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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 2 - Volume II - Pages 272 - 415

Friday, July 27, 2012

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A P P E A R A N C E S

NACDL Task Force on Restoration  
of Rights After Conviction:

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1 SAN FRANCISCO, CALIFORNIA,

2 FRIDAY, JULY 27, 2012, 11:00 A.M.

3 -oOo-

4  
11:02:03 5 RICK JONES: All right. Let's get started,  
6 everybody. Thank you all for being here.

7 I should say that we had a phenomenal day  
8 yesterday; really lively discussion, very informative, and  
9 we're looking forward to the same today.

11:02:21 10 We actually have already had a good a start to  
11 the day as you would want. We got to spend the morning at  
12 the Delancey Street Foundation. We met some of the  
13 residents there. They took us on a tour, and what an  
14 incredible place. Very inspiring. And the work that  
11:02:40 15 they're doing there is amazing.

16 So we are happy to have the three of you here  
17 and especially thankful to Orrick for providing us with  
18 the space and the accommodations. We appreciate it.

19 The way that we operate is that we're going to  
11:02:58 20 give each of you five or ten minutes or so to give us the  
21 benefit of who you are, your background, your experiences,  
22 and the work that you're doing. And then we have lots of  
23 questions for you.

24 And the way that we do the questioning is that  
11:03:12 25 one of our number will be responsible for leading the

11:03:16 1 discussion. And to the extent that there's time, when  
2 that person is done, then the rest of us will follow up  
3 with whatever questions we might have for the purposes of  
4 this conversation. Chris Wellborn is going to lead the  
11:03:28 5 discussion.

6 So without any further ado, I'm going to stop  
7 talking and turn the floor over to you all, and you can  
8 decide who wants to go first.

9 MARIKO YOSHIHARA: I'll go last.

11:03:41 10 GARY SINISCALCO: I welcome you on behalf of  
11 Orrick. I'm a partner here in the employment law group at  
12 Orrick. I spent the first ten years of my practice at the  
13 EEOC, then joined Orrick here in San Francisco in 1978  
14 where I've been representing employers ever since. I'm  
11:03:59 15 currently representing several employers on issues  
16 involving criminal convictions with the EEOC.

17 And I'm glad to hear you had a chance to visit  
18 Delancey Street. I was surprised I didn't see you there  
19 this morning. I'm literally a neighbor. I live right  
11:04:15 20 across the street. And it's a fabulous, fabulous  
21 operation. If you don't know about Delancey Street, you  
22 should learn more about it. It's just an incredible group  
23 of people over there. They're great neighbors; just a  
24 terrific, terrific success story.

11:04:30 25 So I represent employers, and they have a

11:04:35 1 number of concerns I'd like to share with you and then  
2 certainly address questions.

3 And those concerns really fall into three  
4 areas: Risk assessment, risk avoidance, and the  
11:04:48 5 regulatory and statutory compliance requirements that many  
6 employers face.

7 On the statutory compliance side first,  
8 perhaps the easiest ones to address, are, for example,  
9 banks -- banks cannot hire any employee unless they first  
11:05:04 10 go through -- after they've offered them employment, a  
11 contingent offer, then they have to go through the FDIC  
12 pursuant Section 19 of the Federal Deposit Insurance Act.  
13 It's literally an FBI check, and it comes back as either  
14 "satisfactory" or "unsatisfactory."

11:05:23 15 And if it's unsatisfactory, then the bank  
16 cannot hire that individual. And there's a series of  
17 specifics -- crimes involving theft, fraud, embezzlement,  
18 et cetera, which automatically bar individuals from being  
19 hired by a bank.

11:05:41 20 And then banks typically have what they call  
21 their, quote, bank offenses. So, for example, the FDIA --  
22 I forget the specific list, it's -- itself listed, but it  
23 will be embezzlement, theft, robbery, and so forth.

24 Then you have crimes like domestic violence,  
11:05:58 25 et cetera, which may not be covered by the FDIA that the

11:06:03 1 bank, like other employers, may typically use.

2 If you're a retail drugstore or pharmacy, you  
3 have various regulations governing you that might be both  
4 federal as well as state law requirements.

11:06:18 5 Interestingly enough, the EEOC in its recent  
6 guidance suggests that where the discrimination -- where  
7 there's adverse impact on minorities who are more  
8 frequently the -- are impacted by criminal background  
9 screens, the EEOC suggests that state laws are preempted  
11:06:41 10 by Title VII.

11 I seriously doubt they are correct in that,  
12 but whether they are or not, it certainly brings into  
13 question a significant tension. If you're a retail  
14 employer, for example, in Nebraska, a retail pharmacy, do  
11:06:55 15 you follow the Nebraska requirements or other requirements  
16 and local and state laws, or do you ignore them and take  
17 your chances with them and follow Title VII?

18 In terms of risk tolerance and risk avoidance,  
19 really the major area in terms of litigation risk are  
11:07:18 20 those from the tort lawyers and those from the plaintiffs'  
21 lawyers. I'm sure that the plaintiffs' bar in California  
22 and elsewhere is not going to give up claims involving  
23 sexual harassment, workplace violence, or negligence when  
24 they have employees who come to them who say that they  
11:07:38 25 were harassed, physically assaulted by individuals, and,

11:07:42 1 oh, by the way, that individual has a prior record. I'm  
2 sure that's going to be an issue for the plaintiffs' bar.

3 And it comes up in the context of negligence,  
4 of gross negligence, and request for damages including  
11:08:00 5 punitive damages. The same, of course, would be true for  
6 customers and clients of companies with respect to the  
7 risk they would face there from the personal injury bar.

8 And then, of course, there's the other  
9 perceived risk. And how true it is, I don't really know.  
11:08:19 10 I think there's -- I'm not sure that there's any actual  
11 evidence, but the perceived risk in terms of the cost of  
12 the loss from theft, et cetera, co-worker perceptions, and  
13 morale.

14 And then finally, the EEOC guidance, which --  
11:08:35 15 the new guidance, I'm sure you're aware of, which  
16 essentially authorizes and permits the use of background  
17 screens, subject to the showing of necessity and -- and  
18 taking a case into account in a particular case-by-case  
19 assessment.

11:08:51 20 So employers face all of these issues and  
21 risks, and I'm happy to address any questions.

22 One last thing I should point out for those of  
23 you who are new in San Francisco, you may not have been  
24 following the headlines every day, practically, on  
11:09:07 25 Ross Mirkarimi. Ross was successful in the election this



11:09:11 1 year, in 20 -- in November, to become sheriff of the City  
2 of San Francisco, a rising star in the political  
3 establishment.

4 On January 1st, he got into an argument with  
11:09:21 5 his wife. Grabbed her by the arm and caused a bruise on  
6 her arm. She then made a complaint of domestic violence.  
7 He's been suspended by the mayor. He's now the subject of  
8 an ethics/economics inquiry. He pled guilty to a  
9 misdemeanor -- a misdemeanor, false imprisonment. And now  
11:09:40 10 there's an attempt by many, many people to oust him from  
11 his role as sheriff because of the criminal conviction.

12 It presents an interesting interplay. I've  
13 had debates with my wife on it, who is a very strong  
14 Democratic supporter, and her view is, quite honestly,  
11:10:00 15 that he should not be sheriff because of his action.

16 And lot of people feel that way. And it's  
17 kind of an emotional issue, I think, that also plays out,  
18 certainly for the public and certainly for employers and  
19 employees.

11:10:19 20 RICK JONES: Thank you.

21 ROBERT AMBROSELLI: There's also a law that  
22 bars peace officers from having weapons, I think, if  
23 they're convicted of domestic violence. So there's a  
24 little bit of a fine line there.

11:10:30 25 MARGARET LOVE: Federal law, too.

11:10:31 1 ROBERT AMBROSELLI: You're right. There's a  
2 lot of debate going on with that.

3 RICK JONES: The other thing I should say,  
4 just as a housekeeping matter that I neglected to say at  
11:10:39 5 the beginning is not only this is being transcribed, but  
6 it's being recorded, and there's recording throughout the  
7 room. And so you have to speak in a good, loud voice to  
8 make sure that the tape is actually catching.

9 And the other thing I should say is that when  
11:10:51 10 you think you're on a break, you're not. It's still  
11 recording. So be mindful of that.

12 ROBERT AMBROSELLI: The term "recording" with  
13 the red light flashing?

14 RICK JONES: That's exactly right.

11:11:01 15 ROBERT AMBROSELLI: Good morning. My name is  
16 Robert Ambroselli. I'm the state parole director for  
17 California. It's a pleasure here to be here and address  
18 this panel and take questions.

19 I started my career with the department early  
11:11:12 20 on in 1990 as a correctional officer. I actually opened  
21 up Pelican Bay State Prison and activated the prison.

22 For those of you who are not from  
23 California -- I don't know who is or who isn't, so I  
24 apologize -- but it's our maximum-security prison, if you  
11:11:27 25 will, for the folks that just can't seem to get along in

11:11:29 1 the prison system. So they ended up kind of grouping them  
2 up there. We probably gained some notoriety from keeping  
3 people there that couldn't get along anywhere else.

4 I opened several prisons in the State prison  
11:11:42 5 system during the rise of the building boom in California  
6 prisons and then transferred to State parole in the early  
7 to mid-'90s and worked my way up from a Parole Agent I all  
8 the way to my current position as the director.

9 The Department has approximately 65,000  
11:12:01 10 employees. A little over 30,000 of them are correctional  
11 officers, and the remainder work in positions of support  
12 either in business services -- I keep forgetting we have a  
13 person that's trying to catch up there -- and support the  
14 function of the operation.

11:12:19 15 We have 33 prisons and a number of fire camps.  
16 We have about 195 parole offices with roughly 4,000 staff  
17 and about 2,000 and some change that are parole agents.  
18 And, again, the rest work in a support function for the  
19 operation.

11:12:36 20 So I think we can certainly talk a little bit  
21 about what's going on corrections in California, which is  
22 probably changing rapidly.

23 But probably one of the biggest things that  
24 impacted us along with several litigations that are still  
11:12:54 25 pending, but the biggest one was probably the United

11:12:56 1 States Supreme Court decision in 2011 affirming a  
2 three-judge panel's order to reduce or at least cap the  
3 prison population to 137,000 and giving the Department  
4 little choice related to what it could do.

11:13:13 5 And so the Department really had two choices:  
6 It could either release about 33,000 inmates, which in and  
7 of itself would stir a lot of debate in the community; or  
8 it could build a lot of prisons to house those folks. And  
9 obviously the state's in a fiscal crisis, and there's  
11:13:32 10 probably not a lot of interest out there in building that  
11 many prisons.

12 And so to kind of put things into perspective,  
13 in 2006, we had 162,000 inmates in State prison. That was  
14 about 202 percent overcrowding. So overcrowding, for most  
11:13:51 15 folks, I think they think of it being that if you've got  
16 five cells, you've got six inmates; you know, one per  
17 cell. So the Department defines one cell per inmate.  
18 Even though there are two bunks, it's really designed for  
19 one person because of the programming space and medical  
11:14:11 20 space and those kinds of things. Anyways, that was in  
21 2006.

22 The court order came out in 2009, and our  
23 population was at about 188 percent, which is about  
24 150,000.

11:14:23 25 When the Supreme Court ruled in 2011, we were

11:14:26 1

at about 180 percent overcrowding.

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So the biggest thing that probably came to pass recently was in October of 2011, with a public safety realignment, which really moves offenders, low-level offenders who have been convicted of nonserious, nonviolent, and nonsex offenses, down to the counties and gives them the opportunity at supervising them closer in the communities as opposed to the State doing that.

Within the first six months, our population dropped to 133,000, which is roughly 167 percent, so it dropped quite a bit. In June of 2012, we were down to 124, so we're well on our way to getting to the 110,000 mark which is the final outcome, which is expected to be 137 percent by 2013.

The Department also worked closely with the legislature and others to maybe enact a few things that helped lower that population. One was Assembly Bill 900 which worked to pass approximately \$7 billion worth of revenue bonds to do things like build additional jail beds and give programming space to the Department. It gave us the opportunity to ship a number of inmates out of California and other state prisons, all in an attempt to not just lower the population, but also to provide constitutional health care to the inmate population and to provide a better and safer environment.

11:15:59 1

Parole reform came to pass known as  
Senate Bill 3X18, and that was in 2010. It took  
nonserious, nonviolent, and nonsex offenders and placed  
them on nonrevokable parole.

11:16:13 5

And what that meant was that the parole  
division did not supervise them in the traditional sense  
where they had to report to an office. They were still on  
a technical parole, if you will, where law enforcement had  
an opportunity to detain them and to question them as if  
they were still on parole without the need for a warrant

11:16:29 10

but didn't give us an opportunity to do the traditional  
oversight that most people consider to be traditional  
parole.

14

11:16:46 15

SB 678 passed in 2009. That funded probation  
treatment and supervision at the local level. Again, more  
attempts at empowering the local-level counties, if you  
will, as opposed to the State. And we realized about a  
6,080 P average daily -- or, excuse me, a 6,000 population  
reduction of people that would have gone back to State  
prison. So by supervising those people locally, those  
people did not come back to State prison, or at least they  
weren't sentenced to State prison.

11:17:04 20

23

Realignment, which is obviously probably the  
biggest thing that's been in the newspapers related to

24

11:17:17 25

corrections lately, was passed in April of 2011 and signed

11:17:22 1 into law by the governor.

2 It takes, again, low-level offenders and,  
3 rather than having them supervised by parole, allows them  
4 to be supervised by local probation.

11:17:34 5 The law's not specific in saying that it has  
6 to be probation, but it's established that all 58 counties  
7 in California have the probation and what's called a  
8 "Community CCP," which is a local group that's made up of  
9 the sheriff and local law enforcement that actually  
11:17:49 10 determines who supervises and where the funding goes.

11 If there was funding that was tied to that,  
12 that money was shifted from CDCR, California Department of  
13 Corrections, to the counties. And now you have probation  
14 and the sheriffs and local law enforcement taking over the  
11:18:04 15 responsibility of supervising nonserious, nonviolent, and  
16 low-level sex offenders.

17 "Low-level" is determined by a Static 99 Risk  
18 Assessment as opposed to high-risk sex offenders.

19 And then, I think, finally, we were able to  
11:18:22 20 reduce what we call our "nontraditional beds." I think  
21 that's a fancy term for "ugly beds," what most of us  
22 really do think of as the kind of beds we don't want,  
23 which are day rooms and gymnasiums and locations where we  
24 should be providing rehabilitative services or the basic  
11:18:37 25 services that most of us would expect the prison system to

11:18:40 1

be delivering.

2

They were taken up by nontraditional beds. If

3

you can imagine a gymnasium where people should be out

4

there doing indoor basketball, whatever the case is, we've

11:18:48 5

got rows of beds that are triple-bunked, not just

6

double-bunked in some cases.

7

And those are situations that not only cause

8

problems in the prison system for delivering services, but

9

it tends to be a boilerplate and a problem or cauldron of

11:19:03 10

problems, if you will, for the type of flash violence that

11

can occur in a prison when people are overcrowded.

12

In August of 2007, we had roughly 19,600

13

people that were in what we call "nontraditional beds."

14

By October of 2011, we actually deactivated

11:19:23 15

almost 900 of them. By the following month, we dropped

16

down 3200 and then roughly dropped down 900 every month

17

after that. And so our last of the 19,000 beds were taken

18

down in February of 2012. So I think I'm pretty happy to

19

announce that we've closed now at least most of those

11:19:42 20

beds.

21

And so the Department is now in a great place

22

to actually start producing -- or, excuse me, going back

23

to getting back into the rehabilitative process and

24

starting to free up the classrooms and getting people

11:19:56 25

to -- into what it should have been doing all along and



11:19:59 1 also freeing up our ability to be able to get people into  
2 the right program and getting people into the right --  
3 right services for mental health as well as basic health  
4 care and meeting ADA standards.

11:20:10 5 So all of those things are kind of getting the  
6 Department back on its feet again and delivering the right  
7 services of care.

8 Now, we're not, you know, completely where we  
9 need to be in the best situation, but we have moved  
11:20:24 10 completely away from where we were in the past. And so  
11 I'm happy to say that we've met a number of requirements.  
12 And I think that if we continue to take this pace, we'll  
13 be in a place in a couple of years to be proud again in  
14 California about how the prison system operates compared  
11:20:41 15 to how we were maybe 10 -- 10 or 12 years ago.

16 I think I've taken up at least five minutes,  
17 if not longer than that, so I apologize. I know you'll  
18 probably either have questions or hold questions until --

19 RICK JONES: Thank you.

11:20:53 20 Ms. Yoshihara.

21 MARIKO YOSHIHARA: Okay. My name is Mariko  
22 Yoshihara the California Employment Lawyers' Association.  
23 Thanks for having me here.

24 Just by way of background, I've worked in the  
11:21:04 25 capitol working on legislative work for about five years

11:21:08 1 now. I went to school over at Hastings. And, actually,  
2 my second summer, I was at the San Francisco Human Rights  
3 Commission right after they passed the Ban the Box  
4 legislation in San Francisco.

11:21:19 5 And then I worked in the Assembly Labor and  
6 Employment Committee my second year of law school doing  
7 consulting for the labor and employment bills.

8 And then I worked for Assemblyman Fuentes for  
9 a year. And then I've been with CELA, California  
10 Employment Lawyers' Association, for about three years.

11 So hopefully I can provide sort of a  
12 big-picture political perspective on moving forward with  
13 legislation to help remove barriers to employment.

14 We've -- our organization sponsors between two  
11:21:58 15 and five bills every year, and it's particularly tough.  
16 We don't have a political action committee; we don't have  
17 a PAC, so we don't donate money; so all of our efforts are  
18 grassroots.

19 I've been involved in supporting the  
11:22:15 20 legislation that, you know, a lot of the people that have  
21 been speaking on this panel and yesterday have been  
22 working on to try and, again, remove the barriers for  
23 people with conviction status in order to get them back  
24 into the workforce.

11:22:28 25 And I think we share a lot of the same

11:22:31 1 difficulties as far as public relations and public  
2 perception. And our -- our battle in particular is  
3 dealing with, you know, businesses saying that trial  
4 attorneys are putting employers out of business and that,  
11:22:49 5 you know, basically the economy is suffering and this is  
6 why, you know, we need to have fewer regulations.

7 And so, obviously, most of our legislation is  
8 to impose some sort of regulations on employers so that we  
9 can protect workers better.

11:23:07 10 The -- so, just again from the political  
11 perspective in Sacramento, I think we've -- again, it's --  
12 it's become more polarized. And I think it's a big PR  
13 campaign, where the "job-killer" label by the Chamber of  
14 Commerce has been really effective. Usually there's about  
11:23:30 15 40 or so job-killers every year. All of our bills have  
16 been labeled "job-killers," but we actually -- we were --  
17 we had -- two of the four job-killers actually made it to  
18 the governor's desk last year.

19 Three of those job-killers were vetoed  
11:23:47 20 including the two of ours, and one was signed which was  
21 Assembly member Mendoza's bill that would prohibit  
22 employers from using consumer credit reports for hiring  
23 purposes, generally. There were a lot of exceptions to  
24 that bill, but I think there's a lot of lessons to be  
11:24:02 25 learned from the campaign that they've put together for

11:24:06 1 that -- for that effort to ban credit report checks in the  
2 hiring process.

3 So that's sort of background.

4 I just also wanted to do an overview of some  
11:24:16 5 legislation that I've been -- that I've witnessed, that  
6 I've been part of, that I've supported with trying to work  
7 on, again, reducing the barriers to employment for people  
8 with conviction status.

9 And I think they sort of fall into four  
11:24:31 10 categories. There's the employer side, which there's the  
11 carrot and the stick. You know, the carrot is the tax  
12 credit giving -- Assembly Member Swanson had a bill that  
13 would provide, I think it was, a \$5,000 tax credit for  
14 employers who hired people with a conviction record. And  
11:24:51 15 then there's the stick side, which is, like, the Ban the  
16 Box legislation or prohibiting discrimination against  
17 workers with criminal history.

18 And -- then there's -- on the employee side,  
19 there's the legal mechanism to restore rights and status,  
11:25:13 20 the expungement, sealing of records, dismissing records.

21 And then there's also accessing information  
22 which, I think, is more analogous to, like, the credit  
23 report checking. So if somebody's doing a criminal  
24 background check, should the applicant be able to access  
11:25:31 25 that information, and I don't think that's been explored

11:25:35 1 so much legislatively.

2 And so, obviously, some -- within these  
3 different categories, I think some are much more  
4 politically viable than others.

11:25:46 5 The -- what we've been focusing on, at least  
6 this past year with the Ban the Box legislation, I think  
7 it was sort of the stick strategy. And I think that was  
8 particularly tough because you have two -- you're dealing  
9 with the whole public safety issue, which is a political  
11:26:07 10 lightning rod, and then also going against employers,  
11 which is also extremely tough.

