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NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS

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NACDL TASK FORCE
on Restoration of Rights and Status After Conviction

DAY 1 - Volume I - Pages 1 - 271

Thursday, July 26, 2012
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NACDL Task Force on Restoration
of Rights After Conviction:

- RICK JONES, Chair
- JENNY ROBERTS
- ELISSA B. HEINRICHS
- GENEVA VANDERHORST
- MARGARET LOVE
- VICKI YOUNG
- CHRISTOPHER A. WELLBORN
- LAWRENCE S. GOLDMAN

For the NACDL Task Force:
Vanessa Antoun
Obaid Khan

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1 SAN FRANCISCO, CALIFORNIA,

2 THURSDAY, JULY 26, 2012, 9:30 A.M.

3 -o0o-

4
09:30:02 5 RICK JONES: All right. We should start. Let
6 me -- let me start by saying welcome and thank you all for
7 being here. This is Day One of NACDL's San Francisco
8 hearings, the Task Force on Restoration of Rights and
9 Status After Conviction.

09:30:25 10 We are certainly pleased to be here in
11 San Francisco. This is, I believe, our fourth hearing.
12 We started our listening tour in Chicago and then went to
13 Miami; was most recently in Cleveland, Ohio. And now we
14 are here and looking forward to some -- two days of what
09:30:48 15 we hope will be a lively and informative discussion with
16 you folks.

17 I should say that I'm Rick Jones. I'm one of
18 the co-chairs of the Task Force. I practice in New York
19 City.

09:31:03 20 I also should, just at the outset, start by
21 thanking the Orrick Law Firm and the folks who have
22 provided us with all these furnishings as well as active
23 staff: Vanessa in the back and Obaid who is sitting
24 there; Angeline, who can't be here because she's actually
09:31:24 25 running a separate seminar this weekend; as well as Norman

09:31:29 1 Reimer, who I think will pop in at some point, who is the
2 executive director.

3 Our thanks to all those people without whom we
4 would not be here doing this important work.

09:31:39 5 Before I have you guys take over and introduce
6 yourselves and give us the benefit of your thoughts, I'd
7 like to just go around the table and have my colleagues
8 introduce themselves and tell you a little bit about where
9 they're from and what they do.

09:31:58 10 JENNY ROBERTS: I'm the reporter for the Task
11 Force, Jenny Roberts. I'm a professor at American
12 University, Washington College of Law, former public
13 defender. I teach a criminal justice clinic now.

14 RICK JONES: The only thing -- before we
09:32:09 15 start, let me just say that this is a small room, so we're
16 fortunate in that respect. But I'd ask everybody, to the
17 extent that they can, to speak in good voice.

18 The other thing that I would say is that -- is
19 it working, do you know?

09:32:30 20 (Discussion off the record)

21 RICK JONES: We've got a live feed that's
22 running throughout the course of the day without breaks.
23 So I would just say that in addition to speaking loudly,
24 you should also sort of be mindful that the room is mic'd.

09:32:45 25 So when you're on break and you want to, you know, talk

09:32:49 1 about what a dummy the chair is, do it in whispered voices
2 because it will get picked up.

3 JENNY ROBERTS: We have to be ...

4 RICK JONES: Yes, it will get picked up. And
09:33:01 5 you can pass notes. There you go.

6 I interrupted; so Elissa, go ahead.

7 ELISSA HEINRICHS: My name is Elissa
8 Heinrichs. I practice in Bucks County, outside of
9 Philadelphia. I'm in private practice, and my focus -- my
09:33:15 10 practice focuses on criminal defense, trial work in the
11 state courts, and then postconviction relief. And I'm
12 also a member of the board of directors of NACDL.

13 GENEVA VANDERHORST: Good morning. My name is
14 Geneva Vanderhorst. I practice criminal defense in
09:33:30 15 Washington, D.C. I've been doing that for 15 years. This
16 is my second term on the board of directors for the NACDL.
17 And I think I actually will be interviewing you all this
18 morning.

19 VICKI YOUNG: Good morning. My name is Vicki
09:33:51 20 Young. I'm the co-chair of the Task Force. I'm a former
21 board member for NACDL. I'm in private practice in
22 San Francisco in Palo Alto, and I'm a former federal
23 public defender and county public defender.

24 CHRISTOPHER WELLBORN: Good morning. My name
09:34:08 25 is Chris Wellborn. I live and practice in South Carolina.

09:34:13 1 I'm in solo practice. My practice is exclusively limited
2 to criminal defense work, both state and federal trial
3 work as well as appellate work.

4 LAWRENCE GOLDMAN: Hi. My name is Larry
09:34:24 5 Goldman. I'm a criminal defense lawyer from New York City
6 and a former president of this association, the NACDL.

7 I should tell you that Vicki is about tomorrow
8 to receive the highest award the organization confers, the
9 Heeney Award. I just do that because I want to be the
09:34:44 10 first to embarrass her.

11 RICK JONES: The first of many embarrassments
12 she's going to suffer over the course of the next two
13 days.

14 LINDA EVANS: Congratulations.

09:34:53 15 MARGARET LOVE: I'm Margaret Love. I'm a solo
16 practitioner in Washington, D.C. My practice is pretty
17 much focused on executive clemency.

18 I was in the Justice Department for 20 years,
19 in the belly of the breast. And I do a lot of work on
09:35:13 20 collateral consequences, sort of policy work.

21 And Jenny and I are co-authors of a -- I
22 should announce this, you know -- of a forthcoming
23 treatise published by West and NACDL in a joint effort.
24 And so that's --

09:35:33 25 JENNY ROBERTS: On collateral consequences.

09:35:35 1 MARGARET LOVE: -- on collateral consequences.

2 RICK JONES: Great. That's fantastic.

3 LINDA EVANS: It's a book. It's a treatise.

4 It's a big book that covers from --

09:35:41 5 RICK JONES: An opus is what it is.

6 Well, without further ado, we should actually
7 get started.

8 And let me just tell you how we operate. We,
9 as I've said three times now, are very pleased to have you
09:35:53 10 here and excited to hear what you have to say.

11 The way we work is that we're going to give
12 each of you about five or ten minutes to introduce
13 yourselves, tell us a little bit about who you are, and
14 then give us the benefit of the work that you're doing and
09:36:06 15 your thoughts about the subject matter.

16 And then we have lots of questions for you.
17 The way that the questioning happens is that one of our
18 number takes the lead in questioning of the panel. And
19 once that's done, the rest of us will then have an
09:36:21 20 opportunity as well, depending on time, to ask you
21 questions that we might have as well.

22 So for this particular panel, Geneva
23 Vanderhorst is going to lead the questioning and the
24 discussion.

09:36:34 25 But before we get to that, why don't we

09:36:36 1 start -- and we'll start with you, Ms. Evans. You should
2 tell us -- okay, however you want to do it; I'll leave it
3 to you -- tell us a little bit about yourself and give us
4 the benefit of your thoughts.

09:36:47 5 And I'll stop talking and turn the floor over
6 to you.

7 DORSEY NUNN: I don't know how come -- you
8 know, I was thinking, yeah, I do know how come I'm
9 nervous.

09:36:55 10 My name is Dorsey Nunn, and I'm the executive
11 director of Legal Services for Prisoners with Children.
12 And I'm an extremely proud member of All of Us or None.

13 I'm not accustomed to being in a room with
14 these many attorneys and a stenographer and get the right
09:37:12 15 to speak. Generally, I'm being advised to stay silent,
16 you know. And I'm being advised to stay silent, and it's
17 through extreme efforts that I learned to speak in my own
18 voice.

19 And I'd like to thank you for inviting us to
09:37:31 20 come here because very seldom do we get to sit across the
21 table and have a real dialogue. And this time when I'm
22 sitting across the table from you, I'm not your client.

23 The voice that you will hear will be my voice.
24 And some parts of what I need to say is that from the
09:37:51 25 point of meeting you and from the point of walking away

09:37:53 1 from you, my fight has always been for the full
2 restoration of my civil and human rights and -- and
3 totally fighting for the presumption -- one presumption,
4 the presumption of rehabilitation upon the completion of
09:38:09 5 the sentence.

6 I want all of my rights. So if everybody has
7 been telling me for multiple decades that if I do the
8 crime, do the time, at the end of the time, something else
9 got to give. And some rights are so valuable they
09:38:25 10 probably never should be suspended, even with the
11 conviction. And of those rights, I think that voting
12 rights is one of those.

13 I think that I should have the right to vote
14 inside of a prison and outside of a prison. If people in
09:38:40 15 Belize can hold up a purple thumb and we can be proud of
16 them voting, you should be equally proud of me being
17 allowed to vote in this country in a confined setting
18 because we have fought wardens and have allowed others to
19 do it, but yet deny me.

09:38:56 20 So I can walk right out of this room and
21 essentially move to Florida and have my voting rights in
22 jeopardy or move to some other state and have my voting
23 right in jeopardy.

24 It forces me to ask the question: Am I a
09:39:10 25 citizen or not? And I shouldn't be wrestling with that

09:39:14 1 particular question years after my conviction and years
2 after completion of my sentence.

3 I got involved in this particular issue
4 because I seen my rights being laid out by an organization
09:39:37 5 that spoke for me, and I disagreed. And being that I'm
6 old, I remembered when we had the right to vote and times
7 had changed, and they wrote that I didn't have the right
8 to vote upon the completion of the sentence.

9 And I took the matter -- initially wrote a
09:39:59 10 letter to the secretary of state in 2004. And at the
11 time, the secretary of state was going through his own set
12 of problems, and he was only one step ahead of the law.

13 And his name was Kevin Shelley, and I asked
14 him, did we have the right to vote if we were serving the
09:40:16 15 county jail sentence? Did we have the right to vote if we
16 were on probation? Did we have the right to vote if we
17 were on parole or serving a prison sentence?

18 And we wanted that information because what we
19 really wanted to do was do a voter registration drive
09:40:34 20 inside of county jails and for people on probation.

21 Unfortunately, Kevin Shelley didn't give us an
22 answer until probably six days after the election, so we
23 didn't get a chance to pull off our voter rights
24 registration drive.

09:40:58 25 Then the next person that stepped into his

09:41:00 1 seat as the secretary of state, I believe his name was
2 Bill Locklear. And Bill Locklear was the one that issued
3 an opinion that was contrary to what Kevin Shelley said as
4 secretary of state. At that particular point, we went to
09:41:18 5 the ACLU and said we'd like to have some clarity about our
6 right to vote.

7 And subsequently, Bill Locklear's term
8 expired, and the next person that came into play was -- I
9 think his name was Bruce McPherson.

09:41:36 10 So when Bruce McPherson showed up, the ACLU
11 filed a writ of mandate. And in that writ of mandate, we
12 was trying to get clarity of what our rights were because
13 we wanted the right to actually contest a number of things
14 and wanted people inside the county jail on probation to
09:41:58 15 have a say-so and have an opinion.

16 And I believe one of those things were about
17 should they have an opinion about a Three Strikes Law
18 since it was going to impact their lives? Should they
19 have an opinion about whether or not they should be forced
09:42:12 20 to submit to DNA testing? Should they have a right about
21 a number of things; and we feel like these things were
22 going to impact their lives, and they should have those
23 rights.

24 They filed a writ of mandate. So we was
09:42:25 25 standing around probably for four, five, six months. And

09:42:30 1 I think this time, I think, 30 days or 40 days after the
2 election had passed, we won the case, but we lost the
3 ability in the real critical time to actually standardize
4 voting inside of county jails across California.

09:42:53 5 All of us have known that in the state of
6 California, we went through realignment, and I'm just
7 talking about voting rights.

8 And under realignment, they changed the
9 sentencing practices because up under the League of Women
09:43:13 10 Voters -- League of Women Voters v. Bruce McPherson, they
11 essentially said that we had the right to vote if we
12 weren't in prison and we weren't on parole.

13 Then they subsequently changed the law, I
14 think, this year, where what they laid out was that they
09:43:30 15 were no longer going to be sentencing people who weren't
16 convicted of a serious offense, wasn't convicted of sexual
17 crimes, and wasn't convicted of -- what's the third
18 category?

19 LINDA EVANS: Nonviolent.

09:43:51 20 DORSEY NUNN: It was nonviolent.

21 So the nonviolent being that if the people
22 were not convicted, being that they weren't going to serve
23 time in prison and they weren't going to be on parole, we
24 thought that they should have had the right to vote.

09:44:09 25 And the question was: Would 85,000 people

09:44:12 1 have that ability? We took the case up again as to the
2 ACLU and with the ACLU, and the Lawyers' Committee for
3 Civil Rights. We filed a case, and that case was
4 ultimately dismissed.

09:44:27 5 So when I sit down here today, two days ago, I
6 think that we lost ground because it was dismissed in
7 the -- was refused to be heard by the California Supreme
8 Court.

9 So now we got confusion inside of our county
09:44:41 10 jails where we've got two statuses of people who are
11 serving time in the jail. And some of those people are
12 serving time under 1170(h), which is a different
13 sentencing scheme than other people who are being
14 sentenced to jail; which we think that essentially by not
09:44:57 15 hearing the case, they could have eliminated or made the
16 order so confusing that no one is going to sort that out.
17 And subsequently, even those people with a right to vote
18 will not be provided the right to vote.

19 There were several things that we wanted
09:45:13 20 particularly from attorneys and attorneys who represented
21 us. Some of those things that we wanted from attorneys is
22 that 97 percent of us plead guilty. We think we should be
23 advised of what our voting rights are in the event that
24 you're going to be representing us because if we're going
09:45:31 25 to do a plea bargain, we want to know the full

09:45:34 1

ramification of the bargain.

2

So if it means that if I take a deal, what's going to happen is that I'm going to lose my right to vote in the board of -- the educational board so I can't

4

09:45:47 5

actually cast a ballot, that is actually going to impact my children, going to impact my family, going to impact my community. I think that I should be told that.

7

8

The other thing that we wanted was that in the event that you're getting -- we're getting ready to have a sentence pronounced on us, we think that judges should lay

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09:46:02 10

that out because generally, when you take a plea bargain, you go through a preamble about what you're going to lose and what you're going to give up.

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Somebody probably should tell us what those things are, you know. And if voting is a part of that, they should tell us that. In the event we're going to lose custody of our kids or our kids are in jeopardy, they should tell us that also; so certain things that we're not being informed of when we're actually pleading guilty and we are actually going through a plea bargain that we think we should be advised of.

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09:47:04 25

And we would like -- hmmm -- we would like those people who stand behind us and argue for our liberties and our rights to tell us as much of the truth that they know because for the most part, a lot of us pass

09:47:10 1 through the system that don't have your education, that's
2 probably not from your class background, and we think we
3 should be informed of that stuff because the decisions
4 that we're making when we're standing beside you to take a
09:47:23 5 bargain or not taking a bargain not only impact the amount
6 of time that we serve, it impacts the rest of our entire
7 lives. It impacts our children's lives, and it impacts
8 our grandchildren's lives.

9 We think we should have a right to have access
09:47:40 10 to that information if you have that information. And you
11 actually, theoretically, are working for us, and we're not
12 told these things.

13 So when it gets down to this question of
14 voting rights and -- and I've been represented by people
09:48:02 15 doing indigent defense my entire life, and I'd been in
16 prison one time and I'd been to jail a number of different
17 times, and I need to say I met a lot of people that stoled
18 a lot of different things. I'd met people who have stoled
19 cattle and stoled a train and stoled a plane filled with
09:48:26 20 people. I've yet to meet anybody that stoled a vote.

21 So I just assumed that the people who steal
22 votes don't necessarily wind up in the same place with me.
23 So I think that I should have the right to vote, and I
24 think I should be informed what those rights are in
09:48:47 25 relationship to vote.

09:48:50 1

And I believe that our democracy is strong
enough to hold that as a fundamental right for all people.

2

3

So, like, in terms of laying this out in the state of

4

California, we have the right to vote if we're not in

09:49:14 5

prison. We have the right to vote if we're not on parole.

6

And I think that we should have the right to be told that

7

we have that right because most of us running around in

8

this country have been told over and over and over again

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that we don't have the right to vote if we've been

09:49:29 10

convicted of a felony, and that seemed to change from

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locale to locale.

12

So, like, somebody needs to tell us what the

13

truth is since the people who generally hold us will not

14

do it. The people who generally supervise us -- supervise

09:49:48 15

us will not do it. So at a certain point, the people who

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represent us that bring us the bargain should bring us the

17

full bargain and the ramifications of actually accepting

18

the plea. So that's what I came to say.

19

And one thing I probably should point out: In

09:50:11 20

the state of California, we also got Clean Slate remedies,

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and I know you're going to speak to that. The reason that

22

All of Us or None got involved with the Clean Slate

23

remedies, we thought it was an inadequate remedy and if

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people can still -- can actually get access to the

09:50:26 25

information, it's making us jump through a meaningless

09:50:30 1 hoop because we're never forgiven, it's never forgotten,
2 and it's always accessible.

3 And life has changed with the technology. So
4 the technology that moves so fast, I don't think the
09:50:42 5 ethics or the morals follow the technology. And people
6 have access to information that they didn't have access to
7 20 years ago.

8 And having access to that information is
9 having an impact on whether or not we're employable,
09:50:57 10 whether or not we're able to rent apartments, whether or
11 not we're able to secure student loans. There's a whole
12 host of things by having that information accessible like
13 that, that it impacts our lives.

14 And for us, it's no longer a question of what
09:51:11 15 is my individual right because I think that there's enough
16 of us being confined to certain neighborhoods. It impacts
17 the economy and poverty of those neighborhoods.

18 So I'm not very poor, but my neighborhood is
19 absolutely poor, and it's based on them not having the
09:51:30 20 same opportunities that I have. And I think I just got
21 struck lucky, but the majority of people that I know that
22 are similarly situated don't get to make the transition
23 back into a real, full life.

24 RICK JONES: Thank you very much.

09:51:43 25 Ms. Evans?

09:51:45 1 LINDA EVANS: Good morning. My name is Linda
2 Evans, and I also I am on staff with Legal Services for
3 Prisoners with Children. I'm an organizer for All of Us
4 or None, which is an organization of formerly incarcerated
09:51:58 5 people dedicated to the full restoration of our rights and
6 ending all forms of discrimination and upholding the human
7 rights of people in prison.

8 So, again, we really do appreciate being
9 invited, as often we're the subjects of the criminal
09:52:15 10 justice system as opposed to having any kind of input or
11 any -- certainly any power over changing it.

12 So we appreciate the alliance that the NACDL
13 is -- well, we appreciate these hearings, and we hope that
14 an alliance with your clients and formerly incarcerated
09:52:33 15 people around the country will actually come out of these
16 hearings.

17 I'm going to talk a little bit about the
18 restoration of rights work that LSPC and All of Us or None
19 has been engaged in. Of course, we are not, given the
09:52:49 20 subject matter of this hearing, we are not going into the
21 work that LSPC does on behalf of prisoners directly about
22 conditions of confinement; in particular, the support for
23 the hunger strikers in the California prisons who went on
24 strike last year and listed a series of demands.

09:53:08 25 Although these are very important issues to us

09:53:11 1 and the conditions of confinement that people suffer in
2 prison actually affects their ability to come out and be
3 whole people and successful, you know, we are not going
4 into those areas of our work.

09:53:27 5 I think that you know one of the key questions
6 for us is: How does this discrimination happen? What are
7 the collateral consequences? Why do they last all our
8 lives, right?

9 And I think that what we have come to as an
09:53:43 10 analysis is that really, what's happening with our
11 convictions and the way that they're being used in society
12 is that they are creating structural discrimination that
13 really does primarily affect people of color and poor
14 people in our society because that, of course, is a
09:54:03 15 question of the disproportionate conviction, prosecution,
16 and arrest of people of color and the resulting mass
17 incarceration of people of color in this country.

18 And that affects who has convictions, and that
19 affects who suffers collateral consequences. So I think
09:54:22 20 that it's crucial that we understand that this structure
21 discrimination is a mask based on convictions; is a mask
22 for racial discrimination that has been outlawed since the
23 1960s.

24 So that's why -- one of the reasons that we
09:54:37 25 are very passionate about attacking the structural

09:54:41 1

discrimination at every point.

2

And out of that determination and that

3

analysis came a campaign that I hope you all have heard

4

of, which is called "Ban the Box." This actually -- this

09:54:54 5

campaign originated in a series of six community summits

6

that All of Us or None held around the state in 2003 and

7

2004.

8

We developed a series of demands, and Ban the

9

Box came to be a signature campaign that actually has

09:55:13 10

created a lot of momentum around the country, and we're

11

very proud of that fact because, of course, it did

12

originate with formerly incarcerated people here in

13

California.

14

Our recommendation as part of the Ban the Box

09:55:29 15

campaign -- and I'm really willing to go into some of the

16

details later -- our basic recommendation is to remove

17

that question about a felony conviction or have you been

18

convicted by a court or have you ever been convicted in

19

your entire life of anything. We want to remove that

09:55:48 20

question regarding some -- probably in South Carolina, it

21

does include arrests; here in California, arrests are

22

included -- but remove that question regarding our arrest

23

or conviction history from all applications: From

24

housing, public benefits, and employment.

09:56:06 25

So that is the fundamental goal of our Ban the

09:56:10 1 Box campaign is to institute fair processes for people who
2 are applying for jobs, for housing, for public benefits,
3 for student loans, for admission to college, for
4 insurance, because those collateral consequences -- as
09:56:25 5 Margy and I'm sure Jenny are going to put in their opus --
6 those collateral consequences affect every single area of
7 life for people who have convictions.

8 When they're released from prison, in many
9 ways the punishment is just starting because we are unable
09:56:44 10 to support our families, to contribute to the economic
11 development of our communities, to have stable lives. And
12 that's why we urge NACDL to adopt a recommendation to Ban
13 the Box.

14 It's been an extremely successful campaign.
09:57:01 15 Over 35 cities and counties nationally and six states
16 nationally so far have passed Ban the Box legislation.
17 Many of those cities and counties actually require their
18 vendors and contractors to adopt the same hiring
19 processes. So we hope that an actual movement is
09:57:24 20 happening that will eventually affect private employers
21 and large corporations as well as through the vendor
22 process.

23 Also, some of the cities and counties and some
24 of the states, Massachusetts, have included private
09:57:37 25 employers so that private employers are also required to

09:57:43 1

judge a candidate for employment based on their
2 qualifications, not on their past convictions or their
3 past mistakes.

4

09:57:54 5

Here in -- well, the most recent victory we
had was in the South: Newport News, Virginia, a military
6 town. So we know that this is really spreading. It's
7 been a very successful campaign, and we're absolutely
8 determined to take it into the future.

9

09:58:11 10

Here in California, we unfortunately were
defeated with a recent statewide bill that would have
11 required all cities and counties to remove that question
12 from their initial applications and to not ask -- not
13 inquire about conviction history until a person was
14 already screened for minimum qualifications.

09:58:29 15

We believe that postponing a background check
16 is the only way for us to actually be judged on the skills
17 and qualifications and experience that we bring to a job,
18 and that's kind of the fundamental aspect of Ban the Box.

19

09:58:48 20

Unfortunately, AB 1831 was -- disappeared by a
Senate committee chair, but we're determined to bring it
21 back. And in San Francisco, All of Us or None has teamed
22 up with the Human Rights Commission, the Reentry Council,
23 the Lawyers' Committee for Civil Rights, of course, Legal
24 Services for Prisoners with Children, and some

09:59:08 25

supervisors. And we believe that -- or we hope that

09:59:11 1 within the next month, actually, a very sweeping
2 antidiscrimination ordinance is going to be introduced and
3 then, of course, passed, we hope.

4 And these ordinances are actually part of the
09:59:24 5 future, the wave of the future for Ban the Box. These
6 ordinances will cover all vendors for the city. They will
7 cover all employers, both private and public employers.
8 It will cover all landlords, so any housing that's
9 subsidized by the city as well as private housing will be
09:59:45 10 affected, and all public accommodations and hotels.

11 So we believe that postponing background
12 checks in employment and in housing must be adopted for
13 people to have any kind of stability when they get out of
14 prison.

10:00:08 15 And we are, you know, trying to write law.
16 We're actually trying to create a balance. Of course, the
17 balancing tests are very hard. We're writing compliance
18 guidelines and everything with the Human Rights
19 Commission.

10:00:23 20 But the same level of protections that we have
21 in employment do not exist in the housing realm; and
22 therefore, we're trying to mirror housing protections in
23 this -- sorry -- employment protections in this ordinance
24 for housing.

10:00:41 25 So, for example, we are suggesting to

10:00:43 1 landlords that the only disqualifying offenses if they do
2 a background check should be related to the safety of the
3 people, the tenants, and the property itself.

4 I know that's quite a step in terms of we
10:01:01 5 don't have a federal law that backs us up, but we believe
6 that that is a fair way for people to actually be
7 considered for housing.

8 In addition to the San Francisco legislation
9 that we're pushing for, similar legislation is actually
10:01:18 10 being considered in Seattle and in the state of Minnesota.
11 So we're not totally alone here in San Francisco. It's
12 something that we believe is the future of Ban the Box.

13 Additionally, some of the work that LSPC has
14 done has addressed family rights. And I think that's a
10:01:35 15 very crucial area for you all to understand in terms of
16 the collateral consequences as well because, as you
17 probably know, the Adoption and Safe Families Act, we
18 believe it must be repealed because it is interfering with
19 the unity -- with the reunification of families for people
10:01:52 20 coming out of prison.

21 We have been working to reform California
22 custody laws to facilitate family contact visiting. One
23 of the issues that we have with realignment and the number
24 of people that are actually being sentenced now to county
10:02:08 25 jails for many, many years, some of them up to 21 years in

10:02:13 1 the county jail, is that most of those county jails do not
2 have contact visiting. They don't have any way for
3 parents to continue their contact and their family
4 relationships. So we are working on that as well, and
10:02:29 5 we're trying to also increase support for parents when
6 they are released.

7 Another law that we believe must be repealed
8 is the welfare ban. That has affected people all over the
9 country. You know, if you have a drug felony conviction,
10:02:44 10 you're not eligible for TANF, Temporary Aid to Needy
11 Families, or for food stamps in many states. Here in
12 California, you are not eligible for TANF. If you have a
13 simple possession conviction, you can receive food stamps.
14 However, I don't know -- probably most of you do know --
10:03:00 15 that if you have a little piece of crack that's about as
16 big as my fingernail, that will be charged as possession
17 with intent to sell, and therefore you will not be
18 eligible for food stamps.

19 And I think another aspect of family rights
10:03:17 20 is -- I know you'll be hearing more about this
21 afternoon -- is housing discrimination against people with
22 sex offenses.

23 Here in San Francisco, there is no place, not
24 a single house that a sex offender can live if they're on
10:03:36 25 parole, and all of them have lifetime monitoring. So that

10:03:39 1 is a crucial question in terms of family reunification.

2 And I would just like to end that in the
3 future, I really hope that we will develop the
4 relationships that NACDL has with formerly incarcerated
10:03:55 5 people in our organized forums which exist all over the
6 country and that we'll be able to create partnerships and
7 build relationships as colleagues, not clients.

8 Thank you very much.

9 RICK JONES: Thank you very much.

10:04:09 10 Mr. Raja?

11 ALEEM RAJA: My name is Aleem Raja. I am a
12 deputy public defender here with the Public Defender's
13 Office in the City and County of San Francisco on behalf
14 of Jeff Adachi, who is the public defender of the County.

10:04:20 15 Thanks so much to the commissioners and thanks so much to
16 NACDL for having this task force and for inviting us to
17 come.

18 I -- since last year, I have been the Clean
19 Slate attorney. And what that means is I and a staff of
10:04:35 20 three other folks, nonattorneys, work full-time -- that's
21 four full-time employees -- work on postconviction relief
22 and remedy for people with convictions. We do a little
23 bit of relief for folks who are not convicted but were
24 wrongfully arrested and are factually innocent; but a vast
10:04:56 25 majority of our work is helping folks who have convictions

10:05:00 1 get those convictions dismissed and for people that have
2 been to prison in California getting certificates of
3 rehabilitation.

4 If you ask any other county, probably, in the
10:05:11 5 United States, they would be shocked to learn that four
6 people on the public payroll are helping the county. So I
7 wanted to start a little bit by talking about where that
8 success -- I deem that to be a success for a city and
9 county to devote four of its staff members full-time
10:05:27 10 towards helping the formerly incarcerated and people with
11 convictions -- I want to talk a little bit about the
12 partnerships where that success came from.

13 In California, there is no right to counsel
14 for dismissing a conviction. In California, it's called
10:05:44 15 "expungement." I hate that word because I looked in
16 the -- when I started my job, I looked at what that word
17 meant. What does "expungement" mean? It sounds nice. It
18 means to completely erase. And in California, it is never
19 completely erased.

10:05:58 20 And so when people, my clients, look up
21 "expungement," they say, Mr. Raja, you're doing a bad job.
22 You haven't completely erased my conviction. My employer
23 can still see it, even though it stays "Dismissed" after
24 it.

10:06:09 25 So in California, there's no right to an

10:06:12 1 attorney for dismissals. There is a right to an attorney
2 for a certificate of rehabilitation. But the problem is
3 when there's no right to counsel for a dismissal, that
4 right doesn't go vindicated most of the time in
10:06:26 5 California.

6 And so the board of supervisors in San
7 Francisco, through the advocacy of Jeff Adachi and people
8 on our staff, said: "You want my office and you want
9 attorneys and staff to be helping people get rid of their
10:06:41 10 convictions so that they can reenter; so that San
11 Francisco citizens and some from other counties can have
12 their convictions dismissed so that they can be gainfully
13 employed. That is a net financial gain for the city."

14 The supervisors agreed and have specifically
10:06:56 15 funded the Clean Slate Program with specific money for an
16 attorney position.

17 So that's a partnership with the board of
18 supervisors.

19 Another way that our process allows us to help
10:07:09 20 thousands of people every year -- we help somewhere in the
21 neighborhood of 4,000 people a year at various stages;
22 sometimes it's information and advice, sometimes it's
23 telling people that even though you have what looks like a
24 conviction on your record, it's not a conviction, and I'm
10:07:23 25 sorry that your employer is saying, "Hey, wait a second.

10:07:26 1 What happened to this case where it says 'Dismissed'?
2 What happened to it?"

3 That's not a conviction. There is no
4 postconviction remedy for that because it's not
10:07:35 5 technically a conviction -- all the way up to getting
6 people certificates of rehabilitation.

7 So that's -- that's the whole range of work
8 that we do, and we help thousands of people every year.

9 The only way that's possible is if we can get
10:07:46 10 people's criminal records for free. In California, to get
11 your Californiawide criminal record from the California
12 Department of Justice, there's a fee. The fee is
13 prohibitive in most counties for allowing attorneys to do
14 the work. Because if you have an up-front fee -- either
10:08:04 15 by the attorney, by the Court, or by the Department of
16 Justice before you can even access your criminal record so
17 that it can come and be cleaned, then that's -- that
18 doesn't work.

19 In San Francisco, the police department itself
10:08:18 20 maintains an individual San Francisco criminal conviction
21 record. So we have "SF rap sheets," records of arrest and
22 prosecution. The San Francisco Police Department is
23 working with us collaboratively to provide everyone in
24 San Francisco their rap sheet for free.

10:08:35 25 If you're in San Francisco and you have an ID

10:08:37 1 of some form -- it can be a jail bracelet -- an ID of some
2 form, they give you your San Francisco rap sheets. Then
3 you walk across to street to me, you drop it off, and I
4 will go from there. I'll tell you what remedies I can get
10:08:49 5 you. I will get you a court date. I will help you write
6 whatever rehabilitation paperwork you need, and we'll go
7 to court and we'll advocate for you.

8 Most of the counties that come to us for
9 advice on how to set up their programs don't have that
10:09:01 10 system, and I tell them they need to figure out a way to
11 get the criminal convictions because otherwise, what are
12 you remedying?

13 Most of our clients, as Mr. Nunn was
14 explaining, it's not just a process of misinformation at
10:09:16 15 the plea-bargaining stage; it's rampant confusion at the
16 plea-bargaining stage.

17 I have clients who tell me they're on
18 probation. They're not. I have clients who tell me they
19 have convictions. They're not. I have clients who tell
10:09:27 20 me they have to register as sex offenders. They don't.

21 And so the point is, the information
22 dissemination to the client population is so weak,
23 oftentimes, because it's a mill oftentimes in the courts,
24 that we need that hard documentation. We cannot just rely
10:09:43 25 on the memories of our clients.

10:09:46 1 We have a partnership with the District
2 Attorney's Office. The District Attorney's Office can for
3 free download your criminal -- your Californiawide
4 criminal history. Indeed, they can download your United
10:09:57 5 States-wide criminal history, your FBI rap sheet.

6 When we go to them with an application to
7 dismiss San Francisco convictions, they will in exchange
8 provide us with the criminal history of the clients for
9 all of California and, if relevant, all of the United
10:10:11 10 States. With that, we can then tell the clients how to
11 get remedies in other counties.

12 That's -- I want to mention for a second the
13 inherent problem with having a person go county to county
14 to clean up their records. That system, I'm not even sure
10:10:26 15 it makes sense. But even if it made sense, it's way too
16 cumbersome to be useful and effective.

17 A person who lives in San Francisco should be
18 able to come to me and say, "I have convictions in the
19 Superior Courts of California. Whether it be Humboldt or
10:10:40 20 Riverside, can you help me get those dismissed?" And I
21 should be able get them dismissed.

22 In certain instances, a person may have a
23 conviction in L.A., where they are absolutely, legally
24 entitled to get the dismissal, but because it's too many
10:10:54 25 hundred miles away, I can't actually get that case

10:10:58 1 dismissed for them. They have to get to Riverside.
2 That's an unnecessary burden for a Californiawide
3 conviction.

4 And then, finally, we have a -- we have a
10:11:06 5 partnership with the courts in San Francisco. So, unlike
6 most counties, San Francisco devotes a particular
7 courtroom and a particular day of the week to Clean Slate.
8 They do that in partnership with us because we gave them
9 so many applications, they said, "These need to be
10:11:23 10 consolidated." And so we worked with them and said okay.

11 Now, that partnership needs to expand because
12 right now, if you come to my office and say, "Here is my
13 Clean Slate application. Please get this case dismissed.
14 I have a pending job offer. The background check came
10:11:40 15 with a problem. They love me. They'll hold it open for
16 30 days. They'll hold it open for 60 days," I'm going to
17 tell them that's not going to work because the backlog in
18 the court right now is until November.

19 If you come to me today, I can't have a judge
10:11:57 20 dismiss your case, even if you're completely, legally
21 entitled, until November. That's the volume we're sending
22 in the direction of the court.

23 So we're working with the courts and the D.A.
24 to figure out: Is there a way to get these remedies done
10:12:10 25 without taking up court time? Can there be stipulations

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with the prosecution that then go to the judge who, over
lunch or whenever she would do this, would sign off on
stipulations?

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10:12:25 5

The adversarial process has its place. I'm
not convinced the adversarial process has as strong a role
in the postconviction remedies realm. The reason we have
such a backlog is because we set up an adversarial system.
I say the person's entitled to relief or that they should
get relief, and the prosecutor says, "Wait a second. Let
me check," and the judge says, "I want to hear arguments
on both sides for every single relief."

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I'm not sure that's the best model, and it is
a model that could be changed.

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Finally, something I want to talk about which
is a huge, huge hurdle is that if you are 18 years old and
you come from a family where -- or 19 years old and you
come from a family of drug abuse or where drug use is
common, you may easily get sucked into a situation where
you are asked to sell narcotics or possess narcotics for
sale. You're the person that's holding the drugs for a
family member's friend or for some stranger.

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At a very young age, a person can get wrapped
up into narcotics sales of very small quantities. If a
person goes to court and if it's their first-time offense

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and they do get convicted and they spend some time in

10:13:31 1 jail, the fines and fees for that conviction are going to
2 be 5- or 6- or \$7,000.

3 We then say, "We're not going to dismiss this
4 conviction so that you can become a healthy, productive
10:13:45 5 adult member of society until you pay off the \$6,000."

6 They say, "I can't pay off the \$6,000 until
7 I'm a healthy, productive adult member of society."

8 And then the judge says -- it's Orwellian --
9 good-bye.

10:14:00 10 So what we have started to do is, every county
11 in California is mandated to have a collections unit
12 within the county; a way of recouping these fines and
13 fees. That's good and bad.

14 The way it's good in San Francisco is we have
10:14:14 15 worked collaboratively with the fines and fees people to
16 say, "Hey, let's see if there's a community service
17 alternative."

18 Community service isn't the answer for
19 everybody, but it is for some people; and people can chip
10:14:25 20 away at their fines and fees. They can work on community
21 service, and then we can approach the judge and say:
22 "Please forgive the remaining \$5,000 of fines and fees,
23 which you're not going to get anyways."

24 Why hold it over this person's head and forbid
10:14:40 25 them from getting employment because they -- because the

10:14:42 1

punishment involved \$5,000 in fines and fees?

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And so those partnerships, I think, are a success, but buried within a lot of those partnerships are opportunities for change and reform.

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So, again, thanks for having us, and I know we all welcome questions.

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RICK JONES: Thank you all very much.

8

Geneva?

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GENEVA VANDERHORST: Your introductory

10:15:03 10

comments actually covered a lot of the topics that I have.

