12 them and they can get them expunged, but I guess the
13 questions is in your record, can they be reported by
14 a credit reporting company? And that's I guess --

15 MS. GINZBERG: So if the person hasn't gotten
16 it expunged yet?

17 MS. LOVE: Right. Right. If it's a just
18 pardon, I guess there isn't maybe an answer to that.

19 MS. GINZBERG: Not yet.

20 MS. LOVE: Before I turn it over to my
21 colleagues here, Montserrat, you wanted to respond.

22 MS. MILLER: Yes. So thank you. Part of

1 what I feel I have to do sometimes is -- so I'm going
2 to have a slight disagreement with both of you. So I
3 apologize in advance, but I want to respond about
4 background screening companies in general.

5 There are very few large background screening
6 companies and, in fact, if you've seen in the news,
7 there was purchase recently of one of the divisions
8 of Lexis-Nexis and their background screening
9 division by First Advantage, which is a background
10 screening company. That's a very large background
11 screening company, the majority, 90-plus percent of
12 background screening companies in this country are
13 small businesses with 15 or less employees.

14 So I do have to respectfully disagree that
15 this is just a business where they just churn out
16 reports at lightening speed, there's process in place
17 for disputes, reinvestigations, etc., because there
18 is, and most of the companies that I represent in my
19 private practice take the FCRA very seriously and
20 they're actually -- I was just looking at it. I'm
21 sorry. My page is crinkled, my FCRA. I spilled
22 water on it at some point.

1 So there is a section of pre-adverse action
2 notice and there are almost six pages that discuss
3 procedures in the case of disputed accuracy. So it's
4 very clear what has to be done when an individual
5 challenges the accuracy or the completeness of the
6 report. No one is in the dark in the process, and I
7 think, you know, one of the unfortunate things is
8 that background screening companies are the punching
9 bag for everybody, but the reality is we report the
10 information and so I think we need to move beyond
11 that to find relief and other ways to address the
12 criminal justice system.

13 So I just wanted to make that and one thing
14 about databases.

15 MS. LOVE: Before you do that, could I just
16 ask are people always aware that a criminal
17 background check has been done on them or is being
18 done?

19 MS. MILLER: If it is done by a CRA, because
20 remember employers fall outside of the FCRA process
21 if they do it in house, so they do it through their
22 security team or investigations team, H.R.

1 Department, and that has a host of issues with it.
2 You know, just doing a simple Google check -- you
3 know, let's forget about criminal history -- I just
4 can't imagine all of the EEOC laws that you're
5 probably breaking just by looking at certain
6 information that could be discriminatory.

7 When an employer or a volunteer agency uses a
8 CRA, Consumer Reporting Agency, FCRA kicks in.
9 Individuals have rights. Certain obligations must be
10 conducted or certain steps must be done by consumer
11 reporting agencies in conjunction with the employers,
12 because you have to work in tandem. There is an
13 accuracy or a dispute process which does include a
14 reinvestigation.

15 If a report is brought to you, the consumer
16 reporting agency who provided that report to the
17 volunteer agency, to the employer, you have to
18 reinvestigate within 30 days, and if information is
19 erroneous, there's a whole system spelled out in the
20 Fair Credit Reporting Act about how to push that
21 information down to the source of the information.

22 So there is actually a very robust process in

1 place in the FCRA on how an individual can dispute
2 the accuracy or completeness, and the one thing, you
3 have to have their consent. As you know, there was
4 issues around that in years past. So then the FTC
5 came out.

6 In addition to the Fair Credit Reporting Act,
7 there's a wonderful summary staff report on the FCRA
8 that the FTC did before the FCRA was transferred over
9 to the Consumer Financial Protection Bureau, but one
10 of the things is the notice itself, the disclosure
11 and authorization to do a background check must be
12 prominent in the process to you as the individual.
13 It can't be buried in the job application. It can't
14 be buried under other pages. You have to be very
15 clear about the disclosure and authorization, which
16 is what requests the -- starts the process for the
17 background screening.

18 MS. GINZBERG: Can I respond to that very
19 quickly?

20 MS. MILLER: I forgot to talk about
21 databases. Can I talk about databases?

22 MS. GINZBERG: Let me just respond very

1 quickly just to clarify. I completely agree that
2 FCRA does contain once the person disputes -- it both
3 says that the right to dispute has to be publicized
4 to the individual and there are also -- you're right
5 -- many regulations about once the person disputes,
6 what the procedure is.

7 What it does not require is that the person
8 be notified about how to dispute. Just to clarify,
9 that's what I was talking about. So people get a
10 notice saying there is information that will adverse
11 action may be take on, you have the right to dispute.
12 It does not require the background checking company
13 to say to do so, go to X, Y, or Z, nor does it
14 require the background checking company to make
15 dispute process accessible to start the dispute.

16 So I just want to clarify that that's what I
17 was saying in terms of how difficult it is to
18 dispute.

19 MS. MILLER: And I'm not disagreeing with you
20 that there may be instances, but employers, if
21 there's a challenge to the report must give under the
22 Fair Credit Reporting Act the individual a copy, and

1 most employers through the background screening
2 agency will push it out anyhow. The minute you get a
3 disclosure and authorization, they'll push out the
4 summary of your right under the Fair Credit Reporting
5 Act, which was actually drafted by the Federal Trade
6 Commission which is now under the purview of the
7 CFPB. So now it's the CFPB who issues that summary,
8 and that very clearly spells out what your rights
9 under the Fair Credit Reporting Act in terms of
10 disputing the report if there's any inaccuracy or
11 incomplete information in the report.

12 In addition, you have to -- the individual
13 has to be notified of which CRA and they have to
14 provided a toll-free number and the name of the CRA
15 so that then you can contact the CRA with the
16 toll-free number to dispute the report itself, and
17 then there are other steps that flow from that if the
18 information is, in fact, inaccurate or incomplete.

19 You know, anecdotally, I hear because I've
20 asked the companies that I represent in my practice,
21 you know, what are your error rates, and it's less
22 than one percent of the reports that they issue are

1 challenged and an even smaller percentage actually
2 require for there to be some type of change because
3 there was inaccurate or complete information.

4 MR. JONES: Databases.

5 MS. MILLER: Databases. Thank you.

6 So databases, the way I recommend is that
7 they be used as tips and leads. Yes, there are data
8 bases of criminal history information. There are
9 private databases. I would recommend that they be
10 used as tips and lead. If you want to use one of
11 those and you see something, you then use that as a
12 tip and lead to go to the source to verify that
13 information.

14 So there, yes, there are databases and they
15 are used in different ways. There is not one in
16 which to use them. So I just wanted to clarify that.
17 There is not a blanket, you do a background check
18 based on a database and that's all a we do.

19 Thank you.

20 MR. CAMPBELL: Can I just make a statement?
21 You're talking about the FCRA. It was discussed in
22 the Attorney General's report, and one of the things

1 I don't think is very robust about the FCRA is that
2 in Section 613, it gives the consumer reporting
3 agency the option of simply notifying a consumer that
4 a public records has been reported to the user in
5 lieu of having strict procedures to confirm the
6 completeness and accuracy of the record.

7 So that means if you do database check, you
8 can just send it and then do a notice to the
9 individual that you found something and we sent it to
10 the user. Then it's up to the individual to see what
11 that is and then challenge it if it's inaccurate.

12 MS. LOVE: They don't get a copy of whatever
13 it is that the CRA reported to the employer?

14 MR. CAMPBELL: I think they're supposed to
15 get a copy. I don't know if that's always happening.

16 MS. GINZBERG: Correct me if I'm wrong,
17 Montserrat. They get a copy. They've got two
18 choices. Either the individual has to be notified
19 that there is adverse information that may be used
20 against them and a copy has to be provided or a copy
21 doesn't have to be provided, but the background
22 checking company has to have used very strict

1 procedures to ensure that the information is up the
2 date.

3 MS. MILLER: Right.

4 MR. CAMPBELL: Strict procedures is usually
5 when they go to the courthouse or the primary source
6 of whether it's --

7 MS. MILLER: Not necessarily. It depends on
8 what that company determines to be strict procedures
9 for accuracy, but you're right. So Section 613 of
10 the Fair Credit Reporting Act says that if you're
11 going to report public record as a background
12 screening company, you either have to give
13 contemporaneous notice of the fact that you are
14 reporting public records, like criminal records, or
15 you maintain strict procedures, and I'm must looking
16 at it here. I'm so glad I brought my Fair Credit
17 Reporting Act.

18 You maintain -- yeah. If it's going to have
19 an adverse affect on a consumer's ability to obtain
20 employment, you maintain strict procedures designed
21 to ensure that whenever that information is reported.

22 So they have an option of which it is they're

1 going to do, send the notice or maintain strict
2 procedures.

3 MR. GOLDMAN: I'm sorry. You've managed to
4 confuse me, which is not very difficult, but let me
5 ask this: I am Lawrence Goldman. I apply for a job
6 as a night watchman. There happens to be a Lawrence
7 Goldman. I know this, who was convicted of
8 manslaughter, because his name was on the calendar
9 years ago when I went to court and all my friends
10 were walking away from me.

11 But do I know -- if I apply for this job, do
12 I know that I have been rejected? Do I know that
13 they have said Lawrence Goldman has a manslaughter
14 conviction, we're rejecting you?

15 MS. MILLER: Yes, if you're using a
16 background -- if the employer who it is that you're
17 applying for a job uses a background screening
18 company, then you have to be a given pre-adverse and
19 adverse action notice. If information in your report
20 that's been pulled, then you will be provided a copy
21 of your report which, presumably, will show that at
22 which point, you would then challenge it and say

1 that's not me, but you are given notice.

2 MR. GOLDMAN: So I have to be notified in any
3 case?

4 MS. MILLER: Yes.

5 MS. GINZBERG: I will say that from our
6 perspective, people are often not notified by
7 employers. So we see situations in which the
8 employer did a background check through a CRA. The
9 background check comes back, and they just tell the
10 person you're not getting the job. Sometimes they
11 say it's because of your criminal background, but
12 they don't give a copy and people come to us and they
13 say I've never even been arrested, but I don't know
14 what it is they're looking at.

