

1 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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8 REPORT OF PROCEEDINGS

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10 NACDL Task Force on Restoration of Rights and

11 Status After Conviction

12

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Day 2 of 2

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Friday, April 27, 2012

9:02 a.m. - 5:43 p.m.

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1 NACDL TASK FORCE MEMBERS:

2 Rick Jones, Co-Chair  
Vicky Young, Co-Chair  
3 Margaret Love  
Geneva Vanderhorst  
4 Lawrence Goldman  
Christopher Wellborn  
5 Penelope Strong  
Elissa Heinrichs  
6 Jenny Roberts, Reporter

7

8 PANEL I (Page 224)

9

Blain Griffin, Director of Community Relations, Office  
10 of Cleveland Mayor Frank Jackson

11

12 PANEL II (Page 275)

13 Illya McGee, Vice President, Oriana House, Inc.

14 Alec P. Boros, PhD, Research Manager,  
Oriana House, Inc.

15

Ronnie Dunn, Associate Professor Urban Studies,  
16 Cleveland State University.

17

18 PANEL III (Page 334)

19 Al Blumstein, University Professor of Urban Systems  
and Operations Research, Heinz College, Carnegie  
20 Mellon University

21

Kiminori Nakamura, Assistant Professor, Department of  
22 Criminology and Criminal Justice, University of  
Maryland

23

24

25

1 PANEL IV (Page 375)

2 Gary Mohr, Director, Ohio Department of Rehabilitation  
and Correction

3  
4 Senator Shirley Smith, 21st District, Ohio State  
Senate

5

6 PANEL V (Page 444)

7 Judge Nancy Margaret Russo, Cuyahoga County Common  
Pleas Court

8

9 Judge Joan Synenberg, Cuyahoga County Common Pleas  
Court

10 PANEL VI (Page 500)

11 Judge Dan Polster, U.S. District Court, Northern  
District of Ohio

12

13 Dennis G. Terez, Federal Public Defender, Ohio.

14 - - -

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1 (Thereupon, the following proceedings were held:)

2 MR. JONES: Good morning  
3 everyone. Welcome to day two of the NACDL Task  
4 Force on the Restoration of Rights and Status  
5 After Convictions, Cleveland hearings.

6 We have a full slate and a lot of  
7 work ahead of us, but we're excited about it and  
8 we should probably get started.

9 Mr. Griffin, good morning.

10 MR. GRIFFIN: Good morning.

11 MR. JONES: We're happy to  
12 have you. I see you're flying solo this morning.  
13 I know you can handle it.

14 MR. GRIFFIN: Yes.

15 MR. JONES: The way we  
16 operate, as you know, because I think you were  
17 here for some portion of the day yesterday, we're  
18 going to offer you ten or 15 minutes or so to  
19 give us the benefit of your background, as well  
20 as whatever contributions you have to make to the  
21 discussions that we've been having, and then we  
22 have lots of questions for you.

23 One of our members will lead the  
24 questioning and this morning on this panel it  
25 will be Larry Goldman who will be the primary

1 questioner, and so without any further ado, I'm  
2 going to turn the floor over to you and we're  
3 excited to hear from you.

4 MR. GRIFFIN: Thank you.  
5 First and foremost, Chief Walker Minor the Chief  
6 of Public Affairs for the City of Cleveland,  
7 sends her regrets and regards.

8 She got called into a meeting with  
9 the mayor and for any of you who have worked in  
10 municipal service or worked for a mayor of a  
11 major city or if you haven't, I can let you know  
12 when you're called into a meeting with the mayor,  
13 almost everything else stops, and you have to  
14 adhere to it unless the all mighty himself is  
15 calling you to a different place.

16 So she sends her regrets and asked me  
17 to basically pinch hit for both of us today.

18 MR. JONES: You can tell her  
19 that she was missed.

20 MR. GRIFFIN: Thank you. I  
21 sure will.

22 To give you the way that the  
23 City of Cleveland is structured. The mayor has  
24 clusters, and I won't belabor you with all of the  
25 clusters, but you have the Economic Development

1 Cluster, you have the Operations Cluster.

2           The Economic Development is community  
3 development, business, regional development, et  
4 cetera.

5           The Operations Cluster is the water,  
6 the operations like streets and those types of  
7 operations.

8           And then you have the Public Affairs  
9 Cluster, which is the cluster that Chief Walker  
10 Minor oversees.

11           In that cluster you have Human  
12 Resources, you have Aging, you have the Civil  
13 Service Commission, you have Workforce  
14 Investment; you also have my department, which is  
15 the Community Relations Board for the  
16 City of Cleveland; and you also have the Health  
17 Department that is in that cluster.

18           The reason that I wanted to give you  
19 the structure of the city is because within that  
20 cluster is where the movement to ban the box  
21 initiated.

22           I want to focus on the entire cluster  
23 because it wasn't an initiative that was  
24 initiated solely by the Community Relations  
25 Board, who focuses -- and I'll give you a little

1 bit of background about us -- who focuses us on  
2 civil rights and issues of equity and fairness in  
3 our community, but it also focuses on -- but our  
4 cluster also has the hiring policies, the equal  
5 opportunity, which I neglected to mention, which  
6 Chief Walker Minor doubles as Director of Office  
7 of Equal Opportunity.

8           We are what we call the People  
9 Cluster of the City of Cleveland. Our job is to  
10 connect government to people.

11           So that is why it is critical to kind  
12 of give you the structure and why this initiative  
13 was born within that cluster.

14           To give you a little background about  
15 myself. My name is Blain Griffin and I am the  
16 executive director of the Community Relations  
17 Board for the City of Cleveland.

18           The Community Relations Board is the  
19 oldest, government-funded, human relations board  
20 in the entire country. It was initiated in 1945.

21           The reason that it was initiated was  
22 to promote better racial harmony amongst all of  
23 the racial and ethnic groups within the  
24 City of Cleveland. So we're mandated by charter  
25 to promote human relations by the Charter of the

1 City of Cleveland.

2 Our board has 17 members. The mayor  
3 serves as chair of the board. Two out of the 19  
4 Cleveland city councilpersons serve on our board  
5 for the Community Relations Board, and we have a  
6 diverse board, which includes four from industry,  
7 business, four from labor, and five from  
8 community representatives.