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There are some specific things that I wanted to ask each

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of you about. I'll just kind of highlight in the time

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that we have, and then I'll open it up to my colleagues to

14

join the questions as well.

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The first question I wanted to put out there is actually for Mr. Nunn.

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Do you know -- you noted that the realignment

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focuses on the low level of nonviolent offenses. Do you

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know how many people in California would actually be

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impacted by that realignment statute; how many people are

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in the low-level nonviolent offense --

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DORSEY NUNN: I can't give a number on that.

23

I wish I could, but I -- I can't. The only thing that I

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would -- in terms of my fight was the potential of the

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85,000 people that would have -- that would have the right

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to vote.

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RICK JONES: I'm going to ask you guys to keep your voices up. I'm not sure if they can be heard in the back and also whether or not this is being picked up.

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10:16:25 5

DORSEY NUNN: Have you-all seen the movie where the guy says, "Help me help you"? And it's a movie out in the way, I think, that when you're not allowing or information is not being shared for people who got a fine and the fee and don't have a warrant.

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10:16:48 10

How that translates where I live is the police start chasing them, and they abandon their cars. They run people over. Some parts of that is not having adequate information to know that law enforcement is not chasing them. And probably the bizarre thing of it is that law enforcement only chases you that much for minor offenses.

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The credit companies chase you almost forever and deny as many people access to housing as the felony -- a felony conviction does.

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So at a certain point, I think those fines and those fees will corrupt people's ability to actually work, earn a living, and actually participate in a productive way towards rehabilitation because they figure if they got a job, they wouldn't be able to keep their salary or they wouldn't be able to support their kids.

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And most of the time, when we got into the

10:17:56 1 Clean Slate part of this, I don't know if you have images
2 in your head of when black people got the right to vote in
3 South Africa -- when we went out and beat the bushes and
4 told people to line up, and they would have their records
10:18:11 5 cleaned -- it looked very similar. We had almost 1,000
6 people lined up thinking that they were going to get their
7 records cleaned and thinking they were going to get a shot
8 at life. They were sadly disappointed.

9 So it's, like, at a certain point, how do we
10:18:28 10 reenter the sentence -- reenter the system in a way that's
11 productive?

12 So how many people will it impact, which was
13 your question, I suggest to you that it's not who goes to
14 jail that's impacted. It's the entire community.

10:18:49 15 So it's whoever's going under realignment. It
16 doesn't really mean that they're just there. My mother
17 served time with me. My kids served time with me. And
18 when they steal my vote, that vote don't belong to me.
19 That vote belong to my community. It's not a question of
10:19:04 20 who just goes to jail. It's making us all a little bit
21 poor.

22 GENEVA VANDERHORST: Did -- yes?

23 LINDA EVANS: We could provide, you know, that
24 specific number for you. I think one of the key factors
10:19:18 25 for you all, since you're not really mostly from

10:19:20 1

California, to understand is that the numbers of people that are going is one thing. It's a lot of people being crammed into the county jails.

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10:19:35 5

Thirty-two of our 58 counties are actually building new jails or expanding their jails. Instead of using the realignment money supposedly for reentry, they're, you know, expanding the jails.

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And what that means, then -- but in addition to the numbers of people, the time that people are being sentenced to the county jails is just incredible.

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In Alameda County, the average sentence is now four years. And in Sacramento, I know people looked at me like I was crazy when I said 21 years. That is a fact. A man got sentenced, for a nonviolent, nonserious, nonsex-related offense, 21 years in the county jail.

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And as somebody -- you know, I also was formerly incarcerated at 16 years in prison. And, you know, the idea -- I did a lot of it in county jails because I had many trials, and the idea of 21 years in a county jail where you don't have contact visiting, you may not have outdoor recreation, there's no programming.

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Some of the county jails I was in, you couldn't have a book. I was a federal prisoner, so I had a book. I had a phone call. But a lot of the county jails, as you probably know, are really bad. So the idea

10:20:51 1 of people being sentenced to those lengths of sentences in
2 the county jails is very serious.

3 GENEVA VANDERHORST: Ms. Evans, I wanted to
4 ask you about LSPC's focus on women prisoners.

10:21:08 5 Even beyond the reunification of families, do
6 you-all have any kind of connections with job training,
7 work transitional -- work transitions for women in
8 addition to the reunifications?

9 LINDA EVANS: Do you want to answer that
10:21:29 10 first, Dorsey?

11 DORSEY NUNN: I think LSPC, our role is
12 advocacy, flat-out advocacy. The stuff that we do at
13 LSPC, we fight for the right not to be shackled while
14 they're pregnant and delivering. At LSPC, we fought for
10:21:49 15 adequate medical care for women prisoners because men
16 generally get the attention when they're in prison, and
17 the numbers are fewer.

18 So we started suing for adequate medical care.
19 We started suing for protocols for women in prison around
10:22:06 20 the question of pregnancies because they weren't getting
21 gynecologists.

22 We started suing for the right for people to
23 be free from abuse. And we established a program called
24 the "Habeas Project," which represents battered women who
10:22:28 25 have killed their abusers. So along the way, that's what

10:22:32 1

we -- our focus was. We don't do the service provision,
2 although we advocate for service provision.

3

What we feel like we've got to do is advocate,
4 first of all, that we're human beings; second of all, that
10:22:45 5 we have rights; and third, we advocate for the services.

6

But for the most part, we're bogged down
7 fighting for what our human and our civil rights look
8 like.

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10:22:59 10

LINDA EVANS: One of the issues getting out,
11 for women, is there's very little housing, especially if
12 you have your kids. So one of the -- one of the points
13 that we advocate for is eligibility for housing because,
14 of course, if you have certain types of convictions,
10:23:14 15 including drug-related felonies.

16

So advocacy for a suspension of that, there
17 actually is a best practice that, you know, we'd like to
18 put out there. In Alameda County, they've had a program
19 called the "Moms Program" for many years. They just

10:23:31 20

started a "Pops Program," which actually starts in the
21 county jail. I -- I think it's been cut back,

22

unfortunately, due to realignment, but it started out in
23 the county jails. Women participated in it while they

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were there in terms of parenting, in terms of some job

10:23:50 25

training, et cetera.

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Once they were released, they went to a specific public housing apartment building that the Oakland Housing Authority had donated to the program. So it was public housing. These women had drug-related felonies and were ineligible to live in other public-housing projects. But in this one, there was a concentrated program: Parenting, job skills, et cetera, you know, for a year.

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When they completed that program, not only -- they were living there with their children during that year -- when they completed the program, the prohibition on them living in public housing was lifted.

And we think that's a very important best practice because many, many people have drug felony convictions, you know. We believe that drug addiction is a disease and should be treated under public health; not through the prison system.

But so many people have those drug convictions that actually there are thousands of people that are excluded from public housing, so programs like this would alleviate that to some extent.

DORSEY NUNN: I think I need to reanswer the question that you asked me because before I was the executive director, I was just on staff at LSPC. And my director, Ellen Barry at that time, which I think is a

10:25:14 1 brilliant woman, I went to her because the community that
2 I stayed in had been named "the murder capital of the
3 United States." And what she allowed me to do while on
4 salary was go out and build a residential treatment center
10:25:34 5 for women.

6 So one of the things that I was able to
7 accomplish while on salary was that I helped build the
8 largest -- second-largest rehabilitation center in
9 San Mateo County. And what we focused on in that
10:25:48 10 rehabilitation center, called Free at Last, was that we
11 started looking -- first group of people we looked towards
12 were women. And we made a conscious decision to do that
13 because they were not only impacting just themselves, they
14 were impacting the children.

10:26:05 15 So what we wind up doing -- I think I took a
16 year, probably, on salary, and this woman allowed me to
17 take a year to go out and actually help build a program
18 because I could have -- I think that I represented
19 probably the leading edge of education for the people that
10:26:29 20 were like me.

21 So things that are significant that I also
22 need to say is that I'm the head of a public interest law
23 office, and I'm not an attorney. And I do have a couple
24 attorneys that work on staff. And that's significant
10:26:47 25 because it's actually allowing us to determine the

10:26:51 1 direction in which we're going to engage in the fight
2 because some things that other people may not find
3 important, we find extremely pertinent to us.

4 So ascending to that position was meaningful.
10:27:08 5 And some of the stuff that we start talking about is
6 demanding the right to be something greater than just
7 somebody else's clients.

8 And that was important to us as human beings.
9 So some parts of what we got to do is that I don't think
10:27:24 10 that outside of LSPC, I don't think I could have worked in
11 any other law office that would have gave me a year to
12 actually go out and fight for women and establish a
13 program. I don't necessarily see that.

14 So I think I was very fortunate, and I think
10:27:41 15 that Ellen Barry gave my community a gift by allowing me
16 to do that.

17 GENEVA VANDERHORST: LSPC focuses -- at least
18 many of your clients happen to be people of color from
19 communities where there tends to be a lot of dependence on
10:28:01 20 public subsidies. And my interest is -- was focused on
21 women because there tend to be women-led households in
22 those communities. And so when they are getting out of
23 the system, whether it's by incarceration or through some
24 kind of probation or diversion program, a lot of the
10:28:20 25 programs tend to focus on men rather than the women, even

10:28:25 1 for things that they couldn't get training for in jails or
2 in -- through some transitional programs.

3 For instance, if they're going onto probation,
4 where men seem to have the opportunities to get into
10:28:40 5 careers where they can get professional licenses and then
6 be able to maintain some kind of an income for their
7 families, I'm not seeing that for women.

8 And so my interest was then in -- in addition
9 to your advocacy, I notice that your website does have
10:29:00 10 quite a few manuals that help people find -- make
11 connections. I wanted to know whether or not you-all are
12 doing any direct referrals or how you make connections
13 with the folks who are -- who need your services.

14 Presumably, they aren't going to get access to
10:29:17 15 the Web in jail or in the County, so they can't access
16 your manuals that talk about transportation to court or
17 they can't access the manuals that talk about parental
18 rights in divorce issues, which I found actually quite
19 helpful. There are a lot of helpful materials on your
10:29:39 20 website, but how do the people who need them actually get
21 access?

22 DORSEY NUNN: You know, like --

23 LINDA EVANS: By their worn-out copy machine.

24 DORSEY NUNN: Another thing, like, for
10:29:50 25 instance, when we sued them about inadequate medical care,

10:29:53 1 we did stuff that was different. So we didn't -- you
2 know, we came to the conclusion that the attorneys would
3 only be around as long as there were Constitutional
4 violations.

10:30:05 5 So we built a whole apparatus within the
6 organization called the California Coalition for Women
7 Prisoners, that their primary focus were to subsidize and
8 sustain women in prison long after the attorneys left.

9 So, like, we are sending people on a regular
10:30:23 10 basis into institutions to actually provide services and
11 to give out information. We have -- if you walk into my
12 office right now, you will see 13 interns whose primary
13 responsibility is -- is to answer the question of what can
14 we do? Because most of the time when we write the letter
10:30:41 15 out from prison, we generally don't get an answer, you
16 know, no matter what the question is. Our relationship is
17 transactional. As soon as we get to prison, most people
18 get ghost, you know.

19 So where LSPC, some of the things that we
10:31:02 20 start focusing on was how to answer that mail that comes
21 in that nobody else answers, you know. So we got interns
22 answering that mail. We got an intern coordinator
23 answering that mail. We are sending out manuals. We are
24 sending attorneys into the prison to actually examine
10:31:22 25 those other questions that are not a question about your

10:31:26 1 appeal rights on a criminal conviction.

2 It could be about what are your rights in
3 relationship to your parents dying, your property rights,
4 your children rights, all these other areas of law that's
10:31:37 5 pertinent to anybody else that's living in the country.
6 We try to answer some of those questions.

7 So we're going in, in a way, I think -- when
8 we get our interns that sit -- one of the obligations that
9 we've got is to actually send them inside of a prison
10:31:54 10 because we think that when people go to law school, they
11 don't necessarily teach them what's on the back end of the
12 system.

13 We see it as a flaw. So, like, while we still
14 have all of these legal needs, nobody's there to address
10:32:07 15 those legal needs because we don't have money, and the
16 Court only pays for certain type of stuff.

17 LINDA EVANS: And we do a lot of direct
18 referrals also when people write us or even come into the
19 office and visit. We have, you know, the resource
10:32:24 20 directories, certainly for the Bay Area. We have some for
21 other states that we either have downloaded or received
22 from other service providers. So we do as many direct
23 referrals as we can. But actually, the main, you know,
24 work of LSPC besides the advocacy is organizing people to
10:32:41 25 stand up for themselves, and we need to do a lot more of

10:32:45 1

that.

2

GENEVA VANDERHORST: I had another question

3

because I did read about your efforts to Ban the Box for

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cities and counties, not just the state.

10:32:54 5

Is that, for cities and counties, effort

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focused on just private -- sorry, just public positions,

7

or private and public positions?

8

LINDA EVANS: We've tried to get cities and

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counties here in California to adopt vendors' requirements

10:33:12 10

that will require the vendors for the city to have the

11

same fair hiring practices as the city has adopted under

12

Ban the Box.

13

Some places, we've been successful. Most

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places we haven't because it's such a radical idea for the

10:33:26 15

cities that they want to start out just with their own

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employment rather than add compliance requirements onto

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the vendors.

18

So, you know, it's six of one, half a dozen of

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the other.

10:33:39 20

It's really interesting that all of these

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cities and counties implement the -- our recommendations

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in very different ways. And the place that we start as

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formerly incarcerated people is to ask employers to

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examine whether a job actually needs -- actually should

10:33:58 25

require a background check at all.

10:34:00 1 You know, we feel like, really, the background
2 check, the explosion of that, is a -- well, it came partly
3 from 9/11 and then just is a symptom of the fear and the
4 distrust that we have, you know, that is just pervasive in
10:34:15 5 our society.

6 And so by trying to say, you know, a
7 background check is not going to guarantee you a good
8 employee, we're trying to eliminate background checks as
9 an automatic for employers.

10:34:31 10 So we suggest that the standard should be if a
11 job requires unsupervised contact with youth, elderly, or
12 disabled people or large amounts of money, which are the
13 standards that are in place in the City of Boston, we
14 think that actually those are good standards for
10:34:51 15 protection of the public and yet offering people a real
16 opportunity without that deterrent of seeing that
17 background check held against you.

18 So in Oakland, they did accept our
19 recommendations, and some of the cities around the country
10:35:08 20 have similar standards.

21 GENEVA VANDERHORST: And who are you finding
22 your biggest opponents to be in the Ban the Box effort?

23 LINDA EVANS: Right-wing politicians, racists.

24 You know, we have not really made a lot of
10:35:34 25 inroads into private employment yet. One of the things

10:35:37 1 that we are actually coming up against in San Francisco is
2 that our -- the ordinance that we're proposing may be
3 preempted by state law. You guys understand that, I'm
4 sure, a lot better than us; but actually state law says
10:35:52 5 that only certain categories of people can be protected,
6 and we're seeking to expand those categories.

7 San Francisco has done that in the past with
8 weight, height, HIV status, and many other categories of
9 people protected under the City Code.

10:36:10 10 But in the past, adding those categories has
11 not been challenged, right? Who cares if you're a fat
12 person. You should have a right to, you know, have a job.
13 But as far as formerly incarcerated people, we have a lot
14 more opposition.

10:36:24 15 So one of the reasons that we have actually
16 rewritten our ordinance is that -- is to avoid the
17 preemption question as much as possible and because the
18 chamber of commerce and the, I believe, the apartment
19 association have told us that they plan to challenge in
10:36:44 20 court our ordinance. So we're trying to, you know, lay
21 the best basis possible to protect ourselves against the
22 court challenge.

23 GENEVA VANDERHORST: Have they said why they
24 plan to oppose?

10:36:55 25 LINDA EVANS: Well, the preemption question is

10:36:57 1 their excuse, right? They -- I think the problem is that
2 really, they don't want any regulation. Employers don't
3 want to be regulated. That was what happened with our
4 AB 1831, the statewide bill, is that the League of Cities
10:37:12 5 and the California Association of Counties actually
6 opposed us, not based on the content so much as on an
7 imposition of a requirement on city and county government.

8 Their position was: Oh, you can do it, you
9 know, city by city, county by county, which is what we've
10:37:32 10 been doing in California and elsewhere.

11 Of course, where are the civil rights
12 protections here? What is the role of the State when you
13 have right-wing counties, you know, all over California,
14 especially in the southern part of the State, who will not
10:37:45 15 adopt this, you know?

16 So we're trying to do it in a way that
17 actually upholds people's civil rights throughout the
18 state.

19 GENEVA VANDERHORST: Have you heard any
10:37:54 20 opposition arguments about issues regarding liability or
21 concerns about insurance going up, things of that nature?
22 And where does that generally come from?

23 I see you shaking your head.

24 LINDA EVANS: Well, a lot of the -- we've had
10:38:07 25 a lot of issues with liability because of cities, you

10:38:10 1 know. They want to say, "Oh, we'll be liable if somebody
2 in the courthouse attacks a child and they weren't, you
3 know -- properly -- due diligence." Yeah.

4 Actually, if you look at public liability, you
10:38:25 5 know, I'm -- this is a fact -- who -- who is the -- what
6 is the greatest cost to the cities for actual employment
7 liability? It's the police.

8 All kinds of police brutality cases, police
9 misconduct cases are settled. And that's -- that's really
10:38:44 10 where most of the money goes in terms of negligent hiring.
11 It's not called that. And they -- none of them have a
12 record. So it's kind of a straw -- straw dog argument.

13 We know that the law that actually defines
14 negligent hiring is very sparse. There haven't been,
10:39:07 15 actually, a lot of cases brought that say: "This was a
16 negligent hire."

17 And my understanding -- I'm not a lawyer --
18 but my understanding is that there have been court cases
19 that settled that question based on a written application,
10:39:24 20 checking with your references, your written -- your
21 references for employment, and then an interview.

22 So if those three parts of an employment
23 interview occur, employers have been found to be -- I
24 mean, employees have -- employers have been found not to
10:39:43 25 be liable if those three parts of the employment

10:39:48 1

application process actually happen.

2

GENEVA VANDERHORST: Thank you.

3

Mr. Raja, to ask you about who is responsible

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for informing persons in the system of what their rights

10:40:01 5

are, clearly Mr. Nunn believes his attorney should have

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told him, in addition to what plea offers were out there,

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what rights he will lose.

8

I did read that there is a statute that talks

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about a warden is required to tell -- advise prisoners

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when they're released about their -- the ability to get a

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certificate of rehabilitation.

12

But beyond that -- first of all, do you find

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that's happening? Is the warden actually doing that? Are

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they telling folks on release that at least a certificate

10:40:37 15

of rehabilitation exists, whether or not they qualify for

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it?

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ALEEM RAJA: Sometimes. I don't know what the

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mechanism is in place, but some people are coming to me

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directly being released from prison saying, "I was told

10:40:50 20

that I can get a certificate, but I have to wait a certain

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amount of time. So I want you to tell me more information

22

about that."

23

And I think they're learning about that from

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being in prison. Are they are learning it from the warden

10:41:01 25

or from their cellmate, I'm not sure.

10:41:04 1

And a lot of times, the information is wrong.

2

So, again, is that from the warden or from the cellmate?

3

I'm not sure.

4

To answer your question, in California, when

10:41:13 5

you are convicted, at the time of your sentencing, you

6

must be informed that you have a right to a dismissal of

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that conviction once you successfully complete probation.

8

The way you are informed about that is of the

9

43 things that are listed on your sentencing, it's

10:41:29 10

number 40, and it's nice. It's got two little stars next

11

it, at least in San Francisco it does. You're not

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verbally informed. It's one of the 43 things you're

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supposed to read, which is mostly legalese, and at the

14

bottom, it says: "You have a right to dismissal."

10:41:42 15

So that's somewhat helpful. But I completely

16

agree with Mr. Nunn that at the time of the plea bargain

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and at the time of the sentencing, all -- more, if not

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all, of your collateral consequences need to be explained

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to you, and your collateral consequence remedies need to

10:41:58 20

be explained to you.

21

So the judge needs to inform a person verbally

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that "You have a right to get this case dismissed. Do you

23

understand?"

24

Because right now, all we say is, "You have a

10:42:09 25

right to a jury trial. Do you understand?"

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Well, what does that involve? And they'll take the time to get you to waive your jury trial right, but they won't take the time to get you to understand how you do -- how you reenter.

Second, I should have said one of the partners that we have is Adult Probation. Adult Probation in San Francisco is excellent in many ways, and one of them is as a person approaches the end of their probation term, they tell them: "Go see Mr. Raja." That's a part -- that happens in San Francisco because they have somewhere to send people.

As long as you have an agency or somewhere -- Alameda is not through the Public Defender's Office; it's through another civil nonprofit, EBCLC -- as long as there's somewhere to send people, I'm pretty sure probation wants to see people terminate -- sorry, get their cases dismissed because it's a success story.

Probation can take as much credit -- I don't know where you'd lay the credit, but probation can take as much as credit for somebody finishing three years of probation as anybody else can. And so they want to see that. They want to see that dismissal.

DORSEY NUNN: By the way, it's also the application for pardon in terms of their certificate of rehabilitation. If it's an application for pardon -- and

10:43:24 1 none of us ever, ever, ever hear of anybody getting
2 pardoned -- we think the system is broke or corrupt.

3 So it's, like, that's what we think when you
4 say it's an application for pardon. And nobody I know --
10:43:38 5 you? Nobody knows, anybody knows in our organization,
6 which have seven chapters, ever heard of anybody getting a
7 pardon. We don't know those folks, so --

8 GENEVA VANDERHORST: I did read there was
9 16 pardons, and two went to the same person. So I don't
10:43:56 10 know how you find --

11 DORSEY NUNN: Out of how many hundreds of
12 thousands?

13 ALEEM RAJA: We basically tell people --
14 without getting people to be too jaded, we tell them, "Do
10:44:04 15 you know the governor?" Do you know -- do you know the
16 governor?

17 A guy came to me and literally said, "I met
18 the governor. I was catering at a hotel downtown, and I
19 went up to the governor's secretary of legal affairs and
10:44:17 20 said, 'Can you get me a pardon?' And after, like, three
21 days at the conference, the secretary said, 'Give me your
22 name.'"

23 I'm -- and I was, like, "Yes."

24 We haven't -- we haven't met -- we haven't met
10:44:28 25 the time frame to actually submit the application, but

10:44:31 1 I -- I will send a letter to that secretary every couple
2 months saying, "Remember this guy? Here's his picture.
3 He's an amazing caterer. Please keep him on your
4 pardon" -- but it's that -- it's not absurd, you know.

10:44:40 5 It's really, like, do you know the governor? Same with
6 the federal pardon. You know -- do you know Obama?

7 Because otherwise, we're looking at a
8 certificate, not a pardon. And that's -- that should
9 change. That should change. One prison conviction should
10:44:53 10 not be that detrimental to a person's life.

11 Right now, it is. Right now, a certificate of
12 rehabilitation has some benefit. You have a chart up
13 here. It has some benefits, but the pardon is what you
14 really need, and that needs to be dramatically expanded in
10:45:07 15 California.

16 GENEVA VANDERHORST: It's 4852.21 that says
17 that wardens are required to advise.

18 The -- the other -- when you mentioned the
19 form, it made me wonder whether or not they are bilingual.

10:45:24 20 ALEEM RAJA: The sentencing forms in
21 San Francisco are not bilingual. My experience has been
22 that the interpreter, the court-provided interpreter, does
23 not read out the entire sentencing form to the person.
24 That's been my experience.

10:45:38 25 So the burden is on the actual attorney and

10:45:41 1 should be on the court and the public defender attorney
2 together to go through that sentencing list and explain it
3 to the person with the assistance of the interpreter.

4 GENEVA VANDERHORST: And the last one I have
10:45:54 5 is that same statute refers to sex offenders having a
6 10-year waiting period for a certificate of
7 rehabilitation.

8 Have you actually had any sex offenders who
9 qualified; and, second, were you able to get the
10:46:10 10 certificate of rehabilitation even after the 10 years?

11 ALEEM RAJA: Yes. In my experience personally
12 at our office, we have. And then in California, it does
13 happen. There are people that -- in part, you have to
14 realize that we have an -- a very, very broad definition
10:46:26 15 of "sex offense."

16 If you're 17 and you're making out too
17 aggressively with another person that was of a particular
18 age, you're a sex offender. Judges understand that
19 10 years later or 15 years later when you are of a certain
10:46:41 20 age and that you are not a pedophile and you are not any
21 of these things, courts and judges are willing to grant
22 certificates of rehabilitation.

23 Now, we need to expand the pool of folks that
24 can get relief, and we need to expand the pool of people
10:46:56 25 who can stop having to register as sex offenders for the

10:46:59 1 rest of their life. As Ms. Evans said, there is -- when
2 you say there's nowhere in San Francisco that a parolee
3 who is convicted of a sex offense can live, it's because
4 under parole rules, you have to be a certain distance from
10:47:11 5 parks and a certain distance from schools and a certain
6 distance from other locations where children congregate.
7 There's nowhere left in San Francisco that's far enough.
8 We don't have any little rural spot of San Francisco. And
9 so that's a significant problem, and people need relief
10:47:26 10 from that.

11 GENEVA VANDERHORST: Is the Clean Slate
12 Program unique just to San Francisco?

13 ALEEM RAJA: There are other counties in
14 California that have "Clean Slate" programs or programs
10:47:35 15 that help with relief. I think we are the only program
16 in -- that has as much staff and as much resources
17 available to us through the County and through the
18 advocacy of the public defender, and I think it should be
19 a model.

10:47:51 20 I think we need to start prioritizing, not
21 just giving 100 lawyers to help people get pleas and go to
22 trial, but maybe one or two lawyers to help people after
23 they did plead.

24 GENEVA VANDERHORST: Really, just because I
10:48:03 25 don't think we're going to have them among our other

10:48:06 1 group, can you tell us a little bit about the Reentry
2 Council that you-all work with?

3 ALEEM RAJA: So, I don't know all the details
4 of the Reentry Council because my supervisor who
10:48:18 5 supervises -- so the San Francisco Public Defender's
6 Office has a lot of reentry programs and has a lot of work
7 that we do for people that are exiting the jail system.
8 So I'm one component of that.

9 We have a social worker program that helps
10:48:33 10 people make the very same kinds of referrals you were
11 asking about earlier, like, how do women and other folks
12 find out about the resources in the community and
13 training? Well, we have social workers that are on staff
14 at the Public Defender's Office that help with that
10:48:45 15 process of linkages and referrals.

16 So anyways, of the various components that we
17 have, we have a supervisor. Her name is Simin Shamji,
18 S-I-M-I-N. Her last name is Shamji, S-H-A-M-J-I. And so
19 she's my supervisor and the supervisor of the reentry
10:49:01 20 folks. She connects in with the Reentry Council.

21 But what I do know is that the Reentry Council
22 is a partnership between probation and the public
23 defender's office and several other groups that focuses on
24 figuring out a lot of these questions about now that we
10:49:16 25 have realignment, what are some of the remedies going to

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be?

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Because what happened is the State of California accelerated into realignment and left the consequences to be sorted out by people later on. And so the Reentry Council is trying to sort out a lot of these consequences and trying to figure out: When somebody is sentenced under realignment, do they get a dismissal? Do they have to do a certificate of rehabilitation? What are the consequences? What are the collateral consequences? There's a lot of advocacy and investigation around that.

LINDA EVANS: If I could just add something about the Reentry Council process, it might be useful for you-all. I think it may be a best practice that you'd like to mention in your report.

In California, there are 13. And most of the large cities have a reentry council. It might be county-based; it might be city-based. And San Francisco is the only one that has an official relationship with the board of supervisors.

The reason that -- I think you know my opinion is that that's important -- is that right now, every county in California, because of realignment, has what is called a Community Corrections Partnership, CCP.

And the decision-makers in that body are the CCP Executive Committee, which is all law enforcement,

10:50:40 1 including the presiding judge, a police chief from the
2 county, the public defender, the D.A., the sheriff,
3 et cetera, and one public health -- the director of public
4 health. You can imagine that the decisions that are made
10:50:55 5 by that body are rather biased in favor of law
6 enforcement.

7 They also make budgetary decisions,
8 unfortunately. And in most counties, law enforcement
9 receives almost all the money. Here in San Francisco, all
10:51:07 10 the money was distributed to the Public Defender's Office
11 and reentry, so it's markedly different here.

12 The structural relationship of the Reentry
13 Council to the board of supervisors means that there
14 actually is an independent opinion-relating body that can
10:51:30 15 communicate with the supervisors that is not dominated by
16 law enforcement.

17 The Reentry Council here makes policy
18 recommendations. They have participated in authoring this
19 ordinance that we're talking about and generally played a
10:51:46 20 very progressive and unifying role under the leadership of
21 Mr. Adachi. And now it's been transferred over to the
22 probation department.

23 The other 12 reentry councils have no official
24 standing with their boards of supervisors; and therefore,
10:52:00 25 their ability to influence policy is really limited.

10:52:06 1 We participate in what is called the "One
2 Table" in Oakland, which is an Alameda County-based
3 reentry council. We've been participating in it since its
4 inception about five years now, and it has zero policy
10:52:22 5 influence with the board of supervisors and has been
6 further marginalized by now the emergence of the CCPEC
7 process.

8 So what we advocate for is some kind of
9 official relationship of community organizations banded
10:52:40 10 together with official government agencies in the reentry
11 council process to have an independent relationship and
12 influence with the board of supervisors.

13 So if there's a structural relationship, then
14 they're going to listen to you. If it's an informal
10:52:56 15 relationship with no real policy path, then it's actually
16 devolved in Oakland to being a place where people discuss
17 funding; where community agencies discuss funding. And
18 the people coming out of the jails are generally left out
19 of the conversation.

10:53:16 20 GENEVA VANDERHORST: Thank you for that
21 because their website notices there are 43 members and
22 generally a list of categories that those members might
23 work in. But it doesn't specify, you know, exactly what
24 departments they're coming in. So there's nothing on
10:53:32 25 their information that notes that there's a relationship

10:53:34 1

with the board of supervisors.

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LINDA EVANS: Actually, the San Francisco

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board has one-third of its members formerly incarcerated

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people, which is also unique in the whole country. To my

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knowledge, the relationship -- like, I know there's a

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reentry council in South Carolina, and they have formerly

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incarcerated people that may participate in the meeting

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but do not have an official position and therefore an

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official voice.

10:54:02 10

RICK JONES: Vicki?

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VICKI YOUNG: Ms. Evans, you mentioned that

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your conviction was in federal court.

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LINDA EVANS: Yes.

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VICKI YOUNG: And a lot of the programs that

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we're hearing from you today have to do with state

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convictions.

17

I would like you to share with us your

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experience of the collateral consequences of a federal

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conviction because you don't have even the benefit of some

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of the state ones; is that correct?

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LINDA EVANS: Well, we certainly don't have a

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Clean Slate. Margy's the expert here. They're -- getting

23

a federal pardon is extremely difficult.

24

VICKI YOUNG: We know about --

10:54:47 25

LINDA EVANS: Okay.

10:54:47 1 VICKI YOUNG: Could you explain -- let's say
2 in terms of your reentry, you know, the barriers that you
3 had or the lack of information that you had, if you could,
4 you know, share?

10:54:57 5 LINDA EVANS: My parole officer told me I was
6 never going to vote again. And he was the head of the
7 parole, you know, board. I mean, he was head of the
8 parole department. He was the senior -- most senior
9 officer.

10:55:08 10 So, you know, you have to think about is that
11 ignorance, or is it purposeful? I don't know. I'm a
12 white person. You know, I don't know if he thought I was
13 going to vote Republican or -- I don't know. But, you
14 know, so that's one indicator.

10:55:25 15 You know, I feel like my rights were violated
16 as a federal prisoner by having my DNA taken while I was
17 on parole. And that's now a requirement.

18 The services that are available are, I think,
19 much more limited because, you know, you're coming from
10:55:43 20 the federal court system. You may be in prison, you know,
21 states thousands of miles away, even, from where you're
22 going to end up living. And as a consequence, any kind of
23 ability that you might have had to form a network of
24 support is also very limited.

10:56:01 25 So it's more difficult coming from federal

10:56:04 1 prison into a state where you maybe didn't live before or
2 all of your family has died or disappeared or abandoned
3 you. And so there are big challenges there.

4 My personal experience, you know, being a
10:56:20 5 white person, I have an education. I had a really great
6 support network. So my ability to reenter, I don't think,
7 is typical and certainly is not typical for a person of
8 color or somebody that has -- hadn't been able to go to,
9 you know, school in prison. I went to college while I was
10:56:39 10 locked up and actually finished -- almost finished my
11 master's degree; finished it when I got out.

12 So I don't think that my opportunities were
13 necessarily typical of federal prisoners, either. And I
14 ultimately was released through a presidential pardon. So
10:56:55 15 I know that wasn't typical.

16 VICKI YOUNG: So you actually got a pardon?

17 LINDA EVANS: I did.

18 MARGARET LOVE: It was --

19 LINDA EVANS: It was clemency.

10:57:08 20 VICKI YOUNG: Clemency.

21 LINDA EVANS: You can't be pardoned unless
22 you're already out. Margaret can correct me at every
23 point, I know.

24 MARGARET LOVE: You could be.

10:57:15 25 VICKI YOUNG: You could explain. I didn't

10:57:16 1 realize that you had gone through the process and just how
2 long that took and --

3 LINDA EVANS: It took about two years. You
4 know, there's -- you submit your papers. And then there's
10:57:27 5 a thorough, really long investigation of all your judges,
6 all your U.S. attorneys, et cetera, et cetera.

7 And, you know, I would be happy to share the
8 story sometime, but I was very, very, very fortunate. And
9 my charges were political in nature, so that contributed,
10:57:49 10 I think.

11 VICKI YOUNG: So does that meet -- but you
12 still have the conviction now because it was a commutation
13 and not a conviction?

14 LINDA EVANS: I still have a conviction, and I
10:57:57 15 have a long rap sheet from, you know, political protests
16 and other charges that I had throughout my life.

17 RICK JONES: With your permission, we're going
18 to run just a little bit long because our next witness
19 isn't until 11:30.

10:58:11 20 Unless -- hearing no objection, Chris?

21 CHRISTOPHER WELLBORN: Yes.

22 Mr. Raja, I've got a couple of questions for
23 you.

24 What we seem to be hearing is that
10:58:23 25 San Francisco is sort of a bubble as far as what happens

10:58:27 1 statewide in this area.

2 And just the sentencing forms, you indicated
3 that you weren't even sure whether in the sentencing
4 forms, which advised people about to be sentenced, what
10:58:41 5 the downstream consequences were, some of the downstream
6 consequences.

7 You weren't sure whether that was a statewide
8 process or whether this was also just kind of done ad hoc
9 on a county-by-county basis.

10:58:54 10 Am I correct in that?

11 ALEEM RAJA: It is a state law that requires
12 you to be informed at sentencing that you can have your
13 conviction dismissed upon successful completion of
14 probation.

10:59:05 15 CHRISTOPHER WELLBORN: But the form --

16 ALEEM RAJA: The form itself is county by
17 county. It's not a form, really. It's a printout of
18 everything the clerk writes in shorthand and then gets
19 expanded into a sentence, literally a sentence. And every
10:59:16 20 county is different. I've not heard of -- in my
21 conversations with other attorneys and other counties in
22 California, I have not heard of a judge informing people
23 at sentencing verbally, but I would suggest that. We're
24 not even there in San Francisco.

10:59:31 25 CHRISTOPHER WELLBORN: Okay. And then the

10:59:32 1 other question I have is: It seems that one of two
2 approaches might be very efficient for working through
3 this process, given the huge amount of people in this
4 state and the amount of counties. I grew up in Southern
10:59:47 5 California.

6 Number one: Is there any movement,
7 possibility, discussion with judges or the legislature of
8 allowing a mechanism whereby a sitting judge in
9 San Francisco, provided the appropriate information, could
11:00:04 10 make a decision that would then apply statewide? In other
11 words, somebody's convicted in San Diego County of petty
12 theft, whatever the offense is in California, and a judge
13 in San Francisco is able to get that -- get relief from
14 that conviction in some manner versus the person having to
11:00:25 15 travel all the way to San Diego.

16 ALEEM RAJA: So right now -- so I think some
17 of the anxiety of doing that may be based on the feeling
18 that, well, somebody was convicted in a distant land, a
19 distant place, Southern California, and we don't know the
11:00:42 20 particulars of what happened.

21 The reality of it is there's two ways to get
22 your case dismissed: Either you're automatically entitled
23 because you did your -- did your DUI drunk driving
24 conviction, you paid all your fines and fees, you did your
11:00:55 25 class, you did your two, three years of probation. You're

11:00:58 1 done. That's automatic. It's irrelevant what your blood
2 alcohol level was. It's irrelevant how expensive it was.

3 If you got convicted in Southern California, a
4 judge sitting in San Francisco should be able to just sign
11:01:09 5 off on the form, and it should be pro forma. There's no
6 anxiety or concern there that should be raised by form
7 shopping concerns or anything like that.

8 The second way to get your case dismissed is
9 you have to demonstrate a form of rehabilitation.

11:01:23 10 Rehabilitation is not that dependent, if at all, on the
11 underlying circumstances of the crime.