15 So we regularly have to go to employers and
16 say give us a copy of what you have. If you did it
17 through a background checking company, private
18 background check company, you're obligated under FCRA
19 to show it. Under some State laws, you are as well
20 if you're turning someone down because of their
21 criminal record, but I will also say that employers
22 will also -- will often not admit that they're not

1 hiring the person because of their criminal
2 background, because, you know, they don't want to
3 with liability. They're worried about whether -- you
4 know, they say it's for some other reason.

5 So it's not as simple an answer to do I know
6 that this is why I was turned down, the answers that
7 you're supposed to know.

8 MR. CAMPBELL: But doesn't the FCRA require
9 the consumer reporting agency to provide the notice?

10 MS. LOVE: That's what I was going to say.
11 Now I'm confused. Whose is supposed to provide the
12 notice?

13 MS. MILLER: In the pre-adverse action, you
14 provide a copy of the FTC -- well, now CFTB Summary
15 of Rights. This was a recent change that happened.
16 A summary of your rights and a copy of the report is
17 supposed to go at the pre-adverse action notice if
18 any information is going to be used in whole or in
19 part that might adversely affect your employment.

20 That may be done through the employer
21 themselves and, typically, would be. Sometimes if an
22 employer is using a back ground screening company,

1 it's all back door.

2 MS. LOVE: But the law doesn't say who's
3 supposed to?

4 MS. MILLER: But the point is you are
5 supposed to receive a copy in the pre-adverse action
6 notice.

7 MS. LOVE: Who is supposed to give it to you?

8 MS. MILLER: The employer, and I'm just
9 saying that, simply, sometimes background screening
10 companies do that on behalf of employers. I'm sorry
11 for the confusion.

12 MS. LOVE: But it is the employer's
13 obligation to give the report?

14 MS. MILLER: Yes, and a copy of their rights.

15 MR. CAMPBELL: It does raise the issue that
16 if it is inaccurate, the impression has already been
17 made when an employer sees a record, and you may be
18 -- you might have sort of missed the boat on the hire
19 if you're in the midst of trying to prove that that's
20 an inaccurate record.

21 MS. GINZBERG: And I would add that not only
22 has the impression been made, it's not a quick

1 process to prove that a background check is wrong.
2 There are questions about what that means, what a
3 reasonable time period to dispute the accuracy of the
4 report, there are questions about what even means.

5 There are some cases which say seven days.
6 People can't adequately challenge a report in seven
7 days. So not only has the impression been made, but
8 really, practically speaking, it's very hard to
9 challenge a report in time, actually, to get that
10 job.

11 MS. MILLER: I would just caution everybody.
12 We're talking about low numbers. If what I'm hearing
13 is less than one percent of the reports are disputed
14 and then of that, less than one percent actually
15 require that a change be made to the report, I think
16 we're focusing a lot of time on the background
17 screening companies, not that anyone is surprised
18 that I'm saying this, but we're focusing a lot of
19 time on the companies that provide the information
20 when we should look, perhaps, at what causes the
21 criminal justice system to get to the point where
22 there are so many individuals with arrests and

1 conviction.

2 MS. LOVE: Well, yeah.

3 MS. MILLER: So I just want to caution us.
4 Background reports, whether they include criminal --
5 when they include criminal history information, and
6 there are many types of reports that can be done,
7 it's not an unregulated industry. They are not
8 wholly inaccurate. It's not as if no one knows what
9 is happening.

10 So I just want to caution us before we vilify
11 background screening companies to look at the fact
12 that we've got the Fair Credit Reporting Act, EEOC
13 laws, State laws. We have lots of laws covering
14 background checks.

15 MS. GINZBERG: They keep me very busy.

16 MS. MILLER: So maybe we should look at their
17 use in a different way, not so much the reporting of
18 the information.

19 MR. CAMPBELL: I don't think it's a matter of
20 vilifying in industry though. I think it's a
21 question of figuring out what's fair and what works,
22 and, I mean, the companies are doing what's permitted

1 under the law now. The question is is that the right
2 way the law should work. In fact, the Attorney
3 General's report did recommend Congress consider
4 revising the FCRA in a number of respects, one of
5 which would include requiring that they keep the
6 strict procedures to confirm the record's
7 completeness and not sort of rely exclusively --
8 allow the option to just rely exclusively on
9 reporting and giving the option to challenge the
10 record after it's already been reported.

11 So it seems to me that that can be part of
12 the public debate and the policy debate here, and
13 saying that doesn't necessarily mean we're vilifying
14 the background check

15 MR. JONES: Vicki.

16 MR. GOLDMAN: Well, I had one more.

17 I just want to ask a question that's on my
18 mind and you're probably the best person in the world
19 to answer this.

20 New York State law under certain
21 circumstances, the record is sealed. It's destroyed,
22 supposedly. The New York City Police Department is

1 to destroy it or the New York State License
2 information Service. A copy of that is sent to the
3 FBI, and supposedly -- I have been told for years,
4 and 50 percent of my colleagues and 90 percent of
5 clients don't believe it, but supposedly destroyed by
6 the FBI on notification from the State.

7 Is it?

8 MR. CAMPBELL: Actually, there's something in
9 Margi's book that talks about that.

10 MS. LOVE: Buy the book.

11 MR. CAMPBELL: The answer is, yes, the FBI
12 does destroy records when it's directed to do so by
13 the intervening agency. If a State agency that
14 provided them the record says that they should
15 destroy the record, then they will; however, there
16 are State laws that will say rather than destroy the
17 record, they limit its use for particular reasons.

18 So it might be available for certain kinds of
19 law enforcement or criminal justice uses, but not for
20 civil uses.

21 MR. GOLD: Well --

22 MR. JONES: That was your one.

1 MR. GOLDMAN: That's the answer.

2 MR. CAMPBELL: So it all depends on State
3 law.

4 MR. GOLDMAN: That's fine.

5 MS. LOVE: Hey, Larry, we've got a book
6 that's got it all in it.

7 MS. YOUNG: Ms. Miller, you've been focusing
8 very -- and maybe it's because I don't understand the
9 difference on what the consumer reporting agency --
10 and is that different than when you go on line and
11 they say look up anybody for 19.95 and you get
12 whatever? That is just what you're calling a
13 database versus going through the CSA; is that
14 correct?

15 MS. MILLER: Exactly. I would question that,
16 you know, I want to look up my daughter's boyfriend
17 before they go out on a date and I'm going to do that
18 for 9.99 on line. I would question whether that
19 provider of that information complies with the Fair
20 Credit Reporting Act and the requirements that go
21 into that.

22 So that's something that I raised as a

1 concern to the FTC, those types of providers of
2 criminal history information as they claim to do.

3 MS. YOUNG: Well, I guess my question is
4 because you represent the actual consumer reporting
5 agencies, and certain people will use them, but in
6 the day of the internet and the 19.99 search, do you
7 have any idea what percentage of employers use
8 something that might be regulated versus, you know,
9 Google?

10 MS. MILLER: You know, I don't, because I
11 don't know what employers are the ones who are going
12 on line and doing their own searches or have their
13 investigations team doing their own background
14 searches, and "consumer reporting agency" is a
15 defined term under the Fair Credit Reporting Act.

16 MS. YOUNG: So I guess my thought is, you
17 know, these days, everything is out there in some
18 form or another unregulated and everything, and I
19 appreciate concerns and I appreciate trying to seal
20 things, but I just can't be comfortable in mind that
21 anything is ever going to be sealed and then we
22 really have to address what do you do when it's out

1 there, because it's going to be found or not found or
2 whatever, but I guess that was one question.

3 And Ms. Ginzberg, I'm a criminal defense
4 attorney. So I'm used to not winning, but I've
5 redefining winning in many different ways. So in the
6 work you do when you find something, either you're
7 able to correct it or you're not, I mean, are there
8 positive outcomes? Has someone been able to get a
9 job?

10 I'm trying to get a sense of can you unring
11 the bell that people have been talking about?

12 MS. GINZBERG: I also feel in my like it's
13 often pushing the boulder up the mountain. There are
14 definitely positive outcomes. I'm not sure I could
15 continue doing this work if there weren't positive
16 outcomes.

17 There are absolutely times when we get people
18 back to work or we get a record cleaned up either
19 because it's a record that's cleanable or it wasn't
20 really the person. There are definitely times when I
21 file EEOC complaints, charges, based on criminal
22 records and cause findings from the EEOC.

1 So yes. It's not a bell that's been rung and
2 can't be unringed or we wouldn't keep doing this work,
3 because I do feel like we're making these baby steps
4 towards fixing things.

5 Seven years ago -- I've been at CLS, I think
6 I said for 14 years. Seven years ago, I don't think
7 we had seen a FCRA claim yet. I don't think we had
8 seen yet a background check that we said, Wait a
9 second, this is not correct, this is not the person;
10 and in those seven years, we have made steps. We've
11 been involved in class actions that have had
12 phenomenal settlements that have included systemic
13 changes to the organizations.

14 We have -- yes. As I said before, expunged
15 cases do slip through. They do show up in Google
16 somehow because there was a newspaper article, but we
17 get enough people's records expunged and cleaned up
18 and they're able to get jobs, that, yes, it is
19 winnable, I think.

20 MR. JONES: Elissa.

21 MS. HEINRICHS: My question for you,
22 Ms. Ginzberg. I'm from Pennsylvania. I practice in

1 Bucks County.

2 Have you had any of your clients have their
3 expungement order rejected by PSP under the new law?

4 MS. GINZBERG: Under the summary law?

5 MS. HEINRICHS: Yes, summary law based on if
6 you're cleaning up an arrest or a summary and -- it's
7 really the arrest, arrest-free for five years.
8 Right? And then -- because I had a case where there
9 were a number different cases, and there wasn't a --
10 initially, there was not a five-year period, but,
11 eventually, there was.

12 Have you seen PSP reject the order based on
13 their interpretation of that provision in the law?

14 MS. GINZBERG: The rejections that we have
15 seen have not come from the State Police. They've
16 come from the courts. The summary expungement law is
17 written very poorly, and I have met with
18 Representative Solibay, who is the one who introduced
19 it year sago, and pointed out to him how poorly the
20 law was written. He said, Oh, I'm going to change
21 that.

22 Because the way it's written, it says that

1 you can get an expungement of summary offense if
2 you've been arrest-free -- arrest- or
3 prosecution-free for five years from the date of the
4 offense. So the way that reads is the offense was 20
5 years ago and for five years, you were arrest- or
6 prosecution-free, but then 13 years ago, you got
7 arrested again, does that -- and courts have been
8 struggling with how poorly that is written, because
9 does it mean that you haven't been arrested in the
10 five years since your -- previous to your application
11 for a petition or does it really mean as it's
12 strictly written, five years forward from the date of
13 offense?