9 We also have a diverse board that's  
10 made up of LGBT community, Asian/American  
11 community, an Arab/American community  
12 representative sits on our board, members of  
13 several faith-based institutions sit on our  
14 board.

15 Our board is chaired by a gentleman  
16 named Reverend Dr. Charles Lucas, Jr.

17 The reason I want to mention that is  
18 because our board's job is to promote diversity  
19 and human relations and harmony in the  
20 City of Cleveland.

21 Traditionally we've had to deal with  
22 a lot of issues around building race relations  
23 and other type of issues.

24 If you're familiar with the City of  
25 Cleveland, like many other major cities in the



1 1960s, and the turbulent '60s and those times,  
2 there was a lot of racial strife, especially in  
3 areas that were beginning to get integrated like  
4 Glenville and Hough.

5           Many riots took place in light of  
6 some of the assassinations that took place, so  
7 there was a lot of strife, and at that time the  
8 Community Relations Board had the focus of really  
9 building a lot of racial harmony.

10           I would like to start there because I  
11 fast forward to now and some of the things that  
12 cause a lot of -- well, before I move there, in  
13 the 1970s there were a lot of clashes that had  
14 police/community relations problems that really  
15 cause strife with police and community relations.

16           But as you matriculate through time,  
17 one of the things that we witnessed was that:  
18 One, a rise in gang and youth violence in the  
19 City of Cleveland, which our Community Relations  
20 Board now has an arm of people that deal strictly  
21 with gang and youth violence in the  
22 City of Cleveland; and then you also have an  
23 emerging reentry population.

24           So we changed our mission throughout  
25 the time to deal with the impact of what is going

1 on in our community, which leads me to why we're  
2 probably here today.

3           The estimates are, from federal,  
4 state, municipal, and county institutions, that  
5 approximately 16,700 or so people are released  
6 from those institutions back into the Cuyahoga  
7 County area on a yearly basis. At any time we  
8 have 16,000 or so people walking around in our  
9 community.

10           Most of those people that come back  
11 to Cuyahoga County, even though Cuyahoga County  
12 is approximately one million people in Cuyahoga  
13 County, and it's approximately 59 -- give or take  
14 because we have a couple that are not  
15 municipalities but townships -- 59 or 60  
16 municipalities or townships, Cleveland has the  
17 bulk of those residents.

18           We went from in 2000 approximately  
19 445,000 people and Cleveland has lost and  
20 declined population in that ten-year period that  
21 now we're down to 395,000 -- and I apologize --  
22 it's actually 425. It was 445 in 1990,  
23 approximately 425 in 2000, and now we're down to  
24 395,000 or give or take a few in the latest  
25 census.

1                   A majority of those formerly  
2 incarcerated individuals come back to primarily  
3 six neighborhoods in the City of Cleveland, and  
4 I'll start off with the neighborhoods that are  
5 defined as statistical planning areas.

6                   The statistical planning areas that  
7 they come back to are central, which is in the  
8 central part of the city, where a lot of public  
9 housing is located; Mount Pleasant, Union-Miles,  
10 Glenville, Detroit-Shoreway, which is on the west  
11 side of town.

12                   So four of those locations are on the  
13 east side of town and one is on the west side of  
14 town.

15                   And I'll get into this more, the  
16 dynamics of why downtown has a large amount of  
17 people that come in as well, but the downtown  
18 neighborhood also has a large amount of people  
19 that come back to our community from correctional  
20 facilities.

21                   The reason that I mention this is  
22 because a majority of those statistical planning  
23 areas that I mentioned are predominately African  
24 American.

25                   The four on the east side that I

1 mentioned, Central, Mount Pleasant, Union-Miles  
2 and Glenville are almost or probably more than 95  
3 percent African American.

4           The location that I mentioned on the  
5 west side, Detroit-Shoreway has a little bit  
6 less, it's approximately about 60 percent or so  
7 African American and there's also a large influx  
8 of Hispanic population that lives in that area,  
9 and then there's also a large population of white  
10 residents that live in that area as well.

11           The reason I mention that is because  
12 we have a disproportionate amount of people  
13 coming back to the City of Cleveland, which has  
14 an impact, which means that we have to find a way  
15 to do three things that we think are important to  
16 create a safe community.

17           One is we have to, you know, of  
18 course, find a way for these ladies and gentlemen  
19 to become productive citizens of our society;  
20 number two, we want to create a better quality of  
21 life because we want them to help create a safe  
22 community; and number three, which is going on  
23 all over the United States, as well as here in  
24 Ohio, there's a big push to reform the  
25 correctional institutions, the correctional

1 rehabilitation centers, and the reason why is to  
2 save money in the budget, and as blatant as that  
3 sounds, it is what it is, as our mayor often  
4 says.

5           So save money and to reduce costs  
6 that it takes to incarcerate individuals, create  
7 a safer community and also produce tax-paying  
8 citizens, those are the three things we know we  
9 have to do in order for those people returning  
10 home to be effective. So this laid the platform  
11 and the groundwork for ban the box.

12           Before I go forward I also wanted to  
13 state -- and I recognize I missed downtown -- the  
14 reason downtown has an influx. We have one of  
15 the best social service systems in the State of  
16 Ohio. In the downtown area we have what's called  
17 2100 Lakeside, which is the homeless shelter for  
18 men.

19           Many people that are not even from  
20 Cleveland, that are from areas like Youngstown,  
21 from Columbus, Cincinnati, Lorain and other areas  
22 across the State of Ohio, Akron, Canton, they  
23 often get dropped off at 2100 Lakeside, and they  
24 often use that as an address when they come home,  
25 but they are actually homeless and using that

1 homeless facility as an address until they can  
2 gain successful reentry back into our community.

3           So that's why we have a large amount  
4 of people from the reentry community that call  
5 downtown home, just to give you the background on  
6 why downtown is also -- I throw that in there.

7           That's the platform that led us to  
8 ban the box. We looked up Title VII, and Title  
9 VII actually states -- in looking at the U.S.  
10 Equal Opportunity Commission and Title VII -- it  
11 states that, "The commission continues to hold  
12 that where there is evidence of adverse impact  
13 and absolute bar to employment based on the mere  
14 fact that an individual has a conviction record  
15 is unlawful under Title VII."