12 And so I think that it was also a -- again,  
13 just back to the political perspective, it was also a  
14 really strange year because we have redistricting, we have  
11:26:27 15 the top two primary system now. So a lot of people, a lot  
16 of the members, you know, are dealing with new  
17 constituencies and are not exactly comfortable with voting  
18 on certain bills just this year, which doesn't mean that  
19 they wouldn't vote for it in years to come.

11:26:46 20 So kind of going back to Assemblyman Mendoza's  
21 bill, that was successful this last year in passing and  
22 getting a signature. It was actually the fifth time  
23 around that he pursued this. Or, I should say, some -- a  
24 member of the legislature has pursued that legislation,  
11:27:02 25 and it took five times in order to be successful.

11:27:06 1           So with Ban the Box legislation, I think, you  
2           know, even -- I don't know if you guys are familiar with  
3           that bill here in California, but it stalled in the local  
4           governance committee. And I think it was the second year  
11:27:23 5           that this legislation or legislation like Ban the Box has  
6           been introduced in the State legislature, and it's  
7           probably going to take a few more attempts before it gets  
8           to the governor and hopefully gets a signature.

9           So timing is really important. This year is  
11:27:37 10          really strange. I think next year is going to be  
11          really -- it's going to be an interesting year with all  
12          new members coming in.

13          And then also thinking about the -- you know,  
14          sending bills to the governor, there's certain bills that  
11:27:52 15          the governor's going to sign his first year in office.  
16          There's other bills he's going to sign his fourth year,  
17          his eighth year, you know, when there's -- there's no  
18          political pressures necessarily.

19          And, again, I mean, this governor, he doesn't  
11:28:06 20          really answer to a lot of the political pressures anyway  
21          because he just wants to get shit done.

22                  But so excuse -- sorry, forgot this is  
23          recorded on the record.

24                  MARGARET LOVE: We don't mind.

11:28:22 25                  MARIKO YOSHIHARA: So that's basically sort of

11:28:24 1 the big lessons that I've learned, and I think that it  
2 might be more helpful if I just answer questions.

3 RICK JONES: Great. Thank you all.

4 Chris?

11:28:36 5 CHRISTOPHER WELLBORN: Yes. I'd like to start  
6 out, Mr. Ambroselli, with you. I have some specific  
7 questions.

8 And what I really want to focus on is this  
9 concept of people who are being released who are in  
11:28:53 10 transient status because it seems to me I was looking at  
11 your mission statement. And the mission statement for the  
12 Department -- well, actually, for DOPO specifically -- was  
13 to protect the public but also assist parolees in their  
14 reintegration in society.

11:29:10 15 And looking at the California parole  
16 supervision and reintegration model, it seems to me that  
17 it's -- there's this very, very specific,  
18 well-thought-out, organized flowchart which seems to be  
19 wonderful; but for transients, it completely breaks down  
11:29:32 20 even in the incarceration phase.

21 And as we heard yesterday and we've  
22 experienced in other places around the United States,  
23 especially for sex offenders, whether they're low risk,  
24 high risk, medium risk, whatever they may be, based on the  
11:29:49 25 assessment, a lot of them are in transient status just by

11:29:53 1 the very -- by nature of what local communities are doing,  
2 the local laws that are being passed.

3 You can have the best model in the world, but  
4 if they have no place to live, it just breaks down from  
11:30:03 5 the get-go.

6 And I wanted to get your input on that.

7 ROBERT AMBROSELLI: So I am a member of the  
8 Sex Offender Management Board as well in California. So  
9 not only -- I think you're right. The parole division has  
11:30:18 10 a very carefully balanced mission, and it is -- obviously,  
11 public safety's our primary concern. But reintegrating  
12 our offenders in the community is part of public safety.  
13 So it doesn't always mean that everyone has to be locked  
14 up.

11:30:33 15 As a matter of fact, you know, our response is  
16 always try to get them a job, try to deal with their needs  
17 and do what you can to avoid returning them back to  
18 custody.

19 And the entire CPSRM, which is the model you  
11:30:47 20 were just talking about, actually, the foundation, the  
21 basis of that is doing things differently than we did in  
22 the past and the need to get those things done.

23 So related to sex offenders and how difficult  
24 that population can be, the passing of Jessica's Law --  
11:31:05 25 and for, again, for those -- I forget there's some folks



11:31:09 1       who may be outside of California -- that law, in short,  
2       required that sex offenders -- prohibited sex offenders  
3       from living closer than 2,000 feet from a school or a park  
4       where children congregate.

11:31:24 5               And so it sounds like an easy thing to do, you  
6       know. We just -- and the public's perception about what a  
7       sex offender is, is, you know, for the most part, if you  
8       ask most people, it's lock them up; we don't want them.

9       And if they do come out, I don't want them in my  
11:31:42 10       neighborhood. Don't give them to me. With some very,  
11       very minor exceptions, that's usually the perception.

12               And so the parole division is always put in  
13       the very difficult position of what do we do. The law  
14       requires that when these people are released, they come  
11:31:54 15       back to their county of last legal residence.

16               So I'll start out with kind of what we have.

17               We have about 90,000 sex offenders in the  
18       state of California. A little less than 10 percent of  
19       them are on parole. Maybe another 10 or 15 percent are on  
11:32:10 20       probation, if you will, or some form of formal supervision  
21       that is not -- not parole-related. And then the remainder  
22       of them are registered sex offenders because the law was  
23       passed that anybody that was convicted after the 1940s has  
24       to register, even if not on any type of formal supervision  
11:32:25 25       at all.

11:32:26 1

This law may have come out saying no sex  
offender in the state of California can live within  
2,000 feet of a school or a park where children  
congregate, but the reality is that there was no teeth in  
the law other than for the parole division, which had to  
enforce this requirement. By the way, they also will have  
to be on GPS.

11:32:39 5

11:32:53 10

And so many of the counties came back and said  
there's no funding, and so we're not necessarily going to  
enforce it. We understand that it's a great idea from  
their perspective, but we're not going to do much about  
it.

11:33:06 15

But the parole division did not have that  
luxury. We found ourselves having to use the leaf-blower  
effect, if you will, with our sex offenders where we move  
them into one area and we'd measure 2,000 feet as the crow  
flies. If you can imagine them going out and then drawing  
a circle around it, it just became almost impossible to  
house our sex offenders or allow them to live anywhere.

11:33:22 20

It didn't just take the traditional sex  
offender and say "You can't live here," but it took  
anybody that had ever been convicted of any sex-related  
crime whatsoever, and it said, "You can't live near a  
school."

11:33:33 25

Well, that's great except that not every sex

11:33:36 1 offend is a child molester. There are sex offenders that  
2 have committed different types of crimes that have to  
3 register under that law. And now what you've got is  
4 people that are still -- let's assume you're a sex  
11:33:46 5 offender that happens to sexually assault older women.  
6 You can still live next to a geriatrics facility or in a  
7 building where folks that are of a certain age are living,  
8 and that doesn't have any impact at all; and yet that's  
9 where most of your victims are.

11:34:04 10 So it's well thought out as folks thought it  
11 was. It started to take our offenders and push them out  
12 into the fringe, if you will, of the counties or at least  
13 on the farthest end.

14 Many of them couldn't live in the city. And  
11:34:16 15 so the law basically said that if you're homeless, then  
16 you don't have to -- you still have to live away from the  
17 2,000 feet, but we can't enforce the restriction and make  
18 you go back to State prison. And so these people started  
19 registering as homeless. Many of them started living  
11:34:34 20 under bridges and created a very difficult situation for  
21 the parole division because they were on GPS and so they  
22 couldn't charge their GPS. And so we ended up having in  
23 some places to plug an electrical cord in the office at  
24 night and then stick the positive side of the cord out of  
11:34:53 25 a door so they could come along and sit there and charge.

11:34:56 1 Or many of them found themselves in a gas station using  
2 the plug in the bathroom or any other location to get that  
3 done.

4 So -- and there wasn't a lot of concern about  
11:35:09 5 how parole dealt with it. They just didn't want them.

6 In some cities where we found locations, the  
7 city had moved out in one location, and it actually threw  
8 sod down and quickly blessed a park within 48 hours  
9 because they had found a location where they could move  
11:35:28 10 people. In some places, they actually set the entire  
11 coastline as a state park, so you need to get them out.

12 So for every time that we would find a  
13 location or did something -- and, of course, we were  
14 seeing it sympathetic to the child molesters and trying to  
11:35:42 15 hide people, if you will, when in fact it's a reality that  
16 you just are stuck as the director of parole and as parole  
17 agents are trying to trying to deal what people in the  
18 most humane way possible, we've having to move these  
19 people around.

11:35:55 20 In Los Angeles, it got to the point where we  
21 would move them into a hotel and they'd show up. And it  
22 was literally almost, if you can imagine, a  
23 pitchfork-and-torches-type process where the media rolls  
24 up in trucks, and here are our parole agents trying to  
11:36:09 25 move people in there, and we're seen as the ones who are

11:36:11 1

hiding them out.

2

In fact, they termed the word "sex offender shuffle" where it looked like we were moving people from

3

one location to the next, and they actually ended up

4

11:36:18 5

firing a couple folks out of that. So not a lot of

6

sympathy.

7

I guess you asked me what time it was and I

8

told you how to build a clock, but not a lot of sympathy

9

from the community related to those problems.

11:36:30 10

It drove the homeless rate for our paroled sex

11

offenders up quite a bit. It continues to be a problem,

12

and the answer is not a simple one. There just is no

13

simple process or response to it other than just trying to

14

stay ahead of the curve in this situation.

11:36:53 15

CHRISTOPHER WELLBORN: And in looking at your

16

website, I noticed there's this online manual that

17

somebody who was being released, presumably even before

18

they're released, they can log into, and it gives them

19

advice on how they can do certain things so they can

11:37:07 20

reintegrate. That, I assume, is the hope.

21

And in looking at this manual, it says, you

22

know, if you're looking for housing, you can contact the

23

local department of social services or the housing

24

authority. If you have trouble finding a job, you know,

11:37:26 25

just keep trying. Don't give up hope. But there doesn't

11:37:30 1 seem to be much else beyond that.

2 And once again, it just -- and I think you've  
3 addressed it -- if these people can't even find a stable  
4 place to sleep at night, it seems that the rest of it just  
11:37:44 5 breaks down at the get-go.

6 ROBERT AMBROSELLI: It is. And I think,  
7 again, the misconception, I think the public believes that  
8 every sex offender -- and certainly I'm not the apologist  
9 for sex offenders; I try to just bring real discussions to  
11:37:57 10 light -- is that less than a couple of percent is the  
11 stereotypical black coat, dark, creepy guy that you see on  
12 the corner, envisioning as your sex offenders. Most sex  
13 offenders, in fact, the majority of sex offenders on  
14 children, as well as even adults in some cases, are  
11:38:12 15 perpetrated by people that they know very well and/or are  
16 related to them; Uncle so-and-so or dad or whomever the  
17 case is.

18 And so these -- the law, as well-intended as  
19 it is, and we certainly enforce it -- puts people in a  
11:38:30 20 very difficult position to live away from a park and a  
21 school when that's really not what it is.

22 As a matter of fact, we try to explain that,  
23 even as a board, that the real response to controlling and  
24 to rehabilitating sex offenders but primarily controlling  
11:38:47 25 them, if you will, is by putting them in programs which

11:38:51 1 work like the containment model which deals with victim  
2 empathy, psychiatric and psychological assistance as well  
3 as the agents supervising them effectively as opposed to  
4 just kind of making these residential restrictions which  
11:39:06 5 don't work.

6 Getting our agents to understand that was also  
7 another culture change. And that's what the impetus of  
8 the CPSRM was. It is a manual -- and I always invite  
9 people to read it -- which is a major culture change in  
11:39:21 10 how our agents approach not just sex offenders but  
11 criminals in general or folks that have been committed to  
12 State prison, which is that we have to change as an  
13 organization on how we work with these folks.

14 We have to talk to them, use active listening  
11:39:34 15 and open-ended questions. And the manual goes through  
16 about 150-odd pages of what we found to be best practices  
17 nationally and evidence-based programs. Each one of the  
18 steps related to what an agent has to do, at the very  
19 bottom of the page is tied to a study that says if you do  
11:39:51 20 X, then Y happens.

21 Our agents are in a paramilitary organization.  
22 They like structure. They like to know if you said so,  
23 why. And so that manual kind of goes through that  
24 process. And we're still in the throes of this culture  
11:40:06 25 change, if you will. But that takes time. But, you know,

11:40:09 1 we're slowly getting there.

2 CHRISTOPHER WELLBORN: Another question: From  
3 a different end and not specifically dealing with sex  
4 offenders, but I heard yesterday from Chief Davis and from  
11:40:21 5 Nancy O'Malley, very interesting presentations, and there  
6 seem to be -- they were very concerned about either a  
7 complete abatement of or some kind of relief from fees and  
8 fines for these people that are trapped in this vicious  
9 cycle of they get out, they can't find a job because the  
11:40:42 10 box effectively isn't banned, and expungement doesn't  
11 really mean anything.

12 So they can't find a job, but they have fees,  
13 and the fees are accumulating. And presumably, there are  
14 also supervision fees that go along with being on  
11:40:57 15 parole -- or even being on probation -- which accumulate.  
16 And, of course, because they can't pay the fees, because  
17 they don't -- can't find work, eventually, someone may be  
18 making a decision about violation.

19 Can you address that at all?

11:41:10 20 ROBERT AMBROSELLI: Well, it can be a vicious  
21 cycle. So in today's world, I think parolees have a more  
22 difficult time than they ever did before. And I was  
23 taking some notes because I figured this was probably  
24 going to come up.

11:41:24 25 One of them is your prison record. That's



11:41:26 1 always been the case. But today, I think there's a  
2 hyperalert and some vigilance toward, you know, these  
3 folks working in the community. I think there's a  
4 competitive market now more than there ever was before,  
11:41:40 5 high unemployment rates. There are professionals with  
6 bachelor's and master's degrees and law degrees that are  
7 out looking for jobs that were in the past, those folks  
8 could easily find employment maybe five or six years ago.

9 And then, you know, we have a high need when  
11:41:55 10 these folks come out of State prison. Due to the  
11 overcrowding, we weren't able to get them the programs  
12 they needed or the vocational programs that they needed.  
13 And so they were coming out ill-prepared; even more so  
14 with that.

11:42:08 15 So we've got two things: We've got a group of  
16 folks that don't have or didn't have, due to the  
17 overcrowding -- and we're making those changes, and I  
18 think that's going to be part of the change that's coming  
19 in the future -- but these people are coming out  
11:42:18 20 unprepared in the workforce.

21 They're meeting a group of people that are  
22 unemployed that in the past were considered professionals  
23 that are also looking for work.

24 And the ones that are in the prison system  
11:42:28 25 that are professionals, your ex-accountants, ex-lawyers,

11:42:32 1 ex-doctors, their professions obviously bar them from  
2 going back into their employment. If you've been  
3 disbarred, it doesn't matter whether you have a law degree  
4 or not. You can't practice law. You're somewhat on an  
11:42:43 5 island unto your own. So you have to do something else.

6 Even the ones that are educated and ahead of  
7 the game have that stigma as well, be it from their  
8 profession or trying to get into the workforce.

9 So the challenge for us is twofold: One, we  
11:42:58 10 need to and are working on lowering our prison populations  
11 so that we can get these programs in place and also deal  
12 with substance abuse to get these folks there and  
13 stabilize them; and then, secondly, is trying to get their  
14 needs met in the community, which is a challenge right now  
11:43:14 15 because of -- not just the market, but limited resources.

16 The parole division is taking a massive hit to its  
17 funding, and so we've lost a lot of our program dollars.

18 CHRISTOPHER WELLBORN: I guess -- and I  
19 apologize, I probably didn't make myself very clear: Do  
11:43:30 20 you have or does an individual agent on a local basis have  
21 the authority to say: "All right. I know you can't find  
22 work. These fees are accumulating, but, you know, it's  
23 just pointless sending you back to prison because of the  
24 fees because you can't find a job"?

11:43:49 25 Can that agent currently make a decision to

11:43:53 1 say: We're going to abate your fees or we're going to  
2 absolve you from having to pay these fees and fines that  
3 are associated with either probation or parole  
4 supervision, and/or potentially those that follow the  
11:44:08 5 person from the time of sentence?

6 ROBERT AMBROSELLI: Unlike probation, we don't  
7 levy or charge them supervision fees. The usual cost the  
8 parolees may have on them is their victim's compensation  
9 or fines that were imposed by the courts that they have to  
11:44:24 10 pay.

11 And those fees prohibit them from leaving  
12 California until they have paid those fees. So they may  
13 try to be transferred out, but that's stopping them. And  
14 so we're not allowed to waive those. That's one of the  
11:44:35 15 problems there.

16 But the fines that they may owe do sometimes  
17 stop them from being discharged early from parole. And so  
18 a lot of times, the agents are kind of avoiding that from  
19 happening. So the fees don't necessarily deal -- are not  
11:44:48 20 related to parole. They're more probation-related.

21 CHRISTOPHER WELLBORN: Thank you. That helps.

22 ROBERT AMBROSELLI: Sure.

23 CHRISTOPHER WELLBORN: Mr. Siniscalco, I want  
24 to shift to you. There's so much that I could just go on  
11:44:59 25 with each one of you individually.

11:45:02 1                   If you were to write a piece of legislation  
2                   and that piece of legislation were to be the most  
3                   protective for employers but at the same time allow them  
4                   to employ formerly incarcerated or people who have been  
11:45:21 5                   convicted of various offenses without the liability or  
6                   potential liability being attached from either lawsuits  
7                   and/or claims in general, what would that piece of  
8                   legislation look like?

9                   GARY SINISCALCO: That's a tough question;  
11:45:38 10                   good question, but a tough question.

11                   I don't have an answer for that. I mean, I've  
12                   thought about the issue that you do need, and you would  
13                   need some very comprehensive legislation. And it would  
14                   need to address, say, both -- certainly the risks of  
11:45:55 15                   litigation; the use of -- of any information or the  
16                   knowledge the employer would have had regarding the prior  
17                   criminal conviction.

18                   Because it still doesn't eliminate all the  
19                   issues the employers would have, but certainly it would --  
11:46:15 20                   I would expect the litigation -- the legislation would  
21                   have to address all of the litigation risks and all of the  
22                   arguments you would expect to get from the plaintiffs'  
23                   employment bar, from the tort bar, and essentially have a  
24                   safe harbor from all of that.

11:46:34 25                   CHRISTOPHER WELLBORN: The concerns that you

11:46:35 1 raised earlier during your initial presentation seemed to  
2 be more tort-related than they seemed to be issues of  
3 folks just, you know, I want a job, and how come I can't  
4 have a job. It would seem to be more of employers,  
11:46:51 5 potential employers' concerns about claims, lawsuits, you  
6 know, and then also, of course, the public perception of  
7 you're employing ex-offenders.

8 GARY SINISCALCO: And the co-worker  
9 perception.

11:47:04 10 CHRISTOPHER WELLBORN: You mentioned morale as  
11 well. That seems to be more of an  
12 institutional/educational process as opposed to -- you  
13 can't really enact legislation that says you have to get  
14 along with your fellow worker.

11:47:15 15 GARY SINISCALCO: I would agree with that.

16 CHRISTOPHER WELLBORN: Just focusing on the  
17 tort end of things, if you could draft something, you  
18 know, what sorts of things would you want built into it?

19 GARY SINISCALCO: So it would need to  
11:47:27 20 include -- and, again, it's off the top of my head -- but  
21 it would need to include -- so from the tort side, and I  
22 distinguish that from the employment side, but from the  
23 tort side, you have the issues associated with negligent  
24 hiring, with claims by customers.

11:47:47 25 So, for example, if you have a repair person

11:47:51 1 or you have a bus driver, taxi driver, et cetera, hiring  
2 people with prior DUIs or hiring a bus driver with prior  
3 sex offender, et cetera, you'd have all the issues  
4 associated with customers, clients, and the general  
11:48:05 5 public. And so you need to have some bar from tort  
6 claims; use of that information with respect to tort  
7 claims.

8 You then have all of the issues associated  
9 with employees and the employee lawsuits. So, for  
11:48:18 10 example, a sexual harassment lawsuit by someone who is  
11 a -- you know, violent or whatever it might be.

12 You have the claims -- again, sexual  
13 offenders, if the employer has parties or activities that  
14 go on or interaction with, again, whether it be older  
11:48:45 15 women, children, whatever it might be.

16 You're going to get claims from those  
17 victims -- those employee victims brought by the  
18 plaintiffs' bar. So you need to have legislation that  
19 would cover the lawsuits by employees.