14 And, basically, there are courts that have
15 gone both ways that have basically said we're going
16 to interpret the expungement petition in a way that
17 helps this individual clean up the record.

18 MS. HEINRICHS: I had it Bucks, but you are
19 saying if you have one signed, PSP has -- they have
20 abided by it?

21 MS. GINZBERG: We have not had the PSP --
22 we've not seen problems with the PSP. The only

1 problem I saw with the PSP expunging a summary
2 conviction was a woman who called me to say
3 convictions aren't expungeable in Pennsylvania, and I
4 said, yes, they are. This is six months ago. Yes,
5 they are; expungement petitions are expungeable under
6 so and so statute. Oh, I didn't know that.

7 This was someone in the expungement unit at
8 the PSP who went and then spoke to a supervisor who
9 said, Oh, yes, that is expungeable, but we've not --
10 and we've had them refuse to expunge other things.

11 The expungement statute, as you know, in
12 Pennsylvania is written that other convictions are
13 expungeable when the person turns 70 or dies, but
14 that, of course, doesn't help our clients get jobs.

15 MR. JONES: We have to pause for a second
16 because we've got to change the tape, and I really
17 want a give to Penny and Chris and Jenny to ask one
18 question each, and I know we're up against the clock
19 and I know that you have to run.

20 MS. MILLER: I apologize. I have to be back
21 at four o'clock at my office. Sorry.

22 MR. JONES: So if we can get that tape

1 changed quickly.

2 MS. GINZBERG: Do you want me to just finish
3 the thought off the record?

4 MS. HEINRICHS: No. We want it on the
5 record. I can talk to you --

6 MR. JONES: Let's let Jenny jump in real
7 quick.

8 [Pause to change the videotape.]

9 MS. ROBERTS: Ms. Miller, you mentioned the
10 smaller screener as opposed to the bigger agencies.
11 What percentage of checks are done by those smaller
12 screeners versus the bigger agencies, and then a much
13 broader part of this, you've all been mentioning that
14 only the credit -- the CRAs are regulated by the
15 FCRA.

16 What about regulation of everything else and
17 is the only way to do that to limit access to the
18 court and police databases, and what do you think of
19 that?

20 MS. MILLER: To your first question, I would
21 have to get back to you on that, because I didn't
22 come prepared with any stats for NAPBS since I'm not

1 testifying on their behalf. If you'd like, I can
2 circle back with you on that question.

3 As far as bringing in others under the Fair
4 Credit Reporting Act, that might be something worth
5 considering. I know that the FTC through enforcement
6 actions tries to warn individuals. There have been
7 recent settlements and warning letters that have gone
8 out to, for instance, a recent one was mobile
9 applications and background and they were providing
10 -- mobile applications were providing background
11 checks.

12 So you would use a mobile app to do
13 background checks, and FTC came out with some warning
14 letter and said you quack like a duck, you walk like
15 a duck, you must be a duck; be careful, because if
16 fall -- you either fall within the Fair Credit
17 Reporting Act or you don't and you can't not fall
18 into in order to skirt the obligations under the law.

19 So that might be a worthwhile endeavor to
20 consider, what changes could be made to bring more
21 people under the Fair Credit Reporting Act.

22 MR. CAMPBELL: There's actually -- if I can

1 just contribute on that point, it sort of answers a
2 question that was raised here as well.

3 In the Attorney General's report, there was a
4 -- he did note that employers do turn to public
5 source and non-FCRA sources for criminal history
6 information, as you say, Google or other ways of
7 getting it, and because of the, you know, possibility
8 of inaccuracies, Congress might consider making --
9 requiring notice to the individual by the employer
10 prior to adverse action based on name-based criminal
11 history information obtained from public or non-FCRA
12 sources.

13 MR. JONES: Last question, Penny.

14 MS. STRONG: I do have two questions to
15 everybody, and this is maybe a more limited area, but
16 it is an area of quasi-criminal conduct, and this
17 concerns the protective orders for domestic violence
18 and stalking and other type cases that can be issued
19 against a partner or spouse or against a third party,
20 and there is uniform State laws that require
21 immediate reporting, and they can implicate uncharged
22 criminal conduct or charged criminal conduct, and I

1 think particularly, safety in the employment arena.

2 Is anyone looking at those? Are you familiar
3 with the protective order systems and are those
4 implicated in these type of checks?

5 I know that they also have an impact -- an
6 individual who has a permanent order of protection
7 under federal law cannot possess a firearm.

8 MS. GINZBERG: I'll pass it on to you because
9 I'm actually not familiar with the protective order
10 system.

11 MR. CAMPBELL: Well, I know that the FBI has
12 created a file called the protection order file that
13 is used as part of the firearms background check
14 system, because it does prohibit an individual from
15 possessing a firearm. That's part of what they call
16 the NCIC hot files, and I think they are generally
17 used for criminal justice purposes. I don't think
18 they're made available as part of a criminal history
19 check, background check.

20 I can check on that, but my first impression
21 is is it's not there for employment checks, not
22 usually recorded as part of an employment check.

1 MS. GINZBERG: We don't see them come up.

2 MS. MILLER: And I would say there are
3 searches of sex offender databases that a company
4 could do, but I would also have to check if the
5 protective orders would be -- they would be able to
6 report them.

7 MS. STRONG: Anecdotally, I do a lot of
8 employment work, and when I have a client who gets
9 one of those, very typically, the employer learns of
10 it -- if they can under the employment rules, they
11 typically conduct some adverse action, either
12 suspension or sometimes leading to termination, and
13 then they may do an investigation of underlying
14 conduct, which is why I think it's an important area
15 to look at.

16 My second question for Mr. Campbell, I was
17 just on line looking at a private service here, and
18 they advertise that they have a 500 million-item
19 database, and then I looked a little further --

20 MR. GOLDMAN: It's called Google.

21 MR. STRONG: -- and they have immediate
22 access within one minute background check. Can you

1 comment on that type of company and system versus
2 what -- I think you said your recommendation was for
3 the centralized database, and how reliable are these
4 private entities and are they actually maintaining
5 their own databases?

6 And then my last comment is if they are
7 maintaining those databases in light of the recent
8 information we received that the three large credit
9 reporting agencies have about a 50 percent error rate
10 for all of our credit reports, how do we further
11 regulate that type of, if you will, private database?

12 MS. FRAZER: Ladies and gents, we're going to
13 pause. I'm still going to allow you to answer the
14 question, but I'm going to get Montserrat out. It is
15 3:45 and I promised her I would get her out.

16 [Pause.]

17 MR. JONES: All right. We are over time, but
18 you should go ahead and finish your answer.

19 MR. CAMPBELL: Well, I think those kind of
20 internet sort of services that are out there, it's --
21 I can't say about the one that you identified, but it
22 strikes me that if they're not operating as a CRA,

1 then they probably ought to be covered under the Fair
2 Credit Reporting Act if they are providing
3 information that can be used in employment -- for
4 employment purposes.

5 I would be very concerned about those kinds
6 of services because they do provide only name-based
7 checks that can frequently pull up names of
8 individuals who have records that -- or have similar
9 dates of birth and can wrongly identify somebody with
10 a record. So I think they're very concerning and I
11 think that at least as far as that it might be used
12 with respect to employment screening, then it's a
13 real problem.

14 Again, that's one of the reasons why I think
15 in the Attorney General's report, we suggested that
16 Congress look at the question of whether the non-FCRA
17 information on criminal history should be subject to
18 some requirements for notice to the individual and
19 opportunity to contest it if it's inaccurate.

20 MR. JONES: Thank you. Thank you both very
21 much. We greatly appreciate it.

22 We are, just to give everybody a full break,

1 we're going to break now and reconvene at 4:10.

2 [Recess.]

3 PANEL 5

4 MR. JONES: So welcome.

5 MS. SMITH: Thank you.

6 MR. JONES: We're pleased to have you, and
7 this is the last panel of the last day of our
8 hearings in D.C., and we have clearly saved the best
9 for last. So we are very pleased to have you here
10 and interested in having you tell us a little about
11 yourself, your story, your journey, and any other
12 thoughts that you might have, anything that might be
13 beneficial to the work that we are doing.

14 As you see, if you've been here at all, the
15 way that we work is that after you've, you know, said
16 your piece, we have lots of questions for you, and
17 the person who's going to be doing the lead
18 questioning for this panel is Vicki Young.

19 Oh, Geneva is here. Now I understand why
20 you're sitting there.

21 MS. VANDERHORST: You're catching up. You're
22 catching up.

1 MR. JONES: So it's going to be Geneva, and
2 then we all have -- to the extent there's time, we
3 all have questions that we'd like to ask.

4 So thank you for coming. I'm going to be
5 quiet and turn the mike over to you. The floor is
6 yours.

7 MS. SMITH: All right. Well, first and
8 foremost, I want to thank you all for including me
9 with being a part of this panel. In particular, I
10 want to thank Angelyn Frazer for inviting me to be a
11 part of this process as well.

12 I feel as if I'm very fortunate. I recognize
13 the other panelists that were supposed to be in
14 attendance and the fact that we were to represent
15 those affected, those that have been through the
16 system, and in recognizing that and when you speak of
17 this issue of restoration of rights and status after
18 conviction, I'm glad that I am able to represent this
19 population, this set of people in this country, but I
20 will be forthcoming in the fact that I believe that I
21 had a tremendous amount of support coming out of
22 prison and also, which I will speak more on in just a

1 second, because my case was so visible and in the
2 public eye and in media, it did afford me certain
3 opportunities after coming out of prison.

4 So I'm very grateful, you know, that I have
5 two parents that supported me coming out and
6 everything, but I do recognize the fact that I may
7 not be your average person that has certain struggles
8 and challenges coming out, especially with me having
9 my son while I was incarcerated too, that my parents,
10 they were helping me raise as well.

11 But going into who I am, I'm Kemba Smith
12 Pradia, author, founder of the Kemba Smith
13 Foundation, consultant, and advocate. I'm also an
14 international public speaker, and I've chosen since
15 my release and even before my release while I was
16 incarcerated to go public about my story and what led
17 to me being incarcerated and being sentenced to a 24
18 and an half year prison sentence as a first-time
19 nonviolent drug offender in the federal system.