12 CHRISTOPHER WELLBORN: Right.

13 ALEEM RAJA: So, again, the way -- the way --
14 in operation, the way it actually works is when you to go
11:01:36 15 a different county, you can demonstrate through a personal
16 statement, through advocacy of people in your community,
17 that you have rehabilitated. "Here's the good deeds I've
18 done. Here's what I have done to reform myself."

19 That, again, should be administered neutrally
11:01:50 20 through the State. All Superior Court judges are co-equal
21 standing.

22 So I think that it's just -- it's not that
23 there's an automatic resistance to it. I just think that
24 right now it's set up as you have to go county by county
11:02:03 25 because people don't conceive of that as being too much of

11:02:07 1

a burden. The reality is, for our clients most in need,
2 they have convictions all over.

3

CHRISTOPHER WELLBORN: And that's my point. I
4 get the reality of it. And the other reality is somebody
11:02:15 5 may have convicted in San Diego County 40 years ago; and
6 for the last 35, they've lived in San Francisco where they
7 became rehabilitated.

8

ALEEM RAJA: Right.

9

11:02:25 10

CHRISTOPHER WELLBORN: So for a judge in
San Diego County making that determination, it's almost
11 impossible for them to make the determination.

12

ALEEM RAJA: Right.

13

CHRISTOPHER WELLBORN: So, again, is there --
14 are people -- it seems to be, from what you're telling us,
11:02:38 15 that the standard still seems to be whatever the -- the
16 "lead standard," we could call it, that people have to go
17 to San Diego to get this dealt with, even though all their
18 witnesses, all the documentation, all the police records,
19 everything else are coming from San Francisco.

11:02:56 20

ALEEM RAJA: Correct. That's a correct
21 statement.

22

CHRISTOPHER WELLBORN: Then the follow-up: Is
23 there any movement within the Court themselves, or do they
24 even have the power to change things such that, since all

11:03:06 25

these judges are co-equal, so that a judge in San Diego

11:03:10 1 County could make a decision for a citizen of San Diego
2 County and vice versa for someone in San Francisco?

3 ALEEM RAJA: They do not have the power right
4 now. It's written in the law that says you go to the
11:03:21 5 county of the conviction.

6 CHRISTOPHER WELLBORN: All right.

7 ALEEM RAJA: That law needs to change. And
8 I -- and I think there is -- resistance wouldn't -- I
9 don't know. Sometimes I'm surprised at the nature of
11:03:31 10 resistance when it comes up. But in this particular
11 context, there just shouldn't be that much resistance.
12 That would be of benefit to change that.

13 And the experience California already has
14 is -- let me be clear for the Commission -- is if you went
11:03:42 15 to prison out of -- if you went to prison out of
16 San Diego, then I in San Francisco can help you.

17 If you didn't go to prison in San Diego, you
18 have to go back to San Diego to get a dismissal. In other
19 words, if you want to get a certificate of rehabilitation,
11:03:57 20 that's what you do when you went to prison, then it must
21 be done in your county of residence. So I help those
22 people. So it's nonsensical.

23 Our court system -- San Francisco judges
24 already have experience saying "I know you went to prison
11:04:11 25 in San Diego. I see your rehabilitation.

11:04:13 1 Congratulations. You've done a good job. Here's a
2 certificate of rehabilitation."

3 That could easily be applied to dismissals,
4 which are numerically more common; there is a higher
11:04:20 5 volume of dismissals than certificates of rehabilitation.

6 CHRISTOPHER WELLBORN: Ms. Evans just had a
7 question for you. You mentioned that it's a burden on
8 Alameda County for women who -- I guess City of Oakland --
9 all live in the same spot; they live for a year; they take
11:04:37 10 parent classes and they complete all this successfully.

11 It allows them relief from the preclusion against public
12 housing.

13 Is that preclusion against public housing, is
14 that an Alameda County preclusion, or is that a statewide
11:04:51 15 preclusion?

16 LINDA EVANS: That's a national preclusion,
17 unfortunately.

18 CHRISTOPHER WELLBORN: But the lifting of it
19 only applies to Alameda County --

11:04:59 20 LINDA EVANS: Yes.

21 CHRISTOPHER WELLBORN: -- is that correct?

22 LINDA EVANS: Yes.

23 CHRISTOPHER WELLBORN: So -- all right. If
24 it's a national preclusion, how is it that Alameda County
11:05:06 25 is able to say, well, it doesn't apply here?

11:05:09 1 LINDA EVANS: The Oakland Housing Authority,
2 each of the housing authorities that actually govern and
3 administer public housing projects, have -- are common.
4 There are certain, you know, common requirements. But the
11:05:25 5 standards, et cetera, are determined by those individual
6 housing authorities. And therefore, the Oakland Housing
7 Authority had this pilot program that turned into a
8 permanent program because of its success. And now the
9 Pops Program is going to be initiated.

11:05:40 10 CHRISTOPHER WELLBORN: Okay.

11 LINDA EVANS: And actually, just a little more
12 information: There was a very recent -- well, in
13 Los Angeles, we also have a pilot program that is going
14 that is administered by the Public Housing Authority
11:05:53 15 there. And the reason that that actually came into being
16 is that a formerly incarcerated person, one of our
17 members, the executive director of the New Way of Life
18 Reentry Program there, had identified the need for more
19 housing.

11:06:11 20 And developers, et cetera, worked with her and
21 the City to create a new housing project that we thought
22 was going to be actually targeting formerly incarcerated
23 people.

24 When the housing project opened, there was new
11:06:27 25 housing, a grand opening, and it turned out that nobody

11:06:31 1 that was formerly incarcerated had been eligible to enter
2 that housing.

3 So when Susan Burton was asked to, you know,
4 make a speech at the beginning, she pointed out to the
11:06:41 5 Housing Authority that, actually, the -- the origin of
6 this project was to serve the South Central community and,
7 in fact, what happened is that nobody was eligible.

8 And the head of the Housing and Urban
9 Development of the Housing Authority there was appalled,
11:06:56 10 had a meeting with her, and actually initiated a new pilot
11 project there where people with records were going to not
12 only be able to be added to the lease of their families
13 when they get out of prison so that they would be legal
14 staying in that housing authority, but also their families
11:07:15 15 would be put on a waiting list if they required a larger
16 apartment to accommodate a person coming home from prison.

17 So we believe that's a very good practice.
18 And there was a new letter from the head of Housing and
19 Urban Development at the national level encouraging
11:07:33 20 practices by local housing authorities that would open up
21 housing opportunities for people with records.

22 DORSEY NUNN: I don't want to miss the human
23 part of this story.

24 The human part of this story is that some of
11:07:48 25 us watched the development of this housing project develop

11:07:53 1 thinking that as a community -- because every time that we
2 say that we're formerly incarcerated people, we're
3 basically stating that we do have a community, you know,
4 and we watched them develop this housing project thinking
11:08:06 5 that we were going to move into it; that ultimately we
6 couldn't.

7 We lost people as a result of bad public
8 policy. So it wasn't just that we didn't get to move into
9 that housing policy [sic]. People fell off the chart
11:08:23 10 because the hope evaporated. So it's not just simply we
11 didn't get a chance to move in. We lost hope. Some of
12 our people lost hope.

13 RICK JONES: I've got a question, and then
14 we're going to wrap up with Jim.

11:08:39 15 ELISSA HEINRICHS: My question involves -- and
16 it's for you, Mr. Raja.

17 ALEEM RAJA: Uh-huh.

18 ELISSA HEINRICHS: Looking at the question of
19 whether or not a judge in a specific county can enforce --
11:08:54 20 sign an order that can be enforced in a different area in
21 the state, I guess I'm sort of struggling with the
22 practicality of that.

23 And I'm hearing what you're saying about
24 circumstances when there's no need for an adversarial
11:09:10 25 hearing, using your DUI conviction example, and then the

11:09:14 1

other example where you actually have evidence of
rehabilitation.

2

3

Do you think there would be less resistance,
instead of having a judge in San Francisco issue something
that has to be enforced in a different area of the state,
in circumstances that you laid out, where there clearly
isn't a need for a hearing, do you think there would be
less resistance from other counties if they received a
package, maybe, from your office or other agencies that do

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this sort of work; they received a package and the
decision is left in -- their jurisdiction makes the
decision, but the work that you're putting together, that
you're proposing, would be reviewed by a San Francisco
judge; could in fact be reviewed by their judge?

11:10:01 15

16

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18

The reason I'm asking that is because in my
jurisdiction, it comes down to money. They would be
losing \$60 or more for the -- for the petition that's
being forwarded to their clerk of the court.

19

11:10:15 20

21

22

And I would imagine that has to be at least a
part of the resistance that the movement is facing here.

Is that something that has been talked about,
and what are your thoughts on that?

23

24

11:10:31 25

ALEEM RAJA: Let me -- when a person comes to
me and I look at their rap sheet, I can see the
convictions in which they just went to county jail, and

11:10:33 1 then I'll see the convictions where they went to prison.
2 I'm not seeing the realignment convictions yet. I'll see
3 them in a couple of months; in a couple of years I'll see
4 them.

11:10:42 5 If a person is a resident of San Francisco and
6 they establish that through normal residency laws that
7 they're a resident of San Francisco and they were
8 convicted of a crime in San Mateo or some other county --
9 they were convicted of a crime in Los Angeles of weapons
11:10:58 10 possession and they went to prison for three years, the
11 entire process happens in San Francisco, first of all,
12 there's no filing fee. There can't be. Legally, there
13 can't be a filing fee.

14 ELISSA HEINRICHS: Exclusive to San Francisco?

11:11:10 15 ALEEM RAJA: No. For a certificate of
16 rehabilitation, there's no filing fee. Not supposed to
17 because the cost-benefit analysis, they said let the
18 person get a certificate. Don't make money off their
19 backs. That's the cost-benefit analysis California did, a
11:11:22 20 wonderful one.

21 So they -- we file the petition. A
22 San Francisco judge looks at the rehabilitation since the
23 time of the conviction.

24 Now, an important component of a certificate
11:11:36 25 of rehabilitation is that you must prove that you served

11:11:38 1 your entire packet on the county of where the conviction
2 was, "serving it" meaning it goes to the D.A.'s office.

3 The D.A. of our county has the burden of doing
4 an investigation on that rehabilitation. So the
11:11:51 5 adversarial process -- every certificate of rehabilitation
6 is going to be adversarial because ultimately, the judge
7 has to design -- decide, was there rehabilitation or not.

8 And the D.A. then does the investigation in --
9 San Francisco's D.A. does the -- does the investigation.
11:12:06 10 Sometimes that may involve investigating things that
11 happened in other counties, and then they report back to
12 our judge.

13 If the district attorney of that other county
14 has an objection, they may be heard at the hearing. Even
11:12:19 15 if a certificate is granted and the D.A. feels there was
16 some defect, they can file for a rescinding of certificate
17 of rehabilitation.

18 There's lots of built-in protections for the
19 convicting county, but the work is done in the county of
11:12:32 20 residence.

21 And I don't hear objections to this process.
22 I don't object to the process. I object to certain parts
23 of it, but not in what we're talking about. I don't hear
24 objections of other people.

11:12:42 25 California is pretty comfortable saying that

11:12:44 1 they're one California court system. People don't raise
2 the idea of how are you going to decide something in
3 San Francisco and enforce it in L.A. I think there's
4 plenty of experience in that thing. An order by a
11:12:56 5 California Superior Court judge is a California order.

6 ELISSA HEINRICHS: What was the circumstance,
7 then, when somebody who's down in San Diego or wherever
8 your question dealt with, in a different part of the
9 county, that they would have to go to the other county?

11:13:10 10 ALEEM RAJA: If a person doesn't go to
11 prison -- so think of all the convictions, and there's a
12 pyramid of all the convictions -- but the bulk of all
13 convictions are county jail convictions.

14 Then there's a layer of prison convictions.
11:13:22 15 The prison convictions are the certificate of
16 rehabilitation, that top of that pyramid. That gets dealt
17 with in your county of residence.

18 The convictions -- the bulk of the convictions
19 where you didn't go to prison, arguably the less serious
11:13:35 20 ones, they're not -- it doesn't really work out that way;
21 but arguably, we could lobby that it's the less serious
22 ones -- those are the ones that require people to travel
23 up and down the county [sic].

24 I don't think it's an on-purpose decision by
11:13:47 25 anybody. I think it's just an artifact of how it worked

11:13:51 1 out. I think we can use the certificate of rehabilitation
2 mechanism as more of a model. Some of the features are
3 too burdensome, but more of a model.

4 LINDA EVANS: I just want to say that I think
11:14:01 5 you're being kind --

6 ALEEM RAJA: Okay.

7 LINDA EVANS: -- to the -- and, you know, we
8 have a specific relationship to district attorneys and
9 judges. So, you know, we may be biased in our
11:14:10 10 perspective.

11 But we have been agitating for centralization
12 ever since All of Us or None discovered that clean slate
13 remedies existed and were underused.

14 And we've been really working with the East
11:14:25 15 Bay Community Law Center, who you'll hear from later
16 today, along with Mr. Adachi and other counties to
17 actually institute some kind of access because it doesn't
18 do any good if the right -- if the remedy exists and
19 nobody knows about it, you know. And many of us who have
11:14:42 20 more serious offenses aren't even eligible.

21 So I think that what's key here is to
22 recognize that the district attorneys and the judges often
23 want to retain control of these cases. You know, it makes
24 sense that it should be centralized. It makes sense that
11:14:59 25 if a mandatory -- if a dismissal is mandatory, what are

11:15:03 1 they even doing in the process, right?

2 But nonetheless, the district attorneys want
3 to weigh in, even on mandatory dismissals as often do
4 judges.

11:15:13 5 And I also want to point out that
6 San Francisco, as far as I know, is the only place where
7 this is free. Most places, there's an exorbitant filing
8 fee, cost, et cetera. You have to usually retain a
9 private attorney because there are not that many public
11:15:32 10 service kind of law clinics.

11 And the fee for a juvenile expungement is
12 \$150. And -- and what kid do you know that has 150 -- or
13 parents that have \$150 so that you can get your juvenile
14 expungement sealed and destroyed?

11:15:48 15 So there are a lot of problems, you know. As
16 good as this supposed remedy is, there are a tremendous
17 amount of problems here.

18 And for one thing, we believe the mandatory
19 dismissal should be mandatory. There shouldn't be any
11:16:01 20 requirements once you finish.

21 In addition, certainly, centralization and a
22 waiver or elimination of the fees, specifically for
23 juvenile defendants.

24 And then each county -- Alameda County has
11:16:14 25 several courthouses. For the 1203.4 dismissals, you still

11:16:20 1 have to go to every single courthouse in the county. And,
2 you know, transportation is expensive for people that
3 don't have jobs.

4 RICK JONES: Go ahead.

11:16:29 5 DORSEY NUNN: We be saying, like, when we
6 talking in private, we say if you can find a prior, how
7 come you can't find our rehabilitation, because the same
8 weight that you would put on punishing us don't put on
9 allowing us to move forward with our lives.

11:16:44 10 So within the structure of the court system,
11 they will accept the judge's opinion that I did something
12 wrong and give me how many ever extra years they want to
13 impose. But they won't accept that opinion when it comes
14 to something else, you know. So it's, like, if they
11:17:01 15 depend on a prior, they should be able to depend on
16 something else also.

17 RICK JONES: That has to be the last word,
18 unfortunately.

19 This has been a great start to our work here
11:17:11 20 in California. Thank you very much.

21 ALEEM RAJA: Thank you.

22 LINDA EVANS: Thank you.

23 RICK JONES: We're going the reconvene in
24 15 minutes, at 11:30, and there's some questions from the
11:17:25 25 audience. Thank you.

11:17:29 1

LINDA EVANS: Thank you so much.

2

(Proceedings recessed from 11:17 a.m. until 11:31 a.m.)

3

RICK JONES: All right. I think we've got

4

everybody. We can convene.

11:32:15 5

All right. Welcome.

6

REBECCA KUEHN: Thank you.

7

RICK JONES: We're happy to have you here. I

8

think you probably missed the introduction that we gave at

9

the outset, so I'll just give you the short version.

11:32:27 10

The way that we sort of operate is that we

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give you five or ten minutes, whatever it takes for you to

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sort of give us a sense of who you are and the work that

13

you're doing and any other thoughts that you might have

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that are beneficial to our topic. Then we have lots of

11:32:45 15

questions for you.

16

And the way that the questioning works is that

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one of our number leads the discussion. And to the extent

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that there's time after that, the rest of us will get

19

involved.

11:32:55 20

But for the purposes of this discussion, Margy

21

Love is going to be the primary person asking the

22

questions.

23

And so assuming that we're all ready, and I

24

think we are and that we're recording, I'm going to stop

11:33:08 25

talking and turn the floor over to you.

11:33:10 1 And welcome. We're happy to have you.

2 REBECCA KUEHN: Thank you. Good morning.

3 RICK JONES: Let me say one other thing.

4 REBECCA KUEHN: Sure.

11:33:16 5 RICK JONES: You have to keep up a loud voice

6 because this is recording. We're not really sure how much

7 of it's picking up, but we want to make sure we get as

8 much as we can.

9 REBECCA KUEHN: Absolutely. And I'm familiar

11:33:27 10 with working with court reporters from one of my prior

11 lives.

12 RICK JONES: There you go.

13 REBECCA KUEHN: I will do my best to not speak

14 too quickly.

11:33:36 15 Good morning, everyone. My name is Rebecca

16 Kuehn from CoreLogic, which is a large information

17 company. We have a number of consumer reporting

18 subsidiaries.

19 And I'm very privileged to speak with this

11:33:49 20 task force on restoration of rights and status following

21 conviction.

22 The issues surrounding criminal records and

23 background screenings have been the subject of a lot of

24 discussions as of late.

11:34:01 25 Just a little bit about my background -- I

11:34:02 1 know you have my bio -- but before joining CoreLogic this
2 past fall, I worked with the Federal Trade Commission for
3 five years and led its federal Fair Credit Reporting Act
4 Program which included enforcement, policy, and
11:34:16 5 rule-making in the areas of background screening and
6 criminal-offense credit checks.

7 So I have a lot of experience not only with my
8 own company's practices and procedures but also those of
9 other companies that were investigated during the time
11:34:32 10 that I was at the FTC. So to the extent you have sort of
11 broader questions about the industry, I would be happy to
12 help out on that.

13 This morning, I'm coming because I advise and
14 support our credit -- consumer reporting and credit
11:34:47 15 reporting groups. Specifically, I help support SafeRent,
16 which is a large tenant-screening company that operates
17 throughout the country. We have communities that we
18 provide background screening services and other related
19 services to in a number of jurisdictions throughout the
11:35:04 20 country.

21 One of -- we know that criminal records are
22 important to our customers, to the communities that they
23 serve. They are interested in finding out information
24 about the people who are applying to live in their
11:35:20 25 communities. So I thought I would give you some

11:35:23 1 background of how we know these reports are used and the
2 reasons that communities have expressed to us why they use
3 this information.

4 There are two primary reasons that multifamily
11:35:36 5 housing communities seek background checks on their
6 applicants. And we're specifically limiting my comments
7 to criminal records since this is the interest here.
8 Obviously, there's a lot of interest in both tenant
9 history and credit history which I do think are
11:35:51 10 interesting factors in reentry and dealing with consumers,
11 particularly those who may have not had a recent credit
12 history or a recent job history. But I'm going to focus
13 mostly on the use of criminal records.

14 One of the first areas is one I think a lot of
11:36:06 15 people are familiar with, which are for affordable housing
16 and to comply with either federal-sponsored or local
17 housing authority requirements with respect to who can
18 obtain housing.

19 For example, public housing authorities who
11:36:22 20 receive federal assistance have to deny applicants who are
21 either convicted of a methamphetamine conviction where
22 they were manufacturing the methamphetamine on public
23 housing property, for example, or for individuals who are
24 subject to a lifetime registration for sex offenses.

11:36:44 25 Those are two sort of de facto categories that are built

11:36:47 1 into the federal program.

2 There are also requirements for public housing
3 authorities to deny an application if the individual -- or
4 the family, rather, was evicted from public housing as a
11:36:59 5 result of a drug-related offense within the past three
6 years. There are rehabilitation requirements, either if
7 the person can show that they have been -- that they have
8 successfully completed rehab for their drug problems or
9 the person who was the family member in the household no
11:37:19 10 longer is with that household; either is convicted or no
11 longer living with them.

12 Local housing authorities have some
13 discretion, obviously, to impose additional or different
14 requirements. So the use of criminal records and how
11:37:33 15 convictions may impact an individual's ability to get into
16 affordable housing will vary from jurisdiction to
17 jurisdiction. And so we get different requests for
18 different records depending on where our customers are
19 located.

11:37:47 20 Outside of federal or state housing, assisted
21 housing, the communities do criminal background checks to
22 screen tenants that they believe might present a risk to
23 the health and safety of their communities or might affect
24 the right of other residents to enjoy a peaceable
11:38:06 25 existence on the premises. So to that end, they look at a

11:38:09 1 couple of classes primarily. This is, again, based on our
2 general experience with our customers.

3 They look for history of violent crimes,
4 drug-related crimes, and sex-offender status. Those are
11:38:23 5 probably the three primary characteristics they're looking
6 for. And along those lines, they are interested in
7 frequency, recency, and severity.

8 So they do -- you know, we've often heard
9 criticisms that folks -- you know, just any criminal
11:38:38 10 record will result in your not having your application
11 approved; but by and large, our customers are very picky
12 about which records they are looking for.

13 What is SafeRent's role? What is the role of
14 the consumer reporting agency in this status with respect
11:38:55 15 to these applications and dealing with criminal records?

16 It's important to know what we don't do. We
17 don't make decisions for our customers. They set the
18 guidelines, and we provide them the information that they
19 request. We also don't act to deny an applicant
11:39:09 20 information -- an application. We provide information
21 that's considered in the course of that application.

22 And we help our customers with applying sort
23 of fair, consistent, and responsible decisions. We have a
24 number of tools that we use working with our customers to
11:39:27 25 help them do that.

11:39:29 1

A number of communities sort of set standards.

2

We would like to know if someone has had a violent crime

3

within the last three years; conviction in the last two

4

years, felony or above. We would like to know if they've

11:39:41 5

had certain drug-related offenses.

6

And we help them in a couple of ways: One, by

7

helping them understand in cross-jurisdictions what

8

different convictions mean.

9

As we all know, things are called different

11:39:54 10

things in different jurisdictions, and it can be difficult

11

for the layperson who doesn't have a lot of experience

12

with criminal records to understand what they're seeing is

13

actually a misdemeanor, a relatively minor charge in that

14

jurisdiction. Because we work a lot with criminal

11:40:06 15

records, we can assist our customers with that.

16

The other thing we do is by helping them

17

filter out and not deliver records they don't consider

18

relevant because a lot of the decisioning and a lot of the

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actual application process happens at a local level. A

11:40:23 20

number of our customers, we provide a service that says

21

"We will filter out anything except for what you're

22

looking for." In other words, if we find a felony that

23

meets you're criteria, we will report that. But if it's a

24

misdemeanor or another type of charge that doesn't meet

11:40:36 25

your criteria, that won't get conveyed to the local rental

11:40:40 1 office so that you don't have a risk, which is a
2 legitimate concern, that your local rental officer is
3 engaging in their own judgment based on what they see as a
4 criminal record.

11:40:51 5 The company has made a decision at a much
6 larger level what its risk tolerance is and what
7 information it feels like it needs. And this way, by not
8 providing that information to individuals who really don't
9 need it, it helps to protect both the company and the
11:41:06 10 applicant from unfair processes.

11 As a final note, I would say that SafeRent is
12 a consumer reporting agency as are other consumer
13 reporting agency groups, and as such, we are governed by
14 the Fair Credit Reporting Act.

11:41:23 15 One of the reasons they sought and recruited
16 me to come work for the company was to help them with
17 their Fair Credit Reporting Act compliance.

18 We have responsibilities under the Fair Credit
19 Reporting Act for accuracy of records, to help consumers
11:41:35 20 if they have disputes with respect to those reports that
21 are provided on them, and to research those disputes and
22 provide answers.

23 We also look -- our customers who use us have
24 a responsibility to provide an adverse action notice,
11:41:50 25 which we think is a very important tool. It lets the

11:41:53 1 consumer know that they have been denied housing for
2 reasons based on a report provided by our company and
3 invites them to come to us to get a free copy of the
4 report and see what it says.

11:42:04 5 And then from that point on, we also deal with
6 the consumer if they have questions; if they don't
7 understand what the report says. Sometimes that happens.
8 And if they believe it's a report record that doesn't
9 relate to them or they don't think that the status is
11:42:16 10 correct, we work with them as well.

11 In addition, SafeRent provides an annual free
12 disclosure to consumers. So if a consumer is in the
13 housing market and they wanted to know what their SafeRent
14 report looked like, they could come to us and get a
11:42:30 15 report, even outside of the application process.

16 And what might be relevant to this group and
17 doesn't seem to be as well known as I thought, the
18 Consumer Financial Protection Bureau in the last two weeks
19 just published a list of larger screening companies that
11:42:46 20 do provide free reports to consumers.

21 So for folks who are working with individuals
22 reentering the housing market, that might be a really good
23 tool to find out what information exists, what it looks
24 like, and to deal with and correcting any errors or
11:42:58 25 concerns in advance of an application.

11:42:59 1 With that, I'll wait for your questions.

2 Thank you.

3 RICK JONES: Great. Thank you.

4 MARGARET LOVE: Yes. Thank you very much.

11:43:07 5 And I'm glad to have that piece of information about how
6 you can obtain your criminal record because the earlier --
7 our earlier witnesses were sort of concerned about the
8 cost and the difficulty of even knowing what is on the
9 record.

11:43:30 10 Let me ask you a couple things, and I want to
11 talk about your -- the FCRA work -- as well what you're
12 currently doing.

13 First of all, let me ask you: Do you have any
14 consumer reporting subsidiaries that deal with employment as
11:43:54 15 well as the rent?

16 REBECCA KUEHN: So not on a direct to end user
17 basis, and "end user" being the employer, basically.

18 We have a subsidiary, National Background
19 Data, that provides records to employment screeners who in
11:44:08 20 turn use them in reports that provide them to their end
21 users. So we have a large database of information that we
22 collect and update on a frequent basis.

23 And a lot of smaller background screeners
24 don't have the resources to do that themselves, so they'll
11:44:23 25 obtain information from our company and use it in

11:44:27 1 conducting further research. In some instances, depending
2 on the nature of the information, they may incorporate or
3 not incorporate it in a final report.

4 So, for example, an employer will say, "Send
11:44:37 5 me X or Y or Z." They'll get the full history from us,
6 but they'll only deliver what their customer wants.

7 MARGARET LOVE: So where do you get your
8 information?

9 REBECCA KUEHN: We get our information
11:44:48 10 directly from the courthouses across the country.

11 MARGARET LOVE: How many of those are there?

12 REBECCA KUEHN: There are a lot. I can get
13 you the exact number if that will help you.

14 MARGARET LOVE: 30,000 maybe?

11:44:57 15 REBECCA KUEHN: There are a lot. So by and
16 large -- and that's one of the things about CoreLogic,
17 we're used to getting information from a variety of
18 places -- even small places, on the real property records
19 side, which is one of our big stocks in trade; everything
11:45:11 20 from the tiniest little courthouse that does not have
21 electronic records where we have to send someone in to
22 copy them, piece by piece. We go to different places.

23 MARGARET LOVE: So you probably provide a
24 really valuable service to all of the -- however many --
11:45:25 25 there was -- I saw an op ed -- not an op ed, it was an

11:45:27 1 editorial yesterday. I'm sure you saw that in the New
2 York Times --

3 REBECCA KUEHN: I did.

4 MARGARET LOVE: -- about the screening
11:45:32 5 companies and the sort of concerns that have been raised
6 about some of their activities. But -- but you guys are
7 sort of the go-to place for these -- the screening
8 companies, however many --

9 REBECCA KUEHN: We are one of them, yes.

11:45:49 10 MARGARET LOVE: Right. But you -- you've --
11 you've got the -- the resources to go and find all the
12 records in all the courthouses, and then other companies
13 come to you.

14 Let me ask you something: We've had a -- a
11:46:03 15 lively exchange on the NACDL list, as a matter of fact,
16 not in recent weeks, about the effect of relief
17 mechanisms, expungement, set-asides, whatever you want to
18 call them or however they're called, and whether these
19 actually make their way into record systems and how they
11:46:25 20 do, and a particular concern about the FBI and how the FBI
21 records relief mechanisms.

22 Can you talk about how -- how frequently you
23 update your information and how you incorporate relief
24 mechanisms, if you do, into your data production.

11:46:46 25 REBECCA KUEHN: I can. So for SafeRent -- and

11:46:48 1 it's also for us through National Background Data, the
2 criminal record -- we pick up the expungement orders to
3 seal, a variety of names, in different jurisdictions. And
4 we do apply those to our system.

11:47:05 5 In other words, if there are records that are
6 associated with an order to seal or an expungement, those
7 will be suppressed and not produced in the future.

8 The real challenge for SafeRent for anybody
9 who deals in criminal records is that there seems to be an
11:47:20 10 uneven availability of these orders and an uneven updating
11 of the criminal records themselves where expungements are
12 affected.

13 So we -- we find that as an area of challenge.
14 We have an variety of mechanisms to sort of make sure
11:47:37 15 we're picking those up.

16 As for frequency of obtaining the records,
17 again, it depends on the jurisdiction.

18 We have jurisdictions where we obtain records
19 on a daily basis or even more frequently. For ones where
11:47:49 20 we need to go out and do it physically, it's a less
21 frequent basis, you know, maybe once a week, where we're
22 getting an update. We get it as a bulk report, for
23 example, from some courts on a monthly basis.

24 MARGARET LOVE: How about the states? Do you
11:48:04 25 ever get bulk information from states?

11:48:07 1

REBECCA KUEHN: We do in a number of
jurisdictions. And, again, it depends on what the court
system does.

4

11:48:15 5

And the interesting part about this debate is
the courts themselves have been in a budget crunch as
everyone knows, and they've been making some changes how
they make records available, the cost associated with that
which have affected some companies' abilities to obtain
those records.

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11:48:28 10

For us, we consider it a cost of doing
business. And so where we've had to pay more money, we do
that so that we can get timely records and updated
records.

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11:48:39 15

MARGARET LOVE: How about other sources? For
example, there are states that have certificates of good
conduct or certificates of rehabilitation or pardons or
something like that.

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17

18

Do you pick those records up?

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11:48:51 20

REBECCA KUEHN: To the extent they trail from
the original criminal record, we can pick those up and
sometimes do. We have a wide variety of records, and I
could provide you with some information about some of the
scope of things we pick up.

21

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Again, it depends on the jurisdiction.

11:49:05 25

MARGARET LOVE: When you say "to the extent it

11:49:06 1 trails from," what does that mean?

2 REBECCA KUEHN: So if to -- if that type of

3 information is captured within the criminal record system

4 as associated with the consumer and is available within

11:49:16 5 the public record, we would be able to find it.

6 MARGARET LOVE: That's court records.

7 REBECCA KUEHN: Correct.

8 MARGARET LOVE: You would only check court

9 records?

11:49:22 10 REBECCA KUEHN: We check other criminal

11 records sources from different jurisdictions too.

12 MARGARET LOVE: Okay.

13 REBECCA KUEHN: We do get things from where

14 they're publicly available -- and I would caution that I

11:49:32 15 would want to double-check this, but I've seen reference

16 to it in our materials -- with respect to, for example,

17 parole and sentencing boards or things like that. You

18 find those when someone has been released from

19 confinement.

11:49:45 20 MARGARET LOVE: Right.

21 REBECCA KUEHN: Information like that.

22 MARGARET LOVE: We may -- I -- we may want to

23 ask you a few more questions later, perhaps in writing,

24 about -- it's fascinating for me --

11:49:57 25 REBECCA KUEHN: Sure.

11:49:57 1 MARGARET LOVE: -- to hear how you collect
2 data and -- and how you kind of keep it up to date and
3 make sure that everything's -- I mean, it would be a
4 tremendous challenge for me to know how to treat an
11:50:11 5 expungement order that came in because I know that you
6 know they're treated -- they are give different legal
7 effect --

8 REBECCA KUEHN: In different places.

9 MARGARET LOVE: -- in different places. I
11:50:22 10 wouldn't want to be responsible.

11 I said that to somebody the other day: If I
12 were the FBI, I would not want to be responsible for
13 trying to understand how to treat an expungement order
14 from, you know, Texas as opposed to Illinois. So I would
11:50:39 15 just sort of dump the whole thing into the record and, you
16 know, let the devil take the highmost and let them see
17 everything. So I don't know. I mean, that's a --

18 REBECCA KUEHN: That is not what we do. With
19 respect to expungement, if we have an expungement of
11:50:51 20 conviction -- and you're right; there are jurisdictional
21 differences, and our personnel who work with the records
22 have to understand that. And that's one of the services
23 we provide to our customers because they don't know.

24 MARGARET LOVE: I think I'm going to come to
11:51:01 25 you and try to find out. We're trying to write a book

11:51:05 1 about that, and I'm not sure I understand it completely.

2 REBECCA KUEHN: We have some amazing people
3 that work with our data and have more knowledge about the
4 way that the criminal records systems work in different
11:51:14 5 jurisdictions that I just find fascinating. There are
6 some very, very interesting people that do a lot of work
7 on that.

8 At least for our purposes, you know, in
9 different -- I will say I'm speaking from my company --
11:51:25 10 different backgrounds, screening companies, different
11 public records take different approaches. So I don't want
12 you to think is a generic approach. But for us, we've
13 made the decision that if a record is expunged or sealed,
14 we will make sure it doesn't show for future records
11:51:41 15 provided for that consumer.

16 MARGARET LOVE: Okay. Just one more question
17 about this, and then I have one question about the Fair
18 Credit Reporting Act.

19 You said that your main job for your customers
11:51:53 20 is to provide information but that you also sort of -- you
21 provide an interpretative function as well; how we
22 understand this.

23 Do you also provide anything by way of sort of
24 standards, a general set of standards as to how your
11:52:12 25 customers ought to treat the criminal history information

11:52:17 1

that they get?

2

REBECCA KUEHN: Well, the ultimate decision of what information they want and how to use it comes from the customer.

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11:52:23 5

MARGARET LOVE: I understand that. But my question is: Do you provide them advice by way of standards?

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REBECCA KUEHN: By way of standards? Well, no. We don't have general applicable standards we give to our customers, and I wouldn't let us do that as a regulatory and legal counsel because we wouldn't want to usurp the judgment of the individual properties.

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They need to comply with fair housing. It is ultimately their responsibility on how they treat consumers and what they need to do to treat them fairly.

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We can assist them with that.

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So once they make that, you know, we understand that one of the hardest things for them is to figure out what records meet their standards; which ones they shouldn't even bother to look at, and so we help them with that process.

11:53:01 20

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And we have some scoring mechanisms that help apply, for example, like a matrix, so they tell us they want to look at certain types of records. They want to rank-order potential applicants on the basis of certain

11:53:16 25

11:53:22 1 pieces of information. We'll help them with sort of a
2 matrix-like product that helps them make their decisions
3 and makes it easier for them to apply their policies and
4 have the local people find those.

11:53:33 5 MARGARET LOVE: Things like how long ago it
6 was?

7 REBECCA KUEHN: Yes.

8 MARGARET LOVE: Did -- you're in the business,
9 I suppose you could say, of managing risk in a sense.

11:53:44 10 I mean, where do you -- how do you determine
11 risk in this context?

12 REBECCA KUEHN: That -- that's the question of
13 the day, isn't it? So when you look at the research
14 that's being done, I think there's a variety of opinions.

11:53:56 15 When has a person rehabilitated themselves at
16 postconviction such they no longer pose a risk to society?
17 And there have been different studies with conflicting
18 results.

19 And that really puts, I think, property owners
11:54:09 20 in a tough position, right? So they have to try to figure
21 out what's right.

22 The FCRA provides some indication, but that --
23 anyone who knows the history of legislation with the FCRA
24 knows it's seven years, for example. It's kind of a

11:54:22 25 made-up number at the end of the day. It really isn't a

11:54:25 1

risk thing associated.

2

MARGARET LOVE: It's called "the bible," I

3

thought.

4

REBECCA KUEHN: They just sort of put in a

11:54:30 5

seven-year number.

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MARGARET LOVE: I think it's biblical.

7

REBECCA KUEHN: There's no limitation for

8

conviction, which is interesting, for the credit reporting

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agency.

11:54:37 10

MARGARET LOVE: There used to be. That was

11

one the questions that I wanted to ask.

12

REBECCA KUEHN: Yes.

13

MARGARET LOVE: We've heard a lot of sort of

14

suggestions for improvement of the Fair Credit Reporting

11:54:46 15

Act.

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And the seven years limitation does apply to

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arrest records.

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REBECCA KUEHN: Correct.

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MARGARET LOVE: It used to apply to all

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criminal history information.

21

And we've heard some discussions that it might

22

be a good thing to bring that back since "seven years

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clean" has also been sort of put forward in some studies,

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although Al Blumstein seems to be walking that number back

11:55:18 25

at an alarming rate.

11:55:21 1 REBECCA KUEHN: Interesting to me with that is
2 based on our experience with our customers, a lot of them
3 don't look that far back, even seven years. You know,
4 they're more interested in last three, four, five.