11:49:02 20 They are a type of tort, but different from  
21 the tort claims you would typically get. You would need  
22 to have motions in limine, discovery, or legislation  
23 covering, you know, bars to the admissibility of the  
24 evidence, perhaps even discovery the evidence, the use of  
11:49:18 25 the evidence of prior convictions, et cetera.

11:49:23 1

CHRISTOPHER WELLBORN: And just from your  
2 perspective, same question.

3

11:49:33 5

MARIKO YOSHIHARA: Yeah. Well, I just wanted  
4 to add on I think negligent hiring is probably one area  
6 that needs to be focused on because, I mean, there's  
7 legislation right now that deals with social media and the  
8 employer's ability to access their Facebook accounts and  
9 really delve what kind of person this is, what kind of  
activities they do.

11:49:47 10

And can an employer be on the hook for  
11 negligent hiring if they don't check the Facebook page or  
12 whatever the social media account is?

13

11:50:00 15

And so now we're sort of getting into this  
14 area of where you're putting so much responsibility on the  
15 employer to really do this extensive background check on  
16 all the applicants. And it's -- really, you know -- it's  
17 very intrusive to the applicant.

18

11:50:21 20

And so I think we want to -- it's hard because  
19 you want to protect the employee who has the job who may  
20 be sexually harassed later on or, you know, or the  
21 customer, who, you know, they're -- the ones that are  
22 eventually the employers are subject to a lawsuit for  
23 negligent hiring.

24

11:50:37 25

But at the same time, you also want to protect  
the applicant and their privacy rights. So it's a really

11:50:42 1           difficult balance.  But I think that, probably, is the  
2           area that needs to be focused on, where we can get the  
3           employer groups and the employee groups together and try  
4           and figure it out if there's, you know, where that happy  
11:50:52 5           medium could be if there is some area of compromise so  
6           that, you know, we're not creating this expectation on  
7           employers basically to look into every single aspect of  
8           these applicants' lives because you're weeding out a bunch  
9           of real, really good people.

11:51:11 10                   GARY SINISCALCO:  Going back -- and I don't  
11           disagree with anything you said, but picking on what  
12           Robert --

13                   ROBERT AMBROSELLI:  Yes.

14                   GARY SINISCALCO:  -- Robert's point about the  
11:51:23 15           supply side of the employment picture.

16                   There are so many qualified people who don't  
17           have an additional piece of baggage who are equally  
18           qualified or -- and so when you deal with two equally  
19           qualified candidates, there's going to be an issue.

11:51:37 20                   I will say my sense is -- and a number of  
21           employers that I work with, some of the larger employers,  
22           their focus on this is at the contingent offer stage as  
23           opposed to at the initial applicant stage.  And so in many  
24           cases, they've actually determined that someone is  
11:51:58 25           qualified, and they've actually made the offer.



11:52:00 1                   And then this you know, whether it be the  
2                   criminal screen, drug screen or combination screen comes  
3                   back. And then either whether it's pursuant to, for  
4                   example, the statutory requirements such as the FDIA where  
11:52:13 5                   it's a formal government prohibition or whether they just  
6                   get the information through First Advantage or one of the  
7                   other background-checking firms. They see this, and then  
8                   they apply the case-by-case analysis that the EEOC  
9                   suggests. Then they end up withdrawing those offers in  
11:52:29 10                  many cases. In some cases, they don't.

11                   CHRISTOPHER WELLBORN: Is there -- just  
12                  getting out of the sort of general and anecdotal stuff and  
13                  sort of maybe thinking in my mind more globally, is there  
14                  any movement or thought about the two groups, both the  
11:52:54 15                  employment or employee advocates or employee litigators  
16                  and those who represent employers actually trying to get  
17                  together and work on something?

18                         Because I've -- as you've mentioned, there  
19                  have got to be cases where there are employers that want  
11:53:11 20                  to hire somebody with specific skills or they just think  
21                  they would make a good worker and, yes, they have a  
22                  record, a criminal record. But at the same time, they're  
23                  expressing concerns of liability or potential liability or  
24                  some of the other issues that you've addressed.

11:53:27 25                         Is there any possibility or any movement to

11:53:29 1 get the two sides together and try and work on something;  
2 combined legislation?

3 GARY SINISCALCO: You would have to ask some  
4 of the employer organizations that, whether it be the  
11:53:38 5 Chamber of Commerce, Society of Resources Management, some  
6 of the larger employers, because I'm not aware of any.

7 MARIKO YOSHIHARA: Yeah. You know, I meet all  
8 the time with our usual opposition, the Chamber of  
9 Commerce, the Employment Law Council, and it seems -- we  
11:53:56 10 always go into the meetings well-intentioned, you know;  
11 that we can find some compromise. But it seems like, I  
12 mean, over the years, we've just become -- the chasm has  
13 just grown, you know, logically, like, has grown so big  
14 that it's really hard to find that middle ground.

11:54:13 15 I think within our organization, there are  
16 probably the majority of our membership, you know, with  
17 the employer groups and the employee groups, I think there  
18 are areas where we can agree on legislation and a  
19 compromise, but then there's always the fringes in both of  
11:54:31 20 our organizations that really prevent us, I think, from  
21 getting there.

22 And so -- I think that's how it plays out in  
23 politics in general, too, you know. A lot of time, it's  
24 the very, like, far end of the poles that really prevent  
11:54:47 25 legislation, good compromise, from moving forward.

11:54:52 1 But we have those conversations --  
2 conversations every year where -- we're coming on the end  
3 of this legislative session -- and in the fall, I suspect,  
4 you know, that we'll -- this is an issue that we should  
11:55:03 5 get together with the employer groups. And there's a lot  
6 of issues we should get together with the employer groups,  
7 with the Chamber, with the Employment Law Council, and try  
8 and see if there is a way to find something that we can  
9 all agree on. It just -- it's usually a futile battle.

11:55:20 10 GARY SINISCALCO: I suspect that one of the  
11 things that I -- I'm just going to speculate on this; I  
12 don't have any anecdotal general information -- but the  
13 response you may get from employers, even to overtures, is  
14 "Why should I take the risk? What's in it for me?  
11:55:39 15 There's nothing but potential downsides. Even if I'm --  
16 somehow if there's a safe harbor with respect to the  
17 hiring, with respect to litigation, I still have my  
18 employees and customers to deal with who may be upset,  
19 concerned when they don't have legal recourse to knowing  
11:56:00 20 that I'm hiring, you know -- in their midst, having in  
21 their midst, whether it be customer side or at the  
22 co-workers, persons of various criminal histories that may  
23 be of concern."

24 Let's take, for example, the use of a gun in  
11:56:20 25 committing a crime. Let's take crimes of violence,

11:56:23 1 domestic violence, whatever the violence might be, you  
2 know, any number of crimes where there is another victim  
3 there. And the employer is going to be thinking, Why do I  
4 need that risk? Even though that person may be qualified,  
11:56:42 5 if I've got others who are equally qualified who don't  
6 suggest that risk -- and that's not to say that someone  
7 who has never been convicted isn't going to be, you know,  
8 committing some of those things; we know that happens all  
9 the time, unfortunately -- but it's that -- the background  
11:56:57 10 piece that suggests to the employer here's an additional  
11 piece of information I'm aware of, and I'm going to take  
12 that into account.

13 CHRISTOPHER WELLBORN: Now, from an employment  
14 perspective or a resource for potential employers,  
11:57:09 15 Mr. Ambroselli, is -- because you, like Chief Davis and  
16 various departments, have really been -- we've heard this  
17 term over and over again, "evidence-based." And there  
18 obviously is a lot of -- there are a lot of statistics and  
19 evidence that reflects what the actual rate of recidivism  
11:57:28 20 is for people convicted of certain crimes. And in some  
21 cases, they're extraordinarily low. And also, a lot of it  
22 has to do with, obviously, the age; how long ago the  
23 offense was.

24 Is that a resource that you find or you have  
11:57:44 25 found that employer groups have been -- or Chambers of

11:57:48 1

Commerce have actually had any interest in?

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ROBERT AMBROSELLI: Not -- not so much. So two sides. I was just thinking as an employer, it's not just parolees. I also employ 4,000 employees, and my organization employ 65,000 employees.

And I can tell you from that perspective, you're trying to mitigate your risks constantly, especially in the state. You're very open to not just lawsuits, but internal grievances and bargaining units which come against you.

And I think there's -- because we're not insulated -- I don't mean that we should be completely civilly immune from anything -- but you're so compromised if you don't go through a very, very narrow channel of making decisions about how you hire employees and then how you swiftly act when they don't kind of follow the guidelines. You completely are open to that. From the employer side on that end, it -- you're always kind of very careful and narrow about how that plays itself out.

We deal with Facebook issues where one employee is against another employee, and pretty soon they're on Facebook threatening each other, and somehow you're the one that's making those decisions about how do I create a new policy to insulate myself.

On the parolee side, and, you know,

11:59:04 1 recidivism, I think what we really battle more than  
2 anything else is most of our employees, I think they're  
3 kind of broken into a couple of camps. You've got the  
4 professionals, like I talked about earlier. They have a  
11:59:14 5 marketable skill, but they can't get in, so they end up  
6 doing something else outside of what they do. And they  
7 usually can find employment or they do something else.  
8 They got caught doing something, and they've moved on.

9 There's a low recidivist type of person; the  
11:59:31 10 attorney that got disbarred because he embezzled money,  
11 but now he's doing something different, and he's not your  
12 stereotypical criminal that's out there on the street.

13 Then you have the folks that come out, which  
14 is the majority of our people, which are up against the  
11:59:43 15 stigma of you're an ex-felon, and I don't want to hire  
16 you. And so those people get lumped up into places like  
17 physical labor, go out and street sweep or do this -- lift  
18 lumber and that kind of stuff, which they never seem to  
19 get out of, or they're just in this cycle of in and out,  
12:00:02 20 in and out, which is the recidivism rate that we talked  
21 about which now, with realignment, is going to lower.

22 But I think all that does is kind of push the  
23 expectation to a lower level to deal with it, and they're  
24 cycling out of the jails faster.

12:00:13 25 I know I didn't maybe answer you completely,

12:00:15 1 but employers tend to -- there are some places like  
2 home-building industries and some other places that do try  
3 to work to place these folks in there, but it's a  
4 challenge.

12:00:24 5 CHRISTOPHER WELLBORN: Yeah. And, actually,  
6 my question was: Have there been any overtures from  
7 either employer groups or individual corporations,  
8 whatever, to access the evidence-based statistics that  
9 your office maintains, that various police departments  
12:00:46 10 maintain, that actually have real statistics in terms of  
11 what the actual recidivism rates are?

12 ROBERT AMBROSELLI: Not really.

13 CHRISTOPHER WELLBORN: That was my question.  
14 I'm -- I'll pass on to --

12:00:59 15 RICK JONES: Margy.

16 MARGARET LOVE: I have a couple of questions.  
17 I must say I was intrigued. Your agency employees 65,000  
18 people?

19 ROBERT AMBROSELLI: CDCR does, yeah.

12:01:09 20 MARGARET LOVE: How many of those people have  
21 a criminal record?

22 ROBERT AMBROSELLI: Gosh. If you mean have  
23 they ever been convicted of a crime?

24 MARGARET LOVE: Right.

12:01:17 25 ROBERT AMBROSELLI: You know, I couldn't begin

12:01:18 1 to give you -- so the peace officers, they probably have  
2 some -- there are some in there that have gotten them, but  
3 they've gotten through it. But I couldn't begin to give  
4 you --

12:01:29 5 MARGARET LOVE: Do you have a policy in your  
6 agency --

7 ROBERT AMBROSELLI: We do.

8 MARGARET LOVE: -- on hiring people with a  
9 criminal record?

12:01:34 10 ROBERT AMBROSELLI: Yes. I mean, it's either  
11 in State Personnel Board policies generally about who we  
12 can hire and/or it's in our Peace Officer Standards and  
13 Training Requirements, depending on whether you're a peace  
14 officer, whether you're a doctor, whether you're a lawyer,  
12:01:48 15 those professional responsibilities can either prohibit.  
16 So you can have a DUI and still work for the Department,  
17 but you probably can't have two or three DUIs and be a bus  
18 driver who drives inmates around. It depends.

19 MARGARET LOVE: Is there a policy -- apart  
12:02:04 20 from licensing-type standards, do you have a general  
21 policy on whether you will consider making an offer to a  
22 person with a criminal record?

23 ROBERT AMBROSELLI: Yes. There are policies.

24 MARGARET LOVE: And what is the policy?

12:02:19 25 ROBERT AMBROSELLI: Well, it -- it's not as



12:02:20 1 simple as, you know, we will hire or we won't hire.  
2 Again, a lot of it is tailored to the employee themselves.  
3 If you were not a peace officer, you're not in a custodial  
4 setting, your conviction is, you know, not serious, then  
12:02:37 5 we will look at possibly picking you up and hiring you.

6 MARGARET LOVE: That's what I'm looking for.

7 ROBERT AMBROSELLI: I'm trying to get --  
8 that's a little detailed.

9 MARGARET LOVE: So it's case by case.

12:02:45 10 ROBERT AMBROSELLI: Yes.

11 MARGARET LOVE: I think it would be really  
12 helpful, if it's written down somewhere, if we could see  
13 it.

14 ROBERT AMBROSELLI: I can get our HR  
12:02:52 15 department to forward it to --

16 RICK JONES: That would be good.

17 MARGARET LOVE: I have just one question for  
18 Mr. Siniscalco.

19 RICK JONES: Go ahead.

12:02:59 20 MARGARET LOVE: You said that there were three  
21 things that you mostly dealt with in advising clients --  
22 the risk assessment, risk avoidance, and compliance -- and  
23 I guess I didn't hear too much about the risk assessment,  
24 and I wondered if you could just --

12:03:15 25 GARY SINISCALCO: Risk assessment is really in

12:03:15 1 two parts. It's the risk of litigation --

2 MARGARET LOVE: Okay.

3 GARY SINISCALCO: And then it's the risk of

4 what's -- really where I get -- that's what employers

12:03:23 5 focus on.

6 Where I get involved is the claims that come

7 up, typically the claims that come up as -- well, I'll

8 give you one right now.

9 The EEOC is alleging that a bank is

12:03:36 10 discriminating against African-American and Hispanic

11 applicants by having a policy on criminal convictions that

12 adversely impacts --

13 MARGARET LOVE: Okay.

14 GARY SINISCALCO: -- on their hiring.

12:03:47 15 MARGARET LOVE: Okay.

16 GARY SINISCALCO: And they say that they

17 looked at the data. The data they looked at suggests that

18 there is an adverse impact; a greater portion of those

19 rejected --

12:03:55 20 MARGARET LOVE: Right. Right.

21 GARY SINISCALCO: -- are African-Americans or

22 Hispanics. Therefore, in the absence of the banks showing

23 that it is a job-related requirement to get the FDIA, the

24 EEOC is saying "You're discriminating."

12:04:06 25 MARGARET LOVE: So, but, no -- I do understand

12:04:08 1

that issue.

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What, I guess, I'm wondering is: What do you do to measure the risk that you advise your clients about?

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I mean, it's -- it seems like people are concerned about the risk of hiring somebody with a criminal record.

12:04:28 5

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So how -- how do you -- I mean, is the risk such that, you know, whatever the risk is, you would tend to advise just don't do it? Or -- I'm just sort of curious.

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12:04:47 10

GARY SINISCALCO: No, we don't get involved in that. But it's -- what the law requires is -- absent, again, regulatory or statutory bars to compliance requirements, the law requires, EEOC guidance says that an employer needs to use a case-by-case analysis --

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12:05:04 15

MARGARET LOVE: Okay.

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GARY SINISCALCO: -- and look at the particular job for which they're hiring the individual and the particular criminal history.

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12:05:16 20

Most employers do not utilize or -- or bar people where it's a criminal misdemeanor; just a criminal felony. And that will depend on the kind of job.

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MARGARET LOVE: Okay.

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12:05:30 25

GARY SINISCALCO: So, for example, if, you know, a client may ask me, although typically I get involved after the fact, that there's a lawsuit or

12:05:32 1 something, but the client may say, "Well, we've got  
2 someone who was convicted of possession of marijuana, and  
3 they're going to be in an administrative position. You  
4 know, they should go through the analysis of deciding  
12:05:48 5 whether or not that prior criminal background, possession  
6 as opposed to sale, you know, should be -- should bar the  
7 individual. In many cases, they'll pass on that,  
8 especially depending how long -- how long ago it occurred.  
9 If it's five, eight years ago, usually the general rule of  
12:06:07 10 thumb for most companies is seven years for the  
11 conviction --

12 MARGARET LOVE: Uh-huh.

13 GARY SINISCALCO: -- unless it's a serious, as  
14 he describes it as a "serious felony."

12:06:17 15 So it will depend. They'll look at the  
16 particular job, et cetera, and they'll apply an analysis  
17 in making a judgment if this person really seems to be  
18 good, you know, well qualified. But, again, in many  
19 cases, they offer them the job, but without a background  
12:06:31 20 check.

21 MARGARET LOVE: Yeah.

22 GARY SINISCALCO: And so they're already  
23 inclined to hire in individual unlike, you know, where  
24 they reject them.

12:06:38 25 MARGARET LOVE: So they haven't asked that

12:06:40 1

threshold question: Have you ever been convicted of a  
felony?

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GARY SINISCALCO: In a lot of cases, it's less

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analysis. In a lot of cases, the employer does have on

12:06:49 5

the application form the question: Have you ever been  
convicted?

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It says there they've got the right, that

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answering yes to this will not constitute a bar because

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the law is you can't have an absolute bar to prior

12:07:02 10

convictions, again, unless you're under a statutory scheme  
that prohibits it.

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So what the employer typically does is, they

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ask that, and then they'll ask: Were you -- will you

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authorize -- will you authorize a background screen if

12:07:16 15

you're offered employment? And then what happens is, they

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go through the whole interview process, make the offer

17

contingent upon passing the background screen, drug

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screen, whatever it might be, whatever the background

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check is.

12:07:26 20

And then they do the background check. And if

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it's, quote, successful, they're hired; if it's

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unsuccessful, they might go into an automatic, you know,

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rejection; or it is a, quote, pending, where it's the

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case-by-case analysis. Then they assess the risks.

12:07:45 25

MARGARET LOVE: But I guess what I'm getting

12:07:46 1 at is, ordinarily, there's sort of standards that you use  
2 to assess risk. And I'm just -- you've mentioned a couple  
3 of things like how long ago it was, how serious it was. I  
4 guess I'm just wondering whether -- whether there are  
12:08:02 5 standards that you customarily would suggest to clients  
6 about how they should assess the risk of a particular  
7 hire.

8 GARY SINISCALCO: No. I don't, and -- and I  
9 would refer you to the EEOC guidance, which doesn't  
12:08:18 10 either.

11 Basically, it talks about applying, again, a  
12 case-by-case approach, taking into account the factors I  
13 just identified.

14 Essentially, the job you're applying -- the  
12:08:27 15 job you're being considered for, the nature of the  
16 conviction of the crime, how long ago it occurred, I think  
17 those are the three main factors.

18 And then is there any definitional term of  
19 what the risk assessment is? None that I'm aware of.

12:08:48 20 RICK JONES: Geneva.

21 GENEVA VANDERHORST: I want to talk, actually,  
22 to Mr. Ambroselli about an issue that we talked about with  
23 Nancy O'Malley yesterday and Chief Davis yesterday. As  
24 the -- well, Nancy more as a chair for the California, I  
12:09:08 25 think, it was the Sex Offender Management Board.

12:09:14 1

ROBERT AMBROSELLI: She sits on the board with

2 me.

3 GENEVA VANDERHORST: Regarding sex offenders,

4 because primarily one of the things we're looking at is

12:09:18 5

best practices, sex offenders are almost not in the room

6 in the criminal justice system when it comes to

7 rehabilitation issues. It's a two-tiered issue that I

8 wanted to get your remarks on.

9 The first was: A conversation we had with

12:09:34 10

them yesterday where they suggested that one of the

11 reasons that California is one of the four, I think,

12 remaining jurisdictions that do not have a tiered system

13 for sex offenders is because of some issues of fear,

14 political fear, as well as community fear.

12:09:57 15

I'd like to know, because of your position as

16 the director of parole, has the issue of sex offender

17 recidivism -- and presumably you have a voice on several

18 community groups as well as political coalition groups --

19 what is your position or how would you feel about

12:10:18 20

advocating a tier group that doesn't completely resolve

21 the issue of how to get sex offenders reintegrated when

22 residences and restrictions don't work?

23 We also know that there are a lot of people

24 who are categorized as sex offenders who, for instance,

12:10:36 25

might have been involved in sexting with a cell phone.

12:10:40 1 That's a completely different category than someone who  
2 has molested a child or abused an elderly person.