20 In coming out, it was important for me to not
21 shut the door on my experience and to be silent, even
22 though I was advised by my legal counsel at the time,

1 which it was the NAACP Legal Defense Fund. They
2 advised me to kind of, you know, not publicly speak
3 out about my past ordeal because I had received
4 executive clemency from the President and they knew
5 that the United States Government was not happy about
6 the fact that I had been released and given executive
7 clemency.

8 But because of the support that I received
9 while I was inside, because of the other Kemba Smiths
10 who I met while I was incarcerated who were
11 first-time non-violent drug offenders, because of the
12 impact of me talking about the choices that I made
13 that led to me being incarcerated and me receiving
14 several letters from individuals telling me how my
15 story impacted them even while I was incarcerated, it
16 empowered me and pretty much where I felt as if it
17 was just God ordained for me to publicly share my
18 experience and my story after coming out of prison.

19 So that's what led to me being this
20 international public speaker, because I do travel
21 around the country, and coming out of prison, my
22 first goal or objective was to help young people in

1 sharing openly and transparently about the poor
2 choices that I made so that young people can learn
3 from some of those mistakes, and then as I continued
4 to work with certain organizations, some individuals
5 who actually helped myself and my parents with me
6 released from prison, I was able to work with certain
7 organizations and kind of put on the advocacy hat as
8 well as wanting to share my story through teaching
9 other kids about making healthy choices.

10 Ultimately, and going backwards, as far as
11 these choices that I keep talking about, I was a
12 Hampton University College student and met a guy who
13 was Jamaican, eight years older than myself, which I
14 didn't know at the time. Ultimately, I got into a
15 relationship with him. I thought he was Mr. Knight
16 in shining armor initially, and I suffered what I
17 know that a lot young girls suffer these days of
18 having low self-esteem, didn't think I was pretty
19 enough, and this guy who was Mr. Charismatic kind of
20 swept me off my feet.

21 I would see him come on campus with other
22 girls who are on the dean's list and sororities, and

1 I just wonder who he was and what he was like,
2 because it seemed like, you know, not only girls
3 wanted to befriend him, but guys as well, and we got
4 into this relationship that lasted for three and a
5 half years.

6 Eventually, the relationship turned abusive,
7 and I had it in my mind that when it happened the
8 first time that I was going to leave, but ultimately,
9 I listened to his I'm sorrys that it wouldn't happen
10 again, and I ended up staying in that situation, and
11 in talking to certain audiences, it also was a point
12 where -- before the abuse where I knew what he was
13 involved in, but I believe I probably had the
14 mentality of some of the other women on campus who
15 were dating him, was that whatever he does is his
16 business and I'm in college.

17 And, ultimately, we, you know, began to be
18 intimate and my emotions really, you know, got
19 involved and I know, you know, no one woman on this
20 Earth has ever thought this way, but ultimately, I
21 had in my mind, well, maybe if I stay with him, maybe
22 I can help influence him to live a legal lifestyle,

1 forgetting the fact that my parents didn't send me to
2 Hampton University to convert some drug dealer into
3 being a law abiding citizen.

4 So, ultimately, I stayed with him after the
5 first time he put his hands on me, and things pretty
6 much kind of snowballed. There was a murder involved
7 with his case and, ultimately, when he had killed his
8 best friend because he thought his best friend was
9 cooperating with authorities, that love that I
10 initially had for him, even before then because it
11 started when the abuse began, turned more into fear
12 and it became a point of where I felt as if I needed
13 to protect myself and protect my family.

14 He had been to my parents' home. I had also
15 been somewhat open about my relationship with him to
16 my parents, but I was not truthful, because he had
17 been to my home twice. I let my parents meet him,
18 but there was a particular point in time where Peter
19 -- that was his name -- thought that my parents were
20 a part of the Federal Government wanting to come
21 after him. So there was this real sense of fear and
22 real sense of me where I needed to protect not only

1 myself, but my parents as well.

2 So, ultimately, you know moving along, I
3 ended up going with him to different cities and
4 eventually his brother had been indicted on federal
5 charges and other individuals involved in the
6 conspiracy, and during the time I was with him in
7 Texas, in California, in Seattle, Washington, and
8 eventually it came a point where I realized that I
9 was pregnant, and I made a determination in my mind
10 that I wanted to live a normal lifestyle, that this
11 isn't how my parents raised me. I was over 2,000
12 miles away from home, and I, you know, expressed to
13 him wanting to live a normal lifestyle and how I
14 needed to go back home.

15 Ultimately, he got me a ticket to go back to
16 Virginia, and my biggest fear in going back to
17 Virginia was the fact that I was going to have to
18 face my father, but in going back, my loving parents,
19 that wasn't my biggest issue. They were happy to see
20 me and very supportive, but my biggest issue at the
21 time was the fact that I had been indicted by the
22 Federal Government.

1 So I was seven months pregnant when I turned
2 myself in to the authorities. My parents thought it
3 was about who you knew and that it would work to my
4 advantage because I had attorney at the time who was
5 friends with the prosecutor. The prosecutor had
6 basically demonstrated prosecutorial misconduct
7 because he made certain promises where if I turned
8 myself in, that I would get a bond.

9 When I did turn myself in, the judge was
10 getting to release me and the prosecutor stood up and
11 started reading a statute from out of a law book and,
12 ultimately, I was remanded and stayed within being
13 confined, and I ended up giving birth to my son while
14 I was incarcerated and also, too, he said that if I
15 pled guilty, that I would receive 24 months in
16 prison. This is the prosecutor.

17 And I don't know -- yeah. I did say that my
18 attorney was friends with the prosecutor. Correct?

19 So, basically, I ended up giving birth to my
20 son, and my son is in the room and I just want to
21 thank him for accommodating me today. He is 18 years
22 old and a student at Washington & Lee University,

1 doing very well. I'm very proud of him.

2 But I gave birth to him and that was probably
3 one of the most humiliating experiences of my life.
4 It was a joyful experience, obviously, but just
5 giving birth to him and having to be handcuffed and
6 shackled to the bed, because five minutes after I
7 gave birth to him, the U.S. Marshals came into my
8 hospital room and said that my legs had to be
9 handcuffed and shackled to the bed, that I couldn't
10 have any visitors, because both of my parents were
11 there, and that two correctional officers had to
12 guard me at all times.

13 And, so fortunately, my dad had gone to the
14 hospital ahead of time just to let the staff know
15 that I would be coming, because he didn't want them
16 to treat me any ole kind of way because it was this,
17 you know, young black girl in braids and thinking
18 that I didn't have any family members that cared
19 about me.

20 So because he had done that, the woman who
21 was head of the hospital came into my room with the
22 U.S. Marshals and said this is my hospital, I'm going

1 to run it the way that I want to, and she allowed my
2 parents to stay next door. Had that not happened, my
3 son would have automatically gone into the Social
4 Services systems after my two-day stay.

5 So I ended up going back to county jail and,
6 ultimately, I wasn't able to hold, touch, smell, feel
7 my son again until I was transferred to federal
8 prison, because in county jail, you're only given the
9 phone and the window.

10 So thank God my parents had supportive family
11 and had, you know, proper savings, because after the
12 Federal Government transferred me out to California
13 in Dublin, California, FCI, knowing that my family
14 lived in Virginia, my parents were able to take a
15 two-week trip out to California to visit me for a
16 couple of weeks because they wanted me to have
17 sufficient enough time with my son, and so being in
18 California, I realized that I didn't want to go
19 through the humiliating experience of being
20 transferred because you're handcuffed, shackled,
21 orange jump suit, marshals with long shotguns and
22 vest on, and just the thought of if anything happened

1 on the flight, you know, I wouldn't be able to do
2 anything. Even going to the bathroom was like me
3 playing Houdini, trying to use the bathroom.

4 Another humiliating experience was the fact
5 that there were about maybe eight of us women and the
6 rest of the people on plane were men and they sat us
7 in the front. So we had to go to the bathroom, we
8 had to walk past all the men, but eventually, I was
9 transferred to a facility in Connecticut, which I was
10 told was the closest facility, which was still an
11 eight-hour drive for my parents.

12 Because of the time that I had received,
13 because I was sentenced to 24 and a half years in
14 federal prison -- and during my sentencing hearing,
15 just going back for a second, it was a two-day
16 hearing. There was expert testimony about domestic
17 violence and abuse and there were witnesses that
18 wrote letter after the proceeding because my
19 86-year-old judge was sleeping during some of the
20 testimony.

21 But being transferred to the Connecticut
22 facility, that's when my story became public. There

1 was a magazine called "Emerge Magazine" that did a
2 21-page article about my story. Reginald Stewart
3 wrote it. George Curry was the editor at the time.
4 I'm so grateful for them highlighting my story.

5 The black community became outraged and the
6 NAACP ended up taking -- NAACP Legal Defense Fund
7 ended up taking on my case pro bono. Elaine Jones,
8 she was director at the time, and she told me that
9 she was going to make sure my case saw justice.

10 We filed motion after motion. The attorney
11 that I had that was friends with the prosecutor
12 stated that he would testify in a courtroom to his
13 ineffective assistance of counsel due to his
14 friendship with the prosecutor, but the Eastern
15 District of Virginia Courts would not give us the
16 opportunity to do that and, ultimately, my only
17 source of relief was to receive executive clemency in
18 which in the response to a 2255 -- my judge,
19 86-year-old judge, died while I was incarcerated. So
20 they reassigned my case to another judge, Dumar, and,
21 ultimately, he said that I needed to approach the
22 Executive Office about this and that Congress needed

1 to do something about the laws.

2 So, ultimately, moving right along, I was
3 given, granted executive clemency in December 2000,
4 very grateful, but it was a struggle for me in the
5 fact that I knew that my case, my story, my situation
6 was identical to so many other women's stories and
7 men, first-time nonviolent drug offenders. So there
8 was a sense of survivor's guilt coming out, and I did
9 seek counseling, even, you know, getting reintegrated
10 with family. It was important later on for my son
11 and I to go to counseling as well.