11:55:31 5 MARGARET LOVE: Yeah.

6 REBECCA KUEHN: And, again, this is
7 scientific? No. But it's based on their experiences with
8 individual applicants.

9 MARGARET LOVE: If you had to suggest some
11:55:41 10 improvements in the Fair Credit Reporting Act, for
11 example, and if you were -- you were not in your current
12 job but if you were sort of in a -- maybe go back to the
13 Federal Trade Commission or something, you know --
14 horrors, I'm sure -- but if you were told: "Make some
11:56:00 15 recommendations. We've got this problem of all these
16 people with criminal records that can't get jobs, and
17 employers tend to" --

18 (Cell phone ringing)

19 LAWRENCE GOLDMAN: At least I heard it.

11:56:16 20 MARGARET LOVE: "So try to balance the
21 interests here and try to get a functional policy where we
22 don't want people, you know, getting hurt by people and
23 getting their stuff taken; on the other hand, we've got
24 this large social problem that we -- more than social --
11:56:34 25 that we have to deal with."

11:56:36 1

What would you name, like, three things that
you would do with the Fair Credit Reporting Act to --

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REBECCA KUEHN: Good question. For this, I'm
sort of speaking from my prior experience; not on any
official position with any company.

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11:56:50 5

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One of the aspects of the Fair Credit
Reporting Act -- this is back when we were looking at, in
my prior life, at issues with respect to employment and
background screening -- is that there be some more
meaningful use of the pre-adverse action notice. Again,
this is only existing employment; not outside of that
context.

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But when you think about that -- because we
hear concerns about accuracy of records, and it is tough
to match an individual to a criminal record because of the
reduction of identifiers in public records for privacy
concerns -- it gets to a tough job, so mistakes will
happen despite everyone's best efforts.

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11:57:29 20

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So if a consumer knows in advance that they're
going to be denied something and they're able to get a
copy of the report that's on them and can look at it and
say, "Wait. I've never lived in Montana, much less been a
sex offender in Montana; I shouldn't be denied this job"
and be able to have a meaningful use of that.

11:57:46 25

MARGARET LOVE: Right. So that doesn't exist

11:57:48 1 except in the employment area?

2 REBECCA KUEHN: The only -- it only requires a
3 pre-adverse action notice in the employment area.

4 Now, as a practical matter, in the housing
11:57:58 5 area -- this has been our experience -- the consumer is
6 denied housing. A lot of times the housing -- the company
7 will share the information and say, "We saw this on your
8 record" and contact SafeRent because we got the report
9 from them.

11:58:13 10 MARGARET LOVE: Right.

11 REBECCA KUEHN: Then we'll work with them.
12 And we in general, even though the law gives us 30 days
13 and up to 45 in some cases to investigate, our folks turn
14 around at speeds in an average of 48 hours. So we
11:58:26 15 understand housing is important. And once -- if we find
16 an error and get it corrected, we're able to send an
17 updated report at the consumer's request right away so the
18 application isn't delayed.

19 MARGARET LOVE: Right. So, okay. So that's
11:58:37 20 one. And I think that's a good one.

21 What -- what are a couple of others that you
22 might think of?

23 REBECCA KUEHN: Couple of others -- oh, you
24 know, I always found it was not so much a fixture in law,
11:58:50 25 but sort of a better discussion made available to give

11:58:55 1 information for consumers about what information is going
2 to be pulled on this.

3 It's interesting that New York has done this
4 in some jurisdictions, too, basically to try to make it
11:59:05 5 more transparent: What information is going to be
6 obtained, and where is it coming from?

7 Because I recognize there are a variety of
8 companies. We're not the only one. We'd like to be, but
9 we're not the only company out there. So when you go to
11:59:15 10 apply for a particular company, maybe you pulled our free
11 record and it looks good. It's in good shape. But you
12 applied for this property, and they pulled it from someone
13 else, and maybe there's an error or mistake on it, so now
14 you're denied. And you don't know as a consumer until you
11:59:29 15 get your adverse action notice where that came from. It
16 would be great to know when you're applying where folks
17 might be getting their records from.

18 There are -- there's requirements in the
19 employment context to provide a notice, for example, in
11:59:42 20 advance. But you're not required to identify which
21 screening company you might be using at that time.

22 MARGARET LOVE: Yeah. So that's advice to the
23 particular person with the record.

24 REBECCA KUEHN: Correct.

11:59:54 25 MARGARET LOVE: Would you do anything for the

11:59:55 1 people who are getting the records and using the records?

2 REBECCA KUEHN: Well, I think that, you know,

3 one of the things that -- kind of the standard stump

4 speech when I was talking to background screening

12:00:07 5 companies is: How can you help your customers? And one

6 thing is to really have a conversation with folks about

7 what public records are and what limitations they have --

8 because they do.

9 Despite best procedures and different tricks

12:00:20 10 of the trade to try to get better information, there will

11 be mistakes. And there will be mistakes in the original

12 records. We'll find folks who come to us with orders of

13 expungement that aren't reflected, where the records are

14 still in existence.

12:00:33 15 And we not only fix their record with us; we

16 often tell them where they need to go and what they need

17 to do to help fix it at the courthouse.

18 So the end user knows that despite our best

19 efforts -- and, you know, we are a screening company; our

12:00:46 20 stock in trade is accurate and reliable information, but

21 even then, there may be errors -- to not jump to judgment.

22 And, you know, where you see it, a negative

23 thing, it doesn't jibe with your experience with that

24 consumer, have -- stop and have a conversation, even if

12:01:00 25 the law doesn't require it necessarily. And -- and figure

12:01:04 1 out if there's something going on with that particular
2 information.

3 MARGARET LOVE: So -- but that's -- that's one
4 thing back in your other life.

12:01:11 5 REBECCA KUEHN: Correct.

6 MARGARET LOVE: Your government life.

7 And I'm concerned actually not so much with
8 mistakes as with perfectly accurate records that may be
9 used unfairly.

12:01:27 10 REBECCA KUEHN: Well, we see it -- it's
11 interesting because there's a lot of discussion on the
12 EEOC side. But I think that the same discussions are
13 occurring and will pick up, frankly, following the EEOC's
14 work on the housing side.

12:01:39 15 Be very mind- -- so the employers and -- and
16 multifamily housing projects need to be mindful about
17 what's the information they're asking about; what are they
18 looking for, first, and then not make some snap judgment
19 that anyone with a felony, we don't want to talk to. That
12:01:53 20 makes no sense given the number of people who have had a
21 conviction in the United States. You're cutting out a
22 huge part of your potential market who may be very good,
23 responsible tenants. So ...

24 MARGARET LOVE: Is that the kind of
12:02:06 25 conversation you would have with a customer?

12:02:08 1 REBECCA KUEHN: That's one of the
2 conversations that a number of our people have, you know,
3 because we have experience with it. We have experience
4 from really helping our other customers, and we could say,
12:02:16 5 "Well, we can't tell what you should do for this, but we
6 know that here is a range; here are the types of things
7 that people look at."

8 But at the end of the day, you need to sit
9 down with your counsel and figure out what works for your
12:02:27 10 individual entity.

11 Now, there are -- for example, there are
12 housing -- multiple communities in certain inner-city
13 jurisdictions that if they set some standards that exist
14 in other jurisdictions, they'd never have an applicant get
12:02:42 15 through the process. And so they recognize that, and it
16 becomes part of their calculus in how to decide where to
17 set their tolerances.

18 It's interesting, though, as important as
19 criminal records are, and for insurance safety, one of the
12:02:54 20 impetuses that goes along with this -- and to me would be
21 an interesting part of the discussion -- is a risk
22 aversion based on lawsuits for negligently letting in the
23 dangerous criminal who, you know, did something later.

24 You know, when you look at news reports about
12:03:12 25 when things happen -- you know, apartment complex:

12:03:13 1 Somebody was shot, somebody was killed, somebody was
2 raped -- the first thing they do, the news does, is come
3 out and say, "They have this big record, so how would you
4 not know that you're letting in this dangerous person?"

12:03:25 5 And then there are these lawsuits that follow.
6 So that does drive a lot of the concern.

7 MARGARET LOVE: You have done the legal
8 research on negligent hiring suits? I mean, do you have a
9 memorandum of law that you provide your customers?

12:03:37 10 THE WITNESS: We do not. We do not.

11 MARGARET LOVE: Would that be some thing that
12 might be useful? I spoke only because I just wrote a
13 chapter on that.

14 REBECCA KUEHN: I think that type of
12:03:47 15 information would be useful. So what are the standards?
16 What -- where can you set your tolerances and not create
17 an unreasonable risk for your company?

18 You know, we know there are guidance pieces
19 out there. We point our folks to that. But they need to
12:04:00 20 balance that with fair housing and/or fair employment, you
21 know, context considerations, right?

22 MARGARET LOVE: I'm being very selfish. I
23 need to have other people ask questions.

24 RICK JONES: Thank you.

12:04:13 25 Larry?

12:04:16 1 LAWRENCE GOLDMAN: Let me focus on -- let me
2 start off with a preface because I'm, to a slight extent,
3 maybe, going to put you on the hot seat. I have no doubt,
4 having seen you for 20 minutes, read your resume, the fact
12:04:28 5 that you had the guts to appear in front of us, that your
6 company is wholly legitimate.

7 But just --

8 REBECCA KUEHN: I always worry about "just."

9 LAWRENCE GOLDMAN: Just as I and all of us
12:04:41 10 often are assaulted by prosecutors and citizens pointing
11 out the less ethical colleagues of ours, there has been in
12 the New York Times yesterday, I assume you read the
13 editorial?

14 REBECCA KUEHN: I did.

12:05:00 15 LAWRENCE GOLDMAN: I'm sure you did. This
16 just -- just in the past week on another -- not NACDL --
17 there was a discussion of agencies like yours, and these
18 are very reputable criminal defense lawyers on it.

19 And the question came up: How -- when I have
12:05:20 20 a client whose record is expunged, essentially, it's --
21 how do I really do it?

22 And one answer was -- some -- there were a
23 number of answers that -- I'd try to find them, except I'm
24 afraid my phone would go off again -- but one of the
12:05:37 25 answers was: Companies are unresponsive to when you show

12:05:43 1 them essentially proof of an expunged or a vacated record.
2 The other is that one company charged \$400 to
3 expunge it; and another, 1,000.
4 Now, I have no doubt, you know, from what
12:06:01 5 you've told us that you're not one of those, but you do
6 have an expertise in both governmental life and here.
7 What would you suggest to do to eliminate
8 that? I mean, should an individual have a right -- and I
9 know this hits First Amendment issues -- should an
12:06:21 10 individual who has the State rule that that record no
11 longer exists under state law have a right to go to a
12 credit reporting agency or somewhat similar and have them
13 desist from publishing it?
14 REBECCA KUEHN: That's -- we were talking
12:06:41 15 about potential suggestions to improve the FCRA. And that
16 actually raises a really good one.
17 LAWRENCE GOLDMAN: Can you please --
18 REBECCA KUEHN: What can we do to improve the
19 Fair Credit Reporting Act? What can we do to make some
12:06:53 20 things more clear?
21 One of the ambiguous parts of the Fair Credit
22 Reporting Act is: What is the effect of an expungement?
23 And under the standards for accuracy, is it inaccurate to
24 continue to report a record even after it's been expunged?
12:07:09 25 That is not a very clear answer currently

12:07:13 1

under the current statute.

2

LAWRENCE GOLDMAN: I agree with you.

3

REBECCA KUEHN: As I mentioned, I can speak

4

for my company, but I know there are other companies that

12:07:21 5

take the position that it's accurate to report the

6

existence of the record and the subsequent fact that it's

7

been expunged, which seems to defeat the purpose for a lot

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of consumers.

9

Again, we take a different approach. We

12:07:34 10

believe in updating our records and, you know, suppressing

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that information from future reports.

12

So that is one area where the law itself could

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be made to be more clear: What is the impact of an

14

expungement? Is it accurate under the definition -- and

12:07:48 15

that's the standard we're all held to -- to continue to

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record it if you -- and also pointing out the additional

17

status; or is it more accurate to remove that from the

18

reports that are provided in the future on the consumer?

19

On the second issue, you mentioned -- and I

12:08:07 20

don't know companies; I'm not going to comment on any

21

particular company's practice -- I'm speaking from my

22

prior experience with the FTC -- the consumer comes to a

23

consumer reporting agency and wants to dispute an item of

24

information that they hold. They're allowed to do that

12:08:21 25

for free. Consumer reporting agencies can't charge

12:08:26 1

consumers to investigate their disputes.

2

Now, that doesn't dictate what the results of the dispute might be. But I was a bit concerned when you

3

raised this issue of companies charging different fees to

4

conduct these.

12:08:36 5

6

Consumers have the right to raise it, you

7

know, raise a dispute and have that dispute investigated

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within 30 days and to have the results of that dispute

9

reported back to them.

12:08:46 10

11

They also, if it was the result of creating an adverse action against them that they didn't get a job or

12

they didn't housing, they can ask to have that report,

13

corrected report, resent to the employer, to the housing

14

unit, to whomever had requested it. And that's for fee.

12:09:04 15

16

LAWRENCE GOLDMAN: I think the issue that most people have is not so much that it is reported but it is

17

so easily available. In other words, it's available on

18

the Web.

19

I mean, we get in New York State, as you

12:09:22 20

21

probably are more familiar with this than I, arrests were

22

on a plea to disorderly conduct, whereas a lot of lawyers,

23

except Rick, would tell their clients the record is

24

sealed, which, in a certain sense, it was. And they would

go on with their lives.

12:09:40 25

For 15 -- I'm sure the price has gone up --

12:09:44 1 dollars, you could get a record of the actual arrest which
2 sometimes was some heinous crime which turned out to be
3 utterly unfounded. And the defendant, just in order to
4 just end his or her experience in court, pleaded guilty to
12:10:00 5 a very minor offense.

6 The employer would find that the person was
7 arrested, say, for rape. And that person's not going to
8 get a job anywhere. And that's been changed
9 administratively in New York.

12:10:14 10 Is there a way, on a national level, that you
11 think that -- for getting -- just we could control Web
12 reports of arrests or something, or should there be?

13 REBECCA KUEHN: You know, it's interesting.
14 And this is a debate that the background-screening
12:10:36 15 industry would love to have because there are a number of
16 public record vendors. There's a First Amendment. And
17 these people sell records, they claim, not for any Fair
18 Credit Reporting Act purpose, you know; for informational
19 purposes. You want to check out your neighbor, your
12:10:52 20 friend, the person you're dating. And they are large
21 warehouses of information. They sell them on the Internet
22 to anyone who asks.

23 These are the same people that make their
24 records -- they sell their records to anybody. They don't
12:11:07 25 care. And -- and the problem is --

12:11:10 1 LAWRENCE GOLDMAN: Like the State of New York.

2 REBECCA KUEHN: The problem is that if you
3 have a landlord or an employer who wants to get that
4 information and doesn't bother to go to a consumer
12:11:20 5 reporting agency, all the protections of the FCRA go out
6 the window.

7 You may never get an adverse action notice if
8 the landlord or the employer went to one of these
9 on-the-Web instant-look sites that isn't -- that claim
12:11:35 10 they're not governed by the Fair Credit Reporting Act.

11 And that's the issue that the FTC has been
12 struggling with. They brought a recent case against a
13 company called Spokeo who was pulling together social
14 media and other mish-mash of information that they could
12:11:49 15 scrape -- and that's their word, not mine -- from the
16 Internet and pull together in a report. And they were
17 marketing it to employers for use in employment, but they
18 weren't following the Fair Credit Reporting Act. That's
19 what the allegations of the complaint say. I should couch
12:12:04 20 that appropriately since it's a settlement.

21 The order, if you look at it, what the FTC
22 decided to do, basically, said to the extent you are
23 selling things for this FCRA purpose, you have to follow
24 the FCRA.

12:12:18 25 That leaves an interesting gap that Congress

12:12:20 1 is looking into about what about uses outside of the FCRA?
2 And, you know, should there be protections for consumers
3 for that? I think that's a big area of debate.

4 And the role of the First Amendment in this
12:12:30 5 area, I think, is very intriguing. There's litigation
6 going on currently that the FTC and the CFPB have weighed
7 in on with respect to a First Amendment challenge to the
8 restriction of the Fair Credit Reporting Act as they apply
9 to background-screening companies about how long back they
12:12:45 10 can provide records, and is it a violation of the First
11 Amendment to say no?

12 I can't provide truthful court record
13 information that's older than seven years.

14 So I think we're at a very interesting time
12:12:58 15 when it comes to background screening. And I think
16 we're -- you know, we may see some changes come out either
17 as a result, one, of rulings in the First Amendment area;
18 but also, two, this, you know, pronouncement of FTC that's
19 going to look behind someone who says they're not governed
12:13:13 20 by the Fair Credit Reporting Act but, in fact, actually
21 are.

22 LAWRENCE GOLDMAN: Thank you.

23 RICK JONES: Chris?

24 CHRISTOPHER WELLBORN: I'm good.

12:13:20 25 RICK JONES: Geneva?

12:13:22 1 GENEVA VANDERHORST: I have a question about
2 accuracy and correction because I noted that you spoke of
3 making sure that corrections are not reported for future
4 requests; but do you go back to the customer who made the
12:13:37 5 request for the record and say, you know, we have this new
6 information, and what we put in our original report we now
7 need to update for your consideration?

8 REBECCA KUEHN: So the Fair Credit Reporting
9 Act actually provides that if a consumer comes to us and
12:13:54 10 we correct it and they want us to send the updated report
11 to the end user, we'll do that.

12 So the reason that -- it leaves it in the
13 hands of the consumer to say so now this is fixed; please
14 send it. And we honor those requests.

12:14:06 15 A lot of times, we ask consumers if they want
16 us to do that at the time they're making the dispute or
17 we're reporting a dispute back. But it is driven by the
18 consumer because at that point, they might have applied at
19 a different apartment complex, and the original apartment
12:14:21 20 complex would have no permissible purpose to obtain that
21 record. In other words, if they consider their
22 application closed, then they don't have a permissible
23 purpose to obtain another consumer report. But if the
24 consumer directs us to provide that report to them, then
12:14:36 25 we can do that.

12:14:37 1 GENEVA VANDERHORST: By "the consumer," do you
2 mean you would need, at least for criminal records, an
3 order from the court or simply a person goes to the court
4 records and says "I need a copy of my records" or even a
12:14:50 5 letter from their attorney?

6 REBECCA KUEHN: So we're dealing with our
7 report -- our system of reference. So you come to
8 SafeRent. SafeRent's provided a report on you -- on you
9 as a consumer that you had incorrect information or, you
12:15:02 10 know, an expungement wasn't picked up or something like
11 that. We investigate it. We correct our records,
12 SafeRent's records, and you would like us to send a new
13 report to the landlord that you applied to. We will do
14 that. And that's -- that's how it gets to the landlord.

12:15:17 15 But at the time we correct it, your
16 application with the landlord is essentially closed. So
17 either you have to -- if the -- in other words, we can't
18 just voluntarily send it without the consumer's request.
19 And so that -- because there's concerns about sending
12:15:33 20 information about -- we include a lot of credit
21 information on our reports and other stuff; and unless
22 there's an active application, there's no permissible
23 purpose and we don't have authorization to do that.

24 So we get the consumer, the individual, to
12:15:44 25 authorize us to resend the report to where they applied.

12:15:47 1

That way, we know they're still interested in that
application.

2

3

GENEVA VANDERHORST: What's your time frame?

4

Is it 30 days, 60 days, to get the corrections?

12:15:56 5

REBECCA KUEHN: We have up to 30 days, 45 in

6

some circumstances, to research disputes. We tend to do

7

it within 48 hours.

8

GENEVA VANDERHORST: Hours?

9

REBECCA KUEHN: Forty-eight hours, yes. We

12:16:06 10

have -- you know, staff that's -- well, first, we don't --

11

we have very good records. We stand behind our records.

12

So we have a relatively low rate of dispute, which helps.

13

If you were burdened with volume, that would be a much

14

more challenging task.

12:16:20 15

We have people who are very knowledgeable

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about the type of records that we get, and the folks that

17

conduct our investigations are able to research, contact

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courts, make calls if they need to.

19

And we also rely -- consumers bring us

12:16:31 20

records, which is really great. You know, you're filing a

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dispute and you have your order of expungement or you have

22

something that shows that the result is different than

23

what we're reporting. That helps us greatly because we

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rely, again, on the court records being accurate, and they

12:16:45 25

not always are. And so we're able to more quickly update

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12:18:04 25

and correct records when consumers come to us with information.

RICK JONES: Jenny?

JENNY ROBERTS: A couple of things, I guess, going to one the things you talked about earlier maybe in your -- actually, in response to some of Margy's early questions.

What would -- how would you characterize it -- I know this is going to differ for different clients of yours -- but are people -- how interested are people in arrest records versus only conviction records? And if they are interested in arrest records, what would you say their motivation is in those instances?

REBECCA KUEHN: Again, it's going to -- it's a variety of different folks, and they have different interests in it. To the extent that people are interested in arrest records, a lot of times it's on the recent activities. They're not looking too far back. They want to see if the person's had a history of being involved in the court system. Drug-related offenses seem to be an area. Violence, again, another area of concern.

JENNY ROBERTS: For arrest records?

REBECCA KUEHN: For arrest records. But by and large, our folks are looking for convictions and a criminal history.

12:18:07 1 JENNY ROBERTS: Okay. And then also, you
2 talked a little bit about -- I guess in your three
3 recommendations, wear your non-CoreLogic hat, about
4 educating -- I'm phrasing it in how I wrote it down --
12:18:23 5 educating customers about what public records are and what
6 their limits are.

7 REBECCA KUEHN: Sure.

8 JENNY ROBERTS: What have you found to be the
9 most effective in terms of legal mechanisms or other
12:18:35 10 mechanisms for making this really resonate with your
11 clients because that's a very hard ...

12 REBECCA KUEHN: That's interesting. Well, I
13 think, for example, the EEOC's actions recently and the
14 focus on whether employers are making meaningful decisions
12:18:51 15 about when they use criminal background screening and the
16 decisions they make have enabled us to have a lot more
17 conversations with our customers about this issue.

18 You know, we have, obviously, an advantage
19 because we have products that can help them make sure that
12:19:03 20 they're applying their guidelines consistently and using
21 information in a meaningful way.

22 We like to fulfill those needs. We have a
23 financial incentive to do so. But because of the interest
24 in the impact on fair lending -- I'm sorry -- from fair
12:19:23 25 employment practices and now a spillover into fair

12:19:27 1 housing, that gives us an opportunity to have these
2 discussions an revisit those issues with our customers and
3 to talk about, you know, sort of about what decisions are
4 you make with respect to criminal records; how are you
12:19:39 5 using them; have you thought it through; do you have
6 certain meaningful process.

7 JENNY ROBERTS: A couple other relatively
8 targeted questions.

9 REBECCA KUEHN: Sure.

12:19:48 10 JENNY ROBERTS: Going back to the negligence
11 lawsuits, I know you said you didn't have a memo, but do
12 you have any data of how many of these there really are?

13 REBECCA KUEHN: I don't personally, but I'm
14 sure we can find something if you need us to help you
12:19:59 15 supplement your record with that.

16 JENNY ROBERTS: Yeah. That would be great to
17 know.

18 REBECCA KUEHN: I know on the employment side,
19 some of the folks who are looking at these issues have
12:20:08 20 pulled together some information. And I -- I think we
21 have some of the housing side as well. I will look for
22 that.

23 JENNY ROBERTS: And this can be my last
24 question.

12:20:19 25 RICK JONES: It doesn't have to be. We have

12:20:20 1

time.

2

JENNY ROBERTS: Great. I have a couple more,

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then.

4

This is sort of a multipart question.

12:20:26 5

One is: How many of your clients are

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interested in misdemeanor records as well as felony

7

records? Do you see requests for just records, or do some

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people say "felony records"?

9

REBECCA KUEHN: We have some customers ask for

12:20:39 10

the complete record where they want to be the one to sort

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of ferret out and make the decision. Where we use our

12

products to help them sort of ferret out and figure out

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which ones to use, if they're simply looking at

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misdemeanors, again, it tends to be just recent

12:20:56 15

drug-related offenses if there was some area they need to

16

be concerned about.

17

But by and large, it's the larger, more

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serious offenses, and it is more recent ones.

19

JENNY ROBERTS: Within that "drug-related,"

12:21:09 20

are you including marijuana, misdemeanor marijuana

21

convictions? Are people wanting records of that?

22

REBECCA KUEHN: Not as a specific request, but

23

looking, say, like either "Send me anything that's

24

drug-related within the last year."

12:21:22 25

JENNY ROBERTS: When they're saying "drug,"

12:21:24 1 they're not talking just about controlled substances?

2 REBECCA KUEHN: They're not making
3 distinctions as far as I know. Again, I don't know the
4 ins and outs of our specific scoring system to a T. We
12:21:34 5 may have the ability to slice and dice that, but I -- I
6 can't speak to that for sure.

7 JENNY ROBERTS: I can always come back to it.
8 Do clients ever affirmatively ask you to tell
9 them if there is a record that has been expunged; and if
12:21:45 10 they do, what's your policy?

11 REBECCA KUEHN: To my knowledge, no. But it's
12 our policy with respect to expunged or sealed records that
13 those records aren't provided in future reports.

14 JENNY ROBERTS: I guess I'm asking if they say
12:22:04 15 to you, "In doing this report on this individual, we want
16 to know both arrest records, conviction records, and we
17 also want you to tell us if there's a record that's been
18 expunged."

19 REBECCA KUEHN: To my knowledge, no. But,
12:22:15 20 again, I don't talk to our customers. They wouldn't -- we
21 wouldn't be able to give it to them, or we would not give
22 it to them.

23 JENNY ROBERTS: I'm asking about your policy.

24 REBECCA KUEHN: We wouldn't give it to them if
12:22:24 25 they asked us for it because it's policy to suppress those

12:22:27 1

records.

2

JENNY ROBERTS: Would you tell them "Our

3

policy is we cannot tell you if there's a record that's

4

been expunged"?

12:22:32 5

REBECCA KUEHN: No. We essentially suppress

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those records from future reports. You won't get that

7

information.

8

JENNY ROBERTS: Just on the -- I just want to

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make sure I understand something. On the -- the Fair

12:22:46 10

Credit Reporting Act front, you're talking about certain

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things that only apply to the employment side.

12

REBECCA KUEHN: Sure.

13

JENNY ROBERTS: What about the housing side?

14

REBECCA KUEHN: Well, the only special cases

12:22:56 15

in the FCRA, essentially, are employment. Employment has

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a couple of aspects that don't exist for either credit or

17

housing or other uses of consumer reports. And that would

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be a notice to the person that they're going to have a

19

report pulled on them and a request for a written

12:23:14 20

authorization. That doesn't exist outside of the

21

employment area.

22

And then the pre-adverse action notice where a

23

consumer will get a copy of the report, a copy of the

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summary of rights that's been put out by the FTC, now

12:23:29 25

CFPB, before the company takes the adverse action against

12:23:34 1

them.

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12:23:44 5

So those don't exist anywhere outside of housing. So, one, you know, one discussion may be, well, when we're dealing with criminal records should we be looking at that?

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Again, in the employment context, employment being a special case, there's also a provision in the Fair Credit Reporting Act that requires that if a consumer reporting agency is going to be providing negative public records to an end user, to an employer, they have one of two obligations; they can choose which one: One is to provide a notice directly to the consumer that they're going to be sending negative public records to this employer at the time that they do it; or they can apply strict procedures to make sure that the information they have is complete and up to date. So they would have to go and make sure that they have the latest, greatest as of, you know, the time that they send the report.

12:24:42 25

In my experience at the FTC, a lot of companies opt for the notice because that way, they don't have to fight over whether their procedures are strict or not. There's really no definition of what "strict procedures" are. So a lot of companies will send the notice out instead.

JENNY ROBERTS: So just a last question: If

12:24:44 1 it seems like you -- your company, companies like yours,
2 similar to maybe a public defender's office that has a
3 sort of expungement unit, is somewhat uniquely positioned
4 to know if there's a record inaccuracy problem in a
12:25:00 5 particular jurisdiction.

6 And so I wonder if, first of all, you have
7 ever gone back to the jurisdictions or did anyone else
8 about jurisdictions that are problematic; and, two, do you
9 think that there is a way to sort of work that into the
12:25:16 10 regulatory structure that you would have an obligation to
11 go back?

12 REBECCA KUEHN: Well, we -- obviously, we have
13 a responsibility that our reports are accurate. If we
14 have sources that are questionable or cause us concern, we
12:25:28 15 have to take steps to address that.

16 One may be we decide a particular jurisdiction
17 or source of records isn't reliable enough to include in
18 our reports. It's kind of tough when you're dealing with
19 public records because there tend to be only one or two
12:25:42 20 sources for that.

21 JENNY ROBERTS: Right.

22 REBECCA KUEHN: We may take extra steps to
23 take that information and do some extra checking before
24 it's incorporated into our database so that when it
12:25:51 25 becomes part of our records, that we can stand behind the

12:25:54 1 information that's provided.

2 So that -- that's -- it's interesting that
3 that is one of the things that, again, they're focused on
4 the credit side, but there could be spillover effects that
12:26:04 5 the Consumer Financial Protection Bureau is interested in
6 because they're public records that are being used in
7 credit records, judgments, liens, things like that. And
8 they're very interested in what are the processes; are
9 there unreliable sources, even in the public record
12:26:20 10 context; and how do companies deal with it and address it?
11 And, you know, because we have our ultimate responsibility
12 for accuracy, we need to, quote, consider the source and
13 address that if we're -- if there are any concerns about
14 it.

12:26:35 15 MARGARET LOVE: May I just add --

16 RICK JONES: Let me -- let me get Elissa in,
17 then you have the last one.

18 ELISSA HEINRICHS: Relatively quick question.

19 You've indicated you go back to the
12:26:46 20 courthouses and you get -- you obtain your information
21 there. And jurisdictionwide practice in Pennsylvania, an
22 expungement order would be ultimately destroyed with the
23 clerk of court records. The D.A. would retain it, I
24 believe, so that they have a way to handle future
12:27:03 25 prosecution.

12:27:04 1 But -- and the State police would destroy it
2 as well.

3 So how, then, do you safeguard -- sorry?

4 MARGARET LOVE: I don't know of anybody that
12:27:11 5 destroys records.

6 ELISSA HEINRICHS: In Pennsylvania, I -- yeah.
7 We can talk about that afterwards.

8 In my experience, you get certified records.
9 They go to the various court and county agencies that have
12:27:24 10 obtained those records. They are ordered to destroy them,
11 and they send certification back to the attorneys showing
12 proof that they've done so. That's the Pennsylvania
13 statute.

14 If, in fact, it is done that way, how then
12:27:36 15 would you be able to go back to the county courthouse and
16 obtain proof that the file has been expunged in order to
17 correct your record?

18 REBECCA KUEHN: The absence of the record
19 itself would be proof. So, for example, we produce a
12:27:48 20 report on you that has a conviction that is in our records
21 because we've obtained it over the course of our
22 collection. You come back to us and say, "That record was
23 expunged. It doesn't exist anymore. You can't continue
24 to report it."

12:28:00 25 We go back to the original jurisdiction and

12:28:02 1 research it. That record's not there any more. We
2 wouldn't be able to verify the accuracy of our record
3 because it doesn't exist, and the FCRA provides we can no
4 longer report that.

12:28:12 5 So it's the absence of the record that
6 actually operates as a verification that, in fact, the
7 record has been expunged.

8 ELISSA HEINRICHS: Then in order to bring it
9 to my attention, I would have to have an adverse action,
12:28:23 10 correct?

11 REBECCA KUEHN: We do update it. For example,
12 we have comparisons of the records where we were able to
13 get record sets, and jurisdictions vary about our ability
14 to do this. But to the extent we can get record sets
12:28:35 15 that, you know, are updated wholesale, we'll compare it to
16 what we have.

17 And where there are things that are removed,
18 we can remove those items from our records. But, again,
19 it's going to have jurisdiction to jurisdiction to
12:28:46 20 jurisdiction.

21 And, you know, courts are becoming, you know,
22 I think they have a financial interest in sort of setting
23 some restrictions on how often public-record vendors, for
24 example, can get information. And so it may be a period
12:29:02 25 of time for things to be updated.

12:29:04 1 We also find that the procedure by which
2 records are removed sometimes takes a period of time.
3 Where a -- an individual may have gotten the order of
4 expungement and they're excited because now I don't have
12:29:14 5 to worry about this. It will take a period of time. If
6 they come to us, you know, there's been a report, we can
7 correct it in our records often more quickly than the
8 court updates it on theirs.

9 ELISSA HEINRICHS: You'll certify that if it's
12:29:24 10 reported from an attorney?

11 REBECCA KUEHN: We have dealt with that, yes.
12 Absolutely. We just verify -- we will verify it against
13 the court to make sure it does exist.

14 We have seen fraud in some circumstances with
12:29:35 15 folks; but, by and large, we deal -- we do get contacted
16 by criminal defense attorneys on a -- an occasional basis,
17 and they provide us with great information and help us
18 update our records. So we want to get our records right,
19 regardless, and sometimes the consumer is the best source
12:29:51 20 of that.

21 ELISSA HEINRICHS: Thank you.

22 RICK JONES: Did you have a question?

23 VICKI YOUNG: I have a question, and I'm not
24 sure you can answer it.

12:29:55 25 But you've been speaking about your company

12:30:01 1 being very concerned about the accuracy of your records,
2 and I appreciate that.

3 But what does someone do because, even if your
4 records are corrected and the expungement is expunged, you
12:30:17 5 can't do anything about Google that shows the arrest,
6 conviction, or whatever --

7 REBECCA KUEHN: That's right.

8 VICKI YOUNG: -- else is out there.

9 Do you have any thoughts about -- I mean, so
12:30:28 10 you've got your little set of records here, and then
11 there's all this on the World Wide Web. Is there any
12 answer? Or thought?

13 REBECCA KUEHN: That's an interesting area of
14 debate. It was a question I got a lot at the FTC: What
12:30:42 15 can I do about the fact that people can Google me and find
16 out all kinds of stuff?

17 It's something that Congress is dealing with,
18 you know, because there is a wealth of information
19 available on the Internet; some reliable, a lot of it not.

12:30:54 20 And so, you know, what -- for example, the EU
21 has looked at the issue of social media information. And
22 we all know you always tell the truth on your Facebook
23 page about what you're up to; what you're interested in.
24 There are employers that are looking at this information
12:31:10 25 that consider it, you know, of use to them in screening an

12:31:14 1 individual, and they're getting it from Googling or doing
2 some other sort of their own search.

3 The EU actually came up and talked about it,
4 and it's trying to discourage the use of social media
12:31:27 5 information, for example, in the context of employment
6 decisions.

7 And the FCRA, this is an area where credit
8 gets a special treatment as opposed to employment and
9 other uses of it.

12:31:42 10 In credit, if you go to another third party, a
11 different third party, and you request information and you
12 take adverse action on a consumer, you have a
13 responsibility to say, "I went to a third party who wasn't
14 a consumer reporting agency and got information about you,
12:31:57 15 and I'm making this adverse action. Here's where you can
16 go find out about it."

17 That's -- it's a small provision, and it's not
18 widely used because a lot of creditors just go to consumer
19 credit agencies to get information.

12:32:09 20 But the idea behind it was if they went to,
21 say, you have a particular type of loan that isn't
22 reported to a credit reporting agency and, you know, you
23 put on it your application as something you have and the
24 bank followed up and called directly and got information
12:32:24 25 from the source, they'd have to report that and tell you

12:32:27 1

that they were turning you down because of that.

2

It would be interesting if in the employment

3

context as a way of sort of policing fair employment

4

practices to the extent an employer went to someone other

12:32:36 5

than a consumer reporting agent and took adverse action

6

information from a third party, that they'd have to give

7

that; at least give the consumer at least some information

8

about where this bad information is coming from and an

9

ability to sort of respond to it.

12:32:51 10

RICK JONES: So as lunch arrives, we certainly

11

invite you to stay and dine with us.

12

Let's start where we finished or finish where

13

we started with Margy's last question.

14

REBECCA KUEHN: Sure.

12:33:07 15

MARGARET LOVE: I want to get back to this

16

biblical seven years again.

17

REBECCA KUEHN: Never heard to it referred to

18

as that.

19

MARGARET LOVE: That is where it comes from,

12:33:15 20

actually. It's the bankruptcy issue.

21

The -- I believe criminal history information,

22

conviction information is the only kind of information

23

under the Fair Credit Reporting Act that does not have the

24

seven-year -- I don't know what you call it -- the

12:33:38 25

termination that you can't report older than the seven

12:33:43 1

years.

2

If there were a recommendation, say, a strong movement to have a similar -- to restore the old

3

seven-year cutoff that used to exist for criminal history

4

12:33:59 5

information -- 1997 is not that old -- not that long ago,

6

15 years, that it was repealed.

7

What do you think the reaction -- just

8

speculating -- of your old agency might be, and what do

9

you think the reaction would be in the

12:34:23 10

information-providing industry?

11

Not the employers, who I'm sure want

12

everything; everybody always wants everything if they can

13

get it.