16           And it says that, "The Commissioners'  
17 position on this issue is supported by the weight  
18 of judicial authority."

19           So we began looking at Title VII and  
20 at the time the workforce -- the work force  
21 director and myself began to research, you know,  
22 is this an adverse impact and do we have a  
23 disparate impact on certain populations in our  
24 community because these statistical planning  
25 areas are predominantly African American, and

1 because these areas are predominantly African  
2 American, is there a disparate impact on  
3 components and forces of our community.

4           We began to look at our own internal  
5 city policies and upon that we determined that  
6 there was some potential disparate impacts on our  
7 population getting hired for employment within  
8 our community and we decided to do something  
9 about it.

10           However, when we looked and we  
11 actually engaged our law department, they gave us  
12 the recommendation that it was not disparate  
13 impact on city applications because at the time  
14 we had, "Have you ever been convicted of a  
15 felony?"

16           So the first thing we decided to do,  
17 charity begins at home and we have to make sure  
18 that we looked at our internal policies. So when  
19 we looked at our application, it stated, "Have  
20 you ever been convicted of a felony?"

21           Well, when we talked to the law  
22 department, they said, well, this doesn't  
23 determine disparate impact, however, after a lot  
24 of discussion and a lot of dialogue amidst that  
25 public affairs cluster that I mentioned to you

1 guys with human resources, civil services,  
2 workforce investment and community relations, the  
3 civil rights arm, we decided that it was still  
4 the right thing to do, to remove that box from  
5 our city applications.

6           Now, I want to preface this by saying  
7 a couple of things: One is, the  
8 City of Cleveland has always hired formerly  
9 incarcerated people. We have always hired  
10 formerly incarcerated people and as recently as  
11 this mayor has come into office, there are a lot  
12 of formerly incarcerated individuals who work in  
13 the Streets Department, doing several things like  
14 driving, plowing snow, doing other type of  
15 services, goods and services with the City of  
16 Cleveland, building and housing, you know,  
17 housing demolition has contractors that are  
18 formerly incarcerated.

19           So there are a lot of people that  
20 work in the city, that have been hired, that are  
21 formerly incarcerated individuals.

22           However, there was never a formal  
23 policy to take the box off of the application so  
24 that these men and women would have at least a  
25 fair opportunity at getting an opportunity at



1 employment with the City of Cleveland, so we felt  
2 that was unfair.

3           We also know that there were no  
4 policies in place at the Civil Service Commission  
5 nor at the Human Resources Commission in order to  
6 give clear guidelines on our expectations and how  
7 formerly incarcerated individuals can matriculate  
8 through the hiring process for the  
9 City of Cleveland.

10           So we saw this as an opportunity to  
11 create guidelines, create a clear process of  
12 making sure that we help, that we allow formerly  
13 incarcerated individuals to have a fair chance at  
14 getting employment, so that we can get the best  
15 employees.

16           But then also to have a process to  
17 vet these employees or these potential employees,  
18 to make sure that we don't do things like put an  
19 embezzler in the treasurer's department or put a  
20 person who is convicted of a sex offense in one  
21 of our 22 recreation centers across the city.

22           So we created a more clear process of  
23 how we would vet that background along the  
24 process and through our civil service and human  
25 resources guidelines, as opposed to just giving

1 an arbitrary decision up to the directors.

2           Once they see an application that  
3 says, "Have you ever been convicted of a felony,"  
4 and somebody puts, "yes," and it goes into the  
5 bin that collects dust for the next ten, twelve  
6 years. So we wanted to create clear policy.

7           The last thing I will tell you is the  
8 mayor met with a group of advocates, and this  
9 group of advocates is called The Reentry  
10 Leadership Coalition.

11           This is a group of social service  
12 providers, also formally incarcerated people who  
13 serve on this committee, people that serve for  
14 like the ADAMHS Board, and Community Reentry and  
15 other social service providers.

16           We also have people from the county,  
17 the city, the Department of Rehabilitation and  
18 Corrections, a collaboration of several people  
19 that sit on The Reentry Leadership Coalition.

20           The mayor convened a meeting with  
21 this group approximately two years ago and this  
22 group asked the mayor for three things: They  
23 asked, one, to ban the box, that was the first  
24 thing, and we successfully have banned the box,  
25 with the help of human resources and civil

1 services and workforce and the community  
2 relations board, all collaborated under the  
3 public affairs cluster to get this done.

4           The second thing they asked us to do  
5 is to develop training classes to train the  
6 formerly incarcerated individuals in  
7 entrepreneurship and also social-enterprise-type  
8 projects, which we call the triple bottom line,  
9 which is social, economic and environmental,  
10 which deals with three critical things that we  
11 feel are necessary for employment in the  
12 entrepreneur field for the formerly incarcerated  
13 individuals.

14           And then the last thing that this  
15 group wanted the mayor to do is, through annual  
16 resource fairs, where the formerly incarcerated  
17 individuals could come and learn everything about  
18 how to successfully reconnect with their children  
19 through to fatherhood initiatives, how to make  
20 sure that they could, you know, get their record  
21 expunged if they were eligible, to let them know  
22 all of the services that are needed for them to  
23 successfully reintegrate in our community.

24           So I'll close by saying this: We  
25 have had a major undertaking of addressing the

1 formerly incarcerated community in our city, and  
2 with a lot of the partners that you'll probably  
3 see here today, we feel personally and Mayor  
4 Jackson feels personally, as a person who  
5 actually ironically lives in the central  
6 neighborhood, one of the neighborhoods heavily  
7 impacted by the formerly incarcerated individuals  
8 coming back home, that in order to have someone  
9 successfully reintegrate into our community, it's  
10 not just keeping them out of jail, it is helping  
11 them find a way to help Cleveland become a better  
12 place by being a productive citizen, a tax-paying  
13 citizen, and a citizen helping to create a better  
14 quality of life in the City of Cleveland.

15                   Thank you and I will take your  
16 questions.

17                   MR. JONES:                   Thank you for  
18 that presentation and I will tell you that in the  
19 two or three days that we've been here -- I speak  
20 for myself at least -- we've been impressed with  
21 the array of services that the city offers folks  
22 who are reentering society.