12 But, ultimately, coming out, I was scared to
13 kind of like just even -- just to hang out or drive,
14 things even though I was only incarcerated for six
15 and a half years, there were things that had changed
16 and I did have an adjustment. I was afforded an
17 opportunity to work at a law firm where I worked
18 there for over eight years and being exposed in that
19 situation kind of gave me a sense of confidence and
20 helped me reintegrate successfully along with my
21 parents' support.

22 I went back to college. I completed my

1 undergraduate degree in social work. I also
2 completed a year of law school at Howard University.

3 But as far as collateral consequences, after
4 graduating from college, I was interested in moving
5 on my own, and this is one thing that I know
6 generally isn't talked about as much, but I wanted to
7 get an apartment and, ultimately, you know, it wasn't
8 a situation where I was trying to get public housing.
9 Even with private housing and having to fill out a
10 rental application, once you let a person know that
11 you have a felony convictions, the rental people,
12 managers, basically, would tell me that ti's 99
13 percent that you will not be -- your application
14 would not be accepted to live here.

15 So, you know, that can be problematic as
16 well, but also, too, one of -- another one of the
17 humiliating experiences after being released was the
18 fact that I was not registered to vote and having a
19 felony conviction in the State of Virginia, there is
20 a waiting period and you have to apply to vote. It's
21 not something that's automatic restoration, and I can
22 remember my son being in elementary school and one of

1 his friends' dad who I was friends with as well, Tim
2 Kaine, he was running for Lieutenant Governor, and I
3 can remember my son asking me, Well, Mom, who are you
4 going to vote for tomorrow, and so I had to explain
5 to him the fact that I couldn't vote, and it was very
6 frustrating and humiliating, but I had been working
7 with other organizations, such as the National
8 Coalition of Black Civic Participation to help with
9 the get-out-to-vote effort, but when it came to that
10 actual election day, I took my son to the various
11 polling places so he could see the differences, but,
12 ultimately, I felt left out. I didn't feel equal to
13 everyone else. I didn't understand me being a law
14 abiding citizen, going by the rules, and paying
15 taxes, being self-employed and working a job,
16 finishing college, buying a home, and still not being
17 afforded the opportunity to participate and to
18 register.

19 So that was something that really disturbed
20 me. So I was fortunate, met a guy to who came across
21 my path. We ended up getting married, healthy
22 relationship and all, moved to Indianapolis, Indiana,

1 and when I moved out to Indiana, I was kind of
2 curious as to what my status would be being that I
3 was living in a different State, and I remember
4 speaking, actually, I believe it was Ms. Love and she
5 just told me -- and all this is just coming to
6 recollection here too.

7 She was just like, Well, Kemba, I believe you
8 can just, you know, go into DMV and just register,
9 and that's exactly what I did. Eventually, my voter
10 registration card came in the mail and I was able to
11 participate in the local elections that was going on
12 at the time, but in July of last year, my family
13 moved back from Indiana, moved from Indiana back to
14 Virginia, and so I knew that I would be facing this
15 demon again, and even prior to moving back, as far as
16 the consulting work that I've been doing, I've been
17 working with the NAACP and Ben Jealous. I believe he
18 should have been here earlier today speaking on a
19 panel, but he actually was a Rhodes Scholar while I
20 was incarcerated, and he was actually one of the
21 first people that brought my case to President
22 Clinton's attention while he was in Presidency about

1 what he was going to do about my particular case, but
2 with him being at this level within the NAACP, he
3 asked me if I would be a participant in going to
4 Switzerland to speak at the United Nations about the
5 voter suppression laws in the United States.

6 So I had the opportunity to do that,
7 actually, twice last year, in March and September,
8 and, you know, it was amazing to be in that type of
9 setting and to be heard and for other countries to be
10 in disbelief that this was actually going in the
11 United States of America.

12 But coming home, I still wasn't sure what my
13 situation was going to be, and so, ultimately, I did
14 apply to get my rights restored, which was like
15 applying to get to into a top elite prestigious
16 university, which again, I believe that the right to
17 vote is a basic fundamental human right, but,
18 basically, I had to fill out an application. I had
19 to get three reference letters. I had to get a
20 driving record, which I could just go on for days
21 about all of what I had to submit and what it cost
22 for me to get it done, but I did get it done and,

1 ultimately, on October 5th, Governor McDonnell
2 granted my restoration application.

3 Actually, the NAACP had a press conference in
4 Richmond, Virginia that same day. So I was very
5 moved at the fact that my rights had been restored,
6 but, ultimately, I knew that I still represented
7 close to over five million people across the country
8 who weren't afforded the opportunity to get their
9 rights restored. So that's still something that's
10 very passionate and dear to me.

11 But I guess instead of me going on and on, I
12 will open up for you guys to make comments. I have
13 done several things too as far as reentry, and
14 actually, a couple of weeks ago, I was able to be a
15 speaker at CSOSA's reentry symposium for women, and
16 one of the things that I thought was shocking was
17 just that actually there was a government agency that
18 was funding a conference where a group of women who
19 were formally incarcerated could come together in a
20 place and basically gain information. Most of their
21 topics were geared towards relationships, and I
22 thought that was important because most of the

1 problem with some of the women getting in the
2 situations that they get in is because of toxic
3 relationships, but I believe that those types of
4 things should be afforded to individuals, and I say
5 that because as a federal formerly incarcerated
6 individual, one of the requirements with being on
7 supervised release, because even though I received
8 executive clemency, I was on supervised release for
9 close to five years, and you cannot be contact with
10 anyone who has a criminal record or who's been
11 through the system.

12 So you don't have those opportunities to kind
13 of connect and vent and problem solve about
14 individual struggles and challenges that you may
15 have, but at that particular conference, I saw women
16 uplifting each other and moving forward their journey
17 and wanting to better themselves and better their
18 lives.

19 So with that being said, I want to thank you
20 again for your time. I know I was kind of all over
21 the place. I probably left something out, but I'm
22 sure Ms. Geneva is going to pull it out of me.

1 So thank you so very much.

2 MR. JONES: Thank you very much.

3 Geneva.

4 MS. VANDERHORST: Sure. Actually, you
5 covered pretty much everything that I wanted to hit,
6 but there is some information I wanted you to talk a
7 little bit more about, which is your foundation, what
8 you're doing with the foundation aside from the NAACP
9 Legal Defense Fund.

10 MS. SMITH: Okay. Well, with the foundation,
11 I think, like with most nonprofits, there's always a
12 struggle for funding. If anybody knows of any ideas,
13 please see me afterwards, but, ultimately, I've been
14 working with public education with young people and,
15 like I mentioned before, as far as sharing my story;
16 but I collaborated with this organization called the
17 National Alliance of Faith and Justice and,
18 ultimately, it's a national girls initiative that is
19 thematic, has a monthly theme centralized around my
20 story to talk about various issues regarding
21 self-esteem, making healthy choices, being socially
22 active and socially responsible. There is a black

1 history component.

2 So with the foundation right now, that's one
3 of the main things that we're focused on and also,
4 too, there is a curriculum. The program is called
5 "What's love got to do with it?", and there's a
6 curriculum that goes along with that that I've been
7 helping collaborate with the organization that's
8 listed under the foundation.

9 MS. VANDERHORST: I want to tell you we
10 appreciate you coming and telling the details of your
11 story, because often times, people talk about the
12 arrest and then they get into the restoration issues,
13 and we really need a face on what happens in between
14 and how it impacts other people.

15 One of things I wanted to ask you about was
16 whether or not there were any services or were you
17 introduced to any groups while you were incarcerated
18 to try and prepare you for what it would be like when
19 you got released?

20 MS. SMITH: Yes. The programs that were
21 offered were limited for the simple fact that, you
22 know, the facility where I was, I believe there were

1 over 1400 women. So you really had to kind of pursue
2 certain things. They had a drug education program
3 that, ultimately, if you completed that program, you
4 received a certain amount of time off, and even
5 though I had a 24 and a half year sentence, I really
6 didn't care. I was going to take any and all of what
7 I could take so that if anything was reduced, that
8 that one year would help me some, but I made sure
9 that I was involved with a lot of programming.

10 I also taught a black history class while I
11 was incarcerated, and I believe that's what kind of
12 helped me as far as what it is that I'm doing now,
13 but, also, too, you know, my crime was not because I
14 was criminally minded. My crime was because I didn't
15 pick the healthiest relationship and I allowed it to
16 go too far.

17 I will say that I think that relationship
18 component is something that should be more discussed
19 while an individual is incarcerated, because I think
20 some of the decisions -- and when I went through that
21 drug program and you hear people giving their stories
22 and their testimony, you find that it's those

1 unhealthy relationships that lead people down the
2 crazy path. So even with me coming out, you know,
3 that's something that I went to counseling for. That
4 was something, obviously, I was not in anything --
5 because if a man ever put their hands on my while I
6 was out or in the future, it's a wrap. Right?
7 That's not ever happening again.

8 MS. VANDERHORST: But the counseling you had
9 was after you were released or while you were --

10 MS. SMITH: The counseling that I had was
11 after I was released. There was nothing inside that
12 dealt with the relationship aspect other than you
13 doing a self-reflection and, you know, telling your
14 story, your experience, and kind of analyzing it
15 yourself.

16 MS. VANDERHORST: In group settings?

17 MS. SMITH: Right.

18 MS. VANDERHORST: Okay. So given that, one
19 of the things I wanted to just tell you, one of the
20 things that we've looked and going in different
21 jurisdictions is best practices on what particular
22 facilities, Bureau of Prisons, even local facilities

1 would be able to do. What would you suggest would be
2 a way the facilities can prepare folks before they
3 are released so that they aren't dealing with all the
4 surprises of how to find housing, how to find
5 employment, how to get their voting rights restored?

6 MS. SMITH: Well, I know where I was, in
7 Danbury, Connecticut, and they've probably done away
8 with it, they actually had a job fair that I was
9 working on in the Prerelease Department and, granted,
10 I mean, this was in Danbury, Connecticut. They did
11 have some, you know, New York employers that came in,
12 Connecticut employers, but I think that -- where they
13 conducted interviews and everything. The only people
14 that could attend were the women that were on
15 prerelease status that had two years or less, but I
16 do think that programming helped prepare women when
17 they're released.

18 I don't know if it's still going on, but
19 where I was, they also had a vocation training
20 program, computer program, that helped the women gain
21 skills so they could, you know, get some type of
22 employment. Really, you know, when you talk about

1 that aspect, and I think you all have probably talked
2 about it through these past couple of days is, you
3 know, you can give people the skills, but if once you
4 fill out that application, they're not willing to
5 look at you, what good are those skills?