3 But there are -- my suggestion is that there  
4 are ways that have been, you know, disenfranchised in the  
12:10:55 5 entire community to start working with the lower-level  
6 offense group.

7 How do you go about advocating for a tiered  
8 system in your position? And then the issue was: I  
9 notice as Chris referred to your website, also that you  
12:11:14 10 have what's called "residential multi" --

11 ROBERT AMBROSELLI: Service centers.

12 GENEVA VANDERHORST: Service centers.

13 In my jurisdiction in D.C., we call them  
14 "halfway houses." Very similar services.

12:11:29 15 Are there any efforts to create a residential  
16 multiservice center for low-level sex offenders?

17 ROBERT AMBROSELLI: So as the director for  
18 California, I'm appointed by the governor. And as such,  
19 like, all appointees and folks that run for local office  
12:11:50 20 and all of those folks, there's always the concern that  
21 the public sees you as soft on crime or whatever the case  
22 is. And I don't mean that anybody is soft on crime, but  
23 there's always that perception that the public sees it  
24 that way.

12:12:03 25 And there are a couple of cases in California



12:12:04 1 with some sex offenders. One was the Phillip Rio case,  
2 for those of you that probably remember that name, and the  
3 John Gardner case, both of them extremely horrific crimes  
4 related to sex offenders and what they do. One of them  
12:12:14 5 kidnapped a girl, and the other one killed two girls.  
6 So ...

7 Your first question was about tiering and  
8 supervising sex offenders.

9 GENEVA VANDERHORST: Advocating for.

12:12:25 10 ROBERT AMBROSELLI: Advocating for. I think  
11 that tiering, which, in most cases, is treating people  
12 differently based on their assessed risk to recidivate,  
13 which we used to call the "Static 99," is a great way to  
14 effectively use your limited resources.

12:12:43 15 And that means that not everybody should be  
16 treated the same, and it's not because all sex offenders  
17 are the same or they're not; but in the world of limited  
18 resources and the fact that all sex offenders are  
19 different in how they -- on how they perpetrate their  
12:12:57 20 crimes as well as how they think about their crimes,  
21 tiering works.

22 It says that these low-level people, you  
23 should be putting not fewer resources, but doing something  
24 different. The highest-risk people, you should be doing  
12:13:10 25 something different with those folks. So that's being

12:13:12 1

more efficient with your resources.

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So, in general, I support that concept of how

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we do it. As a matter of fact, on parole, the highest

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risk of sex offenders are -- they're called "active GPS

12:13:23 5

cases"; we were talking about that earlier -- we have

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lower case loads. We really scrutinize those people. We

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make sure that they don't -- their zones are closely

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monitored.

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And then the less or nonhigh-risk sex

12:13:34 10

offenders are on passive supervision, and we use a

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different style or different approach of supervising those

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people.

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The problem with that and the risk with that

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is that risk assessment tools are just that. It's like a

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gauge in your vehicle about how much gas you have. And if

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you get too close to empty, you run out of gas, you're

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stranded. And so passive GPS, or people that are not

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high-risk, in some cases commit heinous crimes.

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And so John Gardner, which in the case in

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Southern California, he kidnapped two girls, he was not a

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high-risk sex offender. The community does not understand

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that after something bad happens, right, and now it's

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happened, and so now I want to know why you weren't

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high-risk, and, Oh, God, he killed two girls. How could

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he not be? There's that risk there.

12:14:23 1           The mitigating and the concerns and the -- you  
2 know, later on, how come that happened always tends to bar  
3 anybody from wanting to take those kinds of risks.

4           Do I advocate it? Short answer, yes. How do  
12:14:36 5 we supervise sex offenders better? With the use of true  
6 evidence-based -- and what I mean by that is -- it has to  
7 be found in something where science comes back and says,  
8 yes, this is proven to do what you said it was. If not,  
9 it's just best practices.

12:14:51 10           And so the containment model in -- which is  
11 what the Sex Offender Management Board has been advocating  
12 for, is just that. It says you need to use this kind of  
13 holistic approach, if you will, and it's supervision and  
14 GPS and victim advocacy and also doing, you know, that  
12:15:08 15 type of supervision.

16           The last piece you said about low-level sex  
17 offender residential multiservice centers, that's a great  
18 idea. I don't think it will ever happen because --

19           GENEVA VANDERHORST: Fear factor.

12:15:24 20           ROBERT AMBROSELLI: Absolutely. Who in this  
21 room wants to raise their hand and say, "I'm more than  
22 happy to have 45 sex offenders living next door to me"?

23           And the concept sounds good, but when you try  
24 to sell it to a committee that has to approve the zoning,  
12:15:37 25 a number of folks that are in local government that say,

12:15:40 1 "I'm the local board of supervisors, blah, blah, that is  
2 willing to have that house in my neighborhood" and  
3 something goes wrong, it just won't happen.

4 GENEVA VANDERHORST: Let me suggest this to  
12:15:51 5 you: This is now, I think, our fourth jurisdiction, and  
6 the other jurisdictions that we've visited that have had  
7 issues with a tiered system, they dealt with the fear  
8 factor in a different way, which is they promoted their  
9 success stories.

12:16:05 10 Is that something that you think -- I mean,  
11 California is a huge state, obviously. It's California.

12 There has to be a spectrum of belief among the  
13 communities from north to south where everybody doesn't  
14 think that every sex offender is going to reoffend. It's  
12:16:26 15 an educational piece.

16 And so have you-all had -- done any efforts to  
17 figure out where your success stories are; to have an  
18 educational campaign just -- if not to actually act on it  
19 immediately, but to start preparing people? Because  
12:16:44 20 eventually, financially, you're going to have to.

21 ROBERT AMBROSELLI: Agreed.

22 GENEVA VANDERHORST: It's a matter of time.  
23 It's not a different -- financially, you can't keep it as  
24 it is.

12:16:54 25 ROBERT AMBROSELLI: We usually find -- so

12:16:55 1           there are cities and pockets of California that are  
2           progressive. San Francisco happens to be one of them.  
3           It's not just about sex offenders. This city is extremely  
4           progressive about how it deals with substance abuse,  
12:17:06 5           homelessness, and a lot of other problems in society.  
6           They're more tolerant, if you will, about the reality of  
7           what it is.

8                         The -- but the State, in and of itself, is not  
9           that tolerant when it comes to placing volumes of sex  
12:17:22 10          offenders. As a matter of fact, there's just a push. It  
11          doesn't mean we don't have pockets, and I'm not going to  
12          go on record and say where some of those folks are --

13                         GENEVA VANDERHORST: We don't want you to.

14                         ROBERT AMBROSELLI: -- for all the reasons  
12:17:34 15          that you can imagine. But that is a very -- it's very --  
16          a very difficult conversation to have with the public  
17          because the minute you start to have a conversation that  
18          says, look -- we've argued with police chiefs as well as  
19          our partners -- if you let me keep these people in one  
12:17:49 20          location, not only will I know where they are and that you  
21          will know where they are and that they're not homeless and  
22          they're not roaming the streets at 9:00 at night when your  
23          daughter is coming home from a party or whatever the case  
24          is, but we also can provide the types of services that  
12:18:04 25          you're talking about, which is not letting them go out,

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but to bring those services to them.

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That's what a residential multiservice center does. It brings them into one area.

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But that -- while people nod and shake their head saying yes, that makes sense; but go ahead and make sure that you put it in their neighborhood, not mine.

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And so therein lies the difficulty of trying to educate people and saying but we need to have them in your city because whether you like it or not -- and I tell people this all the time -- I map sex offenders in their

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city. Their eyes just get as wide as dishes the minute

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they realize oh, my God, that many people are floating

13

around in my city that are homeless? Yes. You pass them

14

every single day on the street. You don't know who they

12:18:41 15

16

are. They're not a trench coat guy.

17

GENEVA VANDERHORST: I don't have any other questions, but we ran into that in Chicago where there was

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one that they -- one house that they told us about that

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was literally in an industrial area to get around the

12:18:53 20

21

zoning issues.

22

ROBERT AMBROSELLI: Not everybody has tattoos

23

all over their face. Not everybody is a typical prison

24

convict that people like to think about. You know, the

12:19:04 25

guy that takes your coffee order at Starbucks. But it's

hard. It's really hard to move that stigma, if you will,

12:19:08 1

aside.

2

GARY SINISCALCO: That's where Delancey Street started out. It was all industrial over where they are.

3

4

Now it's all million-dollar condos.

12:19:16 5

ROBERT AMBROSELLI: They have a conditional use permit that they get early on, and then they don't get it.

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RICK JONES: Vicki?

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12:19:24 10

VICKI YOUNG: Since the job of parole is to deal with people who have been released from prison, that means they have all felony convictions. So what training do the officers get on how to address and help parolees find jobs?

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12:19:44 15

ROBERT AMBROSELLI: We use several risk-assessment tools; one that's specific to needs. And so there are various types of risks and various types of needs. So the needs assessment looks at things like substance abuse, mental health; it looks at vocation, education, and those kinds of things because we need to try to stabilize a couple of things, and one is the needs. So that instrument assesses this person's needs, if you will.

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Then there's a risk assessment, and it looks -- it's the Static Risk Assessment that was developed in concert with UCI, University of California at

12:20:18 1 Irvine, and that looks at the risk to recidivate or commit  
2 new crimes.

3 Those two together help the agent make a  
4 decision about what's best for that offender and tailor a  
12:20:30 5 supervision model, if you will, that kind of follows that.

6 And what we do is, we try to use this  
7 hierarchical approach as to I have to get you a house and  
8 a place to live. And then we need to try to get you a  
9 job. And then we need to try to get you an education or,  
12:20:44 10 in some cases, one or the other so you can get that.

11 Then it kind of moves down Mr. Maslow's  
12 hierarchy, if you will, of process thinking that says I  
13 need to take care of these basic things to get you out  
14 here. Then comes, maybe, you know, other things.

12:20:56 15 But we usually try to get a house or housing,  
16 with family and/or on their own, and then comes the  
17 substance abuse because you have to get that taken care  
18 of, and then we move down into education and kind of the  
19 rest of the pyramid, if you will.

12:21:11 20 And so they're trained, and that CPSRM which  
21 we were talking about earlier gets that agent thinking  
22 about how those processes work together.

23 VICKI YOUNG: Okay. But, I guess, separate  
24 from the assessment, it's just do the agents have special  
12:21:27 25 training on -- since the people have felonies, do they,



12:21:31 1 you know, suggest applying for set-asides or, I guess, if  
2 they're coming from prison, they can't get set-asides. So  
3 that takes care of that.

4 But, I mean, do they have any training on  
12:21:43 5 strategies of how to help people locate employment that's  
6 going to be receptive to their application?

7 ROBERT AMBROSELLI: Yes. We have some -- we  
8 have that. We also partner up in the community. Our  
9 agents have a resource guide. It kind of gives them an  
12:21:59 10 idea of where to go and where to direct those people once  
11 they make the determination of what's necessary for the  
12 offender.

13 We have bus passes because, obviously, they  
14 come out without money. You're trying to deal with five  
12:22:10 15 or six issues, you know. This guy's been locked up for  
16 six years. He hasn't established a relationship. He  
17 doesn't have a car, doesn't have a skill. You have five  
18 or six big problems. It's not just this one, if I could  
19 just get you a job, because I can't get the job. I can't  
12:22:24 20 get there with a bus.

21 So the agents have at their disposal cash  
22 assistance, albeit it's a bit limited right now, bus  
23 tokens. All of those things are all a part of what the  
24 agent training is to getting them moving along. Yes.

12:22:41 25 RICK JONES: Jenny?

12:22:42 1

JENNY ROBERTS: Thanks. So I'm going to

2

direct most of my questions at you, Mr. Siniscalco.

3

GARY SINISCALCO: Perfect.

4

JENNY ROBERTS: Okay. Because we've heard a

12:22:53 5

lot from both parole and from Chief Davis yesterday and in

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many cities about going back to Chris's and maybe someone

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else's points about evidence-based decision-making, I want

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to push you on this a little bit more because I think that

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the piece that we haven't had yet in any testimony -- and

12:23:11 10

my sense is it's because it's not out there, but I want to

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ask you, and maybe you've answered this -- but is that in

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the employer decision-making context, there isn't as much

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evidence to base decision-making on; that it seems to be

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more anecdotal.

12:23:29 15

So in a couple of specific areas, I'd like to

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ask you about that. You mentioned, one you talked

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about -- let me go to the core. The core issue, I guess,

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is the risk of lawsuits by either -- let's talk about

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employees, other employees. A tort claim or a customer.

12:23:53 20

Is there any body of evidence upon which

21

employers can go back and say, "Okay, let's make a

22

risk-based determination about whether or not we should be

23

hiring someone with this type of record"?

24

GARY SINISCALCO: I'm not aware of any body of

12:24:07 25

evidence.

12:24:08 1 JENNY ROBERTS: Would you support -- as a  
2 lawyer who is advising employers, would you support sort  
3 of more study of that so that you can have the evidence to  
4 make these decisions?

12:24:20 5 GARY SINISCALCO: Well, it goes back to the  
6 question he asked about whether there's legislation.  
7 It's -- all you need is one situation of hiring an  
8 individual who's got a criminal background who commits a  
9 similar offense -- violence, harassment, workplace  
10 violence, customer, et cetera -- for the personal-injury

11 lawyer, the plaintiff's lawyer if it's representing the  
12 victim employee, to bring that lawsuit and sue the  
13 employer and point to that prior conduct known to the  
14 employer as further evidence that the employer knew or  
15 should have known that there was a risk here of this  
16 occurring again.

17 JENNY ROBERTS: I understand your point on the  
18 need and maybe some agreement on the need for certain  
19 immunity, at least with respect to whether or not there  
20 was an investigation into criminal records or using that  
21 in certain evidentiary ways, right, which would go to this  
22 concern.

23 GARY SINISCALCO: Right.

24 JENNY ROBERTS: And I understand the fear  
12:25:26 25 factor that you're describing, which is very similar to

12:25:28 1 the fear factor of having housing or a sex offender in  
2 your midst.

3 I guess I'm trying to push you on whether  
4 maybe the role of both the employment lawyer and the  
12:25:41 5 employer in getting beyond that in, let's say, flush  
6 economic times when you are going to need to look further  
7 at who you're hiring, you're going to want to go to pools  
8 of people who might have a record. I mean, take, I know,  
9 programmers, right? We need more programmers in this  
12:25:58 10 country. So ...

11 GARY SINISCALCO: We go --

12 JENNY ROBERTS: We can look at other countries  
13 or we can look to people who might have records who are  
14 talented programmers. You may have clients who would like  
12:26:06 15 to know how can we really decide if we can hire this  
16 person?

17 Sort of getting beyond the fear factor, what's  
18 your role, and what's the employer role there?

19 GARY SINISCALCO: Well, so my role usually  
12:26:17 20 comes in, in the context of the defense when there is a  
21 claim such as a discrimination claim or the like.

22 Sometimes they'll call me and they'll say,  
23 "Gary, we've got this person. We made an offer of  
24 employment, and we just learned they've got a prior  
12:26:31 25 conviction." They didn't do a criminal background check

12:26:34 1 but just learned something. It may not be even a criminal  
2 background. Maybe it's something else they've learned  
3 through a Facebook check or a former employee of that  
4 individual from a prior employer who says, "You're hiring  
12:26:43 5 so and so? Why, he was fired from there because of  
6 harassment" or because he got into a fight with co-workers  
7 or he brought a gun into the workplace. But no  
8 conviction.

9 That's what raises a red flag, typically, for  
12:26:55 10 a client, that's us.

11 In terms of the data, I guess where I would  
12 point you to the database or the evidence are all of the  
13 federal and state laws that bar employment. You go back  
14 to the state of California. I bet you, when you look at  
12:27:13 15 the state personnel board, you're going to find lots of  
16 jobs that are -- that are precluded from individuals.

17 JENNY ROBERTS: I think we're not going to  
18 find any legislative history based on Dega.

19 GARY SINISCALCO: I think that's right. Or I  
12:27:27 20 don't know that. It would be interesting to --

21 JENNY ROBERTS: We had that comment from at  
22 least one person.

23 GARY SINISCALCO: Like I said, the -- you  
24 know, look at the Congressional Record for the Federal  
12:27:35 25 Deposit Insurance Act, Section 19, and what the basis is

12:27:38 1 for that legislation.

2 So you've got lots of legislation, state and  
3 federal, where the legislatures have come up with  
4 conclusions and voted on this. And I've got to think  
12:27:52 5 there's some evidence there to look -- I've never looked  
6 at it, but I would think that might be a place to start  
7 and see if there is anything. It may be it's an entire  
8 myth.

9 But we do know that, as employers know, that  
12:28:07 10 the reality is that if we -- if we have looked at this  
11 information and we get sued, you know, it's going to be  
12 raised. And so it's probably more anecdotal than it is --  
13 that's evidence-based, but it's not -- there's no  
14 empirical evidence that I'm aware of.

12:28:30 15 JENNY ROBERTS: I'm not speaking to empirical  
16 evidence. Thank you.

17 Do you want to follow up to that?

18 MARGARET LOVE: Yeah. I just wanted to follow  
19 up just for a tiny second.

12:28:38 20 JENNY ROBERTS: Okay.

21 MARGARET LOVE: Has your advice changed? And  
22 have employers' behavior changed since the Title VII, the  
23 new Title VII guidance came through?

24 GARY SINISCALCO: No. The actual guidance is  
12:28:52 25 not new. It's actually a rehash of what they've said for

12:28:55 1

the last 25 years.

2

So, no, it has not changed.

3

MARGARET LOVE: I hope the Third Circuit

4

doesn't agree with you.

12:29:07 5

JENNY ROBERTS: You had mentioned the -- just

6

looking at my notes here -- one of the -- one bill that

7

got through this year --

8

MARIKO YOSHIHARA: Uh-huh.

9

JENNY ROBERTS: -- prohibits employers from

12:29:21 10

using the consumer credit reports.

11

Can you just tell us a tiny bit more about

12

that?

13

MARIKO YOSHIHARA: So that bill -- so what's

14

been becoming more common or what was becoming more common

12:29:32 15

practice was in addition to doing criminal background

16

checks, they were also doing consumer credit report

17

checking. And, I mean, obviously with the financial

18

crisis, people being foreclosed from their homes, that

19

people were not being hired because, you know, they lost

12:29:50 20

their house or whatever it was.

21

And there was some really compelling stories

22

with, you know, these workers who were just kicked out of

23

their homes and now they can't find a job because they

24

were being discriminated against because of their credit

12:30:04 25

history.

12:30:05 1                   And what does that have anything to do with  
2                   how you're going to perform in this job? And, you know,  
3                   anecdotally, there didn't seem to be a nexus between the  
4                   credit history and the job requirements.

12:30:20 5                   And, again, it was -- I think it was first  
6                   introduced in 2006, maybe. So, I mean, it had gone  
7                   through several times. And I think that every year, it  
8                   just -- there was more and more organizations that were --  
9                   you know, the coalition got bigger and the stories became  
12:30:44 10                   much more personal, and it seemed like everybody knew

11                   somebody who had a similar story. And I think that's what  
12                   was very successful with that campaign.

13                   But, again, I -- that's why I think it's --  
14                   it's probably beneficial to draw that analogy with the  
12:31:04 15                   criminal background checks, yeah.

16                   JENNY ROBERTS: What -- that was one of the  
17                   reasons I was asking.

18                   Do you know the name of the bill?

19                   MARIKO YOSHIHARA: AB 22, Mendoza's bill.

12:31:16 20                   JENNY ROBERTS: Thanks.

21                   GARY SINISCALCO: I would suspect, you know,  
22                   part of it is that it's a much less compelling argument  
23                   about prior criminal convictions, the credit check, the  
24                   vast -- that I'm aware of anecdotal evidence is that it  
12:31:33 25                   has not been in any way relevant to the job. It doesn't



12:31:36 1 create the kinds of risks you would expect.

2 And there are far more horror stories than  
3 there are -- far more horror stories of individuals being  
4 rejected for credit checks that have, you know, nothing to  
12:31:48 5 do with suggesting they are a, you know, going to do  
6 something bad in the workplace.

7 And so in terms of the risk assessment, risk  
8 avoidance, risk of litigation, it's a very different  
9 analysis, I think, both factually and, I think,  
12:32:04 10 emotionally.

11 RICK JONES: We are -- we are -- okay. One  
12 last question.

13 Go ahead.

14 VICKI YOUNG: We were here -- we heard about  
12:32:14 15 the Ban the Box statewide legislation that was introduced.  
16 And when we first heard about it in the spring, I guess,  
17 at least the sense I got from, you know, what I saw in the  
18 paper or what different people were saying was that it  
19 seemed to be on track or pretty close to, you know, there  
12:32:35 20 was consensus, and it was going to get through.

21 And then people just sort of said, well,  
22 somebody tabled it. Was it really just one particular  
23 legislator decided X, or is there some other political  
24 thing going on?