23                   Just before we turn it over to Larry,  
24 I have one quick question. We've heard a lot  
25 about 2100 Lakeside yesterday and I was unable to

1 remember the name of the other place that we were  
2 told about. We went to North Star Neighborhood,  
3 now I've got it, it is the Bishop Cosgrove  
4 Center.

5 MR. GRIFFIN: Yes.

6 MR. JONES: Are you familiar  
7 with that?

8 MR. GRIFFIN: Bishop Cosgrove  
9 Center is located at 18th and Superior,  
10 approximately a half a mile away from this very  
11 location, and Bishop Cosgrove Center serves a lot  
12 of that indigent, poor population, homeless  
13 population, as well.

14 MR. JONES: They also take  
15 sex offenders?

16 MR. GRIFFIN: Yes, they have  
17 sex offenders that go to that area.

18 Excuse me because there will probably  
19 be some people that can answer this better than  
20 me.

21 I'm not sure if they actually have  
22 residential, 2100 is the residential facility,  
23 where most of the indigent population goes, but a  
24 lot of the services to take a shower, to get fed  
25 and get some of the basic needs that most people

1 have, Bishop Cosgrove does offer.

2 MR. JONES: Thank you.

3 Larry?

4 MR. GOLDMAN: Good Morning,  
5 Mr. Griffin, we've met before, we had a  
6 discussion of sartorial interests.

7 I'm going to ask you questions -- our  
8 goal or at least one of our goals is that -- the  
9 hearings which we're holding throughout the  
10 country -- is to do a report on and then to make  
11 recommendations, hopefully, that can be put in  
12 not only perhaps Cleveland and New York, where I  
13 come from, but various places, so I hope -- I'm  
14 probably going to ask you some questions that  
15 since you're -- this is not your only interest on  
16 a day-to-day basis, may be beyond you, just feel  
17 free to say that.

18 Let me ask you in general, first of  
19 all, just so we know, this initiative came from  
20 Mayor Jackson, I assume.

21 MR. GRIFFIN: Yes.

22 MR. GOLDMAN: Let me ask you,  
23 why didn't it come earlier?

24 MR. GRIFFIN: Because the  
25 City of Cleveland had already hired formerly

1 incarcerated individuals. It wasn't something I  
2 believe the former mayors or even this mayor in  
3 the first couple of parts of his administration  
4 needed to address, because we had already been  
5 hiring formerly incarcerated individuals. We saw  
6 this as an opportunity to bring our policies in  
7 line with our actions.

8 MR. GOLDMAN: Well, was there  
9 politically, and we all live in the real world  
10 that we know, you know, there are knee-jerk  
11 reactions from various people and there were the  
12 people who want to punish someone for a crime  
13 until they're in their grave and maybe a little  
14 bit afterwards.

15 I assume there were discussions at  
16 moderately high levels of the local government.  
17 Was there any opposition to this?

18 MR. GRIFFIN: There's always a  
19 few people that have, you know, opposition, but  
20 it was very sparse.

21 One of the things that the mayor does  
22 is what's called neighborhood tours, where he  
23 actually goes out into the streets that actually  
24 I selected throughout the community and he just  
25 walks, he's not campaigning, he walks and talks

1 with residents, how is government working for  
2 you.

3           One of the critical things when he  
4 would go into one of these impacted areas that I  
5 would tell you was, I'm looking for a job, I was  
6 formerly incarcerated, I can't find anything.

7           So to tell you that, to give you  
8 background, there was a large amount of support  
9 and this was one of the more successful  
10 initiatives he created, because a lot of people  
11 or their families or their people that they are  
12 associated with, seen this as something that was  
13 actually beneficial to a large, a huge amount of  
14 our community.

15           So he actually won a lot of praise  
16 for actually doing this and a lot of recognition  
17 for actually doing this, and ironically now,  
18 since he has taken the unprecedented step of  
19 aligning our policies with our actions, now our  
20 county council and the county government, which  
21 represents the city and the other 58  
22 municipalities that I mentioned earlier, is now  
23 initiating a process where they're trying to ban  
24 the box at the county level in government, as  
25 well.



1 MR. GOLDMAN: Let me ask  
2 you -- I am going to ask you various questions,  
3 probably you've gotten some of these questions  
4 from various people on the city council or  
5 whatever your equivalent is, from both sides, but  
6 let me generally -- has there been -- let me say,  
7 you say centrally the fact -- the use of your  
8 term -- as a practical matter, the city of was  
9 hiring a significant number of prior offenders.

10 MR. GRIFFIN: Uh-huh.

11 MR. GOLDMAN: I think you also  
12 said they weren't often doing a very rational job  
13 when they disqualified people.

14 MR. GRIFFIN: Right.

15 MR. GOLDMAN: That, you know,  
16 there are certain positions that most people  
17 would agree. And frankly, politically, if I was  
18 in your shoes, I would be a little concerned with  
19 putting someone with a sex conviction with  
20 preschool children.

21 MR. GRIFFIN: Right.

22 MR. GOLDMAN: That's the kind  
23 of thing that is not going to look good in the  
24 paper, if nothing else.

25 MR. GRIFFIN: Right.

1                   MR. GOLDMAN:                   Have you had any  
2 negative problems as people with felony  
3 convictions got into jobs and there was some  
4 problem on the job?

5                   MR. GRIFFIN:                   Not on the job,  
6 and there have been people who have received  
7 scrutiny for other things that they have done and  
8 they were actually city employees, but nobody on  
9 the job or no incidents as of this time of  
10 anybody who has done anything improper on the  
11 job.

12                   MR. GOLDMAN:                   How long has  
13 this program been going on, the ban the box?

14                   MR. GRIFFIN:                   The ban the box,  
15 we initiated this. The mayor initiated it at the  
16 beginning of last year, so that was 2011, we  
17 changed it. It was a policy decision. He did  
18 not have to have legislation and approval from  
19 council, the mayor was able to do it from a  
20 policy decision on banning the box.

21                   MR. GOLDMAN:                   Do you know, has  
22 the city in fact hired more people with felony  
23 convictions?

24                   MR. GRIFFIN:                   Well, the bad  
25 part is that the city hasn't done a large amount

1 of hiring at all of any type of people with the  
2 economy being the way that it is, but that's one  
3 of the questions we get asked a lot, if we have  
4 tracked that.