6 And that's one of the things that you find in
7 conversation with reentry folks that is most
8 problematic and where you find a lot of formerly
9 incarcerated people going into entrepreneurship and
10 developing businesses on their own; and, you know, to
11 be quite frank, I'm grateful at the fact that, you
12 know, I have this public speaking platform because
13 that's my primary source of income, but otherwise,
14 you know, unless you know someone, it's very
15 difficult for a person that has a record to get that
16 job.

17 MS. VANDERHORST: So in some of the places
18 that you've gone to speak, have there been employers
19 there? Have you talked to anyone who had any
20 suggestions or said the reasons why they are
21 reluctant to hire folks with prior records,
22 particularly federal folks?

1 MS. SMITH: I want to say Jim Webb was
2 supposed to be putting together a commission or
3 committee of folks that were supposed to deal with
4 that particular issue, but I have not had a
5 conversation with an employer asking them, you know,
6 why, but I do know that's something else that the
7 NAACP is supposed to be looking at in the future with
8 trying to eliminate that question from applications.

9 MS. VANDERHORST: So you've been back in
10 Virginia six months?

11 MS. SMITH: Yes.

12 MS. VANDERHORST: How does it feel to be
13 back?

14 MS. SMITH: It feels great because I'm closer
15 to family, and I don't want to be remiss. I did
16 mention my son being here and I'm grateful and he's
17 in college in Virginia. So, you know, it's kind of
18 all working out, but my parents, they are the true
19 heroes of my whole experience, and had it not been
20 for them, reentry may not have been successful for
21 Kemba, and I think that there are family members
22 that, you know, have relatives that are in certain

1 situations that are similar to mine or could be quite
2 different that are kind of unjust where family
3 members are scared to stand up and speak out and try
4 to get help for their family because they're worried
5 about what the repercussions may be, you know, for
6 them, but I'm grateful at the fact that my parents
7 were strong enough.

8 My dad did experience repercussions in the
9 fact that the person that he was working for, the
10 organization that he was working for, the CEO
11 basically told him that she wanted him to stop
12 speaking out publicly about my situation because it
13 was presenting a poor image for the company, and if
14 he didn't, that, you know, he would have to go, and
15 he was just like, Well, I guess I'm going because I'm
16 going to do whatever I need to do to bring my child
17 home, but there's not a lot of family members that
18 could do that.

19 MS. VANDERHORST: We actually have been in
20 some jurisdictions, I think in particular, when we
21 were in Florida where we had folks who were also in
22 federal institutions and come in -- and being home

1 with federal convictions, and they told us about the
2 impact that their convictions were having on their
3 family members.

4 For instance, I remember some of the women
5 told us that they had children who were in elementary
6 school and because of some of the local statutes,
7 that they were prevented from being within a thousand
8 feet of, you know, a public school even though that
9 statute did not exist before their kid or before --
10 at the time that they got their record.

11 So other than your parents, have you had any
12 experience dealing with any other impact from other
13 family members or with your son either in
14 Indianapolis or even in the short time you've been
15 back in Virginia?

16 MS. SMITH: Let me scan through my mind.

17 I can remember just being in federal prison
18 and when wardens would change, there would be a new
19 set of rules, and so my son would come visit me and
20 he was used to, you know, being in my lap, hugging me
21 an everything. I can remember one time, there was a
22 warden that came and she wanted to try to eliminate

1 physical contact like that, only when you're saying
2 hello and goodbye.

3 Also, too, you know, as a mother, you're the
4 primary caretaker. Your child is used to you being
5 the primary caretaker. There was a warden that put a
6 yellow line around the vending machines and basically
7 said that we weren't allowed to use the vending
8 machines in the visitation room. So we would have to
9 ask, you know, other family members to get something
10 for the kid if we wanted to get our own child
11 something from the vending machine.

12 Also, too, as far as after conviction, I can
13 remember with my probation officer, I was told that,
14 you know, he was one of the worst probation officers
15 in the city that I was in and in the federal system
16 and, ultimately, you know, there had to be home
17 visits, office visits, and I was fine with all of
18 that. I mean, I was going to do whatever I needed to
19 do because I was grateful that President Clinton had
20 signed that document.

21 Ultimately, when I had purchased a home, my
22 son was not used to a man that he did not know, and

1 I'm not trying to be prejudicial or anything like
2 that, much less, you know, a white man in a suit
3 coming into our home, and so I basically asked him if
4 he could wait to do his home visits after my son had
5 gotten off to school because it was kind of -- he
6 would come in the morning when we were getting
7 ourselves ready to go, and, ultimately, you know, he
8 didn't adhere to my request, and I think something
9 that is insensitive and those things need to be, you
10 know, considered.

11 MS. VANDERHORST: Yeah. I've had some of my
12 D.C. clients who were called from work and told to
13 come home because the probation officer was there
14 ready to do a home visit and they didn't have notice
15 ahead of time. So that's actually --

16 MS. LOVE: Geneva, could you speak up a
17 little bit? We can't hear you.

18 MS. ROBERTS: That doesn't project.

19 MS. LOVE: You have to speak loudly for us,
20 I'm afraid.

21 MS. VANDERHORST: I do want to ask you a
22 little bit about the clemency process and then I'm

1 sure down the line, everyone is going to have other
2 questions. How long did it take you from the time
3 that the application -- you started the application
4 process until the time you actually were released,
5 not just with prison, from signing the paperwork?

6 MS. SMITH: At the time, it didn't seem
7 fairly quickly, but I do know that my paperwork was
8 submitted in July. It was after another federal
9 woman who was incarcerated, Amy Poufall, and
10 President Clinton had -- he had released some people
11 that July and, actually Congressman Bobby Scott had
12 kind of been pushing my attorneys to get
13 documentation prepared so that I could have a part of
14 that group; but, ultimately, even before that, there
15 was a situation where I was called into a case
16 manager's office and I didn't know why I was being
17 called in.

18 It was at an awkward time of the day. I
19 believe it was in the evening, and pretty much, the
20 case managers really weren't working during that time
21 of the evening, but basically, the case manager said
22 that he had received a call and that someone wanted

1 -- someone important wanted me to go ahead and fill
2 out my commutation application, and they actually
3 gave me the application for me to fill out, and I can
4 remember calling LDF and asking them if I should fill
5 out this paperwork myself, you know, and, ultimately,
6 they told me that I needed to wait, that I need to
7 exhaust all of my remedies, and I waited.

8 But I think that was only maybe the earlier
9 part of the year before that July, and so it was from
10 July when my paperwork was submitted to December.

11 MS. VANDERHORST: So you were in Connecticut?

12 MS. SMITH: I was in Connecticut at the time.

13 MS. VANDERHORST: And the person who gave the
14 paperwork was from the Connecticut facility?

15 MS. SMITH: Yeah.

16 MS. VANDERHORST: Okay.

17 MS. SMITH: And, also, too, you know, I'm
18 just brainstorming different things too. The U.S.
19 Census and being counted in the facility where I was,
20 I didn't understand that whole process. I know they
21 said that we were going to be filling out the census
22 forms, but I remember they locked everyone down in

1 their cell and the people started handing in the
2 forms, and in my mind, I was just like I'm not
3 filling this out, why do I need to fill this out; but
4 it was required, you know, for us to do and it wasn't
5 until hindsight that realized the repercussions for
6 that and how funding would be centralized there
7 versus where you're going -- to the cities of where
8 you're going back to, but yeah.

9 I kind of got off track.

10 MS. VANDERHORST: So did you ever find out
11 why the facility gave you the clemency or started you
12 on the clemency process?

13 MS. SMITH: I did not. I didn't receive any
14 additional information about it.

15 MS. VANDERHORST: Did any of the attorneys or
16 any of the organizations you worked with before, did
17 they make any suggestions?

18 [Ms. Smith gestures.]

19 MS. VANDERHORST: Okay.

20 MS. SMITH: Other than the fact that they
21 knew that they wanted to exhaust all the remedies. I
22 think we hadn't gotten a response from the Supreme

1 Court. After that, they wanted to -- obviously, they
2 wanted to properly do their big packet and all the
3 necessary stuff versus me just writing stuff out on a
4 piece of paper.

5 MS. VANDERHORST: In Virginia, how long did
6 it take you from the time you started that paperwork
7 process to actually being able to register to vote?
8 How long did that take?

9 MS. SMITH: I submitted my paperwork in
10 August and -- I submitted my paperwork in August and
11 found out in October, which was fairly quickly.
12 Governor McDonnell, they say and I've seen, where
13 he's, you know, been better than past Governors as
14 far as trying to expedite the process and get as many
15 applications seen as possible, but issue with me
16 where people may wonder, Well, you were released in
17 2000, why is it that you were just putting in your
18 application in 2012, ultimately, there is a waiting
19 period, and I mentioned it briefly, but you couldn't
20 apply to get your rights restored in Virginia until a
21 three- or five-year waiting period and that's after
22 you get off of supervised release.

1 I was released from supervised release in
2 2005, but because my case was a drug case, even
3 though it was nonviolent, in the State of Virginia,
4 if you have a drug case, it automatically falls in
5 the violent category and you automatically get kicked
6 to that five-year waiting period. So I wasn't
7 eligible to apply to get my rights restored until the
8 year 2010, and at that time, I was living in Indiana.

9 So it wasn't until I moved back where I had
10 to go through the whole application process.

11 MS. VANDERHORST: Okay. That's what I wanted
12 to get out.

13 MS. SMITH: Okay.

14 MS. VANDERHORST: So were you able to vote in
15 November?

16 MS. SMITH: Yes, of course. I was there. My
17 vote counted.

18 MS. VANDERHORST: All right. I'm done.

19 MR. JONES: I feel like I'm watching a
20 segment of NPR Live over here.

21 MS. SMITH: I was thinking Oprah.

22 MR. JONES: Margi.

1 MS. LOVE: Well, it's a very compelling
2 story, Kemba. Every time I hear it, which I have
3 several times, I'm more impressed.

4 I appreciate your acknowledgment and would
5 underscore to this group, in my own experience, that
6 your story is an unusual one, but it's a wonderful
7 one because it gives us, I think, a vision of what --
8 the way other people ought to be treated.