14

But I'm just talking about the agency that is

12:34:36 15

responsible for administering the statute and enforcing it

16

and the sort of service providers, if you will, under

17

the -- who are regulated by the Act.

18

REBECCA KUEHN: Well, it's interesting because

19

with respect to the FTC -- and, you know, I can't speak

12:34:57 20

for the CFPB at all -- when I worked there at the staff

21

level, you know, we -- we're interested in the choices

22

that Congress made with respect to the different cutoffs,

23

seven years, versus longer for bankruptcy. There's a

24

longer time period for bankruptcy to be reported.

12:35:14 25

Bankruptcy can be reported for 10 years.

12:35:19 1

And, you know, and then the -- of course, no
2 deadline on criminal convictions.

3

There's not much in the -- in the
4 Congressional Record as to why they did that. That's an
12:35:29 5 interesting thing, what thoughts went into that.

6

I'm not sure they would take an official
7 position one way or another. And, again, I can't really
8 speak for them because at the end of the day, whether
9 these records are included or not, more of a policy type
12:35:46 10 of decision, the fairness decision, should these things be
11 included?

12

Similar to the questions the FTC used to get
13 whether they should be letting people use credit checks in
14 employment, for example. The FTC sort of stayed out of
12:36:01 15 that.

16

So I -- it would be interesting to me to see
17 whether they would take a position, by and large because
18 their mission is one of consumer protection in dealing
19 with unfair, deceptive practices, actual practices. The
12:36:12 20 FCRA is an adjunct to that.

21

The CFPB is kind of an interesting animal too,
22 when you think about it, and whether it might consider
23 weighing in because its focus is on the financial
24 industry.

12:36:22 25

If you look at a lot of changes that are

12:36:24 1 coming about, they're encouraging screening in the
2 financial industry. A lot of the requirements coming out
3 of the recent rules are saying, "Well, if you want to have
4 a loan officer or you want to have an appraiser, you're
12:36:36 5 required to conduct a background check."

6 And this is where the government's kind of
7 speaking for -- two different sides when you look at the
8 things that are going on. We have some focus on limiting
9 the use of criminal background checks and other focuses,
12:36:47 10 we're saying more and more places we want you to be doing
11 screening. There isn't really consistent federal policy,
12 at least if you were to ask me only speaking for me.

13 With respect to industry, again, I think you'd
14 have a mixed bag. You know, by and large, the information
12:37:04 15 industry believes that information itself is not an evil
16 thing and that more information leads to better decisions.

17 But I think there is a recognition, not only
18 in this context but in the credit context, that after a
19 certain period of time, information becomes less and less
12:37:19 20 relevant to a decision about consumer. And, you know, a
21 consistent deadline or consistent policy might help.

22 I think it's one of the challenges with the
23 EEOC's guidance. In some ways, very direct; but in other
24 ways, murky. And, you know, there's suggestions if you
12:37:36 25 follow certain federal requirements or do certain federal

12:37:39 1 things, you can still kind of follow the EEOC guidance,
2 and I think both employers and screeners are in a
3 difficult position.

4 So getting some consistent, clear information,
12:37:47 5 whether it be from Congress, which would be a hard thing
6 to do, or from an agency charged with it, you know, it
7 would be interesting to sort of think about whether -- you
8 know, Congress often, when it doesn't know the answer to a
9 question, will direct an agency to do a study or to gather
12:38:03 10 information.

11 And that, to me, would be a very useful
12 exercise because I think there are studies that are sort
13 of all over the place about rehabilitation and when does
14 this information truly become less and less relevant such
12:38:15 15 that it shouldn't be considered at all.

16 RICK JONES: Well, thank you for your
17 testimony --

18 REBECCA KUEHN: Thank you.

19 RICK JONES: -- and for sharing your unique
12:38:22 20 experiences with us and expertise.

21 Lunch is right outside the door, on its way
22 in. You're invited to stay.

23 REBECCA KUEHN: Thank you.

24 RICK JONES: We will reconvene at 2:00. Thank
12:38:32 25 you very much.

12:38:33 1 REBECCA KUEHN: Thank you for inviting me.

2 RICK JONES: We may be back to you in writing
3 with additional questions, I suspect.

4 REBECCA KUEHN: Absolutely.

12:38:44 5 RICK JONES: Thank you.

6 (Proceedings recessed from 12:38 p.m. until 2:01 p.m.)

7 RICK JONES: All right. Let's get started,
8 everybody.

9 LAWRENCE GOLDMAN: Turn off our phones?

14:02:31 10 RICK JONES: Please. I would appreciate that.

11 Welcome. We are pleased to have you.

12 I hope you guys were here and got a chance to
13 get a little lunch or at least a cookie or beverage or
14 something like that.

14:02:48 15 But we are excited about the conversation that
16 we're about to have with you all. As you guys know, we
17 have been traveling around the country talking to folks
18 about these issues and are looking forward to hearing your
19 perspectives.

14:03:04 20 The way that we operate as a task force is to
21 give each of you about five or ten minutes to give us a
22 little bit of your background, tell us a little bit about
23 the work that you're doing and the benefit of your
24 expertise, and then we have lots of questions for you.

14:03:22 25 And the way that we go about the questioning

14:03:25 1 is that one of us leads the questioning, and then to the
2 extent that there's time -- and we generally run long --
3 we try not to, but we do, there's so much to talk about --
4 to the extent that there's time, the rest of us get
14:03:41 5 involved in the questioning after that.

6 For the purposes of this discussion, Larry
7 Goldman is going to lead the questioning.

8 So I'm going to stop talking at this point and
9 turn it over to you-all. You can decide who wants to go
14:03:56 10 first, and the floor's yours.

11 NANCY O'MALLEY: I'm happy to be here. I'm
12 Nancy O'Malley. I'm the D.A. from Alameda County. As it
13 says on the program, I'm also the chair of the California
14 Sex Offender Management Board.

14:04:16 15 RICK JONES: I hate to do this. Can I
16 interrupt you for one second?

17 NANCY O'MALLEY: Sure.

18 RICK JONES: One other housekeeping thing that
19 I should have said: This is both being transcribed, but
14:04:23 20 also the room is mic'd. I'd ask you all to speak in a
21 good, loud voice so the recording picks up. Thank you.

22 NANCY O'MALLEY: So get the trial lawyer voice
23 on.

24 So I -- as I said, I'm the D.A. from Alameda
14:04:35 25 County, and I am also the chair of the California Sex

14:04:39 1 Offender Management Board, which has been in existence for
2 about five years, five and a half years now.

3 What I originally intended to talk about,
4 though I'm going to touch on two areas that I think are of
14:04:52 5 interest to this discussion, the first one has to do with
6 what are we doing with collateral consequences for people
7 who are convicted of certain crimes. And I'll
8 particularly focus on felony crimes because, at least in
9 California, a person convicted of a misdemeanor crime,
14:05:08 10 either expunging that or setting that conviction aside, is
11 a relatively easy process in California if people know
12 what to do or know that it occurs.

13 The more challenging one happens be on the
14 felony level because it's different for whether somebody
14:05:24 15 has been incarcerated or has been -- has stayed locally
16 and never went to State prison; or, if they went to State
17 prison, different processes.

18 And I'll talk very briefly about how -- what
19 we are doing with realignment also.

14:05:40 20 The other thing I will save a few minutes for
21 is to talk about some of the efforts and goals that we
22 have at the state level on dealing with sex offenders who
23 are in our community and what we're -- the emphasis we're
24 bringing to the State and also to the policymakers in
14:05:57 25 California, to the extent we can, that -- what efforts

14:06:01 1

we're trying to do in that regard.

2

So I'll -- I will also focus on my office.

3

And I realize that in many respects, issues around

4

addressing collateral consequences of conviction and also

14:06:14 5

the aftermath of somebody being convicted of a crime

6

varies dramatically from county to county. Those of you

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that know, in California, there are 58 elected D.A.s, so

8

what I talk about or what we do in Alameda County is not

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necessarily happening -- though more and more -- in the

14:06:33 10

other 57 counties.

11

Our effort is -- and I see one of my

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colleagues over here who is going to be on your next

13

panel -- that we started sometime back with a project

14

called "Clean Slate." And really, that was designed to

14:06:48 15

help individuals -- help them not only clean up their

16

criminal backgrounds, but help them get employable and

17

into positions where they have a better opportunity for

18

success once they're done with their, whatever, their

19

probation or whatever has happened with them.

14:07:05 20

And it's been, I think, very successful. Our

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efforts have been to not just do this once or twice a year

22

in a big format, but rather to make this "clean slate"

23

concept be almost a weekly event.

24

So for us, right now, our probation

14:07:24 25

department, who has the authority to -- the jurisdiction

14:07:28 1 over individuals who are either on probation or have been
2 convicted of crimes if they've stayed locally, have really
3 not been as strong a partner as we would always hope. But
4 nevertheless, from my office, we've -- what I've done is
14:07:43 5 reassigned staff so that we now have a full-time person
6 who works with the different schools, trade -- trade
7 training centers, the community colleges, and really try
8 to get the word out to individuals about what their rights
9 are postconviction in terms of being considered for having
14:08:01 10 their -- their convictions set aside.

11 "Expungement" is a term that is used in
12 California, but it really almost never exists because
13 the -- this is a relatively lame reason, but one of the
14 main reasons is because it costs so much money to expunge
14:08:19 15 a record from the state database and the federal database
16 that it's become an almost unreachable goal to have it
17 done.

18 The -- but there are some -- in my opinion, we
19 still have some challenges with changing the law around
14:08:36 20 what happens after somebody's had their conviction set
21 aside.

22 And the process, basically, is that we go to
23 the judge. The judge reviews the record. The judge, once
24 they determine that this person is eligible, then the
14:08:52 25 judge basically sets aside their conviction and enters a

14:08:55 1

not guilty plea, and the case is dismissed by the D.A.

2

There are still consequences that follow that

3

individual, which I know you'll hear about later. And

4

that's one of the efforts that I've had with some of the

14:09:09 5

colleagues around the state and really more of our

6

community partners is to make sure that if somebody does

7

have their conviction set aside, that for purposes of

8

employment and for purposes of other activity, that they

9

don't still have this conviction that pops up.

14:09:27 10

It's unclear in the law in California whether

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or not somebody has to report they've been convicted of a

12

crime on an application, a job application. We believe

13

they do not, but the case law is split.

14

And so along those lines, one of our other

14:09:41 15

efforts is to encourage other communities, just like

16

Alameda County has done, to remove the box on an

17

application, employment application, even asking the

18

question. There may come a time when that becomes

19

relevant, but if it's the thing that stops a person at the

14:09:54 20

gate, then we think that is not right and people should

21

have the opportunity to get past that gate area.

22

So we've -- we now, in the last six months,

23

have talked to about 500 individuals about what their

24

rights are. We've got materials that we hand out to them,

14:10:12 25

and then we work with some of our partners to help those

14:10:17 1 individuals, where it's not so clear, to be able to have
2 representation. But for the most part, we're preparing
3 the paperwork, and we're submitting it in court, and we're
4 seeking to have these convictions set aside.

14:10:29 5 One of the challenging issues that still hangs
6 out there is those people that haven't paid fines or their
7 fees or their restitution. And for me, restitution is the
8 bigger issue, although without fines and fees, we don't
9 have the funding that pays for activities or for
14:10:46 10 departments in California.

11 But that's one of the things we work on. And
12 we really just try to set up payment plans and do things
13 that are reasonably accomplishable so that people can move
14 on from their conviction.

14:10:57 15 With realignment, we've had a greater
16 opportunity and more of an incentive statewide to follow
17 the practices that we've developed in Alameda County
18 because we do all have an effort -- and a big cash
19 incentive from funding from the court -- but an effort to
14:11:15 20 help people who are formerly incarcerated or have been
21 convicted particularly of felony crimes to be able to get
22 back into a position where they're either completing their
23 education or getting into a job-training program or they
24 have stability in their lives through housing or some
14:11:31 25 other procedure that we're all setting up in different

14:11:35 1 ranges across the County to help people stay crime-free.

2 And, frankly, from the D.A.'s standpoint, the
3 push is: We want people to not commit more crimes, and we
4 don't want to have more victims of crimes. So it's in all
14:11:47 5 of our best interests to help people stay or get into a
6 position where they have the ability to be successful when
7 they're out of an incarceration facility.

8 And, you know, that includes things like
9 mental health counseling, and, of course, housing, a big
14:12:04 10 issue.

11 Transitioning into sex offenders, one of our
12 efforts at the state level with sex offenders has been to
13 advocate to the Department of Corrections and
14 Rehabilitation that rather than spend a huge amount of
14:12:16 15 money on GPS monitoring, which is not the most effective
16 preventive tool of anything, that we are urging the
17 director to put more money into treatment so that
18 individuals who are out of an incarceration facility, of
19 which there are many -- I think right now, there are
14:12:38 20 several thousand individuals who are registering as under
21 290, our Code section, registered sex offenders -- who
22 have either never had treatment or are in and out of
23 parole violations and things like that. Our effort is to
24 put those resources into treatment.

14:12:55 25 And just in the last two years, through our

14:12:58 1 legislative efforts, we were able to get legislation
2 passed that said that individuals who are convicted of a
3 sex crime that are in the community but still under
4 supervision are participating in a certified sex offender
14:13:13 5 treatment program.

6 And the reason why that's significant to all
7 of us is that we know there are a lot of flighty programs
8 that don't make a difference in the life of somebody who
9 has committed that type of a crime. And there are some
14:13:27 10 treatment programs by certified sex offender treatment
11 providers that have certain containments. It's a
12 containment model where people get together and keep track
13 of what's happening with this individual and share
14 information to the extent they can, always observing
14:13:42 15 confidentiality where it needs to be observed. But we
16 know that there are certain models, therapeutic models
17 that work to help people stay free of incarceration and
18 free of further victimization.

19 The law now says that those individuals have
14:13:56 20 to participate in a certified program that we have,
21 through our mental health experts, created. And we
22 actually run the certification process.

23 So as of July 1, we've got 175 certified
24 treatment providers in California so that there are
14:14:14 25 actually resources to send to direct people into for those

14:14:19 1 that are living in the community and help them to stay,
2 again, free from violation or free from further
3 incarceration and free from further victimization.

4 We have taken to the legislature the concept
14:14:34 5 of doing gradations of registration, depending on the type
6 of offense. We have people who are registering for
7 lifetime in California for basically indecent exposure
8 that they committed many years ago. And there's almost
9 no -- no interested legislator to pick up that
14:14:56 10 legislation.

11 It's a tough time in Sacramento right now, and
12 this is an issue that freaks everybody out. And it's all
13 our -- our effort has been to make these decisions based
14 on evidence and outcomes and not on emotion. And we have
14:15:10 15 done a lot of outreach in education. We've sensitized a
16 lot of the community, but we have yet to get to the -- get
17 off the emotion and into the evidence-based with our
18 legislature.

19 So we just continue to build our case on why
14:15:24 20 we think there should be a different treatment for
21 different individuals.

22 And, you know, I think that the board is made
23 up of representatives from a lot of different agencies.
24 Robert Ambroselli, who will be here tomorrow, is one of
14:15:37 25 the board members. We've got probation officers, we've

14:15:39 1 got chiefs of police, we've got city managers and, you
2 know, somebody from virtually every type of government
3 entity.

4 And then we've got victim advocates and
14:15:49 5 providers, treatment providers, and both the D.A. and a
6 public defender on our board. We're pretty balanced, and
7 we do come together on a lot of these issues.

8 So that's, you know, about seven or eight
9 minutes' worth, and I'm happy to answer any questions and
14:16:07 10 engage in the dialogue.

11 RICK JONES: Great. Thank you.

12 RONALD DAVIS: Good afternoon. My name is Ron
13 Davis. I'm the police chief the City of East Palo Alto.
14 I'm currently serving as interim city manager, but I like
14:16:16 15 the word "interim." I will definitely go going back to
16 police chief.

17 I've been there about seven years as the
18 chief. And before, that I spent 20 years in Oakland. I
19 left Oakland as a captain to take the job as chief in East
14:16:26 20 Palo Alto.

21 Before I get into this issue of reentry, I
22 thought I'd maybe try to give you a story of what really
23 brought me into this arena, if you will.

24 As a police officer in Oakland and in my early
14:16:39 25 years, early months, I would say, as a police chief, to me

14:16:42 1 the issue of reentry, the issue of realignment, was very
2 simple. My job and the job of my officers is to reenter
3 parolees back into the system. Plain and simple. Right?

4 Any time you can take a parolee off the
14:16:55 5 street, in theory, there are less crimes that could be
6 done.

7 That theory got kind of turned on its head
8 within six months of me being the chief in East Palo Alto.
9 I had an officer that was shot and killed in the line of
14:17:07 10 duty my first six months by a parolee who had been out
11 less than six months.

12 And so it was interesting because I was then
13 faced with a choice; the community and I were really faced
14 with a choice: We could launch an all-out war on the
14:17:20 15 issue of parolees and those formerly incarcerated and
16 could probably justify such an action based on the -- just
17 the heinous nature of the crime. It was an execution. He
18 shot the officer while he was on the ground, even though
19 he was already incapacitated.

14:17:34 20 So we would have had the emotion; we would
21 have had the, probably in some people's minds, the moral
22 right to do so. Or we could take a look at why we were
23 suffering such high recidivism rates.

24 So kind of going backward a little bit, a
14:17:47 25 couple months before, I had a gentleman walk into my

14:17:50 1 office and ask to meet me with me. His name was David
2 Lewis, who has since passed.

3 David was a very persuasive guy. And so he
4 said he wanted to meet with me because he does work with
14:17:59 5 formerly incarcerated parolees.

6 And so I gave my secretary the typical "Come
7 and get me in 10 minutes; I've got another meeting to get
8 to" scenario. And that didn't work very well.

9 And I just recall 30 days later, I'm driving
14:18:13 10 to San Quentin with this guy and talk to these fellows who
11 are residents in prison. Like the last one, you know, how
12 did you do that? You know, how did you -- and he
13 convinced me and really converted me to see the issue.

14 One is to accept the idea of redemption; and,
14:18:27 15 two, to recognize that the process we were doing was
16 just -- really, it was facilitating just a cycle that
17 makes no sense. Very expensive, it was absolutely
18 resulting in the spread of incarceration of young men of
19 color, and it wasn't working in the community.

14:18:41 20 So armed with that kind of new thought when
21 the officer was dead and people wanted some justice, we
22 were able to actually work with the family of the slain
23 officer or legislator and actually got our Assemblyman Ira
24 Ruskin to author Assembly Bill 2436 which required the
14:19:04 25 Department of Corrections to do a pilot reentry program in

14:19:07 1

East Palo Alto. It was signed by then Governor
Schwarzenegger.

2

3

And what was unique about this legislation, it
actually was a contract now between the Department of
Corrections and the police department. And it was a
contract in the police department to run a reentry
program; not an enforcement program. We actually opened
up a day-reporting center.

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So as part of the contract, we put together
what we called a "Community-Based Coalition" and

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14:19:42 15

faith-based organizations, community-based organizations,
social services agencies that basically created this
one-stop shop, day-reporting center which is a model
that's around the state to where someone coming out of
the -- a resident coming out of prison could actually go
somewhere and get assistance, the first role of the police
department.

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So we started answering the question: What is
the role of the police in reentry?

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The first job I had the officers do was
actually go knock on every door in the city -- we spent
six -- three months doing this -- of everyone that we had
registered on parole in East Palo Alto with the real
direct instructions that unless you just happen on a
felony, someone takes a shot at you, I don't want to see

14:20:08 1 an arrest. This is introduction, handing out pamphlets.
2 "This is the program. Please come."

3 And needless to say, we got up and running and
4 started changing the role of the police department with
14:20:18 5 regards to reentry.

6 We then got a program with Caltrans where they
7 provided jobs to those that were in the program to work on
8 the freeway as part of the job-training program making \$10
9 an hour.

14:20:29 10 And three and a half years before, we were
11 sitting with a recidivism rate well over 70 percent higher
12 than the state average. We were looking at a community
13 that was dubbed "The murder capital of the United States"
14 in '92. When I walked in, we were looking at 15 murders
14:20:42 15 for a community of less than 40,000; looking at 150-plus
16 shootings a year. I had nights where I could have two or
17 three homicides in one night, five shootings, and you're
18 talking about 40,000 people.

19 And we, four and a half years later, cut the
14:20:56 20 homicides in half. The recidivism rate went below
21 20 percent.

22 And there's something else happened that I
23 didn't foresee happening, but it did; and that is the
24 legitimacy of the police department changed. Instead of
14:21:08 25 being just a tool of oppression that would now incarcerate

14:21:11 1 mass numbers of these young men of color, these people saw
2 the officer as part of a holistic response to treatment,
3 to making people's lives better. And everybody understood
4 that there was accountability. Even the program
14:21:23 5 participants understood that.

6 And so we got past that notion of somehow this
7 was being soft on crime and getting into being, borrowing
8 a phrase of our attorney general, smart on crime.

9 We started seeing a lot of differences in how
14:21:34 10 we responded. Interestingly enough, in asking for the
11 program, there was a community debate. Now, this is a
12 community of '94 percent of color, and there's still a
13 debate about the issue of opening up a reentry center
14 inside of the city.

14:21:49 15 So I remember I think the thing that made it
16 pass -- because everyone suffers from this -- namely, "Not
17 in my backyard." Everybody understands the problem, but
18 nobody wants to actually own it.

19 And so I remember saying to the council about
14:22:01 20 the third meeting that I'm presenting this contract, this
21 getting, you know, millions of dollars coming into the
22 City for these services, I offered it to the council in a
23 very simple way:

24 No matter what happens here tonight, no matter
14:22:13 25 what vote you make, no matter what you decide, you have at

14:22:16 1 least 200 residents that are inside prison, and they're
2 coming out in the next 16 months.

3 The only question I'm asking you is: How do
4 you want me to greet them? Plain and simple. Do you want
14:22:25 5 me to greet them with enforcement so that I can keep this
6 process going that doesn't work, or do you want to
7 basically welcome them back to the community and provide
8 alternatives that would actually change lives and maybe
9 even give people differences and a large amount of people
14:22:38 10 would take advantage of it?

11 They actually had the courage to vote yes, and
12 I think it helped that the police department was the one
13 pushing it versus opposing it.

14 To the point where at the end of the
14:22:49 15 legislation, which was, you know, three and a half years,
16 CDCR called me. CDCR says, "Look, we're not going to
17 continue," which is typical CDCR. I love them, but
18 nonetheless, they said it's just too expensive because the
19 numbers were too low. In other words, the number of
14:23:04 20 parolees in East Palo Alto didn't justify the basic costs
21 of the program.

22 So I went back to the council and community
23 and said the only way we can keep this program is to open
24 it up to parolees outside the program. And, shockingly, a
14:23:18 25 4-to-1 vote voted to expand the program to accept formerly

14:23:22 1 incarcerated parolees from outside the community to come
2 into the community to ensure that all of those in the
3 community have those services. And I think that is a
4 pretty clear statement by that time that people saw the
14:23:32 5 value of reentry.

6 The officers saw the value of reentry because
7 it provided them intelligence about who is in the
8 community. Basically an accountability mechanism was
9 there, and they started working with people. The human
14:23:44 10 interaction took place. Right? In other words, I can put
11 out edicts, I can put policies; but nothing is stronger
12 than a one-on-one interaction that people have on a daily
13 basis for them to make their own decision on how they're
14 going to go.

14:23:57 15 So I talked them and we tried to negotiate
16 another contract, but it failed when the budget was -- had
17 a big deficit. So realignment comes on board.

18 It means so much to my community that we have
19 reopened our day-reporting center using City funds. Right
14:24:12 20 now, we get no funding from the State. In fact, our
21 community passed a parcel tax in 2007 to enhance public
22 safety: 50 percent of that tax goes to community-based
23 organizations, and 50 percent goes to the police
24 department. It's supposed to go towards increasing staff.

14:24:27 25 I went to the council about six months ago

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saying, "We have this new thing called 'realignment' in California which is going to release thousands of people from prison."

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Now, I'll get back to that in a second.

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And I offered to use the police department's portion of the public safety funds. Instead of adding officers to fund this day-reporting center, we need this for realignment. So we now have the day-reporting center open and actually named it after David Lewis, the guy that changed my way of thinking.

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And we're serving most of the parolees and now probationers since we're funding it in East Palo Alto so that they have a place to go to do it.

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And what we're seeing is that it's a very

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effective crime-fighting strategy. It goes to the police legitimacy; it goes to the community's trust inside the police department; it goes to giving people an option; it goes to families because a lot of these young men that we're talking about have kids.

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And so when we see some of them are getting job placements or getting job training and how their lives change, how their families look at them, it really makes a different to some of their kids. Right now, we're chasing some of these kids that we were just chasing their father

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three or four years ago. So it's getting, you know, the

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generational problem is really getting -- growing
exponentially with regards to gangs.

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So for me, it's kind of interesting, coming
from a city like Oakland or East Palo Alto. I would now

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argue and do argue that the issue of reentry is

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significant; that if you're going to be a police chief

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that accepts responsibility for public safety, that you

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could -- there's no way you can abdicate such a large

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segment of your community to a state system, to a county

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system; that if we do believe in community policing and

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problem-solving, then you have to get to the

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problem-solving model, which is getting to the root causes

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of the problem and not just the symptoms of it and

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responding to it; you have to be concerned about police

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legitimacy so people view you and what you do as being in

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their best interests and being fair and not disparate.

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Then reentry would have to be one of many strategies that

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you'd have to engage in.

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It's something that's still being somewhat

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resisted when the governor, at that time Schwarzenegger,

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was talking about before realignment released, I think, it

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was 20,000 from the prison, based on a budget shortfall.

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Mostly the chiefs and most the police opposed

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this as many still oppose the idea of realignment.

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So it's interesting. I think it's starting to

14:26:45 1 evolve. One of the things I hope the Task Force will do
2 is try to address the issue of the effectiveness of
3 reentry and why it's important.

4 My recommendation to the governor at that time
14:26:53 5 was we should release 20,000. That's kind of crazy.
6 That's a budget number. And once you release the 20, all
7 you're doing is getting a zero. In other words, you want
8 a billion dollars, we'll give it to you. Why don't you
9 try 40,000?

14:27:04 10 Because then you could take the second billion
11 and give it to local law enforcement and D.A.s and
12 communities to reinvest it into rehabilitation programs.

13 And in 2009, 37,000 -- I think it may be
14 37,000 -- inmates in the State system spent less than
14:27:19 15 90 days in prison. So we are arguing about millions and
16 billions of dollars for three months. The most ridiculous
17 thing I've seen in my life. It's a shame that we would
18 put that kind of money into that where with just a
19 fraction of that, we can come up with job programs,
14:27:35 20 rehabilitation programs, cognitive life skills, and start
21 looking at basically savings an entire generation. So I
22 think it's something that is very important.

23 One of the things that we learned -- I did not
24 know this with reentry -- I had never realized how many
14:27:49 25 inhibitors there were to a person coming out of prison.

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It is amazing to me.

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And so when we opened the day-reporting center, we had to readjust the entire program to spend the first week of really walking through basic things in life. Okay. I owe child support, so I can't get an ID card. If I can't get an ID card, I can't get a job to pay the child support. Now I can't get a job because I don't have a driver's license or an ID card because I owe child support, and now I'm further in debt in child support. I don't meet my restitution, and I get to go back to prison.

Little things like -- just the things that were adding up. I'm convicted, so I can't get housing. I'm homeless, which means I don't have an address. I can't get services and I can't get a job. And it just keeps adding and adding.

So we had transitional housing, and we actually would have counselors that would be advocates on behalf of our program participants so that we could fight some of these bureaucracies working with county leaders, D.A.'s offices, to start removing some of those barriers. And I'm hoping this is where the Task Force will go, and one being Ban the Box.

I think that the -- I mean, East Palo Alto is a Ban the Box city. I think it makes a lot of sense. I think it's very prejudicial to basically start off at that

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point.

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I agree with Nancy. At some point, if it's relevant, do the background investigation. If it's not, then it really doesn't matter if it's not relevant to the job at hand. Right?

But I think that's still -- I mean, that's starting to change, but it needs to change further.

So I'll wind down by saying it's more than unfortunate that I've learned over the years that there's a couple ways to make changes and get people to change the way they think about certain policies. One would be the moral high ground, which is we're incarcerating too many people as it's very disparate; young men of color, one of three, one of four going through the system, and it's tearing up an entire generation of young people. That's the moral argument. Unfortunately, we lose that one quite often.

The other one is philosophical. Reentry is a policy we should go with. And unfortunately, we lose that one.

Where we have the most unique opportunity right now is the economic one. We just can't afford it. So whether you like it, dislike it, doesn't matter. No one has the money to keep incarcerating people at this rate. It's not effective.

14:29:51 1 And I'm going to put my city manager hat on.
2 I have public services I need to provide to my community.
3 I have infrastructure issues, I have economic development,
4 I have basic school board issues -- school district issues
14:30:02 5 that we need to invest in so that we don't continue this
6 recidivism rate. And it's pumping millions into a system
7 that is not working; is not a good managerial practice.

8 So I hope from the Task Force that as you
9 start putting it together that you hit all those angles
14:30:15 10 because we still need to make the moral argument; we still
11 need new legislation and policies.

12 But there's an economic debate that I think is
13 hard to ignore. And reinvestment and realignment does
14 work. It does not compromise public safety. And that the
14:30:28 15 more people that are embracing redemption and
16 problem-solving, the more effective is the crime-fighting
17 along the way.

18 That will -- and this is from the budget point
19 of view -- my budget for the last six years of the police
14:30:41 20 department has remained relatively static. We have
21 reduced overtime by 30 percent. I have basically -- my
22 department has been reduced by 30 percent, but homicides
23 have still been cut in half. Shootings are down over
24 55 percent.

14:30:53 25 And I think that the community's reaction to

14:30:56 1 the police department is much better because of our
2 treatment with them. So I disagree with the argument that
3 you have to incarcerate people to make your community
4 safe. I think there's a counterargument to that.

14:31:07 5 Thank you.

6 RICK JONES: We're going to bring you back to
7 New York and let you spend some time with Ray Kelly.
8 Thank you very much for that. Appreciate it.

9 Ms. Rapp.

14:31:19 10 KIMBERLY THOMAS RAPP: Good afternoon.

11 Kimberly Thomas Rapp. I'm the executive director at the
12 Lawyers' Committee for Civil Rights of the San Francisco
13 Bay Area.

14 And our organization, dating back to the
14:31:29 15 1960s, has been around advancing the rights of communities
16 of color, immigrants, and refugees. The Lawyers'
17 Committee works on issues related to reentry and
18 collateral consequences.

19 As a part of our racial justice effort, as you
14:31:49 20 know, a lot of the disparate impact that results from
21 the -- what we call "criminal justice efforts" really
22 impacts communities of color, particularly
23 African-American and Latino communities, and our work has
24 really been around trying to address these disparate
14:32:09 25 impacts.

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The disparate impact related to the criminal system really led us to start a Second Chance Legal Clinic for folks here in the Bay Area. And so I want to talk about our -- the work that we do in the Second Chance Legal Clinic. I'll also talk a bit about some impact litigation that we have ongoing and also policy advocacy that we are engaged in on behalf of folks who have been formerly incarcerated.

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Our Second Chance Legal Clinic is offered on a monthly basis. We are -- our doors are always open. We get lots of calls on a daily basis from folks who are formerly incarcerated who have challenges with all sorts of civil consequences related to their incarceration.

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The goal of the program is to help folks to overcome these consequences in whatever way we can.

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Obviously, we say "reentry," but the real goal is to make sure that people can fully reintegrate in their society. And we utilize a number of different strategies to try to assist clients in overcoming the collateral consequences, particularly those that are impacting their ability to secure housing and employment.

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We assist with criminal records remedies, including sealing of arrests, for clients who are factually innocent. And that's under the California Penal Code 851.8. We assist with set-aside and dismissal of

14:33:50 1 convictions, which is under Penal Code 1203.4 here in
2 California, and also with reduction of eligibility felony
3 convictions to misdemeanor under Penal Code 17(b). And,
4 of course, with certificates of rehabilitation under Penal
14:34:05 5 Code 4852.01.

6 Of course, there are lots of legal limitations
7 on many of these remedies, as you've heard from Nancy,
8 with regard to the realities of expungement. I mean, it's
9 really a fiction to many degrees. And so we spend a lot
14:34:28 10 of time advocating with employers, for example, on behalf
11 of our clients around the proper consideration of a prior
12 conviction under state and federal law.

13 And although we should not have to, sometimes
14 it also includes some advocacy about arrest records, which
14:34:49 15 should not at all be considered, but it comes up for folks
16 largely because there are commercial background-check
17 organizations that are employed who oftentimes will
18 provide employers, particularly private employers, with a
19 full litany of things and folks' history including
14:35:12 20 arrests, convictions, and other things. And so we also
21 are engaged in quite a bit of work challenging improper
22 commercial background reporting.

23 And we also assist with appeals related to
24 denials of occupational licenses. Folks come out and want
14:35:30 25 to be able to open a beauty salon or a barber shop. Some

14:35:35 1 folks want to go and be nurses. And so we certainly are
2 supportive of various vocational programs that are out
3 there. But if folks are not able to ultimately use the
4 training and the skills that they're obtaining, well, of
14:35:51 5 course, that's a barrier to their full reintegration.

6 Building on the direct service work, I just
7 want to touch on some of the -- an example of the impact
8 litigation that we are engaged in with several of our
9 colleagues at allied organizations.

14:36:07 10 We have a -- some litigation pending now
11 against the secretary of state here in California
12 surrounding the voting rights for folks who, as a result
13 of realignment, now have -- there are different sentencing
14 structures that are in place now -- and as a result of
14:36:31 15 realignment, there are thousands of folks who are
16 disenfranchised.

17 This was a writ petition that we filed simply
18 to protect the fundamental voting rights, and we did that
19 in collaboration with allies at the ACLU here of Northern
14:36:47 20 California.

21 I believe earlier this morning, you had Dorsey
22 Nunn here from Legal Services for Prisoners with Children
23 who is also working with us and All of Us or None and a
24 couple of other organizations that are working with us.

14:37:02 25 And part of what the secretary of state did

14:37:06 1 under the 2011 realignment legislation, people who have
2 committed nonserious, nonviolent, and nonsexual offenses
3 are no longer sentenced to state prison here in
4 California. Instead, they remain in the -- their local
14:37:23 5 communities under supervision or in county jail.

6 The secretary of state has advised local
7 registrars that the -- these folks cannot vote. And the
8 litigation that we filed really harkens back to a decision
9 here in California, League of Women Voters versus
14:37:43 10 McPherson, where the court really said that, "Look, if
11 you're not in State jail and you're not out on parole,
12 then we -- you've got a right to vote."

13 You know, we need to look at what the
14 circumstances are, but these folks are not in the custody
14:38:02 15 of the California Department of Corrections. Neither are
16 they in prison or on parole. And so these were the only
17 circumstances resulting in temporary disenfranchisement of
18 citizens with felony convictions under the California
19 Constitution.

14:38:16 20 So we're looking for the Court to apply that
21 interpretation to the -- these folks who are now under
22 realignment, sentenced under realignment.

23 The other effort that we have underway that I
24 want to highlight is a policy initiative that we're
14:38:38 25 advancing in our state legislature. It's AB 2263 here in

14:38:45 1 California. It's cleared the Assembly and also cleared
2 the Public Safety Committee of the Senate. And it is our
3 attempt to try to fill a gap that exists as a result of
4 realignment, and it's related to the expungement
14:38:59 5 opportunities that exist. And that is another effort that
6 we're engaged in collaboratively with other
7 community-based organizations.

8 And under AB 2263, a person who is sentenced
9 under the new realignment laws, because he or she is
14:39:20 10 convicted of a felony and has no prior convictions that
11 are serious, violent, or sexual, these folks ought to be
12 allowed to have their records expunged.

13 And right now, the folks under realignment
14 don't have access to expungement opportunities under the
14:39:39 15 existing Penal Code 1203.4.

16 So this is pending. We're -- we were happy to
17 clear the Public Safety Committee of the Senate, and it's
18 going to the full floor of the Senate for a vote. And we
19 remain hopeful that we will be successful in filling this
14:40:04 20 particular gap.

21 And, of course, expungement is not at all a
22 comprehensive remedy, but it is certainly a big step
23 forward and a help in assisting people, particularly as it
24 relates to securing employment and housing. But, of
14:40:21 25 course, there are more gaps to address even beyond simply

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clearing this particular bill.

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In providing our services, we have really observed a number of limitations as it relates to relief for people who are formerly incarcerated.

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And one of the things that I hope this Task Force will help to shed some light on and perhaps address would be a lack of a comprehensive system, really, to address these kinds of issues. And, of course, we see it at the state level, but there are certainly some things that also need to be done at the federal level.

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For California, there are challenges with our records remedy statutes. For example, the statutes are complex; there's lots of ambiguity. When our clients have to try to think about what their obligations and responsibilities are, it's hard to answer the question.

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Actually, each of these questions has a different answer.

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What can an employer ask?

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What does an applicant have to disclose?

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What will show up on a background check?