12:32:51 25 MARIKO YOSHIHARA: Yeah. So that bill was --

12:32:56 1 had gained pretty good steam. It was looking positive  
2 and, you know, passed the Assembly, got to the Senate.  
3 And that is really the unfortunate thing about going to a  
4 committee where the chair is so just ideologically opposed  
12:33:13 5 to the bill and there are, I mean, not just ideologically  
6 but a lot of political reasons as well. Again, this year  
7 is an election year and I think, you know, that had  
8 something to do with it as well.

9 So what happened was -- and this usually does  
12:33:27 10 not happen in committees, so I think with future efforts,  
11 this probably shouldn't be the case -- but the bill was  
12 brought forward. And then, again, the chair was against  
13 the bill. And usually the chair makes a recommendation  
14 whether to vote for or against the bill, and usually her  
12:33:44 15 colleagues -- so for a Democratic chair, the Democrats  
16 will usually vote with the chair or at least make that  
17 recommendation to the chair because the committee's  
18 consultants are the ones that do all the analysis on the  
19 bill, the consequences and everything, and that's what  
12:34:03 20 forms the chair's decision.

21 In this case, the discussion beforehand was  
22 that, you know, the chair was opposed to the bill, but,  
23 you know, she was -- she was going to tell members of the  
24 committee, "Vote your conscience; I'm not going to make a  
12:34:17 25 recommendation."

12:34:18 1

And then what happened was, and a lot of times  
2 you have a lot of committees going on, so you don't have  
3 all the committee members in the room. So at the time  
4 that this bill was heard, a lot of the Democrats were out  
12:34:29 5 of the room. Nobody made a motion to move the bill. And  
6 so it wasn't even up for a vote.

7

And usually what will happen is the chair will  
8 give a courtesy motion or leave the rolls open so that a  
9 member can come in and make the motion to move the bill  
12:34:46 10 or, you know, to move -- well, move the bill. And so ...

11

But that didn't happen here, and so it never went up for a  
12 vote.

13

But I think -- I think next year's going to be  
14 very different, and I think -- I mean, it's still

12:35:04 15

obviously going to be a really hard fight. And I've  
16 talked with the author's office and the author about the  
17 bill, and I think there's other -- maybe other strategies  
18 to use with this because, I mean, one -- I don't know if  
19 you guys have talked about the policy of -- I know we're

12:35:24 20

supposed to go, but -- I don't know if you guys have  
21 talked about the policy of the bill itself.

22

But, you know, doing a more incremental  
23 approach, even though just limiting this to cities and  
24 counties is an incremental approach in itself. But with

12:35:36 25

the State, right, they can't have the box on the

12:35:39 1 application. It's just that some of them have discretion  
2 to use a supplemental form.

3 And, I don't know, that would be -- because  
4 the cities and counties, their argument is that they want  
12:35:53 5 discretion. They want to be able to use their own forms  
6 if they want to.

7 And so this -- if you want to do it the way  
8 that the State does it, it seems to me like that would be  
9 a little bit more politically viable.

12:36:04 10 RICK JONES: We have to -- I'm sorry -- we  
11 have to end this conversation now. You can certainly  
12 continue this, but lunch is outside the door waiting to  
13 come in -- you're all invited to partake -- but we have to  
14 end this now, and you can continue the discussion, and we  
12:36:19 15 will formally reconvene at 1:30.

16 (Proceedings recessed from 12:36 p.m. until 1:30 p.m.)

17 RICK JONES: Let's start, guys.

18 Ready?

19 So the final act. Welcome. We are pleased to  
13:32:03 20 have you here, and we're looking forward to a lively  
21 discussion.

22 At least three of you have been here for at  
23 least one panel. I know you've been here for most of it,  
24 and I appreciate that. I'm happy to see that.

13:32:19 25 And for Mr. C., let me just tell you that the

13:32:22 1 way that we operate is that we're going to give each of  
2 you five or ten minutes to give us the benefit of your  
3 background, tell us a little bit about yourself, the work  
4 that you're doing, and any other thoughts, comments that  
13:32:33 5 you have to share with us.

6 We've got lots of questions, and the way that  
7 we work is one of us is good to be primarily responsible  
8 for the questioning. And I think for this panel, that  
9 actually is me.

13:32:46 10 And to the extent that there's time when I'm  
11 done and we've had our discussion, the rest of my  
12 colleagues will get in on the questioning as well.

13 And so we ought to just start. I will leave  
14 it to the four of you -- and maybe ladies first, I don't  
13:33:04 15 know -- to decide who wants to go first, but we're excited  
16 to hear from you, and the floor is yours.

17 JANICE BELLUCCI: Great. Well, thank you very  
18 much, everyone. My name is Janice Bellucci. I am an  
19 attorney, and I'm also president and state organizer of  
13:33:19 20 the California Reform Sex Offender Laws organization.  
21 We're a statewide nonprofit, or a 501(c)(4). I'm a  
22 volunteer in this organization as is everybody in our  
23 organization.

24 But our organization right now represents up  
13:33:34 25 over 93,000 individuals who are on the registry. So

13:33:36 1 please let that number sink in: 93,000. And that number  
2 keeps growing. In one year's time, I know the number has  
3 grown by at least 5,000 in one year's time because  
4 California's registry is a lifetime registry. And it's a  
13:33:52 5 very sad story, but it's similar to the song Hotel  
6 California, where you can check out, but you can never  
7 leave. And so that's what's happening.

8 And folks who have committed an offense, many  
9 times decades ago, are still on the registry. I  
13:34:06 10 personally know a gentleman who's been on the registry for  
11 50 years for an offense that he committed when he was a  
12 teenager. And our state senator, Mark Leno, knows  
13 personally an individual who was 17 when he offended.  
14 He's been on the registry 55 years, and he's still on the  
13:34:26 15 registry. Never committed another offense, and he's on  
16 the registry.

17 So that's just a little backdrop to our  
18 organization. I have passed out materials here, and  
19 they're 28 PowerPoint slides which I will not read -- just  
13:34:38 20 to let you know -- but I wanted to make sure you had some  
21 background information about the organization and also  
22 about what we're doing.

23 I wanted to also to add that in addition to  
24 being an attorney, being the state organizer and the  
13:34:53 25 president of this organization and a volunteer, I'm a

13:34:56 1 mother. I have two daughters. I am a woman, and I have  
2 two daughters. And I care so passionately about this  
3 cause that I am here today, just like every time I do it,  
4 as a volunteer, paying my own expenses. This issue is so  
13:35:14 5 illogical, I just cannot even believe it.

6 I was an aerospace attorney for 29 years.  
7 I've worked for NASA. I've worked for the Air Force.  
8 I've worked for Congress doing aerospace issues, and if  
9 anybody wants to buy a satellite or a rocket, I'm you're  
13:35:29 10 girl.

11 But I'll tell you what: When I had this  
12 opportunity that the nonprofit I was working for --  
13 another statewide nonprofit for 12 years went out of  
14 business -- I had the opportunity to stop and reflect:  
13:35:39 15 Why did I go to law school in the first place?

16 And as great a career as it was in aerospace  
17 and seeing space shuttles take off and space shuttles land  
18 and meet all these wonderful astronauts, it's not why I  
19 became a lawyer.

13:35:51 20 I became a lawyer because of the movie, To  
21 Kill a Mocking Bird, and Atticus Finch is my hero. I can  
22 think of no group that deserves more attention than this  
23 group, really nationwide, but certainly in this state.

24 We're one of only four states in our nation that lacks a  
13:36:10 25 tiered registry. One of four.

13:36:12 1

We're in the same category as Alabama, South Carolina, and Florida. And that is not a club that I think our state should belong in.

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13:36:24 5

We tried with the support of Assemblyman Tom Ammiano. He is the chairman of the Public Safety Committee. He introduced legislation last year that would have created a tiered registry, and he kept putting it off and putting it off for a vote. Finally, he had to get a vote on it or just kill the bill entirely. It was a voted on earlier this year. 12 members of our organization, all volunteers, all paying our own expenses, went and supported it. Frank and I were here. We went to Sacramento four months in a row and supported that, and it went down in flames.

11

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13:36:56 15

And we had members of our State Assembly tell us behind closed doors, "We agree with you. We agree with you. This is really stupid. But we're not voting for it because it's an election year."

16

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13:37:10 20

So we're going to go after it again next year. I'm -- they -- our State Assembly and senators get elected every other year. So we're going to try again when it's a nonelection year, and we can hope that -- they can hope that their constituents have short memories and won't remember how they voted.

21

22

23

24

13:37:22 25

Okay. Having said that, the mission of this



13:37:25 1 organization is really to restore the civil rights for sex  
2 offenders in our state. But what I found out very  
3 quickly, Addicus Finch aside, is that it's all about  
4 criminal law. Our penal code is just full of all the  
13:37:40 5 provisions that it's -- it's, like, you know, a rat in a  
6 maze. Every time you turn, you're going to get  
7 electrocuted again.

8 Okay. Let's see. We have a broad scope of  
9 offenses certainly represented on our registry, I think,  
13:37:53 10 like many states, but because we don't have a tiered  
11 registry, there's no distinction.

12 So the person who publicly urinated in an  
13 alley behind a bar because there's too big of a line; some  
14 kid who's sex fiend -- don't understand why it's important  
13:38:09 15 to send photographs of your genitals to your friends;  
16 people who are streaking -- a big, you know, thing in  
17 college when I was in college, and I guess it's something  
18 that has come back into vogue -- never was brave enough to  
19 do that myself, but you can end up on our California  
13:38:24 20 registry for doing that.

21 Okay. And, again, once you get on the  
22 registry, you're not going to leave. Okay.

23 The exceptions to that rule keep getting  
24 narrower and narrower and narrower. In this state now, if  
13:38:37 25 you have -- if you have one felony conviction, no matter

13:38:40 1           how long ago it was, no matter how pure a life you have  
2           lived since that point this time, you're going to stay on  
3           the registry for the rest of your life.

4                        So what are some of the repercussions of being  
13:38:51 5           on the registry? Our U.S. Supreme Court ruled in 2003  
6           that being on the registry was not punishment. Really?  
7           Is unemployment not a punishment? Is homelessness not a  
8           punishment? How about vigilante violence?

9                        So one of the things that is in your packet  
13:39:12 10          there is something that came about -- I found it just the  
11          other day and after the PowerPoint presentation had been  
12          put together -- is from Facebook. There's actually a page  
13          there called "No Peace for Predators," and it's the last  
14          page of your handout here.

13:39:26 15                      And on there, there is what appears to be --  
16          it says it is -- a hunting permit for child molesters.  
17          Okay. And it says: "Kill them all. Bag limit none.  
18          Shoot on sight. Rifles, handguns. 22s, no birdshot."

19                      So I'm not a hunter. I don't know. Does this  
13:39:51 20          look like a license to you? It looks like a license to  
21          me. This is on Facebook. Okay. We have protested this  
22          being on Facebook. It's still on Facebook. But guess  
23          what: Registrants can't be on Facebook.

24                      Hunting licenses for a registrant can be on  
13:40:07 25          Facebook, but a registrant cannot be on Facebook. It

13:40:10 1 doesn't make sense to me at all.

2           Okay. So there are two registrants here with  
3 me today, and they will be speaking later. I don't want  
4 to go into their area very much, so I'm going to skip over  
13:40:25 5 a whole bunch of charts here.

6           But a little quick history about the registry  
7 in California. We started it. California is known for  
8 starting all kinds of things. So in 1947, Los Angeles  
9 started a registry. At that point, the registry focused  
13:40:39 10 on organized crime. So they thought, "Ah, these folks are  
11 coming from Chicago and all these other places in the  
12 East. We don't want them in L.A., so we're going to tell  
13 them they have to register when they come to L.A."

14           Well, most people who are in organized crime  
13:40:51 15 families don't want to register. So that kept some of  
16 them out of L.A. for a while.

17           But then there was a shift, and then the  
18 registry focused on homosexuals. So we went from  
19 organized crime to homosexuals. And then another shift,  
13:41:08 20 and that was sex offenders. So now the registry is  
21 limited to sex offenders, and it's statewide. It went  
22 farther than L.A., and now it is, indeed, statewide.

23           We have on our Megan's Law profile -- I  
24 understand that federal law requires a Megan's Law  
13:41:28 25 website, but I do believe that it also requires them to

13:41:31 1 have accurate data on that website. And there's so much  
2 inaccurate information there that it makes me want to cry.

3 The biggest things that are missing is the  
4 year of conviction and the year of release. Okay. So  
13:41:46 5 let's put it -- let's think of it this way: You got a  
6 current photo of somebody. You don't have the year of  
7 conviction. You don't have the year of release. It looks  
8 like they did it yesterday. All right.

9 And, again, our registry has been around since  
13:41:59 10 1947. There are individuals who their sex offense was  
11 over 50 years ago -- never reoffended, but it looks like  
12 they did it yesterday.

13 And so I had a conversation just yesterday  
14 with our California Department of Justice because they're  
13:42:13 15 the ones responsible for this website. And I said, "You  
16 Know what? I keep sending in these requests to please  
17 amended -- correct the profile," and they're doing it now.  
18 If I send a letter in as an attorney and ask them to make  
19 a correction and I give them the proper paperwork, I've  
13:42:30 20 got a 100 percent success rate.

21 But I'm only one lawyer. And there's 93,000  
22 people out there. Not all of them are wrong. Actually,  
23 if they have a more recent offense, it's more likely that  
24 year of conviction and release will be there. But I'm  
13:42:44 25 talking about people whose offenses, again, are 20, 30, up

13:42:47 1

to 50 years ago.

2

So that's missing.

3

We found out too, just recently, there was an

4

update to the website, and now we've got people as old as

13:42:57 5

937 years old on the website. And we have individuals who

6

are less than one year old. So they can't even get that

7

right, the year of birth.

8

We found out that there are duplicate entries.

9

So the same person could be listed as transient and not

13:43:13 10

transient. Could be listed as this address or a different

11

address. And, gosh, gee whiz, it sounds like negligence

12

to me.

13

Okay. Again, we did attempt to get a tiered

14

registry in California. The Assembly Bill was 625. We

13:43:32 15

went up there. We supported it. We fought very, very

16

hard. We talked about what the gentleman from parole just

17

said, "There's limited law enforcement resources."

18

Why do you want to spend all this time and

19

money following people who are not, indeed, dangerous to

13:43:46 20

society? Somebody who publicly urinated 50 years ago is

21

not a current danger.

22

And they said, "Hmmm. No." Again, some of

23

them said, "Okay. We agree with you in policy, but we're

24

not voting for it because we want to be reelected."

13:44:01 25

I have a word for that. I call it a coward.

13:44:04 1                   Okay.  Another effect of having a lifetime  
2                   registry is -- is that Section 8 housing -- every  
3                   registrant in California is ineligible for Section 8  
4                   housing; not an intended consequence, but that's what's  
13:44:17 5                   happening because the way the HUD regulations are written.  
6                   It says "if you're a lifetime registrant," and everybody  
7                   in California is a lifetime registrant.  So we have --  
8                   that's one reason we have more homeless registrants in  
9                   California than we've ever had before.

13:44:32 10                   There are many bills that are pending right  
11                   now instead of our -- in front of our state government.  
12                   One of them has to do with -- if Hollywood -- we have  
13                   Hollywood -- and so if you are going to have anything to  
14                   do with a child in Hollywood, you cannot be a sex  
13:44:47 15                   offender.  No matter how long ago your offense was, no  
16                   matter if it didn't involve a child, everybody who is on  
17                   the registry now is forbidden from ever dealing with a  
18                   child in Hollywood.  Blanket.

19                   Okay.  In addition to our state laws that we  
13:45:01 20                   have problems with, we have problems with our local laws.  
21                   So we've got counties and cities now that are passing  
22                   ordinances that ban our registrants -- and I mean all  
23                   registrants -- from parks, beaches, libraries.  Really?

24                   The Tenth Circuit Court of Appeals ruled  
13:45:22 25                   earlier this year that was unconstitutional; that it

13:45:24 1 violates the First Amendment.

2 So we thought they just don't know about this.

3 So we went to some city council meetings. We said, "There

4 was a ruling made in the Tenth Circuit Court of Appeals."

13:45:36 5 Okay. We're in the Ninth Circuit. We're not

6 in the Tenth, but if the Tenth Circuit Court of Appeals

7 makes this ruling, you know, the Ninth Circuit Court of

8 Appeals is likely to make the same ruling.

9 They passed it anyway. Unanimously. It

13:45:48 10 doesn't make any difference. These people are not

11 thinking. They are not awake.

12 Okay. One other little twist on this is we've

13 got cities and counties passing these ordinances that

14 prohibit a registrant from entering; and if you enter, you

13:46:06 15 can be fined, you can be imprisoned, or both.

16 There are no signs. There are no signs at

17 these parks, at these beaches. No signs whatsoever. So a

18 registrant -- it just says "a registrant," right -- so a

19 registrant from another county, another city, whatever,

13:46:22 20 could wander in, not know what the law is, because not

21 every law -- every city, rather, or county has these laws,

22 thank goodness, right -- and they could end up in prison

23 or fined or both.

24 So we do have a pending bill that would change

13:46:37 25 that and require them to, at least, put signs up if

13:46:40 1 they're going to pass these ordinances.

2           There's another advantage to doing that, by  
3 the way, that it could cost them some money because  
4 they're passing these ordinances saying in their findings  
13:46:49 5 that it wouldn't cost any money.

6           Okay. Skip here.

7           I would like to get to -- and I know this is a  
8 criminal law group and you guys just do fantastic work --  
9 but a little civil rights reminder, if you don't remember:  
13:47:04 10 The case of Plessy versus Ferguson, 1896, that said  
11 separate but equal schools was okay. Sure. We can have  
12 separate but equal schools. Everyone will get an equal  
13 education, right?

14           It took 58 years for our Supreme Court to  
13:47:17 15 overturn that decision. 58 years in Brown versus Board of  
16 Education.

17           And what I tell people, I am not that patient.  
18 And I don't know how I'm going to get there or anybody  
19 else is going to get there, but we're going to get there.  
13:47:30 20 And we're going to prove to the U.S. Supreme Court that  
21 this, indeed, is punishment. And that's how bad this is.

22           So if you look at my slides, you'll see a  
23 photograph in 1954 in Alabama when law enforcement turned  
24 away a young girl, African-American, from going to a white  
13:47:49 25 school.



13:47:49 1

That's what we are dealing with today.

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13:48:01 5

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13:49:08 25

We have many registrants these days who are homeless. The rest of -- ever since Jessica's Law, which is our residency restriction law in California -- by the way, it's a ballot initiative because the state legislature knew that it was a bad law. So they did it through a ballot initiative. And since that passed, the homeless rate in California for registrants has tripled. In San Francisco, the city of, there is no place in the city where a registrant could legally live.

Is that just a coincidence? I don't know.

There's another little town near where I live in Santa Barbara County, that the only place a registrant could live is the cemetery.

Is that a coincidence?

Okay. So we do have some important cases that are pending right now in California. One is People versus Mosley. That is a case about residency restrictions. It is testing the constitutionality of residency restrictions in our state. Our attorney general thinks that they're constitutional, but I will say in her support, at least she's arguing it only applies to registrants on parole. So at least it's not the entire time that they're on -- that they are on the registry.

Another important case here is Doe versus

13:49:09 1 Harris. And in Doe versus Harris, they look back to the  
2 plea agreement. And as criminal lawyers, you'll really  
3 understand -- I think be supportive of this one -- that  
4 actually, it's a contract.

13:49:22 5 Okay. So when your client pleads out to a  
6 certain sentence and the D.A. is promising them certain  
7 things in return, that if those conditions change -- oh,  
8 my goodness -- it's been a breach of contract. Go back to  
9 contract law.

13:49:39 10 So I just can't wait to see what happens in  
11 that case. Hopefully, our State Supreme Court will make  
12 the right decision there.

13 So in conclusion, I would like to talk about  
14 vigilante violence for just a minute. It's actually  
13:49:56 15 increasing in the state of California.

16 We had a gentleman, Michael Dodele, who was  
17 murdered in November of 2008. He had been in prison for a  
18 very long time, and after that a State hospital, for  
19 raping an adult woman. No contest there.

13:50:13 20 He was murdered within 30 days of his release  
21 from prison by a father, who thought that Michael had  
22 looked at his son the wrong way. He knew Michael was on  
23 the registry. I don't know if he didn't care or didn't  
24 bother to look that Michael had a raped an adult woman and  
13:50:29 25 had never harmed a child. But he murdered Michael because

13:50:33 1

he looked at his son the wrong way.

2

We had another gentleman, Bobby Ray Rainwater, who was murdered in just December of last year. Bobby Ray

3

lived in a mobile home park. Again, that's one of the few

4

13:50:45 5

places they can afford to live many times. And Bobby Ray

6

was brutally stabbed. He was stabbed so many times he was

7

practically decapitated.