5                   This system is relatively new. In  
6 the past we have never tracked it and now this  
7 gives us an opportunity to track it, but we're in  
8 the initial stages. But because we have not  
9 hired many people at all, it's very minimal to at  
10 all, if anybody has been on as a formerly  
11 incarcerated individual.

12                   MR. GOLDMAN:                   Is it your  
13 expectation that this will make, say, a  
14 statistical difference in the number of people  
15 with convictions who are hired?

16                   MR. GRIFFIN:                   I think that the  
17 numbers will reflect and actually establish a  
18 baseline and a point of reference, but I truly  
19 believe that, once again, we've already had a  
20 large amount of people who were formerly  
21 incarcerated.

22                   So I think that all this will do is  
23 pretty much take a formal head count and set a  
24 guideline as we move forward, but I won't say  
25 that it will probably show that a larger amount

1 are being hired because of this policy.

2 I think it would just -- I think  
3 right now we're at the point that a baseline  
4 would just probably be created, because we have  
5 already been hiring a lot of formerly  
6 incarcerated people.

7 MR. GOLDMAN: I know I'm  
8 talking sort of through my hat but would not one,  
9 who was not necessarily familiar with the hiring  
10 practices of the city, getting an application and  
11 saying do you have a felony conviction, are  
12 basically a lot of people going to say they don't  
13 want this and throw away the application?

14 MR. GRIFFIN: That was one of  
15 if reasons we took the box off, because many  
16 people thought they didn't even have a chance to  
17 even apply for city employment.

18 Now that that box is not on there,  
19 through our outreach effort and through our  
20 public relations effort, we've let people know  
21 that, yes, you can apply. So, you know, just  
22 because you have a felony or have something, it  
23 doesn't mean need not apply.

24 MR. GOLDMAN: Let me go a  
25 little further and in the kind of process. A

1 person with a felony conviction applies, he does  
2 not check the box, the box is not there, he has  
3 presumably an interview.

4           Is he or she going to be asked, in  
5 the course of hiring interviews, whether he or  
6 she has a criminal conviction?

7           MR. GRIFFIN:                   Yes, it will be  
8 looked at during the course because the box is  
9 off now, so before you could look -- let me  
10 answer that two ways for you:

11           The way it was, if someone didn't  
12 check the box and they just left that area blank,  
13 which a lot of people did, okay, or in some cases  
14 someone might have checked no, and it was  
15 actually found out through the background check  
16 that they actually were convicted of a felony,  
17 then that would create more barriers to them  
18 getting employment than it would allow them to  
19 get employment because it was almost like  
20 falsification of your background on your  
21 employment and there have -- you know, that's  
22 something that we looked at, as well.

23           However, now that we've taken the box  
24 out, the way it is now, there is a process  
25 through the background check, that if a person is

1 considered for the employment and the background  
2 is check is done, then that person will have an  
3 opportunity to elaborate on the reason that they  
4 have that felony conviction or whatever else, and  
5 it will be looked at at that time by that  
6 department director as well as human resources.

7 MR. GOLDMAN: Does human  
8 resources -- again I'm asking questions that are  
9 maybe detail you may not -- does human resources,  
10 has this initiative, in a sense, sent a signal to  
11 human resources to be A, more rational, and B,  
12 for whatever better word I can't think of, more  
13 charitable or less punitive alternatively, in  
14 considering people with felony convictions, or is  
15 it no change at all?

16 MR. GRIFFIN: I think in the  
17 City of Cleveland we have always had a rational  
18 nature when it comes to formerly incarcerated  
19 individuals. I don't think it was something  
20 that, you know, anybody considered, you know, a  
21 taboo to hire someone with a formerly  
22 incarcerated background, because we have a large  
23 amount of people here.

24 However, I will tell you that the  
25 process was subjective, and there was no process.

1 A lot of it was handled at the directorial level.

2           So if I'm a director and you're a  
3 director, I may be liberal in my thinking as far  
4 as I consider somebody who has a background to do  
5 this job, but you may not be as liberal thinking  
6 and you can look at the application and see that  
7 someone checked a felony, that they've been  
8 convicted of a felony, and it goes into the trash  
9 bin or dust bin.

10           Now, with the new policy, it takes  
11 that subjectivity out, and it gives an  
12 opportunity for that person to have a fairer  
13 chance to compete for a job.

14           MR. GOLDMAN:                   Let me ask you a  
15 practical question, because way back I worked in  
16 municipal government, and I know some  
17 practicalities, and I assume people in government  
18 said at sometime or certainly considered, you  
19 know, probably should have, are we going to get  
20 bad editorials on this, are we going to get bad  
21 press, are we going to get complaints, things  
22 like that.

23           Has this turned out in terms of  
24 politically, you think, to have been a positive,  
25 a neutral, a negative?

1                   You understand my question?

2                   MR. GRIFFIN:                   Yes, I  
3 understand your question.   Actually I understand  
4 that very well.

5                   Politically, editorially, in the  
6 newspapers there was, I would call, bland  
7 endorsement because it wasn't overtly endorsing  
8 and, you know, euphoric in their endorsement of  
9 the policies, however they do understand that it  
10 was a necessary policy and, you know, pretty much  
11 said, hey, you know, good government, you know,  
12 we understand why it was done, but it wasn't  
13 something that it was like you just brought 1,000  
14 jobs to the city.

15                   Politically, in the community, with  
16 the base of voters, knowing voters, the voters  
17 that I know that I need to, and because so many  
18 people are impacted by the issue of formerly  
19 incarcerated, the community was ecstatic about  
20 it.

21                   We received calls, we received people  
22 that actually came together and stated how, you  
23 know, excited they were that the mayor took this  
24 step.

25                   We had people who were formally



1 incarcerated that began getting more civically  
2 active because they feel that at least they had  
3 an opportunity to engage or have a fair  
4 opportunity for employment for the city.

5           So politically, amongst the  
6 constituency, it was very popular, especially in  
7 the City of Cleveland.

8           MR. GOLDMAN:                    Let me go to  
9 something else that you mentioned that when the  
10 mayor met with this reentry group --

11           MR. GRIFFIN:                    Yes.

12           MR. GOLDMAN:                    -- they asked  
13 for, among other things, besides jobs, things  
14 like classes and the like.