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I mean, all of these are very basic questions that we get asked all the time by our clients. And it's -- it's -- there's no clear-cut answer to any one of those questions, and the answer is different. And so oftentimes we're left just saying, "It depends. Depends on the circumstances. It depends on the job that you're

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14:42:07 1 applying for. It -- it depends," which is a very
2 difficult question for people who are simply trying to
3 obtain housing, get a job, live, provide for their
4 families.

14:42:22 5 There's also quite a bit of difficulty and
6 inefficiency of process. And here in California, the
7 certificate of rehabilitation that's available for folks
8 has an extraordinarily long waiting period, and it's a
9 very intensive process. And at the end of the day -- and
14:42:39 10 that process includes a full background check -- but at
11 the end of the day, it has really very little benefit. We
12 have found that really it only benefits folks who are
13 trying to obtain an occupational license because
14 ultimately, really, it affords no legal rights when you're
14:42:59 15 issued the certificate.

16 You've heard from Nancy regarding the
17 limitations on the set-aside and dismissal related to
18 expungement. As a practical matter for our clients, many
19 of them are low income, and it's -- it's even if you can
14:43:14 20 and are interested in going through the process, they
21 cannot afford to pay the various fees related to the
22 expungement process.

23 Additionally, from a practical perspective,
24 there are challenges because you have to petition in each
14:43:33 25 county where you may have a conviction record. And that,

14:43:39 1 for our clients, oftentimes can be very challenging.
2 There's no standardized process, and it really has an
3 impact on the -- the client's ability to take care of
4 everything at one time and in one place. It would be
14:43:56 5 helpful if there was some sort of system or standardized
6 process because at the end of the day, regardless of what
7 county you're in in California, oftentimes the same
8 questions are asked.

9 And I mentioned before that we -- that we have
14:44:12 10 a number of matters pending where we're trying to address
11 some of the challenges that arise with background checks
12 that are being conducted on our clients.

13 Landlords and employers, of course, are
14 conducting all kinds of background checks, and the
14:44:31 15 information that comes up can be dated. It can be much
16 broader than should be included. Sometimes it's
17 inaccurate for a client. And so we certainly have
18 supported the Ban the Box initiatives and other efforts.

19 But once the background checks are run, our
14:44:54 20 clients, you know, depending on just the number of pages
21 that employers get back, they might not even, you know,
22 flip through it, really. They just see that, oh, this
23 is -- this stack is too big. I don't even care. Why
24 should I be concerned? Why do I even need to flip
14:45:10 25 through?

14:45:10 1 Yet we have clients who the information is
2 coming up on their background checks as not -- it's not
3 even them. It's not even related to them. It's not their
4 record. It's not their history. And employers are not --
14:45:22 5 are not digging -- in this economic market, employers
6 don't have to, really, go beyond that because there are
7 lots of folks out there looking for jobs.

8 So I will stop there, and I'm happy to
9 entertain any additional questions along those lines from
14:45:40 10 the panelists.

11 RICK JONES: Thank you so much.

12 Larry.

13 LAWRENCE GOLDMAN: First of all, I should tell
14 the three of you, I am so impressed and I thank you all
14:45:49 15 for your really terrific work. I noted that compared to
16 where I come from in New York, which passes improperly as
17 a sophisticated, modern state -- but some of us know
18 better -- California, frankly, with all the problems that
19 you just mentioned, is way ahead. And I guess it's
14:46:14 20 because of people like you.

21 Let me say, Ms. O'Malley, and I apologize. I
22 didn't know you were a district attorney before. And
23 having heard you, I'm still not sure, frankly. That is,
24 by the way, a compliment. And we will not repeat it out
14:46:32 25 this group.

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NANCY O'MALLEY: I think some of my colleagues probably think the same thing.

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LAWRENCE GOLDMAN: Sort of reminds me I was once asked to write a recommendation for someone on behalf of this association who was being nominated for deputy attorney general; write a letter to a significant senator. And I said, on behalf of this organization, I said, "You want it for or against?"

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So let me ask -- let me start off, if I may, Ms. O'Malley. Let me ask you: You know, you'll excuse my questions because I -- I sit, like probably everybody in this room, on too many committees. And I hear D.A.s say, "We don't want expungement because we won't be able -- we're worried about the use of the conviction to impeach, even though draft statutes allow it," but they don't have the information and things like that.

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Does the district attorney have any discretion in opposing someone -- assuming the person meets the statutory criteria in terms of rehabilitation, does the district attorney ever come in -- can you come in and say, "The crime was horrible, Judge"?

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NANCY O'MALLEY: To prevent either the certificate of rehabilitation and a pardon --

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LAWRENCE GOLDMAN: Yes.

NANCY O'MALLEY: -- or the set-aside?

14:48:13 1 So the two processes are if somebody went to
2 State prison, that they have to submit an application.
3 The investigations are done in my county by my office.
4 Our investigative division is pretty extensive, as was
14:48:26 5 stated. And then they go to the court with our
6 recommendation.

7 And I can only think of one case where we have
8 not recommended that somebody receive their petition --
9 accept the petition.

14:48:38 10 The Superior Court then makes their decision,
11 and then it goes to the governor. And I can't remember
12 very many where the governor actually granted them.

13 So it's a very arduous process. And the issue
14 about and that prompts the legislation of 2263 is that for
14:48:55 15 people who are no longer going to physical State prison,
16 but rather staying at the local level, although it's a
17 prison commitment, those individuals statutorily fall
18 under this arduous process of getting a certificate of
19 rehabilitation from the governor as opposed to people who
14:49:14 20 didn't get this local prison sentence, who can come to the
21 D.A. or just go straight to the judge: "We're entitled to
22 notice."

23 The D.A -- since we're entitled to notice, I
24 presume that we can oppose it. The -- I think the -- for
14:49:33 25 most of them -- and there are a lot of crimes that are

14:49:36 1 exempt from that consideration -- though for most -- I'll
2 try to speak for me.

3 We're looking at whether there's outstanding
4 restitution debt; whether there's something that last
14:49:50 5 hasn't been done or if they violated in the course of
6 their three- or four-year probation if they violated a
7 lot, then that might be an indicator that they may not be
8 somebody who should be relieved from all the penalties of
9 having been convicted.

14:50:08 10 So -- but I think that, again, the effort,
11 especially now with realignment, of really codifying this
12 effort to try to do exactly what Ron or Chief Davis or
13 City Manager Davis would say is that we have people who
14 live in our community. Our best efforts are to make sure
14:50:27 15 that they stay stable and are supportive so that we don't
16 have more victims of crime; so that isn't the only option
17 somebody has because they don't have all these skills.

18 And I was listening to you -- to Ron talk
19 about that, and all I wanted to say was and heap on top of
14:50:43 20 that pile people who have been convicted of a sex crime
21 because all of the things he said about challenges is
22 multiplied by hundreds for people who have been convicted
23 of a sex crime.

24 So -- so, you know, I think the effort now is
14:50:58 25 to start -- it's not -- it's not an overnight event for

14:51:03 1 D.A.s around the state for sure, but the effort is to
2 start looking at people differently, based on the type of
3 crime for which they've been convicted.

4 And -- and in my county, where somebody might
14:51:16 5 not be eligible to be treated under this realignment
6 statute, which would keep them at the local level, we now
7 are striking or dismissing prior convictions that would
8 make them ineligible so that we can keep them locally.
9 That's not new for Alameda County. We have historically
14:51:33 10 kept more people local than other counties of like --

11 LAWRENCE GOLDMAN: Let me ask you something,
12 if I may, about local because we heard -- the two of you
13 spoke about this -- we heard something today which,
14 essentially, if I understood it, is that some of the local
14:51:52 15 sentences are for significant years, up to 21 we heard in
16 one case, in sentencing.

17 I have, frankly, very little sense of
18 California jails, but I was told that local jails in terms
19 of open space, exercise, freedom, conjugal visits, and the
14:52:11 20 like are much more limited.

21 It kind of reminds me of the federal detention
22 centers. And those -- some of us know about this -- are
23 so horrendous that people are pleading guilty early to get
24 out to prisons, federal prisons, which, you know,
14:52:28 25 obviously, logic -- the detention center holding innocent

14:52:32 1 people should be not as heinous.

2 Is that seemingly well-intentioned law really
3 harming some of those people that spend time in county
4 jail?

14:52:45 5 NANCY O'MALLEY: Yes. There's -- the county
6 jails are not he equipped for long-term stays. There's
7 just -- there's not a county jail that I'm aware of in
8 this state that is set up to have someone there for ten
9 years, seven years, eight years. It's just not the way
14:53:01 10 they're set up.

11 And the concern that some are starting to
12 verbalize more is that when you have people in a county
13 jail for extended periods, that it's becoming like the
14 recruiting center for the gangs. And really, it doesn't
14:53:14 15 behoove us to keep people incarcerated like that.

16 But the law also allows for a split sentence,
17 which you may have heard about. Let's say somebody has a
18 seven-year sentence because of all their prior convictions
19 or whatever. They -- that person could be sent to a
14:53:33 20 year -- to a seven-year sentence, one year spent
21 incarcerated and the rest of the time under supervision by
22 the probation department.

23 And -- and to me, and I think more and more as
24 we see overcrowding -- it may not have been the
14:53:46 25 philosophical choice of some law enforcement partners --

14:53:49 1 but -- but it's become the economic choice, that it's --
2 it's just going to be better to have people come out under
3 supervision if the sentence has to be that long or it's
4 appropriate for it to be longer.

14:54:02 5 And then at least we know. I mean, the worst
6 thing in my mind is that we bring -- keep people
7 incarcerated, and then they come out with no supervision
8 and no accountability and nobody to check in with and none
9 of the opportunities that are being created in the
14:54:15 10 community so that their opportunity for success is
11 greater.

12 And I think that we're seeing more and more
13 around the state with that -- accepting that information
14 or that process.

14:54:28 15 LAWRENCE GOLDMAN: Do you want to comment on
16 that?

17 KIMBERLY THOMAS RAPP: You know, the irony of
18 it is that California, as you may know, there was a
19 Supreme Court decision, U.S. Supreme Court decision, that
14:54:37 20 addressed the overcrowding in our state jails. So
21 realignment helped to push people out of the state prisons
22 down to the county level where we will have the very same
23 problem at the county level with regard to conditions,
24 housing conditions, for folks.

14:54:55 25 But I do agree that ultimately the

14:55:00 1 split-sentencing structure will -- is an avenue to help
2 provide relief and that the counties -- prior to my tenure
3 as ED at the Lawyers' Committee, I was at the County
4 Counsel's Office for Santa Clara County -- and so counties
14:55:17 5 are, at a very practical level, grappling with their
6 duties and responsibilities and trying to think through
7 what they can do to address the overcrowding, the lack of
8 resources that really exist to be able to fully service
9 this community of folks that are coming down and -- and
14:55:37 10 resting at the counties, to address their challenges.

11 So ultimately, I think, with probation and
12 other options, that that's going to have to provide some
13 relief; otherwise, we've got the same problem at the
14 county level that we had with our state prisons.

14:55:51 15 LAWRENCE GOLDMAN: Mr. Davis, let me ask you:
16 I may not -- just as I'm not sure she's a district
17 attorney, I'm still wondering. I want to see your badge.

18 But, I mean, I come from a place where, you
19 know, we fight crime by tossing everybody on the street
14:56:07 20 and searching them daily. So the state of CompStat or the
21 like.

22 Let me -- how -- I'm always interested in how
23 do the officers on the street take to this kind of
24 noncrime fighting -- at least non-- old-fashioned crime
14:56:29 25 fighting flow. Do you have problems? Is there -- how do

14:56:34 1 they adapt to that?

2 RONALD DAVIS: To go back to one of the
3 questions you asked her, some counties are responding to
4 this by building additional jails. That's going to be
14:56:42 5 a -- a response you're going to see with the overcrowding
6 that you're talking about. San Mateo County is forced to
7 build an additional jail at \$150 million and \$30 million a
8 year. And so you can imagine the push-back of why we had
9 to build another jail and what \$30 million of operational
14:56:56 10 costs could do.

11 With regards to the officer, I think that is
12 probably one of the biggest challenges from the chief's
13 prospective leadership and how you deal what it.

14 So you've mentioned that in New York, you've
14:57:07 15 got a very strong stop-and-frisk policy. I know the Urban
16 Institute is doing a research paper on it right now, on
17 the issue of the effectiveness of stop-and-search.

18 So I think way we address the officers is
19 evidence-based. I think you're getting a new generation
14:57:20 20 of officers that are more technologically astute, that
21 understand the issue of research and evidence and not just
22 embracing practices as we used to do it.

23 What I've done in East Palo Alto in many ways
24 is you have to recognize that at first, this seems to be a
14:57:38 25 social justice project of the chief. And people will

14:57:41 1 simply do it because the chief gave the edict to do so.
2 They say, "I don't believe in it, I don't like it." I
3 count on the human interaction for them to see the benefit
4 themselves; to see the funding that comes with it; how
14:57:52 5 the -- the impact that comes with it. And then really
6 focus on them that it still allows them to do the
7 enforcement but do the enforcement where it's needed.

8 So in one sense, we're almost removing wasted
9 efforts away. You have limited resources, you're reducing
14:58:08 10 the size of your staff. We're at a location of mutual
11 operational cease-fire, the Boston Gun Project.

12 So that same thing so that if I now, instead
13 of you stopping 100 people because someone may, in fact,
14 have a gun -- there are not too many surprises in our
14:58:22 15 industry. Everybody knows who is selling drugs in the
16 neighborhood. Everybody knows who carries a gun. I'd
17 rather equip you and let the officers see that if you want
18 to still be engaged in enforcement, then focus your
19 attention on what actually deserves your focus that are
14:58:32 20 basically shooters, that are selling narcotics, that are
21 more long-term investigations, so that you really have the
22 department that's not soft on crime.

23 So, for example, we have this reentry, but we
24 just did a program where we just arrested 70 people after
14:58:51 25 a year-and-a-half investigation with the FBI, with DEA.

14:58:54 1 But you're talking about wire taps, you're
2 talking about investigations. You're not talking about
3 stopping and sweeping. You're talking about
4 intelligence-based policing, but they still get to enjoy
14:59:02 5 doing the search warrants; they still get to take bad guys
6 to jail.

7 A lot of them are there to do that activity.
8 But it's very strategic, very focused. They still get the
9 reward of taking the bad person to jail. But they also
14:59:15 10 understand that not everybody is bad.

11 So I think the more you present it to the
12 officers that you're really not changing their jobs;
13 you're actually providing the clarity and the definition.

14 One thing I will say that any police leader
14:59:28 15 has to recognize with police officers is do not presume
16 that your mission is the same as theirs. And so we all
17 have mission statements. They're on our walls. But they
18 have to be more than that. If you don't define the role
19 of the police, the officer will define it himself or
14:59:43 20 herself, and it's not going to be what you want it to be.
21 It's going to be completely based on the actions that's
22 involved.

23 So a lot of it is, as you transform the
24 organization, who are you hiring? Why are you hiring
14:59:53 25 them? What's the job that you -- how did you define the

14:59:55 1 job for them? What do they come into the job for? Where
2 is the reward system? Do you get a reward for solving a
3 problem? Do you get a reward for getting five arrests
4 that night? Do you get questioned about why you have so
15:00:04 5 many complaints? What are the accountability mechanisms?
6 What is the job satisfaction for the officer in making a
7 difference?

8 And what we'll see is as they engage in
9 projects, they start getting more satisfaction because
15:00:17 10 there's more thank yous for solving a problem than it is
11 for taking someone to jail.

12 And so I think that role, in the long run,
13 will be beneficial to the organization. Immediately,
14 though, I mean, the culture suggests that, you know,
15:00:29 15 you're always going to have the group in there that "Here
16 we go again," and "This is some, you know, far liberal
17 thing," and "It is what it is," and people start
18 complaining. And six months later, you know, they'll
19 change.

15:00:39 20 Me? I like getting grants to start projects,
21 so I know COPS. I've been a cop for almost 30 years.
22 Most of my projects start out as overtime because one
23 thing that silences any debate is money. Right?

24 So I make the project. I have a project right
15:00:53 25 now with the California Endowment, a foundation here in

15:00:55 1 California, where we're basically making a link between
2 public health and reduced violence.

3 And so we're creating what we call "fitness
4 zones," fitness improvement training zones. I have a
15:01:01 5 system in my city called "Shots Fired." And I have it
6 citywide, the only city in the country that has it
7 citywide.

8 I have neighborhoods where we have thousands
9 of gunshot activations on a daily basis. I think that has
15:01:13 10 a greater impact on the fear of crime than crime itself;
11 living in a war zone, living under the threat. So people
12 can't even engage in things that we take for granted:
13 Going for walks after work, things of that nature.

14 So the officers are going to go into these
15:01:25 15 neighborhoods and they're going to actually engage in
16 physical activity with the neighborhood. We're gonna walk
17 together, ride bikes together, purchase bikes, they have
18 Segways. We're going to take over the corner through
19 physical activity so that our health disparities are
15:01:38 20 changing with that high crime rate leading to high
21 mortality rates. And my theory is an active community and
22 a healthy community is by nature a safe community.

23 Now, selling that to the officer, do you want
24 to walk with the community, if I'd offered it on the job,
15:01:51 25 no. What I offered is that you're going to get time and a

15:01:54 1 half to now basically ride a Segway, to ride a bike, or to
2 go walking. I have a list of people signed up for it.

3 What I'm counting on is that someone, as
4 they're walking with a neighbor, is going to talk.

15:02:04 5 They're going to get to know the neighbors. Their
6 demeanor will change. It's no longer about, you know,
7 Davis said this or the chief wants us to do that.

8 Initially, I'm enticing them to what I know what hits
9 them. But long term, I'll get to them because I just

15:02:18 10 count on the interaction between people. These are good
11 men and women that are serving, you know, and I think we
12 start off with that premise.

13 LAWRENCE GOLDMAN: Then let me ask you a
14 question, then, as a general question -- and I think
15:02:28 15 you've more or less answered it, but let me kind of focus
16 it. And, frankly, speaking for myself, for what we have
17 done -- I think this is our fourth year -- and we have
18 basically focused on the question of reentry, I think, at
19 least for myself, as being fair, decent, toward human

15:02:53 20 beings and not in a sense as -- to an extent, but less so
21 as a crime-prevention model. We focus it more from the
22 view of the offender than the society in terms of public
23 safety.

24 I mean, let me ask you without -- let me ask
15:03:15 25 you a general question without putting the answer in it.

15:03:19 1

Is it your belief that properly done police efforts toward helping people reenter society, for want of a better term, is effective in terms of law enforcement and limiting crime?

15:03:37 5

RONALD DAVIS: I'll use your system. That's the same system that's contributing to your stop-and-frisk policy. You mentioned the word "CompStat." So you've pretty much adopted and embraced a model program starting with Bill Bratton back in the '90s in New York and now, I think, Ray Kelly.

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And it's interesting because the mayor of San Francisco is talking about looking -- looking at the tissue of stop-and-frisk. So you use the CompStat as a model, and I think you use this against the argument.

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If CompStat is about evaluating, knowing and understanding what's going on with crime and responding to the root causes of crime and not just the symptoms and being able to use intelligence-led policing -- you even hear key phrases of "predictive policing" -- then the notion that you could somehow fight crime or reduce it

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without addressing the issue of recidivism rates is counterintuitive. Right?

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If your argument is that you have to do stop-and-frisk, you have to do probation searches and

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parole searches, then you have a small segment that you're

15:04:29 1 attaching to a large amount of crime. Right? Recidivism
2 by itself increases the victimization rate.

3 So problem-solving and CompStat would almost
4 demand -- it would be woefully deficient if it did not
15:04:41 5 include what are you doing with regard to the recidivism
6 rate in your community?

7 So what I would argue if I was arguing
8 stop-and-frisk in New York is: That is not
9 intelligence-led. That's not effective. If you're doing
15:04:55 10 true problem-solving, a problem-solving triangle, you have
11 to deal with victims as well, right? You've got to change
12 some of their behavior, right -- don't put your money in
13 an ashtray -- and you deal with the location and you deal
14 with the offender.

15:05:05 15 This is the basic community policing concept
16 for which all of us are accepting millions of dollars from
17 the COPS office to justify our existence.

18 So then apply it. And if you apply it, then
19 it's impossible not to get into the issue of reentry.

15:05:18 20 The police have a role to play because the
21 only thing that will stop an effective reentry program is
22 the voice of the chief. It doesn't make a difference what
23 your evidence shows; doesn't make a difference how you
24 promote a program. If I get to the microphone at a
15:05:30 25 council meeting, if I get to a legislator and say, as the

15:05:34 1 police chief responsible for public safety, "You just
2 compromised public safety," it becomes political suicide
3 to go against that. It's a very strong voice, so we have
4 to start defining the role of your prosecutors, of your
15:05:45 5 police officers to do it.

6 But I would say it is -- I don't know you can
7 claim to be effective crime-fighting and not address the
8 issue of reentry. I think it's that strong. And it's not
9 the only issue, but it's the issue of reentry; it's the
15:05:58 10 issue of education. That's why we have organizations
11 called "Fight crimes, invest in kids."

12 The idea now that crime fighting is simply
13 incarceration, I think we went way past that. That's why
14 I'm still surprised that people are embracing the
15:06:10 15 stop-and-frisk. That's usually based on fear, and I think
16 the evidence coming out of New York is that it's starting
17 to get counterproductive.

18 The last argument I will make, though -- and
19 if you're interested in some research from
15:06:21 20 Professor Tracey Meares out of Yale and Tom Tyler, who's
21 out of Yale, on the issue of police legitimacy; that even
22 if you get the temporary reductions in crime, they're very
23 temporary. The loss in legitimacy in the communities of
24 color cost you in the long run. You don't have people
15:06:38 25 that's going to call the police. They won't participate

15:06:40 1

with you.

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A good example is right now in California, you've had four nights of riots in the City of Anaheim based on the loss of legitimacy. In other words, I call

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it "a moment of pause."

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When the officer-involved shooting occurs, it's questionable. Do you tear up my city, or do I have the legitimacy for you to say, "Well, let me see what happens because I know they're going to do the right

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15:07:01 10

thing"?

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Or did that tape, that incident, just validate that which you've been believing your entire life because you keep getting stopped and people keep getting harassed, you keep getting -- there's enough people going in and out of jail.

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There are a lot of things that are beyond the issue of crime. There are neighborhoods right now that you can say, "I cut homicides in half," but they still are very fearful. They live under the gun. They have no trust in the police department, and the quality of life is not better. But we get to basically say, "Look at my numbers."

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So I would really -- the argument, I think, to answer you, is absolutely critical. But it's bigger than

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that. I think rolling the police is not simply

15:07:36 1 statistical crime reduction. It's the fear of crime and
2 the quality of life in our communities.

3 LAWRENCE GOLDMAN: Thank you.

4 RICK JONES: Vicki?

15:07:48 5 VICKI YOUNG: How is it, since you have such a
6 strong voice as chief of police and/or city manager, to --
7 because, I forgot, was it -- I think it was Nancy O'Malley
8 saying -- but politically, the politicians that are in
9 Sacramento addressing these issues, there's so much fear,
10 and they're still addressing fear.

11 Can you speak to, you know, you have -- how
12 can you address that other than just say, "This is how
13 we've been doing it"? Because there's so much politics
14 going -- there's -- there's all these good ideas, but it's
15 all overlaid with politics.

15:08:30 16 RONALD DAVIS: Right. I'll probably defer to
17 Nancy as an elected official. I think for her and I, if
18 it's only her and I, then it does -- we get a lot of -- I
19 get a lot of calls to provide support and letters, most
15:08:43 20 recently at the Senate hearings on racial profiling, to
21 provide a different view.

22 But if someone puts out a piece of legislation
23 in California, realignment being one, and I kind of
24 overrode that; it could be AB 1831, Ban the Box, and then
15:08:56 25 one of the opponents is the California Police Chiefs

15:08:59 1 Association, California Police Officers Research, all
2 those associations are against it, then politically, you
3 almost look -- you almost look like you're antipublic
4 safety. You now have the police establishment. And if
15:09:13 5 you have the district attorneys, you've really got a
6 problem. And so it makes it very tough.

7 But I'll defer to her in that case.

8 NANCY O'MALLEY: I think a good example is
9 also with the Sex Offender Management Board where our
15:09:24 10 first two years was really a struggle on every level
11 because nobody wanted to hear about it. Nobody wanted to
12 hear about the humanity of who's behind the registration.

13 And so we just -- we held ourselves out as the
14 experts who could help to educate and bring that
15:09:43 15 evidence-based information to legislators. We flood them
16 with letters. We, you know, we did a lot of stuff.

17 And while -- while some of the legislation
18 that we have pushed forward has not been successful, like
19 changing the levels of how long somebody would have to
15:10:00 20 register, we find that now when there's a question that
21 comes up, we have more legislators who are willing to at
22 least reach out to some of us and ask the question. And I
23 think that's what we count on.

24 So -- but in the end, you know, people go back
15:10:17 25 to their constituents. And one of the things that

15:10:21 1 happened with some statewide initiative in California was
2 that they -- they established residency restrictions for
3 people who are registering under the Sex Offender
4 Registrant Statute, and then it also invited communities
15:10:33 5 to pass more restrictive restrictions.

6 And right now, we have about 99 communities
7 that have passed more restrictive conditions. And one of
8 the judges who sits on our committee has been issuing
9 stays on the State-mandated residency restriction as being
15:10:52 10 cruel and unusual. And then there's community popping up
11 all over the place that are based on fear and things like
12 that.

13 So it's -- it's a never-ending task. But I
14 also think that, you know, when people like us come
15:11:05 15 forward and speak reasonably and speak logically, that
16 more people -- people are more interested in hearing
17 what's going on rather than just slamming the door shut in
18 our face. And that's certainly, you know, again, with the
19 Sex Offender Management Board.

15:11:22 20 The one thing we talked about, the "Ban the
21 Box," that was legislation that -- that got stopped. And
22 it was legislation that I supported and talked to other
23 D.A.s about. And, you know, to some extent, the D.A.s
24 said, "This is not our issue, you know. We don't follow.
15:11:37 25 We have to background everybody who comes to the D.A.'s

15:11:40 1 Office, so we're not even going to get involved."

2 But I think that we have more or more -- as we
3 have more people progressing to leadership in law
4 enforcement, coming in as chiefs, coming in as D.A.s, that
15:11:55 5 we are seeing a, you know, a different analysis.

6 And if I could just say one thing -- one of
7 the -- about the question you asked about looking at
8 people coming out from a humanity standpoint as much as a
9 stop victimization: I think that that has been one of our
10 goals, and I think to some extent we have been relatively
11 successful with the Sex Offender Management Board and the
12 information we put out and the reports we put out and
13 really bringing to the light the issue of homelessness
14 which is, you know, just rampant for individuals.

15:12:26 15 And then talking about not so much in terms of
16 we're going to stop future victimization, but we have
17 human beings we have to deal with and, you know, deal with
18 that. We try to get communities to deal with that, and I
19 see that also evolving: The issue of not just saying,
15:12:42 20 "Oh, you're just a crook," but rather, you know, "You've
21 been incarcerated. You were convicted of a crime. You're
22 back. What can we do to make this -- to give that
23 stability and to give, you know, for some, the
24 opportunities?"

15:12:58 25 RONALD DAVIS: I have one recommendation to

15:12:59 1 make to you, if I could. If you convinced the electeds,
2 the mayors that hire the chiefs, because they're the ones
3 who have to make the mandates of whatever crime reduction
4 they're promising, when community police finally took
15:13:11 5 hold, you could not get hired as chief unless you started
6 talking about community policing.

7 Keep in mind as you deal with the law
8 enforcement component that there's over 12,000 individual
9 agencies in this country. The average one is not going to
15:13:20 10 look like New York; they're about the size of East Palo
11 Alto.

12 We sat around a table recently about two years
13 ago in Sacramento about the issue of reentry, realignment,
14 and parole.

15:13:31 15 And for the first hour, the chiefs one by one
16 made arguments about how it's not our role, how at least
17 people without having parole would be the worst thing ever
18 that could happen.

19 And then when the counsel, State government
15:13:45 20 representative, got up there said, "You're, like, one of
21 only two or three states with parole, right?"

22 "Really?"

23 So you're arguing for something that everybody
24 else has figured out doesn't work, and you can't even tell
15:13:54 25 me why you're arguing for it.

15:13:56 1 So don't assume that the knowledge base is
2 where you think it's at. People are making arguments
3 because that's the argument they've always made. And they
4 have not been presented with the evidence or are not
15:14:04 5 understanding evidence that they're arguing for processing
6 that all evidence, research -- and you said New York, but
7 New York was one of the earlier reinvestment states; New
8 York, Texas, and few others.

9 Your recidivism rates went down, arrest rates
15:14:17 10 went down, and your crime rates went down. You have
11 aberrations with certain cities, but you still were one of
12 the earlier states with regards to the reinvestment.

13 California's problem is that we're not doing a
14 reinvestment; we're doing realignment. Those are two
15:14:30 15 distinct, different things because no one is actually
16 reinvesting anything back in the program. We're just
17 realigning and calling something -- giving it a new name
18 and a new place to be.

19 RICK JONES: Chris.

15:14:41 20 CHRISTOPHER WELLBORN: Yes. Ms. O'Malley, I
21 have a couple questions for you as a follow-up on the
22 homelessness comment that "we have to deal with them"
23 because -- I look at this from two standpoints.

24 I do exclusively criminal defense work, so I
15:15:00 25 naturally look at it from a humanitarian standpoint. But

15:15:03 1 the other side that I look at is I fully agree and
2 subscribe to the concept that, from a legislative aspect
3 and decision-making aspect, it's all about money and who
4 has the money to pay for what because that's what's going
15:15:16 5 the drive everybody ultimately.

6 And from the homelessness aspect, as a
7 prosecutor -- and then I'll follow up from the standpoint
8 of law enforcement -- is it or is it not a real issue that
9 if they have no place to live, you're ultimately going to
15:15:33 10 be dealing with future costly prosecutions and/or police
11 action that costs money? Because they've got nowhere to
12 go, they've got to eat somehow, got to sleep somehow. And
13 if you're on the street, I would assume that you're going
14 to be more susceptible to things such as alcohol-related
15:15:52 15 crimes, drug-related crimes, prostitution, whatever it may
16 be.

17 Would you address that if you can?

18 NANCY O'MALLEY: Sure. The answer is yes, of
19 course.

15:16:01 20 I mean, it's -- it's homelessness, it's lack
21 of stability, it's, you know, all the things that happen
22 to people when they don't have a place to be or to be even
23 safe themselves.

24 I -- with the -- one of the things that we --
15:16:19 25 you'll probably hear some of this tomorrow with Robert

15:16:21 1 Ambroselli, but CDCR -- just to focus on sex offenders for
2 the time being -- invested a lot of money to make sure
3 that there was housing for sex offenders when they came
4 out while they were on parole.

15:16:32 5 That doesn't -- it's not lifetime housing, but
6 it's something that we -- we all believed and supported
7 CDCR in the efforts to make sure that there was some kind
8 of housing.

9 The balance there, which is always going to
15:16:46 10 exist, is that you have people who provide housing who are
11 exploiting the fact that the government's going to give
12 them money. So one facility we saw had 17 men in triple
13 bunk beds in what looked like a garage with, you know, a
14 bunch of extension cords plugged into -- it was not safe.

15:17:06 15 And so we have to balance that, too, about
16 what -- what does stable housing even look like.

17 With our -- with our realignment program --
18 which I will just say that Alameda County is doing what
19 realignment's been proposing for a number of years,
15:17:23 20 investing in the community -- we have a very strong
21 community-based organization, as does San Francisco. And
22 yet when the money came down from Sacramento, we were one
23 of the less-funded counties for efforts because we didn't
24 have a lot of people in prison.

15:17:38 25 And so, you know, we're the model. As I told

15:17:42 1 Sacramento, "Hey, you should tell everybody to come and be
2 us." But you have to give us the money. Don't give them
3 all the money and leave us dry.

4 But -- but part of what we're doing now -- and
15:17:54 5 this is an interesting twist -- is that our probation
6 department, who has the interaction with individuals
7 coming back from prison, is doing intake or an assessment.
8 And the indication is only 3 percent of those coming out
9 of the Department of Corrections need housing. So we all
15:18:10 10 know that's simply not true.

11 And the public defender and I and our
12 leadership teams meet every other week to talk about these
13 things; like, we all know that can't possibly be the case,
14 so how we're asking questions and how we can bury certain
15:18:26 15 information.

16 And, you know, we're trying to be more
17 truth-tellers about what the real situation is so we can
18 deal with it more appropriately.

19 But in the end, you know, the -- some of
15:18:38 20 the -- it is as much an issue of finances and the economic
21 tag, but it's prioritization also. And I think that
22 that's one of the things that I keep emphasizing, not just
23 with my own office and with the police agencies around me,
24 but there's only so much money. There's never going to be
15:18:58 25 an abundance of money. So it's prioritization of how

15:19:01 1

we're going to conduct ourselves.

2

CHRISTOPHER WELLBORN: Chief, do you feel that

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having a homeless sex offender or, I guess, a better,

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maybe more accurate term, formerly incarcerated people who

15:19:16 5

have been convicted of sex crimes for which they have to

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register, does that cause potentially more police activity

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or, for lack of a better term, more crime having them

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homeless than it would if they had a place to live, a

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stable place to live?

15:19:35 10

RONALD DAVIS: I think so. And I also think

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it puts them under higher scrutiny of law enforcement

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because they're more visible to the officers out and

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about. In other words, you're going to get more

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complaints, there's more focus. And if there's more

15:19:44 15

focus, more likelihood of getting some kind of technical

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violation going back.

17

As Nancy mentioned, some of the laws we have

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with sex offenders, though, the law would prefer the

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person to be homeless than have a residence 1,000 feet

15:19:56 20

near a school. You can't live in this house right here.

21

I'll kick out you, but can sleep on the corner right

22

across from the school. So it's kind of silly how we have

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it set, and that part needs to change. I know it's being

24

led by a lot of good people so we can have some housing.

15:20:09 25

But I think when you say "homeless," I would

15:20:10 1 prefer not to say that they're linked, but the other
2 areas, law enforcement is quickly becoming the social
3 services for homelessness and for mental illness.

4 And what's happening is that if we don't
15:20:19 5 address it through social services, then my officers will
6 have to address it at 10:00 at night, which means probably
7 the biggest homeless shelter we have and the biggest
8 service center we have for mental illness is called the
9 county jail.

15:20:31 10 CHRISTOPHER WELLBORN: Right.

11 RONALD DAVIS: Until we change that, that's
12 going to be very problematic. I think there's a link. I
13 don't think the people automatically revert to crime
14 because they're homeless. I think it ties into the
15:20:40 15 inability to get jobs, other services, identification. I
16 think it ultimately will lead to it. And it increases the
17 scrutiny of law enforcement. Wherever I focus, I'm going
18 to find what I'm looking for. Right?

19 CHRISTOPHER WELLBORN: Right.

15:20:52 20 RONALD DAVIS: If I focus on all blacks, then
21 eventually I'm going to find some carrot head, and then
22 I'm going to use that number to justify why I stopped more
23 blacks. This is --

24 CHRISTOPHER WELLBORN: So the follow-up
15:21:01 25 question is: Has there been enough statistics, is there

15:21:08 1 enough evidence that both of you, one of you, either one
2 of you could make the argument using evidence-based
3 arguments that, look, these sex offender laws that are
4 effectively kicking people out of their homes are, from an
15:21:24 5 economic standpoint and a law enforcement standpoint,
6 counterproductive?

7 NANCY O'MALLEY: This is one of our major
8 goals and efforts at the state level with the board. So
9 every month we look at the numbers. And the numbers of
15:21:39 10 people who declare themselves homeless, or transient we'll
11 call it, which means they're not living in a -- a stable
12 place for more than five days or something, those numbers
13 increase every single month. It's gone up, like,
14 300 percent since the law was passed a couple of years ago
15:21:57 15 and since we've been keeping track. But we look at those
16 numbers every month.

17 The other thing that's interesting from a
18 statistical, evidence-based standpoint is that there are
19 more -- the recidivism rate of individuals who are
15:22:11 20 required to register under supervision who come back into
21 incarceration is quite high, somewhere around 70 percent.
22 And that's across the board.

23 But for the -- those convicted of sex crimes,
24 it was about -- a little bit less than that. But when we
15:22:29 25 looked down, we drilled down on it, most of those are

15:22:32 1 because the battery to their GPS went down to a certain
2 bar, to one bar. That's a technical violation. That
3 landed them back in incarceration. When you look at the
4 number of -- percentage of individuals who actually
15:22:44 5 committed another sex crime, the number is extremely low,
6 almost lower than the general population of individuals
7 coming out of incarceration. So we focus on that also,
8 to, once again, use evidence-based rather than
9 emotion-driven practices.

15:23:00 10 And this whole thing about residence
11 restriction which we've written in our reports, even
12 though we fall under CDCR, that our reports are sometimes
13 critical of them, that the one thing that we -- that we
14 are pointing out to them is that without those resources
15:23:18 15 or with the enforcement of these residency restrictions,
16 that we're driving people into a much more challenging
17 situation that almost begs out for them to break a law to
18 survive.

19 RONALD DAVIS: One thing: The issue for
15:23:37 20 homelessness for a specific form of incarcerated also
21 includes the issue of clean and sober housing. So some
22 response is some people start giving out vouchers and then
23 put them into hotels that are just automatically going to
24 ensure they go back with a violation.