9 So, first of all, you said one thing that
10 made me kind of interested. You said that someone
11 had let you know that the government wasn't terribly
12 happy about the commutation. Could you just say a
13 little more about that?

14 MS. SMITH: Basically, it was my attorneys
15 that were -- they were concerned. They're more on
16 the conservative end. Here it is that President
17 Clinton granted me executive clemency, and they felt
18 as if, you know, instead of me being public out in
19 the forefront, you know, I guess they were concerned
20 about me speaking about the injustice with situation
21 everything, that I should just kind of go back and
22 live my life and move forward and not speak on it at

1 all.

2 MS. LOVE: I mean, I think the Justice
3 Department did support clemency in your case. So I
4 don't think that you really needed to worry too much
5 about that.

6 MS. SMITH: Yes. You would know.

7 MS. LOVE: Yeah, I do know.

8 MS. SMITH: I think they were more so
9 concerned about Virginia and because of who I had
10 been assigned for a probation officer, that they
11 might find a way to -- yeah.

12 MS. LOVE: That's always possible.

13 Let me ask you about -- the main thing that
14 we're dealing with here in this group is restoration
15 of rights and status, and for federal offenders,
16 we've heard a lot of this three days about the sorry
17 state of the federal clemency system, and since
18 that's the only game in town for a federal offender,
19 that's what we have to look at.

20 Sure. You got your voting rights back from
21 the State and Governor McDonnell has been quite good
22 about that, but if you really want your rights

1 restored in the sort of larger sense, you have to
2 apply for a pardon from the President.

3 So we've heard that this President has not
4 been terribly -- have you thought about applying for
5 a pardon?

6 MS. SMITH: I have, and I know -- I don't
7 know what the status is of Serena Nunn, but she was
8 also another individual that received executive
9 clemency and went to law school. She did complete
10 law school and she was pushing to receive a pardon so
11 that she could practice, but I did find out that she
12 was allowed to take the bar, which I think is what
13 she was concerned about.

14 MS. LOVE: She's a public defender now, I
15 believe.

16 MS. SMITH: Okay. Okay. Great.

17 MS. LOVE: Her application is pending.

18 MS. SMITH: Okay. I have considered it. You
19 have -- I've been in conversation with you, and when
20 I think about it, I think of you. So it's something
21 that I probably need to move forward.

22 My concern with, you know, applying for it is

1 the fact that I am so public and I do talk about the
2 poor choices that I made, and even though it's
3 beneficial, you know, to others and you would think
4 the government would like that, but most of the
5 people that I think that apply for the pardons, they
6 kind of go on live with their life. They're not
7 publicly speaking about those poor choices, but the
8 best thing for me to do is just to try and see what
9 would happen.

10 MS. LOVE: I certainly don't think it ought
11 to qualify you just because you've been pretty much
12 poster person for turning your life around.

13 Well, I hope you will apply, and so I tell
14 you what. Since I know so much about your story
15 anyway, I'll turn it over to my colleagues here and
16 let them have at you.

17 MS. SMITH: Thank you, Ms. Love.

18 MR. JONES: Chris.

19 MR. WELLBORN: Just briefly, if you were to,
20 let's say, have a face-to-face, no one else in the
21 room, with either or both the current Attorney
22 General Eric Holder and/or the President and the

1 discussed the issues of, Gee, is it worth actually
2 looking at some of these pardon applications and
3 maybe doing something about them, what would you say
4 to them?

5 MS. VANDERHORST: Besides sign mine first.

6 MS. SMITH: What did you say?

7 MS. VANDERHORST: Besides sign mine first.

8 MS. SMITH: Right.

9 I would basically say how, you know, we want
10 to feel whole, that this country, that we should all
11 believe in redemption, and once a person has served
12 their time, proved themselves to society above and
13 beyond, that these situations should be looked at,
14 that to just totally ignore it when people want to be
15 made whole as much as mentally -- I try not to let
16 the psychological bondage affect me as far as having
17 a felony conviction and me having to jump through
18 hoops and hurdles to vote and just being a fully
19 restored individual, it does still internally have an
20 affect on you.

21 So just wanting to be made whole and be able
22 to move forward and have a clean slate, I think that

1 people should be afforded that opportunity.

2 MR. WELLBORN: As a follow-up, do you think
3 that there should at least be some sincere effort on
4 the part of whoever is making these decisions to
5 really look at the application and say, Hey, maybe
6 this one is worth considering?

7 MS. SMITH: I do, and the fact that you have
8 piles of paperwork just sitting on your desk and not
9 even dealing with the issue is kind of disrespectful
10 to mankind and this country and what you truly
11 believe in and family, you know, restoration and
12 moving forward; and because we live in a country that
13 incarcerates at the rate that it does and, you know,
14 some of these people are your neighbors and doing
15 exceptionally well, why wouldn't you just allow them
16 the opportunity for a clean slate and, again,
17 especially when it involves family, kids, and moving
18 forward and still having to explain to your kid years
19 later why you can't participate in this or why you
20 can't get a job. Yeah.

21 MR. WELLBORN: Thank you.

22 MS. SMITH: You're welcome.

1 MR. JONES: Penny.

2 MS. STRONG: Kemba, do you find that the
3 passage time has made a difference even though you
4 are doing wonderful public outreach and speaking
5 about your situation in terms of maybe potential
6 employers or anyone else who sort of considers your
7 situation?

8 MS. SMITH: I don't think the passage of time
9 makes a difference. I think for myself -- and I've
10 applied for certain jobs just cold with my resume and
11 doing it on line, and I think as long as you're
12 checking "X" to that box and it's discrimination as
13 far as your past, that it doesn't matter how much
14 time has passed. I think there has to be a
15 reeducation process and incentives and something
16 legislatively put in place that encourages employers
17 to hire people who are formerly incarcerated with
18 felony convictions.

19 MS. STRONG: Do you mind me asking if you
20 ever have been denied employment? Has any employer
21 ever given you a specific explanation that it was
22 your criminal record and have they ever given you a

1 notice of what is known as an adverse action based on
2 your background?

3 MS. SMITH: No. The denials that I received,
4 they haven't given me a specific reason. Most of the
5 stuff that I did a denial for was through online
6 applications.

7 MS. STRONG: Thank you.

8 MR. JONES: Elissa.

9 MS. HEINRICHS: No.

10 MR. JONES: Vicki.

11 MS. YOUNG: Kemba, you made reference a
12 couple of times to survivor's guilt and to how while
13 your situation is very unique, there's also elements
14 of it that are very similar to a lot of people that
15 were incarcerated with you or in other institutions.

16 A couple of questions: One is have you had
17 feedback or reaction, or I don't know if you were
18 even allowed to correspond to anyone that you had
19 been serving time with to see what it meant to them
20 or did it mean anything?

21 Also, have you been able to speak to the
22 judicial system or the prosecutorial agencies to

1 explain about the culture of relationships and what
2 has happened?

3 MS. SMITH: Okay.

4 MS. YOUNG: In five seconds.

5 MS. SMITH: Right, and my brain will forget
6 stuff.

7 So your one was with regard to -- because
8 there's so much that I have to say -- was with regard
9 to? Can you rephrase your question?

10 MS. YOUNG: Well, because -- you know, sort
11 of what has it meant or have you communicated with
12 people you've been serving time with or people that
13 heard about you?

14 MS. SMITH: Right. Initially, coming out, I
15 was very fearful to communicate with anyone because I
16 knew the mail room would be monitoring the mail, and
17 like I said, I was concerned that, you know, one of
18 the correctional officers would call my probation
19 officer and say, Look, I see that. You know, even if
20 I wrote in code, I just didn't want to risk it.

21 My mother, she did communicate with some of
22 the women that I was close with. After my

1 probationary period, I did reconnect with some of the
2 women, but there's always -- like there are two
3 individuals that I know that have a life sentence,
4 one from New Orleans, the other one from Michigan.
5 They both have already served over 18 years in
6 prison, first-time, non-violent offenders.

7 I'm always feeling guilty as far as, you
8 know, what can I do for them, but at the time, I'm
9 juggling my own life, and so I know even at the D.C.
10 event that I told you, about a couple of weeks ago,
11 there were -- even before that. I actually went and
12 spoke in Danbury, Connecticut. The Federal Bureau of
13 Prisons contacted me, one of the counselors, and they
14 invited me to come in and I basically piggybacked a
15 speaking engagement and made the sacrifice to kind of
16 go in there, knowing that it would be crazy for me to
17 go back in there just emotionally for me.

18 So I did go in there, and it was very -- one
19 of the girls that I'm telling you about that has the
20 life sentence that's served over 18 years that I was
21 friends with, she was still there. So I had to look
22 her in her face, knowing how much time has passed,

1 knowing where my son is, knowing where her kids are.
2 Her mother passed away of cancer since I had left.

3 So they were very supportive of me. I got a
4 standing ovation. The women were supportive during
5 the time and still now. They thought my parents
6 were, you know, the greatest parents because they
7 would see them on CNN, talking about drug policy
8 issues and advocacy. They thought that my case would
9 set a precedent, and so did the NAACP Legal Defense
10 Fund for everyone else for first-time nonviolent
11 offenders.

12 Ultimately, that didn't happen, but with the
13 conference in D.C., there was a move where they shut
14 the D.C. women's facility down and transported their
15 women into federal facilities. So some of the women
16 that I was actually incarcerated with in Danbury came
17 to this function with the women's reentry symposium a
18 couple of week ago and, you know, they hugged me and
19 said how much of an inspiration, you know, I was to
20 them.

21 So that's to answer your first question,
22 which what was your second question?

1 MS. YOUNG: The second question, because
2 you've been -- from what I'm hearing is that the
3 speaking you're doing was to educate young women
4 about the poor choices they made and for them to
5 consider their choice, but there are other audiences
6 for what you have to say, and I was just wondering
7 whether you've been invited to speak to those
8 communities, prosecutors or judges?

9 I mean, they've got a lot to learn.

10 MS. SMITH: Yeah. I have spoken at the
11 American Bar Association's conference. I forgot what
12 year it was and, actually, where one of the people in
13 the audience wanted me to give the prosecutor's name
14 because they felt as if something should have been
15 done to him, but in relation -- because I think you
16 did mention with the prosecutor and understanding the
17 whole relationship aspect, when I did go to apply to
18 get off of supervised release a couple of months
19 early because I was starting law school, I had to go
20 to the U.S. District Court in Norfolk and go before a
21 judge, and it was Judge Dumar, and the federal agents
22 that were there that were involved with my case, I

1 heard them like making little jokes as far as, you
2 know, me being in the courtroom, and the prosecutor,
3 he was doing -- the same prosecutor was doing his job
4 as far as fighting with me getting off.