8

But it's not a hate crime, right?

9

Robert Warren, an attorney, went to prison for

13:51:02 10

child pornography. He was murdered in prison. He was

11

72 years old, and he hadn't been in prison, I think, three

12

months.

13

So I don't know how many of you know in the

14

State of Washington, we had two registrants who were

13:51:17 15

brutally murdered, shot to death by one gentleman. He was

16

apprehended on his way to a third. And he is boasting.

17

He is still boasting about what did he did and why he did

18

it. And he's getting fan mail.

19

That's where we are in our society today.

13:51:34 20

I'm available for questions. The last page of

21

my PowerPoint slide is my name and contact information,

22

and you also have my business card.

23

Thank you for listening.

24

RICK JONES: Thank you very much.

13:51:45 25

Next.

13:51:47 1 FRANK LINDSAY: My name is Frank Lindsay, and  
2 I'm a registered citizen here in the state of California.

3 Thirty-three years ago, I crossed the line and  
4 took a plea. That plea included an expungement, a  
13:52:03 5 dismissal, and a set-aside if I completed all of my  
6 probation without a hitch. And I did.

7 And when I was released from the probation, I  
8 then decided to get on with rebuilding my life as I  
9 understood the plea agreement to also indicate that I  
13:52:28 10 would not have to register as a sex offender.

11 And so I went out into my community and began  
12 to rebuild my life. Eventually, I got married. Had a  
13 daughter. Came back to the Central Coast. Began building  
14 a business. In the '90s, I was doing very well.

13:52:51 15 Jumped into my community. Loved my community.  
16 They loved me.

17 One year, I was awarded an honor of being  
18 volunteer of the year. A year or so later, I was director  
19 of the year. I had gotten really involved with the  
13:53:11 20 Chamber of Commerce, and they had said that I was good  
21 enough to be called "Director of the Year." The following  
22 year, I was citizen of the year.

23 Right about that time, I got a letter from the  
24 DOJ indicating that I may be in violation and -- not  
13:53:30 25 registering as a sex offender -- could go to jail.

13:53:33 1

That was followed, within a week or so, by a certified letter from the local police department, of which many of them were my friends.

4

13:53:46 5

That began starting to lose friends immediately.

6

7

And what I have noticed over the course of years is that this is perpetual, collateral damage in my life as it just becomes smaller and smaller and smaller.

8

The containment model reduces you to depression in a home with drawn curtains and locked doors.

13:54:05 10

11

Your friends on the block have been handed little warning posters that you're a dangerous sex offender, and now they don't wave anymore. They don't even make eye contact anymore, many of them.

12

13

14

13:54:26 15

The rumors begin to abound because they don't know what I had done. So everything I had done.

16

17

And a grandmother from across the street came over one day. Luckily, she wasn't holding a weapon, but she was very distraught that her grandson, who had been told that I was an offender, I had looked at him oddly.

18

19

13:54:51 20

And she was livid. What I had done had not been done to a male. I had no interest.

21

22

23

But then the other occasional people that would come up and want to know -- there's just a wide variety of stories they had heard and manufactured in

24

13:55:16 25

13:55:19 1

their own minds.

2

So I was slowly becoming the pariah of the

3

community, and thus life shrinks. You can't imagine

4

trying to develop a wholesome relationship with someone

13:55:38 5

knowing that at some point you're going to have to tell

6

them, "I'm a registered sex offender." That makes it real

7

difficult for that young lady to be compassionate enough

8

to hold on.

9

And that has happened, and for various

13:55:56 10

reasons, but one is the potential of the violence. And

11

two years ago, I had -- right before a book that I had

12

written on this was published, a young man came into my

13

house, waited for me, and when I walked through the door,

14

attacked me with hammers. And I'm really fortunate to be

13:56:25 15

here today.

16

And that's one of the reasons that a long-term

17

relationship has now been given a lot of space because I

18

do not want that young lady violated.

19

My daughter has been violated. She had to

13:56:46 20

quit high school and move out of town because of the

21

ridicule.

22

Every time she comes back to town, there seems

23

to be an incident. So she doesn't come to visit much

24

anymore. And now when I go to visit her in Orange County,

13:57:06 25

I don't know what park I can go play frisbee with her.

13:57:11 1 My brother came back from Houston, Texas, with  
2 his family. My daughter works at a pretty high-powered  
3 real estate firm, and they've got a little boat down in  
4 Newport Harbor that we borrowed and took my brother and  
13:57:26 5 his family out. And I almost had a heart attack when the  
6 sheriff's department boat pulled up next to us because I  
7 wasn't aware that Newport Harbor is a county harbor. And  
8 sex offenders have been banned from the county harbor.  
9 Well, they weren't looking for us, and they moved on. And  
13:57:55 10 the heart settled down a bit.

11 I have a handler at my local police  
12 department -- they change about every two to three  
13 years -- that has indicated that he will find any reason  
14 to violate me.

13:58:12 15 Violate me? What?

16 I live in a home that I bought 14 years ago.  
17 Right about the time -- a few years later, Jessica's Law  
18 and oh, my God, when are they going to knock on my door  
19 and tell me I have to move because there's no place in the  
13:58:31 20 little town that I live that I could legally live?

21 Perpetual collateral damage. Every time I  
22 turn around, there's more damage.

23 And I, at a point, decided that I needed to  
24 write about this, and I did. And I was really fortunate  
13:58:59 25 that Janice bought a book. She's a client of mine, and on

13:59:06 1 the day that I was there, shortly after the book had been  
2 published and I had gotten some copies, we talked on a  
3 fairly deep level in regards to the spiritual nature of  
4 living. And I had mentioned that I had published this  
13:59:26 5 book now that she had been hearing about for a couple of  
6 years, and she bought a copy. I didn't know if she would  
7 ever invite me back to her home.

8 And when I got back from a short vacation that  
9 was gifted to me by a friend of mine, there was a message  
13:59:44 10 on the answering machine that said, "Frank, we've got to  
11 talk." And my heart dropped again because I was fearing  
12 the worst, and that didn't come to pass. I was very  
13 amazed this lady decided to get behind this and advocate  
14 for us.

14:00:04 15 And I'm -- I feel blessed to be here today.

16 RICK JONES: Thank you very much.

17 Mr. Woods.

18 KEN WOODS: Hello. My name is Ken, Ken Woods,  
19 and I have this little handout that was passed out you to  
14:00:22 20 earlier. So if -- I wanted to use that more or less as a  
21 guideline. I'm not going to read all of the slides  
22 either, but it helps me to stay organized.

23 But I just wanted to mention briefly the  
24 consequences of conviction that I faced as a former  
14:00:38 25 physician who lost his license to practice medicine as a



14:00:42 1 result of a sex offense that was contained within the  
2 family, and it only involved one of my three daughters.

3 So I want to talk about those consequences,  
4 and also the problems encountered -- that I've encountered  
14:00:59 5 with rehabilitative efforts, even though I have amassed a  
6 huge volume of rehabilitative efforts according to my  
7 attorney, and the reforms that I feel are needed at the  
8 state and federal level in order to promote more thorough  
9 restoration of rights.

14:01:20 10 You know, there -- I have a list there of the  
11 personal consequences that I have -- that I have  
12 encountered. The personal consequences are the ones that  
13 really hurt the most because they -- it has interfered  
14 with my relationship with my other two children. Lost --  
14:01:38 15 I lost the relationship with the woman that I loved very  
16 much and for many years held on to the hope that we --  
17 there would be some forgiveness and reconciliation there,  
18 and there never was.

19 And I want to tell Frank to never give up hope  
14:01:55 20 because I have now found a woman who is forgiving and  
21 loving and is here with me today to support me. And there  
22 are people out there who are open-minded enough and  
23 forgiving enough to want to get involved with someone with  
24 a past like mine. And that's a huge blessing.

14:02:18 25 So I've had to deal with this negative view of

14:02:23 1       how others view me, the negative beliefs based on fear and  
2       false beliefs and the myths that are perpetrated about sex  
3       offenders. I've had to face that even at church recently.

4               Because -- well, it's hard to understand why,  
14:02:45 5       but I was told that because of -- because of the fact that  
6       there's only one insurance company in the state of  
7       California who is willing to underwrite the denominational  
8       employees against sexual harassment and civil lawsuits  
9       based on sex offenses, the insurance underwriter had  
14:03:07 10       demanded they put a tighter rein, if you would, on known

11       sex offenders that are members of the community, even  
12       though the payouts that the church has had to make have  
13       not come from offenses by registered sex offenders in the  
14       congregation. They've come from youth pastors and other

14:03:26 15       people who are denominational employees that have a  
16       problem with boundaries and perhaps never even had the  
17       right kind of training regarding boundaries and have  
18       crossed a boundary and has resulted in multimillion-dollar  
19       payouts by churches and organizations.

14:03:43 20               And now I'm being asked to sign an agreement,  
21       even though I've been a lifetime member of the church.

22       I'm being asked to sign an attendance agreement that says  
23       I will not sit next to a child. I will not do this and  
24       that. I won't participate in this and that. And I --

14:03:56 25       they almost -- they almost decided that I couldn't sing in

14:03:59 1 the choir, which is really -- would be devastating to me  
2 because I am -- I have been a singer since I was a kid.  
3 And, in fact, I'm singing this weekend for church. So  
4 I -- I believe that that is possibly going to cause me to  
14:04:19 5 face some restrictions of my freedom to exercise my  
6 religion in the future.

7 Interestingly, I wanted to mention when I was  
8 on probation -- well, originally I was -- I was given a  
9 suspended prison sentence in 2001, with probation. My  
14:04:38 10 probation was very long. It was eight years. And when I  
11 was first released from county jail, I was told that I  
12 couldn't travel out of state without permission from my  
13 probation officer. I had -- I got a job soon after I got  
14 out of jail, and it required travel out of state because I  
14:04:59 15 had Reno in my territory.

16 So, initially, my probation officer allowed me  
17 to go to Reno, and all I had to do was call her and tell  
18 her, "I'm going to Reno tomorrow," or "I'm going to Reno  
19 today. I'll be back tomorrow." And that was all that  
14:05:11 20 they required.

21 In 2004, that changed because of an  
22 organization called Interstate Compact, which you probably  
23 have all heard about. But because of Interstate Compact,  
24 it raised the specter that the probation officer's  
14:05:30 25 organization nationwide actually has more power than the

14:05:33 1 courts because even though the judge said I could travel  
2 out of state with permission, the Interstate Compact says,  
3 "No, you can't? Sorry."

4 So I wasn't allowed to travel out of state  
14:05:46 5 after 2004 because of the Interstate Compact, which I  
6 found interesting.

7 As far as job and career losses go, I've lost  
8 my license to practice medicine. Interestingly enough,  
9 revocation of a physician's license is not mandatory  
14:06:04 10 following conviction of a felony, even a sex offense.

11 Over the years, the medical board has handled  
12 disciplinary actions against physicians in various ways.  
13 There have been physicians who have been convicted of  
14 sexual battery against a patient, and sometimes those  
14:06:22 15 cases end up with -- in criminal prosecution. But even in  
16 those cases of -- of -- a certain percentage of them have  
17 actually been able to undergo rehabilitation and reenter  
18 practice.

19 I don't want to go into a lot of detail about  
14:06:37 20 my license issues except to say that I -- my -- the loss  
21 of my license falls under a special law that went into  
22 effect because of a particular legislator in the state of  
23 California who was a former probation officer and decided  
24 that he wanted to make a name for himself. And he got a  
14:06:59 25 law passed after -- while I was still on probation, that

14:07:03 1 forces the medical board to rescind the license of any  
2 physician who has ever had to register as a sex offender,  
3 for any length of time, since 1947.

4 And, fortunately, that law has been challenged  
14:07:14 5 a couple of times already in courts, various courts. It  
6 was challenged here in Sacramento in the U.S. District  
7 Court, and it -- it had to be modified. But fortunately,  
8 I have some avenues open to me there through the Superior  
9 Court, and I'm headed in that direction in the near future  
14:07:37 10 to try to get my medical license back.

11 I've lost my professional relationships with  
12 colleagues. Immediately, you get labeled. They don't --  
13 even my former call members I used to share a call with do  
14 not return my phone calls anymore.

14:07:54 15 And the details of my crime were posted in the  
16 disciplinary action. They call it the "Accusation" that  
17 gets published on the medical board's website. And this  
18 is done under the guise of protecting the public.

19 So earlier, we heard some testimony from  
14:08:11 20 others about the campaign for Ban the Box. I am  
21 100 percent in favor of that, and I'm glad the state of  
22 California has banned the box. But from my -- from where  
23 I sit, I don't think that's going to really solve the  
24 problem because as long as the pro- -- the prospective  
14:08:26 25 employer can go to the website, like Megan's Law, and pull

14:08:32 1 you up, they don't have to do a background check. They  
2 just did one. All they -- they go right to Megan's Law  
3 and type your name in, and there you are.

4 And they are -- they are going to use that for  
14:08:42 5 screening. And as far as the -- any -- any physician --  
6 and I assume this is the case with other boards --  
7 although I'm not 100 percent sure of that -- I think that  
8 any member of the public can go to the medical board's  
9 website or perhaps the contractor board's website and look  
14:09:00 10 up disciplinary actions against a licensee, and all the  
11 details of the crime are there posted for anyone to read.

12 And so from where I sit, it doesn't really  
13 matter whether you Ban the Box or not. I think I'm still  
14 going to experience a tremendous amount of discrimination.

14:09:20 15 I've probably applied to close to a thousand  
16 jobs in the last 12 years. I've been able to get a few  
17 part-time jobs, but I have yet to find meaningful work.  
18 I've been denied a state insurance license after I went to  
19 insurance school and passed the state insurance test for a  
14:09:37 20 property and casualty broker's license.

21 The State Insurance Commissioner,  
22 John Geramendi, denied me an insurance license solely on  
23 the basis of a previous criminal record, which he can  
24 legally do. It's written right in the Insurance Code.

14:09:57 25 But that was the only reason I was rejected.

14:10:00 1                   And I was also denied a contractor's license.  
2                   So I've tried to switch gears several times.  
3 I even went back to graduate school and got a master's  
4 degree in business administration. I'm now \$40,000 more  
14:10:11 5 in debt for that, with Stafford loans and so on. I have  
6 no idea how I'm ever going to pay that back. I still  
7 can't get a job.

8                   One of the more most recent, horrendous  
9 examples of not being able to get a job occurred just on  
14:10:27 10 the other end of the Bay Bridge, when I applied as a  
11 nonlicensed physician to go out and harvest tissue for a  
12 company called the -- well, I don't know if I should  
13 name -- we're on the record here, so I won't name the  
14 company. But there's only two companies in California  
14:10:50 15 that harvest tissue from cadavers and so on. So it  
16 wouldn't be hard to find out who it is.

17                   But anyway, I -- they will never tell me that  
18 was why I was rejected. I was totally up-front with them.  
19 I've tried various approaches because I've tried to say,  
14:11:05 20 "Well, if I don't have to answer it on a box, or if I  
21 leave the box blank, maybe I can get an interview. Maybe  
22 I can explain myself in an interview."

23                   I was in sales for a while and pretty good at  
24 that. I thought maybe I can sell myself if I can just get  
14:11:18 25 the interview. I got the interview at this donor

14:11:21 1 transplant place, and I was up-front and gave them a whole  
2 ream of information about my past criminal actions and the  
3 rehabilitative efforts I have undergone including  
4 psychological evaluations and so on -- treatments that  
14:11:40 5 I've been through for years. And been -- I've been  
6 assessed a very low risk, somewhere between  
7 0 and 1 percent risk of recidivism, but they never came  
8 through with any further offers after that point.

9 So from where I sit, I think that it's very  
14:12:00 10 difficult to think -- you're basically damned if you tell  
11 somebody. You're going to be rejected immediately. If  
12 you're up-front about your offense, they're not even going  
13 to give you a chance. The only way you'll ever have a  
14 chance is if you can get to the interview stage and hope  
14:12:15 15 that somebody will have enough compassion, understanding,  
16 and so on to offer you a job anyway, and it seems like a  
17 long shot at this point in time.

18 So I'm hoping that I will be able to get my  
19 medical license back so that I can somehow return to work.  
14:12:34 20 I have a tentative offer from a hospital who's in a very  
21 rural location, and they agreed to at least consider me  
22 for employment. And it's going to be a long road back.  
23 The fun is going to start as soon as I get my license  
24 reinstated. Then I have to go back and pass tests and get  
14:12:53 25 some additional clinical experience so that I can be



14:12:58 1 brought current on my knowledge in the field and that sort  
2 of thing.

3 So other employment problems I've noticed -- I  
4 am skipping over to page 3. There's all kinds of ads. If  
14:13:12 5 you go to Craig's List and look in the employment section  
6 today in any city, especially here in Sacramento or  
7 San Francisco, there's all kinds of employment ads there  
8 that say right on them: "No felons."

9 So despite the EEOC and Department of Labor's  
14:13:30 10 guidelines for how employers should look at a previous  
11 criminal record, there are employers out there who are  
12 making job offers contingent upon whether you've got a  
13 criminal past or not. It's happening every day.

14 I've been discriminated against for housing.  
14:13:50 15 There are numerous -- numerous -- I can give you examples  
16 of apartment complexes have a written policy of not  
17 allowing ex-felons to rent apartment space there, which is  
18 a violation of HUD regulations, but they do it all the  
19 time.

14:14:09 20 I lost my home to foreclosure in 2010 because  
21 I simply could not make the payments anymore. And I had  
22 raided a retirement fund that I had to come up with the  
23 down payment and to make monthly payments for four years  
24 on a condo because I couldn't find a place that would rent  
14:14:30 25 to me. And I found out it was easier to buy a place on a

14:14:34 1 stated income back in 2006 than it was to rent.

2 I would be homeless right now if it weren't  
3 for the fact that I was taken in by a 92-year-old  
4 gentleman from my church who took pity on me and said,  
14:14:49 5 "Well, you can come live with me." His wife passed away a  
6 few years ago. I'm able to live in his upstairs and help  
7 him around the yard and things.

8 So don't let the clothes fool you. I actually  
9 am homeless and currently on food stamps. No income, but  
14:15:09 10 things are still looking up for me, and I feel I still  
11 have some hope for the future.

12 And I would like to see some of the changes  
13 made that I've listed on page four, and I'm not going to  
14 read them. You can look at them and ponder them and ask  
14:15:24 15 me questions if you'd like.

16 And thank you for asking me to be here today.

17 RICK JONES: Thank you for being here.

18 Mr. C.

19 MR. C: Thanks very much.

14:15:33 20 I'm just going to give you a quick little  
21 background on myself. Tell a little bit from a  
22 perspective, both as an applicant employee as well as an  
23 employer. I'm an employer that has given people second  
24 chances, and we'll talk about them and give both  
14:15:46 25 perspectives.

14:15:47 1                   So first, a little about my background. First  
2 of all, my legal issues -- obviously, I take full  
3 responsibility for what happened to me and what actions I  
4 took. I worked in a company. It was involved in a  
14:15:57 5 restatement. The transactions were found to be  
6 fraudulent. I wasn't necessarily the architect of the  
7 transactions. I was familiar with the executed  
8 transactions. And the issue for me, was twofold: One,  
9 you know, as I see it, I wasn't wise enough and courageous  
14:16:14 10 enough to stop the transactions when they were occurring,  
11 number one; number two; I was aware of the transactions.  
12 So therefore, I was -- took a plea and received probation,  
13 and this was terminated early.

14                   So to tell a little bit of my situation, for  
14:16:30 15 me, you know, I was very fortunate prior and even today.  
16 I believe I still am fortunate to live the American Dream.  
17 I still do that.

18                   I earned a top education from an Ivy League  
19 for a graduate degree in business. I went to a top  
14:16:46 20 undergraduate school. I served my country as an officer  
21 in the military. I spent 10 to 15 years learning how to  
22 manage large organizations. I worked for a Fortune 10  
23 company and a Fortune 500 company. And the military --  
24 the government spent money training me how to lead troops,  
14:17:04 25 basically.

14:17:05 1                   When I made my mistake, you know, it  
2                   effectively ended my corporate career. Similar to the  
3                   gentleman, you know, you get -- I was trained to do  
4                   something. Experienced to do that. And all of a sudden,  
14:17:17 5                   boom, that was gone.

6                   You know, to give you a little story, before  
7                   my conviction was made public, I traveled about 10,  
8                   15 cities. I have a lot -- still have, thankfully, a lot  
9                   of mentors who are, you know, ones going to be a CEO of a  
14:17:36 10                  Top 10 company in the United States. And they all said,  
11                  "We'd love to hire you. We can't do it. You're not" -- I  
12                  was talking to very senior people who, you know, are top  
13                  seven of the company. They can make the call. But for  
14                  political or for liability reasons, they were not able to  
14:17:52 15                  hire me.