15:23:52 25 Or what ends up happening, which see a lot, is

15:23:54 1 the only person or the family is still somewhat enabling.
2 And so grandma lets the person come back, and that
3 grandmother gets a visit every Saturday at 6:00 in the
4 morning for a parole search. So now they're subject to
15:24:06 5 this increased scrutiny of the officers.

6 So the housing part is -- is not just the --
7 homelessness is a problem, but also if they are staying
8 somewhere, are you putting them right back into the
9 environment that contributed to the gangs and violence?

15:24:18 10 So hopefully, good programs will have
11 transitional housing where they can have clean and sober
12 accommodations while they're getting their rehabilitation
13 and cognitive life skills.

14 In many cases, families have not been able to
15:24:27 15 walk away, so can you reintegrate them in a safe
16 environment so that I can see that you're starting to make
17 the advancements; you're not just saying what you always
18 said: "There's changes."

19 So I'm a big supporter of the idea of
15:24:41 20 transitional housing, even if they have housing, because
21 in many cases, that housing has been not been beneficial
22 to them.

23 CHRISTOPHER WELLBORN: Thank you.

24 RICK JONES: Geneva.

15:24:50 25 GENEVA VANDERHORST: I want to ask about

15:24:50 1 having lifetime registration. I don't practice in
2 California. I want to make sure that I'm clear as to
3 how -- who's categorized as a sex offender.

4 Is it accurate that a someone who is sexting
15:25:10 5 using a cell phone or teenagers involved in consensual sex
6 can be convicted of certain sex offenses and then be
7 categorized as a sex offender that has to register?

8 NANCY O'MALLEY: If we're talking about
9 teenagers or -- well, let me talk about minors.

10 The only thing that would put a minor in a
11 situation where he or she would have to register as a sex
12 offender is if they're convicted of a violent sex crime
13 and they go to the what we used to call the Youth
14 Authority or now the -- the -- the Division of juvenile
15:25:47 15 Justice.

16 And for the state of California right now,
17 there's a big move not to send minors to that facility.
18 So I think there's about 1600 across the state now of
19 juveniles who are incarcerated in the old Department of
15:26:06 20 Juvenile Justice. That's the only thing that would
21 qualify a juvenile: A violent sex crime.

22 When you're talking about consensual sexual
23 intercourse, that is not something that would be -- it's
24 not a registerable offense. California has articulated
15:26:21 25 what crimes are registerable crimes. It also gives the

15:26:26 1 judge authority to order registration if the crime
2 doesn't -- is not articulated in the section but
3 nevertheless was a sex crime intent like a burglary where
4 the intent is proven to be sex-related or
15:26:44 5 sexual-assault-related -- I don't want to say sex --
6 sexual-assault-related. The judge has that authority.

7 But whenever there's a -- there's a
8 sexual-assault crime that would be, let's say, based on
9 age -- so if a 30-year-old, if there's 10 years difference
15:27:01 10 in age and the minor is under a certain age, which is 16,
11 and the adult is more than 10 years older, even if we
12 would call it consensual -- that would not be the basis
13 for registration because the conduct or the crime was
14 based on the differentiation in age.

15:27:18 15 So the -- right now, the registration for
16 those types of crimes is really looking more at child
17 molest and something more violent.

18 The other place where it is a registerable
19 crime, however, is child pornography or engaging children
15:27:36 20 in child pornography. That, one would not say the act,
21 itself, is violent though exploiting children on that
22 level, some would consider it, including myself, as being
23 violent against the child. But the -- but the actual act
24 would not be involving violence. Those are registerable
15:27:54 25 crimes.

15:27:55 1

And the way the state of the law now is, you
2 are correct: That even if a person has their conviction
3 set aside, they still would be required to register. The
4 place where someone would be released from that penalty is
15:28:11 5 if they're given a certificate of rehabilitation and a
6 pardon by the governor. That would also relieve that
7 requirement to register.

15:28:11 5

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GENEVA VANDERHORST: Sex offenders, they give
the certificate only after 10 years being completely out
of the system.

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NANCY O'MALLEY: Right. That's one of the
criteria. They have to be free of incarceration for a
period of time. They -- you know, there's a whole list of
things they've got to complete, but basically that.

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GENEVA VANDERHORST: So here's a question that
I have: We have a copy of the "California Sex Offender
Management Scope Update on Homelessness." And one of the
key questions in this report focused on whether or not the
actual question is: Is there any evidence to support the
belief that residence restrictions increase community
safety?

The question that I have, then, is: Are there
any studies or is there any evidence that you are aware of
that says having lifetime registration as opposed to a
tiered system of registration increases community safety

15:29:18 1 or -- or increases or impacts recidivism?

2 NANCY O'MALLEY: I don't know of any study
3 that says lifetime registration increases or even
4 contributes to public safety because registration on some
15:29:36 5 level is not going to prevent crime. It's going to help
6 figure out who did the crime because it's a -- it's
7 follow-up to a crime being committed, oftentimes.

8 There -- California is one of the -- in the
9 minority now of states that still has lifetime
15:29:53 10 registration for all sex crimes that are articulated in
11 the statute.

12 And, you know, our board has -- while not
13 unanimously, certainly those that didn't stand in -- stand
14 in complete favor of it, support the effort to bring some
15:30:14 15 evidence-based information to our legislature to talk
16 about having them start to look at different offenses
17 could require some level of registration, but not
18 lifetime.

19 GENEVA VANDERHORST: What I'm getting at is
15:30:31 20 that the example that Chief Davis gave of the police chief
21 who used tradition as an argument for why they were
22 keeping their efforts the same, where everyone else had
23 already changed it. California is one of the -- your one
24 of last states to have a lifetime registration. So what's
15:30:55 25 the holdout in California even considering going to -- to

15:31:00 1

a tiered system?

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NANCY O'MALLEY: Well, the holdout is back to,

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I think, politics. I think that people -- you know, so

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we've broken into some committees to really address a lot

15:31:13 5

of these issues. One of them is what is our messaging.

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Not our board, because our board is clearly standing in a

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position of saying we will help you figure out how to do

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this in a way that is safe for your constituents, but the

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fear factor that people live with or the emotion-driven

15:31:34 10

decision-making is what is the barrier.

11

Bill Locklear, when he was our attorney

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general, used to start almost every speech by saying the

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most unsafe place for a child in America is their own

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home. That's true, that more people are sexually

15:31:48 15

assaulted or sexually abused by someone they know than a

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stranger on the street, which is also why this residency

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restriction is so counterintuitive. And -- it's -- it's

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not going to foster public safety.

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So our effort is not only to work with media

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or work with messaging about what we put out in the

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community about somebody who's returning who is required

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to register. We also work with the police departments to

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try to make sure that they're not going out giving public

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announcements for somebody who they -- that it may not be

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necessary for. And maybe there's some people coming back

15:32:28 1 that it is, but look at individuals and look at individual
2 conduct.

3 And then we just keep going back to the
4 legislature every year to say, "We're here again. This is
15:32:39 5 our message. This is our information." And, you know, we
6 just -- we aren't necessarily -- and we aren't giving up
7 on trying to become more evidence-based with our laws.

8 RONALD DAVIS: As long as they're registered,
9 I have to check. Once a month, I have crews that go out
15:32:53 10 and do 290 register checks because if I don't --

11 VICKI YOUNG: It costs money or time.

12 RONALD DAVIS: -- if I don't, the one that's
13 going to -- inevitably, in any group, somebody is going to
14 do something bad. Then the question is: You haven't done
15:33:04 15 a check in six months; you haven't done a check in a year.

16 As long as they're required to get registered,
17 I'm actually doing 290 registration checks of people
18 that's been -- whose offense could have been 30 years ago,
19 literally.

15:33:15 20 GENEVA VANDERHORST: Right. You cut off those
21 folks who are 20 years out clean, no other violations, cut
22 them out completely, take that money and use it towards --

23 RONALD DAVIS: Exactly. It ties our hands.

24 RICK JONES: Unfortunately, we're out of time,
15:33:28 25 sadly.

15:33:31 1 Thank you for the work you're doing, for the
2 way you're doing it, and for sharing your time with us.
3 We appreciate it. Thank you.

4 NANCY O'MALLEY: Thank you.

15:33:39 5 RICK JONES: We will reconvene in 15 minutes.

6 (Proceedings recessed from 3:33 p.m. until 3:48 p.m.)

7 RICK JONES: Let's get started if we can.

8 So last, but certainly not least on Day One.

9 This has been a fantastic and fascinating day
10 for us, and we expect this last panel to be nothing
11 less --

12 ELIZA HERSH: No pressure.

13 RICK JONES: -- no pressure -- than that we've
14 had all day. I saw you guys were here for some of it, at
15:49:10 15 least some of the last panel, so you have a sense of how
16 we operate.

17 We're going to ask each of you to give us
18 about five or ten minutes by way of introduction who you
19 are and what you do, benefit of your thoughts; and then
15:49:23 20 we've got tons and tons and tons of questions for you.

21 And the way that we ask questions is that one
22 of us leads the discussion; and then to the extent that
23 there's time, when that person is done, the rest of us
24 will get engaged as well.

15:49:37 25 But for the purposes of this conversation,

15:49:39 1

Elissa Heinrichs is going to be the questioner.

2

And so without any further ado, I'm going to turn the floor over to you. You guys can flip a coin and decide how you want -- who's going to go first, but the floor is yours.

15:49:54 5

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MAURICE EMSELLEM: It was a real interesting conversation. Chief Davis and some of the folks you have invited are real impressive people, and I'm sure you're going to have a lot of think about when you're all done.

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15:50:10 10

I have some slides. So I'm not going to bore you with a lot of this information, but I want to pass this around because I'll refer to some of this stuff here.

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13

So our organization is the National Employment Law Project. We're a national non-profit group, a

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workers' rights organization. So we get involved in helping to protect workers and expand laws that mostly protect low-wage and unemployed workers.

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For a few years now, we've been involved in a project that, kind of in the vein of enforcing the

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civil -- getting out there more on civil rights issues, we started a project called the "Second Chance Labor Project," and it's about helping workers navigate criminal background checks for employment.

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15:51:07 25

And because we're -- we do a lot of policy work, too, we've been involved not just in enforcing the

15:51:13 1 laws that apply to this area, which are basically the
2 civil rights laws and consumer protection laws, but also
3 trying to work to change the law to accommodate workers;
4 create more fair and accurate background checks,
15:51:27 5 basically.

6 So it gets us very involved in looking at, you
7 know, the multitude -- and Margy's intimately involved in
8 this -- the multitude of federal laws that require
9 background checks for employment, the state laws, and all
15:51:41 10 that.

11 So -- and then we -- and then so we're a
12 national group. I'm based here in Oakland. There are a
13 few of us who work on this particular project around
14 background checks. And then we also operate a hot line
15:51:53 15 here in the housing Bay Area where we help workers, again,
16 who may have background issues, run background checks,
17 especially around enforcement of the civil rights law.

18 We have kind of an interesting perspective.
19 We do a lot of national work. We get to see what's going
15:52:08 20 on at the national level and see what's going on with
21 those issues; but we also kind of try to have a practical
22 side to our work, which is about helping these workers,
23 who are in these actual situations of dealing with their
24 background check.

15:52:19 25 So what I want to talk about in the next few

15:52:25 1 minutes is basically a few things. One is why employment
2 is so important to reducing recidivism. It's kind of a
3 natural no-brainer; but it's helpful to kind of, if you
4 haven't already, take a look of some of the information to
15:52:38 5 back up that basic proposition.

6 I'll talk some about the occupational laws
7 that restrict employment, especially here in California.

8 And then last, probably most important, talk
9 about the critical role that the civil rights and consumer
15:52:52 10 protection laws play in this effort.

11 So -- so I'll start -- I'll just throw out
12 some of these slides. The first slide is a number that we
13 put together in a report a couple years back that shows
14 that just kind of the magnitude of the problem.

15:53:09 15 One in four Californians, about 7 million
16 Californians, has had a background check -- or an arrest
17 or conviction that will show up on a routine background
18 check. And nationally, that number is 65 million adults.

19 So for us as employment advocates, you know,
15:53:26 20 there's a lot of talk about reentry and people who are
21 formerly incarcerated and recently left prison. Well,
22 that's the employment advocates. We're very much about
23 helping people who have a record that's been sitting
24 around for 20 years that's still creating -- it could be
15:53:39 25 even a minor offense -- still creating a big problem for

15:53:42 1 them to access employment. And you get, you know, the --
2 the magnitude of the problem. This gives you a sense of
3 that.

4 And then the next slide just is one study of
15:53:50 5 many that talks about why employment is so important.
6 This is a study out of a group called -- have you been to
7 Chicago yet? Kind of like Godzilla for a lot of great
8 reentry work. This program, Safer Foundation, places a
9 lot of people in jobs. And this slide just goes to show
15:54:07 10 that if you give people a job and if they stay in the job
11 for a significant period of time, up to a year, it vastly
12 reduces their rates of recidivism.

13 The next slide is just some information from
14 one employer, Johns Hopkins, that had a really
15:54:22 15 excellent -- made a really excellent effort in the
16 Baltimore area to employ people with records. And these
17 are just some of the results from their efforts. It
18 basically shows that they've hired a lot of folks with
19 records. Their track record on the job is as good, if not
15:54:37 20 better, as anybody else who they hire. In fact, they have
21 less problems with them on the job once they've been given
22 that opportunity.

23 So now, just moving into the area of
24 occupational licensing laws here in California, the State
15:54:52 25 DOJ, Department of Justice, is the entity that conducts

15:54:56 1 the background checks for what's required in the state
2 laws. They conduct 1.7 million background checks a year
3 to -- implementing the various state occupational
4 licensing laws and some of the local laws that are passed.
15:55:10 5 So these are employment laws. This is not for criminal
6 justice purposes; this is to screen people for employment.

7 And then these next couple slides, I'll just
8 buzz over them. They're some of the big occupations:
9 School, youth organizations, private security, community
10 care, et cetera, et cetera.

11 And then one issue that you may be dealing
12 with -- and this is a real struggle for us -- is to figure
13 out the impact of these laws. I mean, we know that,
14 obviously, you know, it's a huge barrier to begin with;
15:55:43 15 but once you go through the screening process, how many
16 people make it through the process?

17 We really -- there are -- there are very
18 limited data on this issue. Margy and I were on a
19 fellowship together. I spent my fellowship trying to dig
15:55:55 20 around state laws trying to find out what was actually
21 going on with them. The only occupation I was able to get
22 some data on was private security here in California, and
23 it indicates that two-thirds of the folks who are screened
24 out for private security jobs had a misdemeanor only. And
15:56:09 25 that's -- this is it. I couldn't get any more data from

15:56:11 1 the State of California or any of the other licensing laws
2 to get a feel for more background on the quality of the
3 records folks who were being denied a job. So that's -- a
4 big issue is just the research.

15:56:25 5 The next slide is kind of our model, worker
6 protection in the state law. So the big issue if you're a
7 worker trying to navigate one of these laws is, number
8 one, what if you have -- what if the record's not yours or
9 it's in some way inaccurate? You need to address that
10 concern. Some laws are way better than others in
11 addressing that issue.

12 And then what if the law has, you know, some
13 serious restriction, you can't be employed if you have a
14 felony going back some period of time, but you've done
15 everything humanly possible to turn your life around since
16 then?

17 So does the law take into account your
18 individual situation in addition to having whatever, you
19 know, disqualifications are imposed by law?

15:57:08 20 So the Port Workers' Security Law is kind of
21 our gold standard and, you know, it could be improved
22 upon. But we spent several years -- we represented
23 500 workers through this Port Workers' Security Program.
24 It was one of the laws that was passed after 9/11. We had
15:57:23 25 a contract with the Longshoremen's Union to really test

15:57:25 1 this law because they worked hard to get these protections
2 into the federal law and wanted to find out if they were
3 really working.

4 So the protections require, first, they are
15:57:35 5 limited in terms of the duration, seven years, which is
6 very -- compared to most laws -- is pretty good. Some are
7 lifetime bans. This is just to work on the port. Just
8 2 million workers were screened under this law to work in
9 the nation's ports. They all have to go through this
10 process.

11 They have a very good process for checking
12 inaccurate records. And then, most importantly, they have
13 this thing called a "waiver." And this is our -- this
14 what we try to push in all state laws that regulate
15:58:02 15 employment.

16 And basically, it says: If you have one of
17 these disqualifying records, we're still going to look at
18 your individual circumstances to figure out if we will
19 waive you in just the same.

15:58:13 20 And it sounds really commonsensical and normal
21 and -- but this is -- it's pretty uncommon for most laws
22 to have these protections.

23 So the next slide gives you a sense of the
24 impact. So we tracked what happened with the 500 people
15:58:26 25 who we represented. TSA, of course, did not -- didn't

15:58:30 1 keep any of this information. We wanted to know how long
2 it took them to get through the process and especially the
3 issues related to the demographic characteristics, how
4 were people of color doing, because they're -- you know,
15:58:41 5 they're hugely impacted by background checks.

6 So what this slide shows is, first of all, the
7 punch line is 98 percent of the people who applied for a
8 waiver through TSA got the waiver.

9 So you look at the person's individual
15:58:54 10 situation, and chances are, you know, there's a --
11 especially with the minorities working, which is what the
12 port workers are -- you know, chances are they're not
13 going to be considered a risk on the job. And TSA did a
14 good job making sure it worked out that way.

15:59:07 15 But here, just look at the left-hand column.
16 You see that 54 percent of the waivers were filed by
17 African-Americans compared to 14 percent of their
18 representation in the port-worker population. So by a
19 ratio of 4:1, African-Americans, this was their lifeline,
15:59:23 20 if you had a record, to a job; to maintain your job at the
21 ports. So that goes to show both that the process works,
22 but also impact of background checks on people of color.

23 And then last, I'll just run down this issue
24 of the civil rights and consumer laws. I know you heard
15:59:39 25 from Rebecca Kuehn earlier. She was the civil -- she was

15:59:43 1 the person in charge of enforcing the consumer laws at the
2 FTC. And then you're going to hear from some employers
3 tomorrow, so this might be helpful information to kind of
4 talk with them about.

15:59:54 5 Basically, the way that -- how much -- how
6 much have you heard about these EEOC guidelines and the
7 civil rights laws? Is this brand-new information? You've
8 heard some of it?

9 Okay. So basically, the way the civil rights
16:00:07 10 laws work is because background checks have a huge,
11 disparate impact on people of color, folks protected by
12 Title VII of the Civil Rights Act, employers have to
13 file -- the EEOC has set up certain guidelines to say that
14 you have to do more than what's normally required; but
16:00:26 15 they're very basic criteria that they come -- that they've
16 established.

17 You have to look at the age of the offense,
18 the seriousness of the offense, and whether it's related
19 to the job. Under brand-new guidelines which they just
16:00:37 20 issued in April, which was a really big bipartisan vote by
21 the EEOC, they said you also have to look at these
22 individual circumstances, just like I was just talking
23 about with these waivers. So it's not enough to have a
24 policy that says seven years for this offense or that; you
16:00:52 25 also have to take into account the person's individual

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situation.

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And then the Labor Department issued a very similar guidance that applies to all -- that enforces the civil rights laws as applied to all the programs in the country that get Federal Workforce Development money, the job-training money. There are 3,000 organizations called "One-stop Career Centers" that are the local entities that connect people to jobs.

We filed a petition with the EEOC saying these are violating the civil rights laws because they're posting requirements that say you have to have no record. Employers were posting jobs that say "any record, and you're not qualified for in job." It's a blanket prohibition against employment.

That violates the Title VII standards because, by definition, they're not looking at the age of the offense, the seriousness the offense, whether it's job-related. It's this blanket policy.

So those -- this is -- in my world, this is the biggest thing that's happened in five or ten years. And people have been fighting -- these guidelines date back to when Clarence Thomas chaired the EEOC. It's been 25 years since they updated these guidelines. It's a really big deal.

I'm just going to -- I'll actually end there

16:02:08 1 because I'm going too long. The rest of the slides give
2 you a better feel for what these guidelines require. They
3 endorse Ban the Box; they set up model employer policies;
4 they went generally far to do some really great things.

16:02:22 5 So for us as employment advocates, it's all
6 about enforcement of the law. You know, you can have a
7 minimum -- you can have the Fair Labor Standard that
8 requires people to be paid minimum wage --

9 ELISSA HEINRICHS: Maurice, you've gotta
16:02:30 10 breathe. You're going too fast.

11 MAURICE EMSELLEM: I'm sorry. All that
12 enforcement of law means is that as required, it presents
13 a huge opportunity. I mean, you know, New York Times
14 editorialized in favor of this stuff. Lots of papers have
16:02:49 15 covered these issues. The employers should know about it
16 now. And the question is whether they're going to -- you
17 know, what they're going to do and then whether the laws
18 are going to be enforced.

19 RICK JONES: Great.

16:03:04 20 ELIZA HERSH: I'm really in trouble if Maurice
21 was too fast.

22 RICK JONES: Thank you.

23 ELIZA HERSH: Thank you so much for inviting
24 us here. And, well, I'll say all the reasons I'm excited
16:03:15 25 later, but I'm, again, Eliza, and I direct the Clean Slate

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practice at the East Bay Community Law Center.

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For those of you not from here, this is

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San Francisco, and then there's a whole world on the other

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side of the bay, and it's a number of different counties.

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I work in Alameda County which, you know, Oakland is in

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Alameda County, as you probably know, and it has a

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population of about 600,000 people. And Nancy who was

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here is the D.A. in Alameda County.

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So the East Bay Community Law Center is a

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teaching clinic of Boalt. I say that to the other

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clinical people in the room. And I actually brought my

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law student, Sheena, here today also.

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Our office actually is the largest provider of

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free legal services. We have services for eviction

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offense and public benefit, immigration, consumer debt

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defense, and a medical-legal cooperative at Children's

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Hospital. And I say that because in every single one of

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those practices, we've realized the crossover reentry

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component.

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So we started Clean Slate in 2005, and we

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serve approximately 1200 people a year. We are a

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high-volume practice. And I call it "reentry legal

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services." It's a hybrid practice of mostly criminal law,

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employment law, consumer rights law. It's really also

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become a juvenile delinquency court practice as we talked

16:04:37 1 about. And it's licensing, administrative law, and some
2 family law with respect to child-support issues.

3 I think there's not a month that goes by that
4 I don't figure out there's a new collateral consequence of
16:04:47 5 a criminal record that requires expertise in the homeless
6 thing. Luckily, we don't become experts; we reach out to
7 the experts.

8 And I want to stop here. I was going to talk
9 about this later, but I think I'll just mention it here.

16:04:59 10 And I don't know if you've heard this already today, but
11 people talk about reentry as if it's this monolithic,
12 static thing. And I saw this on the last panel, where
13 reentry for the police chief really means one thing and
14 for the D.A. it means another. But I think it's worth
16:05:18 15 thinking about, which is I break it down as new-release
16 reentry and post-sentence reentry. And I think there's a
17 spectrum along that.

18 So who -- the police chief was talking about
19 the folks who are coming back from prison and coming out
16:05:36 20 of jail tomorrow. And at the other end of the sentence --
21 other end of the spectrum of reentry are people who
22 have -- their sentence is complete or close to complete;
23 or, more important, it's the one in four people in Alameda
24 County who have not had contact with law enforcement in 5,
16:05:54 25 10, 15, 20, 30, 50 years. We have clients with the

16:05:58 1 collateral consequences of convictions that are 50 years
2 old.

3 So there's a spectrum.

4 The other part of it is the gravity, right?

16:06:06 5 We have some people in the reentry population who are
6 coming back from prison following very serious, violent
7 offenses. Most people still facing collateral
8 consequences of convictions never went to prison, never
9 went to jail. They had short periods of incarceration, if
16:06:20 10 any. They have misdemeanors for DUIs or petty theft.

11 In Alameda County, we have three years'
12 mandatory probation following a misdemeanor which creates
13 huge barriers to employment, et cetera. So I just point
14 that out by way of saying there's a spectrum. And when we
16:06:35 15 talk about it, we talk about really different needs for
16 that population.

17 So Maurice and I mostly work at the end of the
18 spectrum where people are looking for and are ready to
19 take jobs; whereas for Nancy and for the police chief,
16:06:50 20 it's more the needs that those -- that new-release reentry
21 population has: Housing, mental health, substance
22 abuse -- mental health, substance abuse, in that order.

23 So the reentry legal services I provide at the
24 other end the spectrum, they're done or almost done with
16:07:06 25 their sentence. It's mostly about employment and then,

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again, all these other issues that come up.

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So we, Kimberly Thomas Rapp, who was sitting here before, actually one of our former students, started

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the Second Chance Clinic you heard her describe, and that

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was great. We -- she basically described the same work

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that we do, and so I'll not even touch on that.

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You know, given as much as I try to avoid

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policy work, given that we see 1200 people a year and we

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see the same recurring problems, we have noticed some

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patterns and some areas that require some policy change.

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And so that's one thing we work on, and I'm going to talk

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about that in a second.

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And then another goal of ours has been to

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coordinate reentry legal services in California. For a

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number of reasons, one is we try to replicate our model

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because we think there should be more high quality legal

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services available, but it's also selfish for our clients,

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which is you don't get the benefit of having your record

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cleaned up if you have convictions all over the state.

16:08:13 20

You have to go county by county by county, and we had no

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place to send our clients.

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So one of our primary goals has been to

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duplicate our model and share resources and figure out

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platforms to do that. And it's also the benefit of that

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has been that we have a pretty good network for policy

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change now and, you know, also impact litigation
strategies.

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So I'll move on. You're here, you know what
the problem is, and Maurice has the great graphs.

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I just wanted to focus on what I think the
chief problem in California is, and Kimberly touched on it
really well.

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And I actually have handouts, too. And these
are not handouts to make things clear like Maurice's; I'm
trying to show you how complicated things are.

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So the first two documents are materials we
use for our pro bono volunteers and our law students to
train them. And there's other materials, but this is a
very quick-and-dirty way to see what it -- what the

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reentry scheme is in terms of records remedies in
California.

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And then the last three documents are
document -- or four documents are things we actually give
to our clients. And I don't give these to you as a model.

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I think these are really impenetrable; not
fourth-grade-reading-level documents. I don't think our
clients fully understand them. And that's exactly what
she referenced, that I actually -- we give different legal
advice than a clinic in San Francisco because, again, the

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laws are so open to different interpretations. So I'm

16:09:44 1 going to pass these around and give one to you.

2 So basically, there's this complicated and
3 sprawling reentry scheme, and it's not complicated because
4 it's nuanced and sophisticated. We have arrived at this
16:09:59 5 crazy scheme partly because of federal law and how it
6 interacts with state law. That's probably unavoidable in
7 America, but it's also because there was no time where we
8 set out to, you know, articulate a comprehensive,
9 rational, reentry scheme; just over time, it's been
16:10:16 10 cobbled together and, more importantly, decreased and
11 decreased. And strip -- the existing remedies have been
12 stripped away and minimized by subsequent case law.

13 So I am sorry that Margy Love is not here.
14 She does not know me, but I know her because I've spent a
16:10:32 15 lot of time reading her work about, you know, the unified
16 collateral consequences of conviction work she's done.
17 Because we and other collaborators decided we would put
18 together -- we're tired of fighting this bad scheme; we'd
19 take a minute and a breath to think about what it should
16:10:51 20 look like.

21 And so we have a kind of working model based
22 on our exist -- keeping the best of the existing model
23 and, you know, trying to keep it -- trying to address
24 preemptively law enforcement concerns. And I'm not
16:11:07 25 actually going to talk about that. I -- I just say that

16:11:11 1 by way of saying we did do that, and I was really proud
2 that we took a minute to stop the defensive work we always
3 do to imagine what in California could a working scheme be
4 like. A lot of it overlaps with the work Maurice said.

16:11:26 5 A goal, again, would be to bring the intention
6 of the impact to these remedies into alignment with what
7 actually happens.

8 So I told you what I wished over -- I think
9 I'll say two more things. I'm probably over my time, too.
16:11:38 10 But I -- there's a lot of reentry bills pending right now
11 in California. Some are very good, and some are
12 well-intentioned and very bad, and some are just poor --
13 bad-intentioned and very bad. And you also heard about
14 some impact litigation including the voting stuff. And I
16:11:55 15 can address questions you have about that to the extent
16 you're interested.

17 But I will just -- and, I guess, by saying one
18 thing, which is I -- you are all thinking it was radical
19 that Nancy was here, but I really think it's radical that
16:12:09 20 you all are thinking about reentry because I've had a lot
21 of conversations with public defenders and other criminal
22 defense attorneys who do not think reentry is their work
23 and don't see why it's so important.

24 And I was thinking about why I think this is
16:12:26 25 the perfect group to take this on and, like, just beyond,

16:12:30 1 you know, Padilla and all that that means for needing to
2 really advise your clients about the collateral
3 consequences of conviction and the constitutional need to
4 do that.

16:12:40 5 I just wanted to raise a few other things,
6 which is: In Alameda County, the D.A. has a loud presence
7 at reentry policy, and the Public Defender doesn't really.
8 And I always wish that there would be more of a space and
9 she would be able to take more of a space to -- there, but
16:12:56 10 it cedes a lot of power to law enforcement, probation, and
11 the D.A.s when P.D.s and defense attorneys don't come to
12 the table. That's one thing.

13 The other thing is there's money, and they
14 divvy up the money to the Public Defender and everyone
16:13:11 15 else at these meetings. And when the Public Defender or
16 criminal attorneys are absent, you know why they aren't
17 getting the money.

18 And then just one last thing about expertise,
19 which is: I come to criminal law through the back way. I
16:13:26 20 know how to read rap sheets, and I know what happens only
21 because I see it on a rap sheet. So we rely on the
22 expertise and the people who were in court with the
23 clients.

24 And then I'll be bold and say I also think
16:13:37 25 that to be a really good criminal defense attorney, you

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need to know what the reentry consequences are.

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And I had a conversation with the Public Defender who was, like, I don't understand why you guys get funding to do what you do. And I thought, Oh, that is so horrifying because that means you don't see that your clients are getting subsequent convictions because you're not advising them about how to register as a sex offender or about their loss of gun rights, et cetera.

But I also see there's other possibilities.

Just yesterday, one of our former students who is now a public defender called, and we were working out how to do it, but he negotiated a disposition of a case that resulted in something less than conviction. It was a postplea kind of diversion that they -- basically, the judge was willing to do because he front-loaded her licensing issues.

So she runs a child-care thing, and he knew that the consequence of a certain conviction would be she would lose her license and her livelihood. And he was able to negotiate a disposition that was -- avoided that consequence but also used that by way of saying the punishment she gets is actually going to be very severe for her because of that so the judge could take that into consideration.

I just put that out there as a bridge to work

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together, you know, across the reentry line more.

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So I -- I had other things to say. I wanted to talk about Nancy O'Malley and my experience with her deputies in court, but I'll leave it to questions now.

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RICK JONES: Great. Thank you.

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ELISSA HEINRICHS: I'm going to start my questioning with the last point that you just made regarding the role that defense attorneys play. And I want to ask this question first because I know I'll forget because there are a lot of other policy issues to talk about.

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Earlier this morning, we heard from Dorsey Nunn, and he felt very strongly that defense attorneys should be advising their clients presentencing about collateral consequences. And I think it was noted a couple of times in his presentation.

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And I thought about that, in contrast to some of the testimony we've heard in different jurisdictions -- specifically, I believe, when we were in Miami, and I could be remembering it incorrectly -- but I thought there were people who thought that at the time of sentencing -- these are formerly convicted individuals -- at the time of sentencing, they wouldn't have given -- they wouldn't have been as concerned with the collateral consequences. There were other issues they were going to spend time on.

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16:16:14 1 Everyone had a different perspective.

2 So as a defense attorney, I'm struggling with,
3 you know, certainly I believe we have an obligation to
4 advise.

16:16:24 5 What do you think, based on the individuals
6 that you're working with, what sense are you getting from
7 them as to what importance they would place on
8 comprehensive information being given to them
9 presentencing?

16:16:41 10 And then as a second part of that question:
11 In what form should the information come; specifically,
12 orally from the judge, from their attorney, in writing, a
13 written colloquy? What are the things you have heard;
14 feedback from the individuals you're working with, and
16:16:57 15 what is your sense? What recommendations could you
16 provide to the practitioner in advising clients?

17 ELIZA HERSH: So you all know your clients
18 want to get out, first, second, and third. It's a liberty
19 interest. I think if you have a client-centered approach,
16:17:14 20 you know, that's -- that's going to be what you respond
21 to.

22 But there are a few areas where I think -- and
23 so what I'm saying is, it's hard to -- especially with
24 young people, they don't know the course their lives are
16:17:28 25 going to take. And I don't expect that all public

16:17:31 1 defenders could be an expert on licensing for all areas of
2 licensing. So some of it, I think, would be too broad.

3 But a few key areas where I think public
4 defenders and criminal defense attorneys need to gain
16:17:42 5 expertise is around 290 -- at least in California -- sex
6 offender registration.

7 Because Ms. Vanderhorst was pointing out these
8 lifetime requirements. You don't know. That could be the
9 only thing you focus on is the 290 problem in California,
16:17:59 10 and that would be something. But -- and also around gun
11 rights.

12 So Maurice showed this slide of the security
13 guard, you know, who knew that in California, security
14 guard jobs are very important, a significant source of
16:18:12 15 employment for people who don't have a lot of school. If
16 you have any conviction -- misdemeanor or felony -- that
17 arose from a domestic-violence thing, you permanently lose
18 your gun rights under federal law. You don't lose them
19 under state law, but under federal law. That is a shock
16:18:30 20 for people who are security guards who need a gun permit.

21 So, for example, that one alone, if people
22 knew that, I think would make a big difference. There's a
23 few areas like that.

24 And how they give them to them, I -- that's
16:18:41 25 because I haven't been a public defender. I actually

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don't know when your clients would be most receptive to
it.

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I think law students are a great vehicle for
talking to clients, but I'll end it there.

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MAURICE EMSELLEM: You may have heard some of
this before, but there are a couple of states, Minnesota
and maybe a couple of local jurisdictions, where they are
trying to compile in one all the various collateral
consequences.

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And then, obviously, the big question is --
kind of what you're saying is, you know, how you present
that to somebody is a whole another question. But at
least the -- the district attorney, the public defender
have access to the information and they know the client a

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little bit, and they can tailor, you know, what it is that
you're seeing in terms of the collateral consequences to
the -- to the goals in the situation of the client. Like
Eliza mentioned, you know, the -- a client who runs a day
care center, you know, it really depends a lot on the

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situation of the client. But I think I would look at
those comprehensive registries. They're really trying to
get at picturing the whole universe. And, I don't know, I
would start to survey what people are really doing with
that.

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Off the top of my head, I don't know any

16:19:55 1 amazing, you know, like, one-pagers or two-pagers or some
2 perfect colloquy, although it could be out there. I don't
3 know.

4 I forgot to mention I was a public defender in
16:20:04 5 New York at the Legal Aid Society for a few years before I
6 started doing this work. So, you know, back then, I
7 represented a lot of folks, and it just -- just came back
8 to me as you asked that question to this audience. It's
9 the first time I've actually brought it up in my work.

16:20:23 10 But, anyway, knowing your clients, having some
11 time to work with the individual in their situation, I
12 think, is probably the most important thing.

13 ELIZA HERSH: I'll saying one thing, which is
14 a huge thing. Public defenders are already
16:20:37 15 underresourced. And so if there was to be money spent, I
16 would actually think a good source would be to create
17 those online sources for -- about collateral consequences.
18 And we -- we, you know, with our limited time and, again,
19 in collaboration with people around the state -- and we
16:20:55 20 have one. There's a free platform called "MyGideon."

21 Essentially, you can -- I don't know if you've heard about
22 this -- but it's a free platform that they offer to folks
23 like us who want to use it for a kind of criminal-justice
24 purpose. And it's a password-protected thing, and you
16:21:11 25 basically create an online repository of information.

16:21:15 1 But, again, it's funding. We barely have time
2 or effort, resources, to put it together. And then giving
3 time to public defenders and their case load to look at
4 that kind of thing, it's another issue.

16:21:28 5 ELISSA HEINRICHS: I want to talk now about
6 some of the pending legislation, and I note it's specific
7 to California. But to the extent that there are bills
8 pending that you support that you think are heading in the
9 right direction that other jurisdictions could model, I'd
16:21:51 10 like to hear about those.

11 I know that you -- there's something pending
12 that would expand the eligibility for the set-asides,
13 expanding the convictions that would qualify.

14 If you could tell me if that's one of the
16:22:06 15 bills. If that's an example, talk about that and some
16 other things that are pending.

17 MAURICE EMSELLEM: You probably heard from
18 Dorsey and them about the Ban the Box bill. Chief Davis
19 was a huge supporter of AB 1831. And there are just --
16:22:23 20 there are six states including California state level that
21 have adopted that policy.

22 And, again, you know, here the bill was
23 actually very modest. It was about saying, you know,
24 removing the question from city and county employment
16:22:38 25 positions because of the realignment effort here. The

16:22:41 1 idea was to kind of introduce an employment component
2 point to realignment.