15           Has the city done, in terms of these  
16 ancillary services and ancillary help -- I don't  
17 know if you know the answer to this -- in  
18 New York public housing, generally speaking, it  
19 is a no, no, you get convicted of a felony, you  
20 get kicked out of the public housing and often  
21 your family goes with you.

22           Is there any ban on that, on former  
23 felons, convicted felons, in housing, do you  
24 know?

25           MR. GRIFFIN:                    A lot of those

1 are federal policies. A lot of those are  
2 policies that we have to rely on HUD and other  
3 types of federal groups that have those types of  
4 policies.

5           We do our best to try to build  
6 collaborations with other community partners in  
7 order to provide advocacy, to speak for whatever  
8 the most fair process for any institution, agency  
9 or group that has a lot of influence over our  
10 citizens.

11           However, at the end of the day a lot  
12 of those are federal policies that we, you know,  
13 either take a position to support or take a  
14 position to speak out against.

15           And as of this time I can tell you  
16 that, you know, that's not something that we have  
17 looked at as a priority or something that has a  
18 disparate impact on our community, but there have  
19 been other issues where we collaborated with  
20 other local agencies and entities.

21           For example, most recently House Bill  
22 86, which was initiated by the governor in order  
23 to reduce costs in the correctional facilities  
24 and create more opportunities for transitional  
25 control for people to come into the

1 City of Cleveland, and we are all for that  
2 policy.

3           We think that transitional control is  
4 a great thing, however, one of the reasons why we  
5 helped advocate, along with several other  
6 providers in the City of Cleveland, the mental  
7 health board as well as, you know, Oriana House,  
8 and other advocacy groups, was because we felt  
9 that they were sending people back to our  
10 City of Cleveland but we were not given the  
11 adequate funding that we needed in order for them  
12 to successfully transition back into our  
13 community.

14           So we were supportive of the policy  
15 but we were saying, hey, you have got to bring  
16 the resources for them to be successful.

17           So we do advocacy for some of the  
18 issues that you're talking about at the federal  
19 and state level, however, at the end of the day,  
20 they're the ones, the jurisdictions that have to  
21 make the final decision.

22           MR. GOLDMAN:           Is there any  
23 financial assistance in terms of housing or any  
24 public housing that people can transition to or  
25 assistance to help people get apartments?

1                   MR. GRIFFIN:                   The person that  
2 would be better suited to answer that are  
3 probably coming after me, that deals a lot with  
4 those types of issues, like Oriana House and  
5 other groups, and I think you mentioned North  
6 Star, that has a lot of those types of services,  
7 so they probably are better, more equipped to  
8 answer those type of service delivery questions  
9 than we are.

10                   As government and as city government,  
11 we don't profess to understand the entire arena.  
12 We run our lane and we use the bully pulpit of  
13 the mayor in order to really try to advocate and  
14 to focus on policies of fairness for the formerly  
15 incarcerated community, and make sure that we're  
16 not excluding them from a the quality of life of  
17 the City of Cleveland, but one thing that we're  
18 very clear about is not trying to be duplicative  
19 or trying to pick up where other agencies can do  
20 a better job.

21                   MR. GOLDMAN:                   Thank you very,  
22 sir.

23                   MR. GRIFFIN:                   Thank you, sir.

24                   MR. JONES:                   Thank you.

25                   Jenny Roberts is our reporter for the

1 task force and she's got some questions for you.

2 MR. GRIFFIN: Sure.

3 MS. ROBERTS: Thanks for the  
4 presentation. You answered most questions I had  
5 had already but two things, two questions.

6 One has to do with private employers  
7 and contractors and grantees of the city, I guess  
8 it's really a two-part question: One is what  
9 concerns have you heard from employers about  
10 hiring people with convictions; and second is  
11 what, if anything, has the city done in terms of  
12 the policies with contractors, going beyond ban  
13 the box or, you know, what have you done or what  
14 have the discussions been in this area?

15 MR. GRIFFIN: That's a very  
16 good question. I can tell you first of all, the  
17 first thing we see we need to do is address our  
18 own policy, and that's the reason why we banned  
19 the box in our own policy.

20 The mayor felt heavily that before he  
21 could even go to the private sector and to the  
22 corporate community to ask them to hire formerly  
23 incarcerated individuals, he had to take the  
24 unprecedented step of making sure that everybody  
25 was clear and it wasn't a hidden fact that the

1 city, you know, hired formerly incarcerated  
2 people but, you know, to let them know that he  
3 did encourage them.

4           And, of course, they are private  
5 inusitations, private corporations, so they have  
6 the ability to make those policies.

7           And I'm going to get to something  
8 that I thought was kind of unique, that I heard  
9 from my workforce director, who has given me an  
10 ear full on this policy.

11           Contractors, no, there's no policies  
12 for contractors to hire formerly incarcerated  
13 individuals. Some people that provide goods and  
14 services at this time, we don't have anything in  
15 place to hold them accountable to hire formerly  
16 incarcerated individuals.

17           However, the City of Cleveland does  
18 have what is called the Fannie Lewis Law, which  
19 is named after a former councilperson, who is  
20 deceased now, a woman who was a fierce advocate  
21 for anybody who got contracts to do goods and  
22 services in the City of Cleveland, they had to  
23 hire a certain portion of their workforce from  
24 the City of Cleveland residents.

25           In light of many of the affirmative

1 action rules and laws getting overturned in the  
2 latter part of the '90s and other areas, we found  
3 another way to create the residency law, the  
4 Fannie Lewis Law it's call, alternative law,  
5 where we have more people from the  
6 City of Cleveland that have to be hired for these  
7 jobs.

8           So what we've seen, and what I think  
9 can be done better is actually doing the math and  
10 the calculations to see the impact this has done.

11           We have seen former incarcerated  
12 people get on jobs of vertical and horizontal  
13 construction and other things because they're  
14 City of Cleveland residents that are working on  
15 projects that are receiving government funding,  
16 and, you know, because they're working for a  
17 minority company or they are a minority  
18 contractor, entrepreneur, they're able to get a  
19 piece of work on those jobs, so we have seen that  
20 happen.