16                  So then, from that, what I had to do was  
17                  either -- I had two options: Either buy a company; or,  
18                  second, network like crazy with people I went to graduate  
19                  school and worked with throughout my life to find a small  
14:18:08 20                  company where there was no shareholders, quite frankly, in  
21                  terms of -- from a corporate situation.

22                  And I came very close to buying a few  
23                  companies with a couple of business partners. And,  
24                  similar to these gentleman, as I looked at industries,  
14:18:23 25                  insurance, auto dealerships, all those, they all have

14:18:25 1 legal restrictions against felons, number one.

2 Number two, though -- so what ended up  
3 happening is a person I went to graduate school with, who  
4 I worked with before, has a company. I came in as one of  
14:18:37 5 the principals of the company. We have approximately 250  
6 employees. I manage about 150 of those employees.

7 You know, on an emotional level, I think, up  
8 to the point where I made my major mistake, you know, I  
9 was a pretty driven person. You know -- you know, my  
14:18:57 10 parents taught me, "Hey, work hard. Have goals. Get a  
11 good education. "And today, we instill those values to  
12 our kids.

13 And yet, you know, sometimes I lie at night,  
14 and I go, "I'm never going to reach my potential." I -- I  
14:19:12 15 see, you know, I work -- I still work 60, 80 hours a week.  
16 You know, and all of you in this room who are lawyers, who  
17 are professionals, most of you love the law. Most of you  
18 love what you do. Similar to these gentlemen, imagine a  
19 situation where you cannot do what you love, you know.  
14:19:29 20 That would eat at you, right? And so that is one aspect.

21 In terms of financial, you know, by nature,  
22 I'm an analytical person. I've done benchmarking on  
23 salaries. For me, you know, my loss in salary is about --  
24 roughly, you know -- I'm -- compared to my peer group in  
14:19:50 25 either corporate or graduate school, I'm down about

14:19:52 1 70 percent. This is where they are, right? So that's  
2 the -- the number -- numeral -- number difference.

3 Another way I look at it is from an economic  
4 standpoint, an open market. You know, once you have a  
14:20:06 5 job, you're afraid to leave the job because, you know, if  
6 you to go a place where you're not sure -- sure about it,  
7 not sure about the politics, not sure about the  
8 environment, you're not going to take a chance. You're  
9 not a free agent.

14:20:19 10 So imagine, from an economic standpoint,  
11 you're not a free agent. Therefore, you're beholden to  
12 one or two or ten employers at most, or 15. That makes  
13 your pricing power decline dramatically. So imagine you  
14 had to work at one law firm, and that was it. That was  
14:20:36 15 the situation there.

16 In terms of other restrictions, we talked  
17 about ownership. The other aspect is community. I sit on  
18 two advisory boards in the community, nonprofits. They  
19 have asked me from time to time, "Do you want to be a  
14:20:52 20 board of director member? Do you want to help us raise  
21 funds?"

22 You know, I went to school with a lot of  
23 people who have a lot of assets, and they want those funds  
24 contributed to a nonprofit, and/or be involved in -- I  
14:21:05 25 worked at a management consultant company. So they want

14:21:07 1 me involved in strategy work for that. I can't. You  
2 know, I can do that from an advisory -- I can't do it from  
3 a board of directors. They would like that.

4 One time I wanted to volunteer for the  
14:21:16 5 Red Cross. One thing the military teaches you is crisis  
6 management, you know, like disaster, you know, et cetera,  
7 there. They do a background check in the Red Cross now  
8 because of the funding issues that they've had there in  
9 the past.

14:21:31 10 In terms of travel abroad, our company has  
11 opportunities to join venture -- to go overseas. I spent  
12 some time -- I spent many years working overseas. You  
13 know, we -- you know, there are travel restrictions as you  
14 probably know. So that limits my career potential from  
14:21:47 15 that standpoint. And in the company, I have the most  
16 international experience, but it can't be exercised upon.

17 The other aspect is we have -- I'm in a  
18 hospitality business. We have hospitality units at the  
19 airport, and because of TSA, I'm not allowed to go in to  
14:22:07 20 those airport locations.

21 Interestingly, I took my family to  
22 Washington, D.C. recently. And I had a friend who, you  
23 know, I went through the background security check of the  
24 White House. I could get into the White House, but I  
14:22:21 25 cannot get in behind an airport.

14:22:24 1                   So I was really surprised. I thought I could  
2 not get in. It was the fastest background check I  
3 received. We do background checks in our current company.  
4 It came in within, like, that afternoon -- boom --  
14:22:33 5 approved and good to go. I was, like, this is crazy.

6                   So that's it from, you know, from my  
7 standpoint. You know, and like these gentlemen, and I'm  
8 an optimist from that standpoint. That's on the employee  
9 side.

14:22:50 10                   On the employer's side, you know, I have  
11 150 people. We do give people second chances. We have  
12 hired people who have had burglaries, robberies, sex  
13 offenders. We've had hired people who've had drug issues.  
14 And it's been mixed results.

14:23:09 15                   The majority, no one has repeated their crimes  
16 for what they were convicted, except for the people with  
17 drug issues. So, you know, our sample is, you know, our  
18 sample over the last six years -- I've hired maybe a  
19 dozen, 10, 15. I don't know the exact number. And of  
14:23:29 20 that, the biggest issue has been drug repeat, the  
21 addiction issue. No one has repeated their -- again,  
22 their past.

23                   And so I will tell you as an employer, some of  
24 the complications we have is some of the documentation  
14:23:42 25 because, given I've gone through the legal process, I can



14:23:47 1 ask very direct questions. When I ask my HR director to  
2 do research, it's really hard because he or she doesn't  
3 have time -- he doesn't have time to go do all of the  
4 research.

14:23:57 5 You know, he has to go back to county records  
6 or go back to state records because -- to get the  
7 information so that we can understand the circumstances.  
8 Because when I get a background report and we run them,  
9 you just get top-line information. You don't get detailed  
14:24:14 10 information. So you have -- so it costs money and time,  
11 which are precious commodities in business, to go do that  
12 research. So you really have -- you know, obviously, I  
13 come from a different situation, so I make my HR director  
14 do that, you know, to do the research. And sometimes, we  
14:24:27 15 still can't get the information.

16 And some of the individuals that have  
17 committed the crime, you know, they don't want to give it  
18 to us, or they don't have it themselves. They just kind  
19 of lock it away. And they don't want to deal with it, or  
14:24:35 20 they don't have access to the paperwork.

21 What would be helpful is to have a better  
22 understanding as an employer, you know, depending upon  
23 how, you know, the changes in laws occurs, to get  
24 information more readily available.

14:24:47 25 And right now, as a company, we go with a lot

14:24:51 1 of gut. We make those decisions. We interview  
2 references. We -- if possible, and it depends upon the  
3 year, we'll check with the probation officer or the parole  
4 officer or the -- or the halfway house or whatever the  
14:25:02 5 situation may occur.

6 And we don't discriminate in pay. So --  
7 because we just are very -- we run the company objectively  
8 and logically from that standpoint.

9 So in, you know, in closing, I think, you  
14:25:16 10 know, I think the issue is: What's our system? Is it  
11 punishment, or is the rehab?

12 And to be brutally honest with you, I believe  
13 in both. You know, I made a mistake. I got punished for  
14 it; but at the same time, you know, there's

14:25:28 15 rehabilitation. There's a factor of, hey, do I want to  
16 live a life sentence? You know, probably not, you know,  
17 from that standpoint.

18 And, you know, at the end of the day, you  
19 know, I think that, you know, every situation is

14:25:41 20 different. I think, you know, two things. One is, you  
21 know, there needs to be some type of statistical analysis  
22 or some type of analysis saying you have these set of  
23 crimes. You're a higher risk. And you can't get away  
24 from that data, right?

14:25:54 25 And on the -- and then there has to be some

14:25:56 1 kind of due process or process where the government or  
2 some type of judge or some type of board or whatever that  
3 says: "Hey, the probability is 0 or 5 percent." And then  
4 that gives business a higher confidence rate because if  
14:26:12 5 everyone is grouped the same, then it's easy. It's no.

6 So being able to analyze and group that, I  
7 think, would help, too. Because as an employer -- I'm  
8 talking now on the employer side. Okay.

9 That's it. Thanks.

14:26:27 10 RICK JONES: Thank you.

11 Our mission here as we go around the country  
12 is really to -- to, one, sort of understand the scope and  
13 the magnitude of the problem and to try to get our arms  
14 around it. It's clear to me that we may never get our  
14:26:46 15 arms completely around the problem because, you know,  
16 listening to your stories, you know, there are limits  
17 to -- to our ability to completely understand the pain and  
18 the devastation and the hurt and the loss and the -- the  
19 depression and all those kind of things, but to -- but to  
14:27:06 20 understand.

21 And then, secondly, to -- and our audience  
22 really is more the legal system and the -- the -- the  
23 criminal justice system and even, more specifically,  
24 defense lawyers, who have to deal with these issues and  
14:27:25 25 think about these problems -- and some don't -- and then

14:27:28 1

to educate folks that think about these problems.

2

And so -- and so we want to really think about

3

and understand, from your perspective, what works; what

4

doesn't work; what are the legal mechanisms that have

14:27:43 5

benefited you. What are the biggest roadblocks and

6

hurdles? Where are the gaps? Right?

7

And I want to discuss that with you a little

8

bit. I'm not really going to pick on people or call on

9

people or anything like that. I'll just throw the

14:27:59 10

question out. And I'm interested in everybody's sort of

11

opinion.

12

Two quick questions before we get to that: Is

13

public urination still a registerable offense for sex

14

offender registration --

14:28:12 15

JANICE BELLUCCI: Yes.

16

RICK JONES: -- to this very day?

17

JANICE BELLUCCI: Yes.

18

RICK JONES: It is. If it's not too personal

19

a question, I hope not, what industry are you in?

14:28:25 20

MR. C: Hospitality industry.

21

RICK JONES: Hospitality?

22

MR. C: Yeah. So restaurants, hotels, and

23

that industry.

24

RICK JONES: Okay. Great.

14:28:29 25

MR. C: Yeah.

14:28:30 1 RICK JONES: So -- so let me just ask: How --  
2 when you were first arrested, and even before you were  
3 convicted, right, did any of you -- I can almost guess the  
4 answer, but I don't want to -- did any of you have public  
14:28:50 5 defenders representing you? You all had retained counsel?  
6 Okay.

7 As you look back, let me just ask you: How  
8 long ago was your conviction?

9 MR. C: Five years ago.

14:29:02 10 RICK JONES: Five years?

11 KEN WOODS: Eleven years.

12 RICK JONES: Eleven years?

13 Mr. Lindsay?

14 FRANK LINDSAY: Thirty-three.

14:29:07 15 RICK JONES: Thirty-three years.

16 As you think back about the process of being  
17 arrested, retaining counsel, going through the criminal  
18 justice process, ultimately, entering a plea, being  
19 convicted in some form or fashion, having your case  
14:29:22 20 disposed of in some way, is there something -- had you  
21 known where you would be sitting today, would you have  
22 done anything differently in terms of the way you handled  
23 your case, negotiating a plea?

24 Would -- would you talk about that just a  
14:29:42 25 little bit?

14:29:43 1                   What -- what could your defense attorneys have  
2                   done differently that would have, on the front end,  
3                   made -- made your decisions differently, if at all?

4                   KEN WOODS: I could speak to that.

14:30:00 5                   I had one of the best criminal defense  
6                   attorneys in California. He did a great job. I was  
7                   looking at possible mandatory prison time for my crime,  
8                   and I was very fortunate to get a suspended prison  
9                   sentence with probation.

14:30:16 10                   But criminal defense attorneys can't have  
11                   specialized knowledge in defense of licenses. So there's  
12                   two -- two things that I would have done differently. One  
13                   is, I think I would have gotten -- when I first suspected  
14                   that my lawyer for my -- my attorney for my -- that was  
14:30:36 15                   defending my medical license was not really acting in my  
16                   best interest and that I had questions that weren't being  
17                   answered, I should have followed up on those questions.

18                   And I think that it would really behoove  
19                   criminal defense attorneys to understand that just because  
14:30:56 20                   you hire another attorney who says he's an expert in  
21                   defending professional licenses, that does not mean that  
22                   he's going to do the best job of defending that client.

23                   And if we're really in a situation where we  
24                   believe in restoration and rehabilitation, that we need --  
14:31:16 25                   we need so many reforms. We need reforms at the judicial

14:31:19 1 level -- legislative level, to allow judges to incorporate  
2 rehabilitative sentencing.

3           You read about that. I've read about it. I'm  
4 sure it's -- and in particular, in cases of professional  
14:31:32 5 licenses, I see no reason why it wouldn't be in society's  
6 best interest to have the licensing board work with the  
7 criminal justice system in coming out with a solution that  
8 would include rehabilitation.

9           In California, there's even a -- there's even  
14:31:52 10 a law -- Business and Professional Code 2229 states that  
11 "The Division shall, whenever possible, take action that  
12 is calculated to aid in the rehabilitation of the  
13 licensee."

14           That just plain didn't happen in my case.  
14:32:05 15 It -- you know, it's a law, but, you know, so what? It's  
16 just a bunch of words on paper.

17           That's what I would try to say that could have  
18 been done differently. Once you lose that license, you  
19 can't -- I mean, I can't even pick up a syringe and throw  
14:32:23 20 it in a waste basket without a medical license now. I  
21 can't touch a patient chart to do any kind of review work.  
22 They wouldn't even let me work on dead people over here,  
23 across the Bay.

24           And it's just -- it's humiliating to realize  
14:32:36 25 that you have all these years and years of training behind

14:32:39 1

you, and you can't do anything related.

2

MR. C: Mine is a little bit more humorous

3

situation.

4

You know, I would have my attorney do a better

14:32:51 5

job because my boss who gave me directives, she got

6

immunity. The account person who gave me the advice, he

7

got immunity. So I don't know if he did a good enough job

8

with the DOJ.

9

RICK JONES: But you were in a position

14:33:04 10

where -- were you in a position where the company provided

11

you with counsel?

12

MR. C: No. Because I was junior enough,

13

unfortunately -- great question -- I was junior enough,

14

unfortunately, where I didn't get the -- what do you call

14:33:18 15

the protection -- you know, the D and C, or what do you

16

call it, the directors and -- D and O coverage. Whereas

17

the people right above me all got D and O protection. I

18

forked out hundreds of thousands, close to a million

19

bucks. All the other guys got all the D and O paid out.

14:33:35 20

RICK JONES: Did your attorney at any point

21

during the -- during the process leading to your

22

conviction discuss with you the collateral consequences of

23

what was --

24

MR. C: You know, no. Because I think the

14:33:48 25

primary objective was to make sure, you know, like, let's



14:33:51 1 cooperate with the government. Let's, you know, get the  
2 probation.

3 You know, we were tactical at that point -- or  
4 strategic at that point. They look at it.

14:34:00 5 And, you know, and I kind of knew, you know,  
6 because I wasn't, you know, business is not as  
7 license-driven, you know, as -- I knew it was going to be  
8 the end of my corporate career to an extent.

9 RICK JONES: You wouldn't have done anything  
14:34:14 10 differently had you had a prior knowledge about what your  
11 situation was?

12 MR. C: Not -- not -- I can't think of any  
13 specifically.

14 RICK JONES: Okay.

14:34:20 15 FRANK LINDSAY: For me, I was very fortunate.  
16 I had a very good defense attorney. He got me six months  
17 in county jail, two years probation, work furlough. I  
18 felt very fortunate.

19 He said, "It could be much worse."

14:34:40 20 And the judge saw that, evidently, that the --  
21 I had no record. And there has been no record generated  
22 since. But who knew what would happen in 20 years?

23 And in 20 years, what appeared to happen is  
24 laws were changed that then said: "Your contract is null

14:35:06 25 and void. We're changing it. You don't get a decision in

14:35:09 1

it."

2

RICK JONES: Right.

3

FRANK LINDSAY: And now you are going to be

4

held accountable and put into this box for the rest of

14:35:17 5

your life.

6

JANICE BELLUCCI: It's something no attorney,

7

no human being could have predicted.

8

FRANK LINDSAY: Now when I got in touch with

9

my attorney after getting -- basically, being forced under

14:35:28 10

threat of arrest, which would have killed my company

11

immediately -- under threat of arrest, I did sign the

12

paper. I didn't take an attorney with me.

13

I figured these are friends of mine at the

14

police department. We can work together, and, you know,

14:35:48 15

let me try to find what you need to see. And I produced

16

the dismissal, but that wasn't good enough.

17

So under threat of arrest -- and then I did

18

find my attorney of record and asked him, "What should I

19

have done?"

14:36:04 20

He said, "You shouldn't have signed."

21

RICK JONES: Right. So you had -- you had --

22

yours is an interesting case because you had 20 years

23

of --

24

FRANK LINDSAY: Right.

14:36:12 25

RICK JONES: -- you know, non --

14:36:14 1

FRANK LINDSAY: The life of Reilly.

2

RICK JONES: Nonregistrant life where you

3

actually went back and became a productive citizen in

4

society?

14:36:20 5

FRANK LINDSAY: You have to understand now

6

that the education process via the California Sex Offender

7

Management Board has done the statistical research to say:

8

"Okay, 95 percent of convicted sex offenders never

9

Reoffend."

14:36:37 10

Hmmm. But we're still lumping them all into

11

the same group in this state and following them and

12

managing them and restricting them smaller and smaller.

13

RICK JONES: How many years now have you been

14

a registrant?

14:36:49 15

FRANK LINDSAY: '96.

16

RICK JONES: '96.

17

JANICE BELLUCCI: That's when Megan's Law was

18

passed. And so, in Megan's Law, that's when everybody got

19

put on a public website.

14:37:01 20

And part of the problem is the public doesn't

21

know what to do with this information. They're very, very

22

confused.

23

And, you know, as bad as things are in

24

California, they're going to get worse because next year,

14:37:13 25

there's a law -- and it's just tick, tick, tick, waiting

14:37:16 1 for this to happen -- they're going to put the risk  
2 assessment of each registrant on the public website.

3 FRANK LINDSAY: That's public -- that's --  
4 that's private information.

14:37:28 5 Do we have no privacy? There is no privacy --

6 JANICE BELLUCCI: What --

7 FRANK LINDSAY: -- whatsoever.

8 JANICE BELLUCCI: The public is not going to  
9 know what to do with that information. They don't know

14:37:38 10 what to do with information that they're looking at right  
11 now.

12 You ask this risk assessment -- and whether  
13 it's a 0 to 10, and maybe you're a 7. Most people are not  
14 going to look to see, is 7 good? Is it high, or is it

14:37:46 15 low? Does that mean that you're more liable to reoffend  
16 or less liable to offend?

17 We've got vigilantes out there right now that  
18 are hunting down human beings, citizens of our country,  
19 and killing them.

14:38:01 20 FRANK LINDSAY: This is how this young man  
21 ended up in my house. He went to Megan's Law website. He  
22 has issues from the past.

23 I'm not quite sure of all of that at this  
24 point, but he wanted to do something about it. And in his

14:38:15 25 mind, doing something about it -- he was in the police

14:38:18 1 department earlier that morning wanting to -- demanding to  
2 know what the police department was doing about sex  
3 offenders. And then ended up storming out and coming to,  
4 first, another registrant's home, trying to break in.

14:38:32 5 He -- resistance there was enough that he never got in. I  
6 wasn't home. He then waited for me.

7 RICK JONES: Hmm.

8 FRANK LINDSAY: Where it would have gone from  
9 there -- how fast does this change?

14:38:44 10 Well, from that threat of arrest to the time I  
11 signed, I was told -- and the only reason I did sign is  
12 that "This information is going to be held by the  
13 department only."

14 RICK JONES: Right.

14:38:57 15 FRANK LINDSAY: Okay. Well, another  
16 contract -- verbal, but a contract that was law at the  
17 time that stated that a registrant's information is to be  
18 held by law enforcement only for law enforcement purposes.  
19 Then it was released to the public because our  
14:39:16 20 Supreme Court said, "It's not punishment."

21 RICK JONES: Right.

22 FRANK LINDSAY: So I then -- because the  
23 person who owned the building decided that he wasn't going  
24 to renew my lease after 11 years of rent on time --

14:39:31 25 JANICE BELLUCCI: For your business?

14:39:32 1 FRANK LINDSAY: -- for my business. And  
2 fortunately, I had a service, then, that didn't require a  
3 rented space. So I retired to my home to run it out of my  
4 home, which -- it keeps dwindling, as people hear rumors  
14:39:46 5 and innuendo in a small community.

6 RICK JONES: I have just two more sort of sets  
7 of questions, and then I want to give everyone else a  
8 chance because I know they want to get in on this.