3 There's been very limited discussion in this
4 whole universe of realignment about what we're doing to
16:22:50 5 help people in this situation with their job challenges.

6 So this was -- that was really what AB 1831
7 was about, right, and it just applied to cities and
8 counties. And it just said that when the city and
9 county -- city or county finds the individual to be
16:23:05 10 minimally qualified for the job, so you don't have to wait
11 until the end, then they can ask about the person's
12 criminal record. And there's a ton of exceptions.

13 So that's -- as I mentioned, EEOC endorsed
14 that. And, again, you know, it's something to raise with
16:23:21 15 employers. Most employers actually don't do the
16 background check until they make a conditional offer of
17 employment because it's kind of a waste of resources
18 otherwise. So that information is just kind of sitting
19 out there. It discourages a lot of people from applying
16:23:35 20 for a job because you figure, Why should I apply? You
21 know, they're going to ask me, and I'm never going to make
22 it past the application stage.

23 So, you know, it's sending the right message
24 to the community too. You know, it's not perfect. We
16:23:48 25 don't have, like, some slam-dunk study says it gets a

16:23:51 1 million people jobs, but it's trying to create fair
2 standards. And it communicates, like I said, it
3 communicates the right message.

4 That's a bill that we worked on and we are
16:24:00 5 hoping a lot with that kind of legislation elsewhere
6 around the country.

7 And we had -- the public defenders were
8 supportive of the legislation. They're not a huge,
9 effective lobbying organization. They do some great work,
16:24:15 10 but compared to the law enforcement, I'm sure it's true in
11 every state, you know.

12 But we did -- we did really well. Actually, I
13 don't want to bore you guys, but the story there, we got
14 through the Assembly, we got through most of the Senate.
16:24:26 15 There was one legislator in a key position as chair who
16 overruled her committee and that -- and that bill down.
17 We very well could have gotten through the Senate.

18 And then -- so it's a -- it's a popular -- a
19 great organization, and there's a of momentum behind it.

16:24:44 20 If you all could endorse that like the EEOC
21 did and others, that would be very helpful.

22 ELIZA HERSH: I watched because -- and their
23 office did such an amazing job. And part of what I
24 thought was so successful is their ability to build
16:25:00 25 coalitions.

16:25:01 1

So the way politics works here in terms of
2 reentry in California is whatever could possibly help
3 people reenter successfully, the D.A. is saying no, and
4 that ends it essentially. Or the D.A.s say no and then
16:25:13 5 get the --

6

MAURICE EMSELLEM: The sheriff. I would say
7 in California, it's actually the sheriffs who have,
8 because of realignment, if I -- they have so much power
9 over what happens with realignment that they are probably
16:25:26 10 the strongest voice on the sort of thing that we work on.
11 I know the D.A.s are a problem, but people expect the
12 D.A.s to come around --

13

ELIZA HERSH: And it also probably is where
14 the type of bill. But I was going to say something

16:25:37 15

specifically about another -- but that is to say that I
16 thought their office did an incredible job of building
17 coalition. So many letters in support; way more than most
18 other positive reentry bills. The fact that it wasn't
19 successful, I think, is a hard lesson because if not that
16:25:52 20 bill with that support, it just kind of shows the map
21 of -- shows the hill, the barriers, in California. It was
22 a modest, conservative, relatively, bill, and it -- it
23 didn't pass. That was a hard lesson.

24

And so the bill I'm working on more is

16:26:08 25

AB 2263, and Kimberly talked briefly. And it doesn't

16:26:13 1 expand. And the way I would frame it is it does not
2 expand the set-asides or expungement or 1203.4.

3 It's just -- when they passed realignment
4 laws, I think they inadvertently created a huge population
16:26:28 5 for whom there is no remedy. And it's that -- they did
6 that because they don't pay very much attention to it. So
7 it really was not an intentional thing. And so this bill
8 would basically bridge that gap so to restore that right
9 to people who would be eligible if they were sentenced
16:26:44 10 another way and create that remedy. And I can talk more
11 about that.

12 But our experience with that bill and other
13 similar criminal records bills has been the D.A. just says
14 no, the association lobby group says no.

16:26:57 15 And one of the challenges is we don't have a
16 platform for meaningful engagement. And so we drafted
17 responses addressing each of the points they raise, and
18 that's it. There's -- we didn't hear back. And -- and I
19 don't know how we do meaningful engagement. Maybe that's
16:27:12 20 a place for defense attorneys to kind of counter that D.A.
21 voice. That's a possibility.

22 The other -- you heard it mentioned -- there
23 was a bill that was run that would -- right now, there
24 are -- essentially it would turn into misdemeanors for
16:27:30 25 simple drug possession. And that died -- that bill died a

16:27:34 1 serious death, unfortunately.

2 And there's bills that would allow people who
3 have felony convictions to actually still get food stamps
4 and the public benefits program here called CalWORKs, and
16:27:47 5 one of those died, and one may still be alive.

6 And then I also just had to give an update,
7 which was there was a voting rights lawsuit. And just
8 yesterday, actually, the Supreme Court declined to grant
9 review, which means that's now dead, too.

16:28:01 10 So just to say this in a stark way, there are
11 now people sitting in county jail with the exact same
12 record, exact same offense, but just happened to be
13 sentenced under a different penal code. Someone sentenced
14 under a different penal code -- same record, same
16:28:16 15 offense -- and one has the right to vote in jail and one
16 does not.

17 And the Supreme Court said, "We're just going
18 to let that lie. We're not going to grant review."

19 So that's a disappointment too. I guess I'm
16:28:27 20 full of doom and gloom. I'm sorry.

21 ELISSA HEINRICHS: Turning to the mechanisms
22 that are in place now, I'm interested in hearing some of
23 your thoughts on -- I guess looking at this question of
24 expungement and does it impact the meaning of it, that
16:28:44 25 it's to erase, and the fact that it doesn't actually erase

16:28:48 1 anything here, that's not the effect of it.

2 What do you feel about the mechanisms as they
3 are in place now? How effective are they, and what could
4 be changed to -- what could be changed to make them have
16:29:03 5 some effect on employability?

6 MAURICE EMSELLEM: I mean, you're talking
7 about in California, so I think I should allow you to
8 answer that one. I mean, you know ...

9 ELIZA HERSH: Well, but there -- I mean,
16:29:18 10 most -- there are people who come from our legal services
11 for dignitary reasons and for other reasons, but really,
12 it's about employment. And so a solution -- well, so
13 meaning, giving them meaning, is really figuring out what
14 will work in the employment context.

16:29:31 15 And I have this vision which involves kind of
16 we have the Fair Credit Reporting Act that Maurice talked
17 about, and then the California analog. And essentially,
18 we say -- my office says that if you get a 1203.4
19 dismissal or expungement -- and, again, felonies or
16:29:47 20 misdemeanors, not all. Some you can read the complicated
21 which and how of they can be dismissed -- and for most
22 private employers, you can check no convictions.

23 Now, what can be reported to employers by the
24 commercial criminal background check companies is a whole
16:30:03 25 different thing.

16:30:04 1 So, to me, it's not necessarily changing the
2 criminal record remedy so much -- and I'll pause there and
3 say, as Maurice pointed out, the protections that come
4 from a 1203.4 expungement remedy, that's in the Penal
16:30:21 5 Code, but the protections are in the Employment Code and
6 in the Code of Regulations.

7 And so the first thing would be to put
8 explicitly in the Penal Code, in the remedy, what the
9 benefits are as opposed to having them be all over the
16:30:34 10 place and unclear and, you know.

11 So my vision would be that it's -- it's --
12 whatever the remedy is, it clearly spells out what the
13 benefits are and that it's a coherent and consistent
14 thing.

16:30:47 15 So an example would be under ICRA, the
16 California analog to FICRA, because of the way it was
17 drafted, no one would ever imagine that an infraction,
18 which is the lowest-level offense here, could ever keep
19 someone out of work. But, of course, we find that our
16:31:02 20 clients have infractions reported on criminal background
21 checks now.

22 But only recently can you get an infraction
23 expunged, but the place that codifies the ICRA protections
24 doesn't address infractions. We have clients who get
16:31:19 25 their felonies and misdemeanors dismissed and don't show

16:31:20 1 up on commercial criminal background checks, but the
2 infractions do just because we haven't updated all the
3 places we need to update the benefits.

4 That's a long-winded way of saying: Decide a
16:31:34 5 rational, probably more conservative limit to what the
6 benefits will be, and then put it in very clearly with the
7 remedy. That would be a start.

8 ELISSA HEINRICHS: Do you have something to
9 offer to that?

10 MAURICE EMSELLEM: No. I mean, on the
11 employment side, I think, again, it kind of -- it's a lot
12 about the enforcement. Honestly, I think we, in fact, in
13 California, I've looked at a lot of 200 occupational
14 licensing laws, and we applied these EEOC criteria in the
15 law. You know, it has to be the offense is supposed to be
16 substantially related. There are some exceptions where
17 the -- there are very broad disqualifications; but in
18 general, the laws are pretty good here, both on -- in
19 terms of the standards that apply to occupational
16:32:15 20 licensing, but also on the consumer protection side.

21 In California, the only state in the country,
22 private screening firms are not supposed to report a
23 conviction older than seven years old. The federal law,
24 it could be however far back as you want. That's huge.

16:32:32 25 ELIZA HERSH: Huge.

16:32:33 1

MAURICE EMSELLEM: Seven years is very

2

different. But there are rampant violations of that.

3

So we're -- you know, we've been -- we're --

4

we and others are trying to get the attorney general more

16:32:43 5

involved in, you know, in some enforcement efforts,

6

auditing, that sort of thing; just making these good laws

7

that are here on the books in California which contrast

8

with some of the other states -- I'm a little familiar

9

with the way the other states are -- and just giving them

16:32:58 10

real meaning.

11

New York is a really good example. New York

12

has laws that specifically identify criminal records in

13

their civil rights protections. If you have a criminal

14

record, it's like -- it's a protected class in a sense.

16:33:13 15

And there are a bunch of standards that apply.

16

The New York Attorney General, Cuomo first and

17

then now Schneiderman, filed huge lawsuits against the

18

biggest companies, you know, in the United States:

19

Against ChoicePoint, the biggest background-check company;

16:33:29 20

against Aramark; against Radio Shack, to enforce the New

21

York laws. And they got major settlements against them

22

under New York law. And that, you know, that sent a huge

23

message.

24

If more attorney generals were doing that or

16:33:42 25

coordinating or the feds got involved in that sort of

16:33:44 1

thing, you know, it could have a serious impact.

2

ELIZA HERSH: One of the efforts that his

3

office is working on -- again, in the collaboration with

4

as many people around the State -- is getting the problem

16:33:58 5

with some of the violations that we're seeing on

6

commercial criminal background checks, they don't -- they

7

truthfully make a -- they kind of avoid class -- class

8

action remedy. So we call it, like, death by a thousand

9

paper cuts, which is encouraging people to get copies of

16:34:14 10

their commercial criminal background checks and then going

11

after the furnishers one by one by one by one because

12

there's a \$10,000 statutory fine that commercial criminal

13

background checks are supposed to pay if we go after them

14

for misreporting or reporting violations or errors on

16:34:33 15

commercial background checks.

16

But the problem is -- I think earlier today

17

you heard from someone from the San Francisco Public

18

Defender's Office -- so on one hand, it's so, so, great

19

that the Public Defender here pays for -- does reentry

16:34:47 20

legal services, but it really is record remedies. They

21

don't do employment stuff.

22

And so part of the challenge, I think, is

23

to -- we want to build capacity that there are attorneys

24

doing the record remedy in criminal court. But it's

16:35:02 25

meaningless if you get those dismissals and they keep

16:35:05 1

showing up on employment background checks.

2

You really need to include -- for a meaningful reentry legal service practice, it has to have consumer protections and kind of employment law advocacy.

3

4

16:35:14 5

And then the challenges: How do you build that into a public defender's office that obviously isn't able to do that?

6

7

8

MAURICE EMSELLEM: One bill that's going

9

through -- don't ask me to remember right now; I forget

16:35:24 10

what it is, but we were helpful with it -- it's sponsored

11

by the attorney general. It's to provide everybody who

12

gets through the licensing process with a copy of their

13

record so that they -- you know, it's a basic consumer

14

protection. It's what's required of private employers

16:35:37 15

under the Fair Credit Recording Act so you can, you know,

16

make the corrections, you get -- and you know what you're

17

dealing with in that situation. So that's another helpful

18

model.

19

ELIZA HERSH: Hugely helpful. It sounds tiny,

16:35:49 20

but it costs up to \$60 for people to get their state

21

record on their own. There's some waivers, but it doesn't

22

eliminate the cost altogether. And that is, like, kind of

23

prohibitive for people to start the process of cleaning up

24

their records.

16:36:02 25

And then, you know, this is so good to hear

16:36:05 1 Maurice talk because I learn so much. And I also really
2 like this slide he has about the applicant for the
3 security guard licenses. And what our experience has been
4 is you see that 67 percent of the people are denied
16:36:20 5 because they only had a misdemeanor.

6 And here's what happened: For some huge
7 percentage of those people, it may have petty thefts,
8 right, and they don't want them to work in retail or
9 whatever. But a huge percentage of the clients we see who
16:36:33 10 we help through the licensing process, they get a
11 dismissal or expungement or they have a DUI that they
12 don't think is a conviction. And they begin the licensing
13 process, and on the application, it says: "Do you have a
14 conviction" or whatever, and they say no.

16:36:46 15 And then they are denied the license on the
16 basis of their lack of candor. And it's -- so one -- one
17 small policy change would be we know that the licensing
18 boards are going to have access to a full criminal
19 background check. Clients barely know what happens to
16:37:03 20 them in court, let alone remember it forever ago, let
21 alone really understand when they can say "yes" or "no."

22 Why not just eliminate that question on
23 licensing applications? It's like a trap for candor
24 that's really so loaded against applicants.

16:37:20 25 So that would be another. So, again, I don't

16:37:23 1 know if this is true in other states. Maurice probably
2 knows. But in California, I think it's like 30 percent of
3 all low-wage, low-skill jobs require either licensing by
4 the State or certification to work in a licensed facility.
16:37:34 5 So I'm not talking about doctors and lawyers here, who
6 deserve to be background-checked even more.

7 ELISSA HEINRICHS: I don't want to take up all
8 the time. I'm sure other people have questions.

9 Larry?

16:37:47 10 LAWRENCE GOLDMAN: No.

11 RICK JONES: Question? Vicki?

12 VICKI YOUNG: One question I had for Maurice
13 is: There was some reference earlier this morning that
14 employers or rental people, they want to have this
16:38:08 15 information to protect themselves if something happens
16 down the future and somebody's in the unit and, you know,
17 some crime occurs or something occurs. So then they would
18 be sued for letting the person live there or whatever.

19 And I couldn't tell if your project tracks any
16:38:31 20 of these, you know, how many actual -- is this just a
21 myth, or is it reality that people get sued and are
22 successfully sued on these kinds of grounds?

23 MAURICE EMSELLEM: So it's -- it's the theory
24 of negligent hiring, you know, which varies some by state.
16:38:49 25 And then the question is, you know, whether -- you know,

16:38:52 1 what the law says about defending against the negligent
2 hiring lawsuit.

3 Of course, the employer is going to say I
4 can -- anybody can file a lawsuit against me, and I'm
16:39:01 5 going to have to deal with that and settle it. And it's
6 going to have consequences. That's a lot of what they
7 say. There's not a lot of -- there's, you know, a fair
8 amount of documentation of, you know, the size of these
9 lawsuits.

16:39:12 10 The bottom line is though, when it comes to a
11 background check, you know, first of all, to protect
12 yourselves against liability for negligent hiring, in most
13 states you don't even need a background check. You just
14 need to do a -- a criminal background check -- you just
16:39:29 15 need to do a background check like most responsible
16 employers would do. You have to exercise due diligence.
17 That's pretty much what the standard is, what's
18 reasonable. It doesn't say you have to do a background
19 check. Most cases don't say that. A few do.

16:39:42 20 So, then, the question is: What's the
21 background check? If you follow the EEOC guidelines and
22 age of the offense, nature of the offense, seriousness of
23 the offense, et cetera, et cetera, just those normal, you
24 know, common-sense guidelines, you're going to protect
16:39:56 25 yourselves against two things: A Title VII lawsuit and a

16:39:59 1 negligent hiring lawsuit because they're fair standards.
2 And no court is going to say that you were negligent if
3 you applied these kind of fair standards.

4 And so that -- you're going to hear from
16:40:11 5 employers, I'm sure. You learn it from a background
6 check. Obviously, that's the first thing.

7 And I also want to say, you know -- a decade
8 ago -- I've been doing this for 20 years; not the criminal
9 record stuff, but I've been an employment practitioner for
16:40:25 10 more than 20 years -- and, you know, this whole issue of
11 negligent hiring and background checks wasn't around, you
12 know, 10, 15 years ago. It came into being, you know,
13 especially since 9/11, but especially with the growth of
14 the background check companies. It's a hugely profitable
16:40:40 15 business, and they're constantly marketing new products.

16 I can, again, in the employment area, I can
17 tell you, you know, financial institutions now want to
18 market a product to document your employment record, you
19 know, and your bank accounts. You know, that's a huge
16:40:56 20 thing right now. That's a brand-new product that didn't
21 exist five minutes ago. Now everybody wants to buy this
22 product because it's being marketed very aggressively.

23 So to get back to, like, where is it coming
24 from? It's coming a lot from the background check
16:41:10 25 companies. They're marketing their products. They're

16:41:13 1 working up a lot of concern and hysteria. They are the
2 ones that who are throwing out the figures on the size of
3 lawsuits and all that.

4 So, you know, in defense -- on the management
16:41:22 5 sidebar, they're concerned about it, too. But you would
6 mostly focus on the industry that's really profiting from
7 all that.

8 So bottom line: The employers are doing the
9 responsible thing to protect themselves, both for
16:41:35 10 Title VII and for negligent hiring if they apply the EEOC
11 guidelines. It's really that simple.

12 They're probably going to say, "Well, we can
13 always get hit with a lawsuit." You can always get hit
14 with a lawsuit, but the background check is not going to
16:41:49 15 prevent that.

16 ELIZA HERSH: And I -- I think some
17 jurisdictions have passed either ordinances that
18 basically -- if you hire someone with a criminal
19 background, you're indemnified from negligence suits,
16:41:58 20 right?

21 MAURICE EMSELLEM: Not totally indemnified;
22 but, yeah, they basically, like, if you -- these
23 certificates of relief and that sort of thing, what
24 they've done and in Massachusetts where they have Ban the
16:42:09 25 Box, they did that, too -- where if you comply with

16:42:13 1 certain procedures in the law, you know, certificate,
2 whatever, that they -- I don't think it's total
3 nonexposure to negligent hiring, but it's reduced exposure
4 to negligent hearing. So there's made a connection with
16:42:25 5 that.

6 ELISSA HEINRICHS: Many --

7 GENEVA VANDERHORST: I think we heard about it
8 in Chicago, some kind of bonding.

9 MAURICE EMSELLEM: There's bonding as well.

16:42:33 10 That's different from what the negligent hiring is.

11 ELIZA HERSH: I think Margy addressed this in
12 the uniform collateral consequences of convictions thing.

13 They also, if someone attained -- or obtained,
14 I should say, like, the remedy that's -- it would involve
16:42:51 15 employers could hire that person basically without

16 exposure to --

17 MAURICE EMSELLEM: Right. And that's what the
18 Illinois law was about that expanded the list of what's
19 considered a certificate or expunged. And if you hire
16:43:04 20 folks in that situation, you're not exposed. But bonding
21 is different. There are tax credits out there for hiring
22 people with records. There are a lot of employer
23 incentives to do that.

24 ELIZA HERSH: There's a housing piece in there

16:43:18 25 I want to talk about. But also one issue we are starting

16:43:22 1 to think about more and the only solution is to partner
2 with, like, plaintiffs' law firms who know about insurance
3 companies. But what else drives that idea about that
4 employers feel they have to do this is insurance
16:43:35 5 companies.

6 I think it's a combination of insurance -- we
7 saw an e-mail, a client brought it in, that said: "We do
8 not insure employees who have misdemeanors -- multiple
9 misdemeanors or a single felony."

16:43:49 10 So essentially it's, like, the policy is in
11 violation of Title VII. It's forcing the employer to make
12 bad hiring practices. And I'm so curious -- I'm sure
13 we'll never see actuarial tables regarding criminal
14 records from the insurance companies -- but at the very
16:44:06 15 least, what I'm thinking about is what FICRA obligations
16 do insurance companies have?

17 They're making decisions about people in terms
18 of individuals who want life insurance or auto insurance,
19 and they're making adverse decisions on insuring them or
16:44:21 20 insuring them at really increased rates. Wouldn't you
21 think that a person has access to their record to check
22 for accuracy?

23 But anyway, my -- I think the issue is going
24 after insurance companies as well who impose that on
16:44:34 25 employers.

16:44:35 1

And then the housing thing is more

2

complicated, and we have -- it means we have to have two:

3

One for land- -- like, your rights with background checks

4

for landlords because the rules are different than your

16:44:44 5

rights for employers.

6

But I actually talked to some housing

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attorneys. I was, like, well this is silly, right?

8

Landlords don't get sued. And they said, "We get sued all

9

the time for negligent renting or the equivalent." So I

16:44:56 10

do think that's an issue.

11

But one solution -- and that -- in San

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Francisco, and I'm sorry that they're not here to talk

13

about it -- but they were working on basically an

14

ordinance that would limit that discrimination for

16:45:10 15

employment and for housing. And so I think that's a great

16

solution: Local ordinances that would address that.

17

RICK JONES: Vicki, go ahead. You still have

18

the floor.

19

VICKI YOUNG: So we have the issue that 1203.4

16:45:28 20

goes to a conviction in a particular county in California.

21

And do you have any proposal on addressing a statewide

22

process or, let's say, a standardized form or process that

23

once someone does it for them in Alameda County, if they

24

have a separate conviction somewhere else, at least the

16:45:54 25

person can take that template and try to walk it through,

16:45:57 1 themselves, or something?

2 ELIZA HERSH: So, yes. And -- but I'll start
3 off by saying if Maurice is successful with Ban the Box at
4 a statewide and citywide level, then the next step is
16:46:08 5 private employers banning the box, and we don't need
6 criminal record remedies. You know what I'm saying? We'd
7 have some other -- we wouldn't need it. So I vote for
8 pushing for that.

9 And in the meantime, like, in "real land," I
16:46:21 10 just want to point out, in case it's not clear, that for
11 people who are sent to State prison in California, they're
12 ineligible for expungement or set-aside. And the only
13 remedy is something they call a "certificate of
14 rehabilitation." And it, again, is not helpful for the
16:46:36 15 most part. And you're ineligible between -- you have to
16 wait seven to ten years. It's all there in that
17 complicated form.

18 So the first thing, I would say a big
19 priority, would be to create a meaningful remedy for
16:46:48 20 people who go to prison for, as we've pointed out, in
21 California we're so lucky because we have the FICRA analog
22 ICRA that says no reporting of convictions over seven
23 years old.

24 So if people are willing to lie on background
16:47:01 25 checks and say no convictions, if they were released from

16:47:05 1

parole over seven years ago, that won't show up.

2

So I'll put that on the table by way of saying

3

there's lots of problems with the remedy scheme as we have

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it including not just incentivizing, but just kind of --

16:47:19 5

incentivizing people to be dishonest to employers, which

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is probably not good public policy, but it's how it works.

7

With respect to the 1203.4s, in our -- it's

8

not just county by county. It's courtroom by courtroom.

9

So in Alameda County, there are five courthouses spread

16:47:38 10

out over about 45 miles, which is a lot of driving that we

11

have to do all the time. But if you have convictions,

12

which many of our clients do, in each of those

13

courthouses --

14

VICKI YOUNG: Pleasanton and Oakland and

16:47:48 15

Berkeley and Hayward and Fremont.

16

ELIZA HERSH: You've got it. You feel my

17

pain. And Berkeley closed down. But other than that ...

18

And so we're trying just to -- we, like, it's

19

a revolutionary idea that once a judge makes a

16:48:01 20

determination of rehabilitation, it should apply to all --

21

it's the same -- it's the same consideration because the

22

fact of conviction is in the -- that's not really what

23

they're considering.

24

We've talked to Nancy about it, and we're

16:48:13 25

working on that.

16:48:14 1 So consolidating at the county level would be
2 a first step, but then the same thing would work for the
3 state which is, in the model I envision, it would be
4 something like a judge makes one determination about
16:48:27 5 rehabilitation, and then that's all you need. You don't
6 need to go courthouse by courthouse, county by county.
7 And it would be something like it would only require one.
8 So that would be an immediate change I'd like to make.

9 MAURICE EMSELLEM: In the legislature when
16:48:42 10 this issue comes up in different permutations, the D.A.s
11 object often because they have the authority under Section
12 1203.4 to object. And so it's like interfering with their
13 discretion. That's the way they see it.

14 It's created a barrier to any kind of
16:49:01 15 uniformity. You know, you can give us 1203.4 up here, and
16 who knows what's going on, you know, two counties away or
17 one county away. It's very different treatment that
18 you're getting.

19 So the other issue is not just for the benefit
16:49:15 20 of a client, you know, to not have to go all over the
21 place to deal with the record, but also to some fairness,
22 some basics, to remove the arbitrariness in the system.

23 But that's how it's played out here because
24 the D.A.s, they have a certain amount of discretion
16:49:32 25 involved in doing that.

16:49:34 1 ELIZA HERSH: I'll say, if I can -- I mean,
2 and I've said this to Nancy, and we've talked about it
3 because in her office, they value giving discretion to
4 their line deputies. But we, I would say, you know,
16:49:44 5 you -- Nancy is -- is a unicorn. She really is. I think
6 that's one area of policy change and challenge which is
7 outreach, educating D.A.s; but we have D.A.s every day who
8 we come cross in court who -- this just happened in one
9 particular case. The client has a conviction, a
16:50:02 10 misdemeanor conviction for 1986, when she was using drugs,
11 1986. And she violated probation because she was using
12 drugs, and so it was a per se matter, the D.A. will always
13 object to that set-aside being granted, and so it is about
14 fairness.

16:50:17 15 And in this golden era of realignment in
16 poverty California, which our state is bankrupt pretty
17 much, it's an assistancy matter. So in Alameda County,
18 we're filing separate petitions where they're considering
19 the same thing in all those courthouses. That's such a
16:50:32 20 waste of money. And so I think it is an economic argument
21 to make. If it could happen at the state level, that
22 would be ideal and efficient.

23 Other -- a less moderate approach -- I think
24 all of us are known to promote this -- is the automatic
16:50:46 25 mandatory record destruction at the state level. So the

16:50:51 1 DOJ would just automatically destroy conviction records at
2 a certain point, like, three years after a misdemeanor so
3 there wouldn't even be a judicial process. That would
4 also be one approach; probably not low-hanging fruit in
16:51:04 5 terms of the policy, but a nice idea.

6 VICKI YOUNG: I have another question about
7 this seven-year washout period you're discussing.

8 Do you really mean convictions over seven
9 years old, or do you mean seven years since the last
16:51:19 10 release from custody?

11 Your pieces of paper say "convictions," but if
12 someone served an eight-year sentence and then they get
13 out, does that mean it's there, or what is the definition?

14 ELIZA HERSH: It's -- I mean --

16:51:35 15 VICKI YOUNG: Or we don't know.

16 ELIZA HERSH: No. We do know, but we have it
17 written broadly because we would like to make that -- we
18 don't want to have clients exclude themselves on their
19 own. I mean, again, for most people that this is directed
16:51:49 20 to, they never were incarcerated. It's just misdemeanors,
21 and it's seven years from the date of their conviction.

22 For people who are incarcerated in prison,
23 it's really seven years from their release from parole.
24 And then we're litigating whether or not subsequent
16:52:02 25 violations. But ...

16:52:04 1 MAURICE EMSELLEM: Which seven years? We're
2 not talking about the consumer law, though, now.

3 VICKI YOUNG: Well, there's different seven
4 years.

16:52:12 5 MAURICE EMSELLEM: For the consumer law, it's
6 seven years for conviction, not release and all that.
7 So ...

8 ELIZA HERSH: We're leaning on the parole
9 issue.

16:52:19 10 MAURICE EMSELLEM: Okay. Got two different
11 sevens.

12 VICKI YOUNG: Different seven years.

13 MAURICE EMSELLEM: Yeah.

14 ELIZA HERSH: I mean, just -- that is to say,
16:52:27 15 our experience right now fighting the background check
16 companies and losing is basically they say it's seven
17 years from your release from prison or a violation. We're
18 not ceding on the violation, anyway.

19 RICK JONES: Okay. Chris?

16:52:45 20 VICKI YOUNG: The EEOC rule just plain says
21 seven years?

22 MAURICE EMSELLEM: No. The EEOC doesn't --
23 you're talking about the -- the Fair Credit Reporting, so
24 it's the California version of the Fair Credit Reporting
16:52:58 25 Act that says seven years.

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VICKI YOUNG: I think I see.

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MAURICE EMSELLEM: EEOC doesn't comment on periods of disqualification. They didn't get into that.

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They could have gotten into it, but they didn't.

16:53:07 5

ELIZA HERSH: That's probably better, right, because it gives more discretion to employers?

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MAURICE EMSELLEM: Yeah.

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ELIZA HERSH: Yeah.

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RICK JONES: Chris?

16:53:14 10

CHRISTOPHER WELLBORN: I'd like to follow up on the question of this going to different courthouses and each D.A., you know, having a chance to weigh in when the ultimate issue is rehabilitation which is made by one judge based on one set of evidence no matter what the crime was in what county.

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Because the D.A.s have a right to receive notice, it seems to me that regardless of whether there's going to be an individual hearing in each county, that was only going to come up when the D.A. opposes it.

16:53:47 20

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They're going to get the notice electronically that, presumably, a judge up in Humboldt made this decision, and therefore you down in San Bernardino are getting notice that this 40-year-old conviction for petty larceny is now -- do you want to do anything about it?

16:54:05 25

I mean, it seems to me that that's a timesaver

16:54:08 1 and a moneysaver to do it that way for the D.A. down in
2 San Bernardino versus, okay, now we're all in court on a
3 busy Monday or Tuesday or whenever, and you've got 40 of
4 these. And, by the way, we're dealing with this
16:54:21 5 40-year-old conviction of petty larceny.

6 You have to send the assistant D.A. down there
7 and waste their time dealing with something where you're
8 just going to say, yeah, fine, we're out of here.

9 That seems to me to be a logical argument.

16:54:32 10 Are you getting blowback on that?

11 ELIZA HERSH: He said it. The D.A.s --

12 CHRISTOPHER WELLBORN: Is it a knee-jerk
13 reaction, or is it actually being presented that you're
14 going to be saving a lot of money. And you still have the
16:54:46 15 option of saying, "Oh, wait a minute, this is the serial,
16 you know, candy bar stealer from 40 years ago; no, I don't
17 want her getting it."

18 ELIZA HERSH: Well, we -- in our county, we've
19 got -- we have buy-in from the judges. They ultimately
16:55:00 20 are the final arbiters. But what is surprising is if we
21 go to court in one courtroom for the same client and the
22 answer is yes, case is dismissed, and then we can be in
23 another courtroom with a similar situation and the answer
24 will always basically be no. And so forget county by
16:55:18 25 county. Even that is hard.

16:55:20 1 And I think -- I think that people -- I think
2 the challenge is really opening up the discussion about
3 reentry at a bigger level because there is a knee-jerk
4 reaction from D.A.s. Our experience has been with these
16:55:35 5 reentry remedy laws -- I won't say D.A.s like Nancy, but
6 around the state, the answer is basically -- and I don't
7 understand it, but the -- there's often opposition. And
8 I --

9 CHRISTOPHER WELLBORN: The judges here in
16:55:48 10 California, unlike, say, where I come from, South
11 Carolina, the judges are elected by the public at large as
12 are the D.A.s. So is that the issue of I don't want to
13 look?

14 ELIZA HERSH: Some are elected and some are
16:56:01 15 appointed, the judges in state court here.

16 VICKI YOUNG: They always run. Even after
17 they're appointed, they run.

18 ELIZA HERSH: That's true. But I hear judges
19 say things like "I'm not taking you off probation for this
16:56:13 20 DUI because when you go and get in a car accident, I don't
21 want my name in the paper."

22 Although that's not a rational -- I understand
23 that, but it turns out getting off probation doesn't give
24 you your license back. So that's not really -- but I
16:56:28 25 don't even think it's that. I just think we haven't had a

16:56:31 1 rational discussion about reentry, and I think that we're
2 not even there yet. No one has articulated, that I've
3 heard, kind of concrete reasons that they oppose so much
4 as it's just we haven't even really had a meaningful
16:56:48 5 discussion or planning around these policies. That's my
6 sense.

7 RICK JONES: Geneva, anything?

8 GENEVA VANDERHORST: No.

9 ELISSA HEINRICHS: I have a question. I just
16:56:58 10 want some clarification.

11 With the costs associated with filing, you had
12 mentioned that it could cost -- I don't remember the
13 figure you put on it -- but I think it was for sealing.

14 ELIZA HERSH: For dismissals, the courts can
16:57:13 15 charge up to \$150 per petition; so, yeah.

16 ELISSA HEINRICHS: Then isn't another
17 mechanism that there's no fees associated with that? Is
18 that the certificate, there's no fee?

19 ELIZA HERSH: That's right.

16:57:27 20 ELISSA HEINRICHS: So do you think, then, when
21 there are costs associated with some but not with others,
22 how much does the county's budgetary interest, the
23 D.A.'s -- I don't know if they get any money from the
24 mechanisms that do require fees -- how much has driven
16:57:44 25 their reluctance to give up their discretion or their

16:57:47 1 power to require you to come to their jurisdiction? How
2 much of that is driven by ego, discretion, and, you know,
3 power hungry; and how much is driven by the fact that
4 giving up the petition and the filing fee is going to have
16:58:03 5 an impact on the county's fiscal stability?

6 ELIZA HERSH: So most -- it's a patchwork of
7 counties that even charge those filing fees. They're
8 authorized to, and then counties can draw down, can have
9 an ordinance is enforces those. But in my county, there
16:58:20 10 are no filing fees.

11 ELISSA HEINRICHS: Really.

12 ELIZA HERSH: And then the other thing is,
13 like, any court filing, if you're indigent, you can
14 petition and get a waiver. So we're actually making this
16:58:31 15 argument on our AB 2263 that it's a cost-neutral bill
16 because -- anyway, that's by way of saying the people who
17 can't -- I mean, they're not making a great deal of money
18 from filing fees.

19 And I would -- I would suspect that there's a
16:58:47 20 stronger argument that they would recognize there's
21 better, more efficient things to do with their -- better
22 things they could be doing with their time but do
23 duplicative petitions.

24 ELISSA HEINRICHS: Do people know they can
16:58:57 25 file for indigent status? Those who are filing pro se, do

16:59:01 1

they know that?

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ELIZA HERSH: Well, so, it's not -- in my county, I don't know. We don't have that issue, but I

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know the public defenders and our, like, collaborators

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around the state, that is part of their service is they

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help people fill in those forms, which is labor intensive.

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ELISSA HEINRICHS: In our jurisdiction, they

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don't. They -- they don't at all. And I think they

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probably could file for indigent status; but because they

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make the forms available online and discourage them from

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hiring defense attorneys, they're not advertising that

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they can file for waiver of fees. But they are now

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getting \$60 per petition, which is interesting.

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ELIZA HERSH: One thing is we -- it's not a

16:59:41 15

mandatory requirement, but we send our clients to pay off

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their fines, fees, and restitution before we will petition

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for them where possible. So I would say we drive a lot of

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business to county collections so people can begin that

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process. So that's another economic benefit for the

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county, although it's hard to -- I mean, they should be

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paying their fines and fees off, so -- but ...

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RICK JONES: We are out of time.

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MAURICE EMSELLEM: Thanks for hanging in

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there, you guys. I know this is really tough.

17:00:10 25

RICK JONES: You stood up to the pressure

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well, actually, of being the last panel. You did a great job. Thank you.

MAURICE EMSELLEM: Thank you.

ELIZA HERSH: Thank you.

RICK JONES: This has been a fantastic day for us, and we greatly appreciate all the things that you taught us today. So thank you very much.

We will reconvene here tomorrow at 11:00.

VICKI YOUNG: Don't forget we're going to be at Delancy Street at 9:00, those who are going to take the tour.

(Proceedings recessed for the evening at 5:00 p.m.)

1 REPORTER'S CERTIFICATE

2
3
4 I, CARRIE HEWERDINE, RDR, California Certified
5 Shorthand Reporter #4579, do hereby certify:

6 That on Thursday, the 26th day of July, 2012, I
7 was present at the Orrick Law Offices Building, 405 Howard
8 Street, 10th Floor, San Francisco, California, for the
9 purpose of reporting in verbatim stenotype notes the
10 within-entitled Task Force Hearing meeting;

11 That the foregoing transcript, consisting of
12 pages 1 through 271, inclusive, includes a full, true and
13 correct transcription of my stenotype notes of said Task
14 Force Meeting.

15
16 Dated at Alameda, California, this 4th day of
17 August, 2012.

18
19
20
21 _____
22 CARRIE HEWERDINE, RDR
23 California CSR #4579
24
25