21           But one of the things that's been  
22 unique, that our workforce employment director  
23 let me know, is that many of the private  
24 corporations -- once again this is him talking to  
25 me and my discussions -- many of the corporations

1 don't want -- they hire formerly incarcerated  
2 individuals, but they don't want it publicized.

3           The reason they don't want it  
4 publicized is because of their process of  
5 training and everything that we actually take  
6 people through in our workforce training  
7 programs, then, you know, these guys bypass and  
8 they go straight to these corporations or for  
9 whatever reason the corporations are, you know,  
10 put in a position of managing an influx of people  
11 trying to get employment at their business  
12 without being properly trained, without the  
13 proper matriculation process.

14           So for whatever reasons, I guess  
15 there's a multitude of reasons, and maybe it is  
16 just because they don't want the bad publicity,  
17 like Larry just said, but they don't like it  
18 publicized.

19           So we have had success with our  
20 Workforce Investment Board placing formerly  
21 incarcerated individuals in private business  
22 opportunities or private business institutions  
23 but, for whatever reason, they do not like it  
24 publicized that, yes, this group hired 20 guys to  
25 do assembly or whatever else like that.



1 MS. ROBERTS: Just as a  
2 follow-up on that, have you heard any concerns  
3 about getting sued for negligent hiring practices  
4 or any other concerns that employers have  
5 expressed to the city?

6 MR. GRIFFIN: No. At this  
7 time I have not heard about that but there are  
8 risks and there are things that people do have  
9 concerns about.

10 You know, the same statement I said  
11 earlier, someone with a financial securities  
12 institution wouldn't want an embezzler in that  
13 institution, so they do look at those kind of  
14 screening processes and try to look at -- you  
15 know, protect their interests, as we do as the  
16 city.

17 MS. ROBERTS: This is pretty  
18 quick one. If somebody has a conviction that was  
19 sealed under Ohio law, what, if any, policy do  
20 you have about asking about that in the  
21 interview?

22 MR. GRIFFIN: We don't have a  
23 policy for that. We go strictly on our  
24 background checks and if it doesn't come up, from  
25 what I understand, unless it's -- you know, we

1 don't have anything that reaches that level of  
2 security clearance, that I see anybody asking  
3 about a sealed conviction.

4 MS. ROBERTS: So if it was  
5 sealed and it didn't show up on your search, then  
6 there's nothing asked, even to ask somebody if  
7 they sealed it?

8 MR. GRIFFIN: At this time we  
9 don't have anything go further than a sealed  
10 conviction.

11 MS. ROBERTS: Thank you.

12 MR. JONES: Elissa and then  
13 Larry.

14 MR. GOLDMAN: Let me follow-up  
15 on something I find interesting.

16 A number of cities, New York, for  
17 instance, have very strict laws against hiring  
18 contractors who have felonies, convicted felons,  
19 as they say in their hierarchy or sometimes  
20 working, and that presumably is to prevent  
21 corruption or presumably as a remainder of our  
22 past mayor, Mr. Giuliani, perhaps continued  
23 punishment for life.

24 Does Cleveland have any rules barring  
25 certain, you know, contractors contracting for

1 the city, who have people with convictions either  
2 in prominent jobs or in other positions?

3 MR. GRIFFIN: Cleveland  
4 doesn't, but there is something that has had a  
5 very large impact on our community regarding  
6 school construction.

7 One of the things that the  
8 State of Ohio has is it bars employment for  
9 people convicted of felonies to help build  
10 schools.

11 So a lot of these contractors that --  
12 you know, we have what was called Issue 14, which  
13 created a school bond to build brand new schools  
14 across the city. A lot of our workforce were not  
15 able to work on those jobs because there is a  
16 state policy that states that they cannot work on  
17 schools, but the city does not have a policy like  
18 that?

19 MR. GOLDMAN: Does that state  
20 rule effectively bar people with criminal records  
21 from working in that area?

22 MR. GRIFFIN: Yes, yes.

23 MR. GOLDMAN: But the city  
24 itself has no program similar, that would have  
25 the same effect?

1                   MR. GRIFFIN:                   No, not at this  
2 time.

3                   MR. JONES:                   Ellisa.

4                   MS. HEINRICHS:                Just quickly,  
5 building on some of the questions that Jenny  
6 asked you.

7                   You conveyed that the private  
8 employers are reluctant to publicize the fact  
9 that they may hire formerly incarcerated  
10 individuals, but has the mayor's administration  
11 considered making it a requirement for the  
12 application process, that private employers who  
13 contract with the city or receive some other  
14 economic benefit from the city, have a similar  
15 application policy that Cleveland has  
16 implemented?

17                  MR. GRIFFIN:                   At this time,  
18 no.

19                  MS. HEINRICHS:                Is that  
20 something that would be considered?

21                  MR. GRIFFIN:                   That's something  
22 we would have to look into because there will  
23 probably be a little bit more of a process to  
24 accomplish something like that, and actually  
25 that's an idea that you're giving me to basically

1 take back and vet, where my fellow directors and  
2 us maybe come up with a policy decision, so  
3 that's actually an idea that you are giving me.

4 I know that there was a potential --  
5 at one point in time there was legislation that  
6 was being drafted by counsel, ironically Fannie  
7 Lewis and another councilman by the name of  
8 Coats, when I first came into office and I was an  
9 appointee in 2006, it was called fair working  
10 legislation that they were trying to put in place  
11 in order to have legislation to do what you're  
12 talking about doing.

13 For whatever reason council tabled it  
14 because of the contracting requirements. That's  
15 not as much a mayor's policy decision that can be  
16 made, there's a little bit more work that has to  
17 be done in that through legislation, through  
18 legal interpretation. So that's something  
19 actually that might be worth reviving.

20 But at this time I know that council,  
21 who originally initiated that legislation for  
22 private sector employers, to look at that,  
23 actually tabled it, and it happened approximately  
24 six or seven years ago, so excuse me for not  
25 knowing why they tabled it, but it did get

1 tabled.

2 I believe it was probably more legal  
3 lifting that day or legal or political lifting  
4 than they might have wanted to do at the time but  
5 it also was tabled.