5 But afterwards, my mom and I were walking and
6 we got in the car and I was pulling out and getting
7 ready to go to the front of the courthouse to pick up
8 my dad, and I saw my dad talking to the prosecutor,
9 and I was just like, What is my dad doing?

10 And my dad gets in car and he was just like
11 you would not believe the conversation that we just
12 had, and, ultimately, he was just saying how, you
13 know, at the time, he was just doing his job and that
14 he's very grateful to see that things are going so
15 well for me and the fact, you know, he has a daughter
16 and he's a minority too, and he was just saying that
17 he does think that there are policies that aren't
18 unfair, blah, blah, blah.

19 So I think -- and even during my sentencing
20 of what he was fighting for, which I don't know if it
21 was just him being an actor or what, but he was doing
22 his job, but I do remember him when the judge

1 sentenced me to the 294 months in the federal system,
2 federal sentence, he dropped his head in the
3 courtroom was just like this. I mean, he gave the
4 sentence.

5 So, you know, obviously that was something
6 that he had to kind of deal with in his conscience,
7 because I think anybody hearing the testimony about
8 the relationship aspect and self-esteem and
9 everything, that you can't understand it, but in the
10 court of law before that particular judge, he refused
11 to understand it and he refused to understand the
12 domestic violence and abuse aspect.

13 MR. JONES: Jenny.

14 MS. ROBERTS: Just one question: I wanted to
15 come back to -- I wanted to just come back very
16 briefly to the mention you made of filling out online
17 applications for employment. Can you just describe
18 the denial? Was it sort of an immediate once you
19 checked the box denial, or was it just you didn't
20 hear again?

21 MS. SMITH: No. It wasn't immediate, and I
22 would get a response saying that maybe within a

1 couple of weeks -- and this was a while ago when I
2 while I was living in Indianapolis where they said
3 that my application was considered, and I don't
4 remember the specifics as far as what the text was,
5 but I knew when I read that it wasn't -- that they
6 weren't hiring me.

7 MS. ROBERTS: Thank you.

8 MR. JONES: I have a question and a request.
9 The question is when you were in home buying process,
10 the mortgage application process, did you encounter
11 any speed bumps, any obstacles, any hurdles, any
12 challenges during that mortgage application process?

13 MS. SMITH: I guess not. The mortgage people
14 are just concerned about your credit and can you pay
15 the mortgage every month, but no. The bank didn't
16 --- there wasn't -- you know, they wanted to see my
17 taxes and all of that.

18 MR. JONES: Right, and the next is more of a
19 request than a question, and you should feel free to
20 throw that coffee at me if you think not, but we have
21 heard now from a number of folks who are returning
22 citizens, members of the affected community, but very

1 rarely, almost never, can I think in our travels, and
2 certainly not from a child, have we heard from the
3 family members.

4 I'm wondering if you feel comfortable having
5 your son come up and sit next to you just for a
6 minute or two and tell us about this experience
7 through his eyes.

8 MS. SMITH: I'm comfortable.

9 MS. HEINRICHS: He's got to get your cup of
10 coffee though.

11 MR. JONES: That would be really something
12 special.

13 MS. SMITH: And I, you know -- I'll wait for
14 him to come in.

15 One of the things that I tell Armani, you
16 know, he's a very resilient, you know, kid and from
17 when -- going through the whole ordeal, he was the
18 one that me kept strong through my ordeal, and he
19 basically would say, you know, Mommy, eventually, you
20 know that God's going to bring you home, and to have
21 that six-and-half-year-old now be an 18-year-old and
22 a freshman in college and knowing the background of,

1 you know, his father, what I've been through, and
2 just transition -- even with the move, getting
3 married and the move to Indianapolis and him going to
4 a new school, he has been an exceptional child with
5 dealing with the obstacles that he's dealt with and
6 still maintaining education, academics, as a
7 priority.

8 So I know you can handle this and I know it
9 wasn't expected, but sometimes God has you doing
10 things, because he has a journalism at Washington &
11 Lee and he's writing about felony disenfranchisement.
12 So that's why he's here, but he never would have
13 imagined --

14 MR. JONES: Well, I would just say if you
15 would speak loudly, and I can't tell you how much we
16 appreciate you doing this. If you would just speak
17 loudly. Tell us your name and then just tell us in
18 your own words a little bit about what this whole
19 thing has been like for you, you know, from earliest
20 memory up to, you know, today.

21 MR. SMITH: I'm Armani Smith. I think
22 growing up, it wasn't as big of a deal when I was

1 young. My grandparents, you know, they raised me
2 well. They were really supportive. I had people
3 that supported my mother's situation.

4 So throughout elementary school, it wasn't
5 really an issue. Entering middle school, it kind of
6 became an issue because people would -- you know,
7 they would ask me, you know, why are your
8 grandparents always coming to pick you up.

9 They would Google my mom's name and ask me
10 about my mom. Stuff like that would happen. They
11 would ask me about my dad and I would have to tell
12 them that my dad is deceased.

13 So, you know, it hasn't always been easy and
14 something that I've had to grow up and accept and
15 realize that this is part of my life; it's not my
16 fault, and, you know, I can only learn from it and
17 grow from it.

18 In high school, actually, we were at a
19 retreat where I talked about, you know, my life and
20 my experiences, my mom and how that's really affected
21 my life, and even though all of this has happened to
22 me, I've still turned out to be someone that, you

1 know, I'm doing pretty well in life right now for an
2 18-year-old.

3 In middle school, I had a teacher, you know,
4 kind of talk to me after he found out about my mom
5 and, you know, and said that it was really amazing
6 that I turned out so well considering all the
7 circumstances.

8 MR. JONES: What are you plans in the future?

9 MR. SMITH: I plan to double major in global
10 politics and romance languages and go into
11 international relations. This summer, I'm traveling
12 to Oxford for six weeks. I just found out that I was
13 accepted yesterday.

14 MR. JONES: Great. That's great.
15 Congratulations. Thank you.

16 MS. SMITH: Something that he may not
17 remember, when he was younger where it started to
18 impact me more, and if I didn't receive executive
19 clemency, in my mind, I was going to have my parents
20 do things differently, because it would come to a
21 point -- initially, when he was younger, an infant,
22 you know, he wouldn't -- I wouldn't deal with him

1 crying or grabbing on to me and not wanting to leave
2 or wanting me to come with him, but, you know, going
3 into that five-, six-year-old age, there were moments
4 where he would cry and cling on.

5 Recorded conversations where I'm calling
6 home, you know, I can remember one conversation like
7 yesterday: Mommy, why don't you just jump the fence
8 and come home? I'm like, Uh, don't say that.

9 But I don't think he -- because my parents
10 provided the absolute best for him and there were so
11 many people in the community and outside the
12 community, strangers that we didn't know that
13 embraced him and the family, that, you know, it
14 didn't really affect him like that.

15 As he says, you know, he speaks openly about
16 it. There are, you know, various responses that he
17 can get, but even at his high school in Indianapolis
18 too, he was part of the Black Student Union at his
19 school and he asked me if I would be the keynote
20 speaker for their Martin Luther King convocation.

21 So, you know, it's quite an elite group of
22 kids, because he was in private school in Indiana

1 and, ultimately, it was a college preparatory school,
2 and, ultimately, you know, there was a standing
3 ovation and kids were coming up to him and me, saying
4 how, you know, I was the best speaker that they had
5 ever had at the school.

6 So that takes a lot for a kid to have gone
7 through what he's been through and to know my past
8 and know his dad's past and to be forthcoming and
9 wanting to share with others and to help others. So
10 I appreciate all of what he does for me, has done for
11 me, and continues to do for me.

12 MS. VANDERHORST: It sounds like you're a
13 good role model.

14 MR. SMITH: Thank you.

15 MS. VANDERHORST: So I do want to mention
16 Kemba has a book.

17 MR. JONES: Okay. Go ahead.

18 MS. VANDERHORST: Kemba has a book.

19 MS. SMITH: I should be plugging it myself.

20 MS. VANDERHORST: Okay. Kemba has a book,
21 and maybe in a few years, Armani will have a book as
22 well.

1 MR. SMITH: Possibly.

2 MS. SMITH: His book would be the book, I
3 keep telling him.

4 It's in the car. My book is in car. The
5 name of my book is called "Poster Child: The Kemba
6 Smith Story", and it is very transparent about the
7 choices that I made, and most of the people that have
8 read it said that it was a page turner and,
9 basically, the only reason why I've done it is
10 because I've had individuals that -- for instance, a
11 girl that graduated from Hampton University come up
12 to me and asked me to sign her leather-bound degree
13 holder because she said had it not been for her
14 reading about my story, that she never would have
15 received her degree because she was in the exact same
16 situation I was in.

17 So knowing that it can save lives caused me
18 to want to be transparent and forthcoming as far as
19 what I went through and the fact that it was 20 years
20 ago and I know that I'm not that same person.

21 MR. JONES: Well, it's powerful testimony
22 from both of you and we really appreciate it and we

1 thank you for being here and we thank you for sharing
2 with us and we thank you for your time.

3 MS. SMITH: Thank you.

4 MR. SMITH: Thank you.

5 MS. VANDERHORST: Can we do another plug?

6 Do you want to tell folks how to get in
7 contact with your foundation?

8 MR. JONES: There it is.

9 MS. SMITH: Yes. This is my book, "Poster
10 Child: The Kemba Smith Story; It was easy falling in
11 love with a drug dealer. The hard part was paying
12 for his crimes,"

13 There, actually, on the back, there are
14 actually letters from President Clinton and Mark
15 Warner, because we have been in correspondence since
16 my release, but if you're interested in getting in
17 contact with me or ordering the book, you can do so
18 via www.KembaSmithFoundation.org or
19 www.KembaSmith.com.

20 MR. JONES: Great.

21 MS. SMITH: Thank you very much.

22 MR. JONES: That concludes our Washington,

1 D.C. hearings. Thank you, everybody.

2 [Whereupon, at 5:16 p.m., the hearing was
3 adjourned.]

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