9 In terms of now, on the back end, right, life  
14:40:02 10 postconviction, are there any -- are there any -- are  
11 there any things in place currently; legal mechanisms that  
12 actually work, that actually are a benefit that we should  
13 actually, you know, be sort of thinking about positively  
14 that -- that do -- do some good and have helped you in  
14:40:24 15 your situations? Any legal mechanisms that you would say,  
16 "I don't know what they are: Expungements, pardons?

17 KEN WOODS: In California, if you've committed  
18 certain code violations in the criminal code, you are not  
19 eligible for a certificate of rehabilitation or  
14:40:42 20 expungement.

21 And I think that that really is -- is a wrong  
22 approach for a state that just changed the name of their  
23 Department of Corrections to the Department of Corrections  
24 and Rehabilitation. It's going to take more than a change  
14:40:59 25 in the name of the department to actually institute

14:41:01 1 rehabilitation in this state.

2 And I think that our legislators need to get  
3 serious about it and recognize that certificates of  
4 rehabilitation ought to be available for every first-time  
14:41:13 5 offender --

6 JANICE BELLUCCI: And I --

7 KEN WOODS: -- not just --

8 JANICE BELLUCCI: I would like to add to that.  
9 I'm working with a gentleman who has one misdemeanor  
14:41:22 10 offense, a sex-related offense. He committed that 12  
11 years ago.

12 In California, if you have one misdemeanor  
13 offense, no subsequent anythings -- misdemeanor, felony,  
14 anything, then you're eligible to apply for a certificate  
14:41:37 15 of rehabilitation. So he went to Superior Court and  
16 applied for his certificate. This is the only way in  
17 California to get off the registry.

18 He was told no.

19 RICK JONES: Because?

14:41:48 20 JANICE BELLUCCI: Because he did not renew his  
21 driver's license on time, once, since that time.

22 RICK JONES: Hmm.

23 JANICE BELLUCCI: And the judge said, "Oh,  
24 don't worry. You can come back two years from now and ask  
14:41:58 25 again." But he has to wait for two more years.

14:42:00 1 RICK JONES: I just have one -- did you want  
2 to --

3 MR. C: No.

4 RICK JONES: I just have one last question,  
14:42:03 5 and it is for you, Mr. C.

6 And now this is switching to your hat as an  
7 employer.

8 MR. C: Okay.

9 RICK JONES: All right. We heard from a  
14:42:12 10 management-side-employment lawyer earlier today. And one  
11 of the things he said that is sort of foremost in the  
12 minds of his clients, the business community employers,  
13 is, if I hire these folks, what's in it for me, right?

14 As a business owner, what's the answer to that  
14:42:34 15 question: What's in it for me?

16 MR. C: You know, we do get tax credits on  
17 the -- I think, on the state level. I have to check with  
18 the county, but we do get tax credits when we hire someone  
19 with a record. I think it's a couple thousand -- it's  
14:42:49 20 capped at 2000 or some dollar amount.

21 That's number one.

22 Beyond that, you know, I'll tell you the  
23 second thing. Sometimes you get really highly qualified  
24 people, over- --

14:43:01 25 FRANK LINDSAY: Yeah.



14:43:01 1  
2  
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14:43:08 5  
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14:43:21 10  
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14:43:37 15  
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14:43:44 20  
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14:44:00 25

MR. C: -- overqualified people for the position.

I think that's -- we get people who, you know, come in at entry-level positions or second-level positions, where they've done that previous position in the industry. Maybe they were four levels above that or three levels.

So I think that's the possible -- now on the liability side, you know, depending upon the unit of operation, you do have close quarters. If it's a violent issue, then you are concerned on the liability side.

So, you know, I got to -- you can look at it from every angle, you know. So if it's only two people in the unit working late at night, you think about that. You have to.

RICK JONES: Right.

MR. C: I just have to, and I'm being very, you know, like it is.

RICK JONES: But from a "what's in it for me" on the positive side, economic standpoint, it's tax abatements, and it's -- and it's highly qualified --

MR. C: You might get over- -- you generally get an overqualified person from that standpoint. And also, if you get the right person, they'll work their tails off.

14:44:01 1

RICK JONES: Right.

2

Larry, did you want to get in on this?

3

LAWRENCE GOLDMAN: Okay. Let me ask a couple

4

of questions. Let me be frank with you. You three know

14:44:12 5

it better than we.

6

The chance -- since we've got to submit a

7

report in a year and a half, maybe, some people will take

8

it seriously. I don't think anyone at this table,

9

frankly, thinks there's going to be a massive movement --

14:44:27 10

in knowing what we all know about the past years -- in

11

significant changes to sex registries.

12

The D.A. of Alameda County who was here

13

yesterday, who you must know is head of the state

14

organization -- and frankly, we don't have -- unless

14:44:46 15

you're going to tell me differently -- D.A.s like that in

16

New York -- is a very reasonable, humane person -- talk to

17

us about the political problems which the three of you

18

know better than anyone.

19

There are things that seem to me -- I mean,

14:45:06 20

honestly seem imminently reasonable, even more reasonable

21

than that and the like.

22

What -- can I ask you -- of the things that

23

possibly have a shot, one would be tiering, different

24

tiers, I assume. Another is limits, you know, that you're

14:45:24 25

not tarred-and-feathered until you die.

14:45:28 1 Is there anything else that you think is  
2 within the realm of --

3 JANICE BELLUCCI: Yes.

4 LAWRENCE GOLDMAN: -- people are going to take  
14:45:35 5 seriously?

6 JANICE BELLUCCI: Yes. The courts have to  
7 recognize that mere registration is a punishment. Okay?  
8 That will be one thread that unravels the tapestry because  
9 that 2003 decision by our U.S. Supreme Court that says  
14:45:49 10 registration is not a punishment therefore allows states,  
11 counties, cities to pass ex post facto laws.

12 LAWRENCE GOLDMAN: Isn't that generally the  
13 law around the country?

14 JANICE BELLUCCI: What?

14:46:01 15 LAWRENCE GOLDMAN: Isn't that done only in  
16 California --

17 MARGARET LOVE: No. It's the U.S. Supreme  
18 Court.

19 JANICE BELLUCCI: Our U.S. Supreme Court.

14:46:09 20 MARGARET LOVE: The U.S. Supreme Court.

21 JANICE BELLUCCI: Our U.S. Supreme Court ruled  
22 that --

23 MARGARET LOVE: Two cases came at it in the  
24 last week.

14:46:11 25 JANICE BELLUCCI: -- in 2003, that

14:46:13 1

registration was not a punishment.

2

What we need to do is get a decision from the  
U.S. Supreme Court that says registration is a punishment.

3

4

Therefore, any law that's applied retroactively is

14:46:23 5

ex post facto.

6

LAWRENCE GOLDMAN: But Judge Scalia has  
stopped returning my calls --

7

8

JANICE BELLUCCI: He never took mine.

9

FRANK LINDSAY: So what will make a

14:46:33 10

difference?

11

RICK JONES: Yeah.

12

FRANK LINDSAY: Education. Education and a  
paradigm shift in the thought of what our justice system  
is supposed to be. And for me -- I've had a lot of time

13

14:46:45 15

to think about that. And for me, my co-author and I

16

looked at: What do people really want on this planet?

17

What do they really want?

18

And I want the exact same thing that everybody  
in this room wants. I want peace.

19

14:47:00 20

And that's what our justice system, I think,  
is supposed to be.

21

22

Define "peace." Set up a framework for  
maintaining that peace. And when somebody steps out of  
line, restoring that peace so that they can reenter the

23

24

14:47:16 25

collective, in peace.

14:47:19 1                   Pretty simple stuff because that's what we all  
2                   want. So the restoration part of justice is nonexistent  
3                   right now, really.

4                   JANICE BELLUCCI: There's one thing else that  
14:47:32 5                   would help, and this is legal: That right now, at least  
6                   in California, if you go to a counselor and you say, "I  
7                   have inappropriately touched a child," they have to report  
8                   it. It's mandatory reporting.

9                   So guess what? Nobody is going to go tell a  
14:47:47 10                  counselor they've inappropriately touched a child, very  
11                  few. In Germany --

12                  FRANK LINDSAY: In Germany. Yes. I have been  
13                  fortunate enough to have this young lady that comes to our  
14                  meetings give me a piece of evidence that works.

14:48:03 15                  Where are the new cases coming from? Within  
16                  the home and the circle of friends. Not from the stranger  
17                  on the street or the convicted offender.

18                  It's been -- there's new cases every day;  
19                  5,000 new cases last year.

14:48:25 20                  How do we stop this? Well, it's called  
21                  gungderfelt.

22                  In 2005, it was started in Germany. And as of  
23                  2010, what they had done -- and the only thing different  
24                  that they have in place in Germany that we do not have  
14:48:43 25                  here is confidentiality.

14:48:46 1                   Where someone -- and they do it over the  
2                   media -- they say: "If you're thinking these thoughts,  
3                   you need to call us" and then they set up a treatment  
4                   program. And right now, they have 0 percent --

14:48:58 5                   LAWRENCE GOLDMAN: I think this is -- you and  
6                   I had an open discussion in theory yesterday. I think all  
7                   of us have spend a good part of our life butting our heads  
8                   against the wall. And I'm trying to focus on things that  
9                   are within the realm of conceivability.

14:49:15 10                   Let me ask this, then I want to ask you one  
11                   other basic thought before --

12                   KEN WOODS: I had a comment about the tiered  
13                   registry. That is that there's a fair number of academic  
14                   articles out there and articles from people in law  
14:49:29 15                   enforcement who believe in tiered registries; that in  
16                   order to really make them fair and make them reasonable,  
17                   they need to be risk-based and not offense-based.

18                   A lot of the states that have tiered  
19                   registries now, the registries are offense-based. In  
14:49:47 20                   other words, the -- a particular code violation, they're  
21                   not risk-based at all.

22                   And that needs to be -- it needs to be  
23                   risk-based. Also, you need to -- you need to provide a  
24                   way for people to either get their level of -- their tier  
14:50:02 25                   level reduced on appeal. In order to preserve people's

14:50:05 1 rights, they need to be able to have some sort of an  
2 appeal mechanism so if they were to do a -- assign a  
3 Level 2 or 3, and they really, you know, think they should  
4 be a level -- one level lower, they have some sort of  
14:50:16 5 appeal process. And there should be some provision for  
6 being able to get off the registry after a certain period  
7 of time.

8 LAWRENCE GOLDMAN: Let me ask -- and this will  
9 also involve you, Mr. C, as you have some corporate  
14:50:28 10 background, and I'm speaking crazy.

11 At the moment, I am dealing with an entity, an  
12 organization called an "IPSIG," private something --  
13 private inspector general. And what this organization,  
14 headed by an individual, does is -- does an incredibly  
14:50:50 15 in-depth, quite expensive examination of an individual or  
16 a corporation to go to banks and say: "This is not a mob  
17 organization. This is not a money-laundering  
18 organization."

19 And because of the individual who runs it -- a  
14:51:08 20 former government official, very well respected -- some  
21 banks take it seriously. Your earlier suggestion that  
22 maybe there should be some state agency reviewing it may  
23 politically not make sense, but I'm wondering if  
24 someone -- you have to give me a royalty if you do this --  
14:51:28 25 if someone were to set up an organization -- someone with

14:51:32 1 credentials -- doctors, psychiatrists, medical people --  
2 and say, "I have examined these gentlemen, and their  
3 chances -- I'm certified, and I'm respectable -- their  
4 chances of recidivism are .0; at worst, .05."

14:51:49 5 I don't know. I think that's impossible --  
6 .0, .5 percent; one in 200.

7 Do you think that would help you anywhere? Do  
8 you think that would help, particularly, sex offenders in  
9 the corporate world?

14:52:06 10 MR. C: You know, on sex offenders, I can't --  
11 in general, I think it would be good because then someone  
12 is doing a -- you know, he is your employee, and you're  
13 making a gut reaction. It's really hard. But if someone  
14 is, you know, doing a risk assessment, I think it's  
14:52:20 15 better, right?

16 So my answer is yes. My short answer is yes.

17 LAWRENCE GOLDMAN: Do you --

18 JANICE BELLUCCI: In California, they --  
19 unfortunately, our folks can't even agree on what tests --  
14:52:30 20 so there's a SORAPSA score, there's a Static-99 score,  
21 there is all these different ways to test. And right now,  
22 there's not agreement as for which test is valid and which  
23 test isn't.

24 So as Ken just said, there's the type of  
14:52:42 25 testing that looks back to the original offense. You're



14:52:45 1 looking at the past. There's an another one that looks at  
2 where are you today. And so we've got the people in  
3 mental health that don't agree with each other.

4 Which one is actually the better predictor?

14:52:55 5 RICK JONES: Larry, we're running out of time.  
6 We've got to get to some other people. I'm sorry.

7 Chris.

8 CHRISTOPHER WELLBORN: Yes. Ms. Bellucci, is  
9 it?

14:53:02 10 JANICE BELLUCCI: Bellucci.

11 CHRISTOPHER WELLBORN: Has there been any kind  
12 of an economic impact analysis or study on how much a  
13 tiered -- a rational tiered system would save not only the  
14 state of California, but municipalities and counties?

14:53:26 15 It seems to me, it would actually save a ton  
16 of money.

17 JANICE BELLUCCI: It would save a ton of  
18 money. I mean, that's based on gut knowledge; but, no,  
19 there hasn't been a study. But that's a really worthwhile  
14:53:34 20 thing to do.

21 CHRISTOPHER WELLBORN: That was my question.

22 RICK JONES: Margy or Vicki? Geneva?

23 GENEVA VANDERHORST: I'll follow up on Chris.

24 Has there ever been any effort to get in

14:53:44 25 contact with grad school, Ph.D. students who would be

14:53:50 1 interested in completing such a study?

2 JANICE BELLUCCI: We have some people coming  
3 to us and making some offers.

4 I want to tell you our organization is less  
14:53:57 5 than one year old, and I'm the head of it. I've got some  
6 volunteers. I'm a volunteer myself, so we're doing our  
7 very best.

8 What I need right now most of all is some  
9 other lawyers. We have a lot of lawsuits to file, and one  
14:54:11 10 lawsuit that I would want to file tomorrow, if I could, is  
11 file a lawsuit against our U.S. Department -- our  
12 California Department of Justice, rather, because of their  
13 negligent maintenance and operation of our website, our  
14 Megan's Law website. They are doing such a bad job of it.

14:54:27 15 I talked to a representative from that agency  
16 yesterday, and she said at the current rate, it's going to  
17 take them seven years, seven years to put in the year of  
18 conviction and the year of release. You know what agency  
19 has the year of conviction already in their database? The  
14:54:43 20 same agency.

21 So when I help an individual get their profile  
22 corrected, I go to the California Department of  
23 Justice -- actually, the individual has to. They get  
24 their Livescan report, which is the rap sheet, right?

14:54:55 25 They get their rap sheet. They send it to me. I send it

14:54:58 1 with a cover letter and say, "Okay. This was when the  
2 person was convicted. This is when they were released.  
3 By the way, take off that comment that says, 'We don't  
4 know if there's any subsequent felony convictions' because  
14:55:07 5 it's in your database." Right?

6 But they don't look at it. It's going to take  
7 them seven years to complete this process.

8 FRANK LINDSAY: Mine was the first one she  
9 did. Because for 16 years, they had my middle name  
14:55:19 10 spelled wrong. My hair color was wrong. No date of  
11 conviction, no date of release, which, interestingly  
12 enough, was both in 1979.

13 So when I go into the police department and  
14 show them my credentials every year and I'm living where  
14:55:40 15 I'm -- where I said they, at least, upload the new picture  
16 that they take of me every year, I assume that they're  
17 also sending the fingerprints along every year.

18 But none of the other information seems to get  
19 corrected until I go down, get a Livescan, and come to  
14:56:00 20 Janice. She fills out the paperwork, and we send that  
21 information to the DOJ that I had just gotten from the DOJ  
22 back to the DOJ so that they can do a correct job.  
23 They're not maintaining the site well at all.

24 And that puts people in harm's way. And it's  
14:56:16 25 interesting. Down at the bottom of the site on everyone's

14:56:19 1 picture, it says: "This individual may have relocated."

2 And when Janice questions Janet Kneely on why  
3 that's there and, please, remove it, she says, "Oh, we  
4 can't. That's to protect anyone else that moves into the  
14:56:35 5 home."

6 Oh, so there is some degree of risk by doing  
7 this?

8 JANICE BELLUCCI: So the next --

9 GENEVA VANDERHORST: I appreciate that. I  
14:56:43 10 guess the focus of my follow-up was maybe you taking the  
11 next step where there are lack of resources and personnel  
12 to try to and assist the transition or, at least, identify  
13 allies who could assist with part of the issue, maybe.

14 You know, we have to deal with a task force  
14:57:07 15 that works these up that will not be able to change the  
16 entire world. But if we can find ways to see where people  
17 can work together, and particularly -- this now being our  
18 fourth jurisdiction -- seeing so many other jurisdictions  
19 have the same issue, but they don't seem to be getting  
14:57:25 20 together to share ideas --

21 JANICE BELLUCCI: Well, the sex offender  
22 issue --

23 GENEVA VANDERHORST: -- and resources.

24 JANICE BELLUCCI: -- is a polar issue. When I  
14:57:33 25 try to go and meet with the police chiefs and I try to go

14:57:38 1 meet with the Sheriff's Association and their lobbyist,  
2 they won't even meet with us.

3 GENEVA VANDERHORST: They may not be your  
4 allies, but maybe --

14:57:44 5 FRANK LINDSAY: But they need to be because  
6 they --

7 GENEVA VANDERHORST: -- they can have a clean  
8 slate, you know, and a public defender group or civil  
9 rights group.

14:57:53 10 JANICE BELLUCCI: Would you like to talk --  
11 call the ACLU for me because I will tell you I am sick and  
12 tired of calling the ACLU. I'm sick and tired of asking  
13 the ACLU to file a lawsuit on our behalf.

14 Now, they did it in New Mexico. They just did  
14:58:06 15 it in Rhode Island, but California? They have a deaf ear.

16 FRANK LINDSAY: Yeah. They are a little  
17 scared.

18 Now, interestingly enough, Janice, when she  
19 decided that she was going to begin this organization last  
14:58:19 20 October, she came to me in November and said, "We're going  
21 to Sacramento. We've got four meetings."

22 And the first one was with the director of the  
23 Sex Offender Management Board, Jack Wallace. And that  
24 scared the hell out of me. I mean -- but after -- we had  
14:58:38 25 hoped for 30 minutes. We got two hours. And basically he

14:58:43 1

said, "Boy, we are glad you're here because we can  
advocate for what their statistics are showing."

2

3

And so we have worked with them. We've  
presented to them in January, and we do have an alliance  
with them. We're just trying to grow alliance, and  
it's -- it's slow. It's tedious because it's a charged  
issue.

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14:58:58 5

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And once again, everybody is operating on a  
fixed belief that once an offender, always an offender.

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That's the myth -- that we're trying to  
educate others to break that myth and have the truth come  
out so that people aren't living in fear and passing these  
insane ordinances that put me feeling like no matter where  
I go, either law enforcement or a vigilante is out to get  
me.

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JANICE BELLUCCI: I'd like to end on a  
positive note.

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The State of Ohio has made some very, very  
good steps forward. So the State of Ohio even has their  
Supreme Court -- the State Supreme Court there said, at  
least for juveniles, not only is this punishment to be on  
the registry, it is cruel and unusual punishment.

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15:00:00 25

So my hat is off to the State of Ohio.

RICK JONES: That's a great note to end on.

Thank you very much --

15:00:01 1

JANICE BELLUCCI: Thank you.

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RICK JONES: -- for your time and for your  
testimony. We appreciate it.

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FRANK LINDSAY: Thank you.

15:00:05 5

RICK JONES: That concludes our hearing in  
San Francisco.

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FRANK LINDSAY: Welcome to San Francisco.  
What a beautiful day out there today.

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(Proceedings concluded at 3:00 p.m.)

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1 REPORTER'S CERTIFICATE

2  
3  
4 I, CARRIE HEWERDINE, RDR, California Certified  
5 Shorthand Reporter #4579, do hereby certify:

6 That on Friday, the 27th day of July, 2012, I was  
7 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 272 through 415, inclusive, includes a full, true  
13 and correct transcription of my stenotype notes of said  
14 Task Force Meeting.

15  
16 Dated at Alameda, California, this 6th day of  
17 August, 2012.

18  
19  
20  
21 \_\_\_\_\_  
22 CARRIE HEWERDINE, RDR  
23 California CSR #4579  
24  
25



**Transcript Edits  
San Francisco Hearing  
Day 2**

**Robert Ambroselli**

Page 328, line 1, "Phillip Rio" should be "Phillip Garrido."