6 I also want to go back to that  
7 employer -- to the question that Jenny mentioned.

8 I believe a lot of it is just the  
9 relationship. You know, an employer,  
10 private-sector employer, has a relationship with  
11 a government or a nonprofit entity, where they  
12 receive workers from those nonprofit or  
13 government entities and they know that they have  
14 received good workers from those employers. I  
15 believe that that's the reason why they like to  
16 keep that relationship intact.

17 We do a great job of really retaining  
18 our workers to go into the workforce, so they  
19 know that they're getting a good quality person  
20 in order to continue that work.

21 I don't think that is being done  
22 because, you know, they just don't -- you know, I  
23 haven't figured it all out but I think that's why  
24 they don't advertise that they do hire formerly  
25 incarcerated.

1 MR. JONES: Chris?

2 MR. WELLBORN: Good morning.

3 Thank you for your time. A couple questions for  
4 you. This the sort of stepping out of the city  
5 employment arena, but something that, obviously,  
6 the mayor would be very concerned about, and I'm  
7 sure the city is extremely cognizant of, would be  
8 the impact of lost revenue to the city by way of  
9 lost tax revenue, use of city resources to  
10 provide for folks that can't find homes, jobs,  
11 et cetera.

12 Has the city done any economic impact  
13 studies on what this population of formerly  
14 incarcerated or non-incarcerated people with  
15 felony convictions or convictions in general is  
16 doing to the city, in terms of how are you guys  
17 being affected, not only by people that can't  
18 find jobs because the city may or may not be able  
19 to provide work for them, but because private  
20 employers aren't picking them up either.

21 MR. GRIFFIN: No, I wouldn't  
22 say that we have an economic impact study that  
23 actually shows what this is actually costing us,  
24 but I will tell you, as I did earlier, that  
25 that's one of the three things that we understand

1 that is clearly needed in order for a person to  
2 successfully reintegrate back into the community,  
3 is because there is a sense of lost productivity.

4           And that lost productivity is not  
5 only from a standpoint of not being able to be a  
6 tax-producing citizen, but also if there's any  
7 potential violence that is incurred by this  
8 person or if there is an arrest and other type of  
9 city services that are dedicated to this person  
10 going back into the system, which there's a cost  
11 there.

12           And that impact, we have looked at  
13 some of those things, and that is anywhere  
14 between sixty to \$100,000, that it would actually  
15 take for a person to send them back to the penal  
16 institutions, if there is anything from just the  
17 investigation, arrest, incarceration, violence,  
18 other things like that, that we looked at, if  
19 they are not a tax-producing citizen, but we have  
20 not put down that this is what we're losing in  
21 lost productivity because they're not working.

22           MR. WELLBORN:           Is there some  
23 sense in city government that there is also  
24 perhaps an impact through the school system on  
25 the graduation rates of kids of parents who were



1 formerly incarcerated, who again can't find jobs,  
2 housing and therefore they drop out and they  
3 become not only non-taxpayers but also later a  
4 drain on city resources as a result of that?

5 MR. GRIFFIN: No, I wouldn't  
6 have that.

7 MR. WELLBORN: Is that  
8 something that the city has considered looking  
9 at?

10 MR. GRIFFIN: At this time  
11 that is something that you are bringing to me.  
12 That is something that I probably would look to  
13 team up with some of our community partners.

14 Many of our community partners,  
15 that's what I was saying, the city does not do  
16 all of the data collection on that.

17 There may be other community partners  
18 that you will be interviewing in upcoming  
19 sessions that may have more data on those issues,  
20 but the city has not instituted a study regarding  
21 those factors at this time.

22 MR. WELLBORN: Thank you, sir.

23 MR. GRIFFIN: A lot of times,  
24 because we rely on those partners in order to  
25 help us with that data, so we don't try to run

1 everybody's lane, we try to stay on our own.

2 MR. JONES: Geneva?

3 MS. VANDERHORST: One of the three  
4 components that you talked about, that came as a  
5 proposal from the Reentry Leadership Coalition,  
6 was training, entrepreneurial, social and  
7 economic.

8 Have you considered linking that  
9 training to a program that gives private  
10 employers an incentive to hire the persons who  
11 have already been in the city's training  
12 programs.

13 MR. GRIFFIN: Well, in those  
14 training programs that we were talking about,  
15 that was actually created to try to promote  
16 entrepreneurship and not go to a private employer  
17 or a private sector, but to actually start a  
18 business on their own, because we understand that  
19 these former incarcerated individuals cannot just  
20 go into the private sector, but they may need to  
21 try to create wealth on their own.

22 One of the things that the city did  
23 was teamed up with the county, who has a large  
24 social service impact on our community and our  
25 foundation, local foundation, which is The

1 Cleveland Foundation, and we let out a \$2.5  
2 million social enterprise grant last year in  
3 order the try to do that triple bottom line.

4           A lot of these institutions already  
5 came with a business plan or a business model in  
6 order to do that, like Lutheran Metropolitan  
7 Ministry, like North Star, which you witnessed  
8 yesterday, and those groups actually put forth  
9 the initiative to try and create that business  
10 model for them, but it is not transferable to  
11 once that training takes place, then market it to  
12 the private corporations. It was more so that  
13 these businesses can create a model to sustain a  
14 business operation and a business model in the  
15 City of Cleveland on their own.

16           MS. VANDERHORST:           Do you have  
17 private employers who are involved, so that they  
18 get an idea of what returning citizens are able  
19 to do despite their records?

20           MR. GRIFFIN:                Oh, yeah.  
21 Private employers were part of their bidding  
22 process.

23           For example, Lutheran Metropolitan  
24 Ministry, when they actually submitted the bid  
25 for the proposal, wanted to create bike racks

1 throughout the city, so they had to have an  
2 employer that was part of that proposal.

3           It was built so that these formerly  
4 incarcerated entrepreneurs can actually become  
5 part of that business and be on their own,  
6 self-sufficient.

7           MR. JONES:                   We are just  
8 about out of time. Last question is Margy Love.

9           MS. LOVE:                   We heard  
10 yesterday about the statewide efforts to sort of  
11 identify the laws and the rules that bar people  
12 with a criminal record from doing certain jobs,  
13 and I was sort of interested in your comments  
14 about working on a construction project, and also  
15 the federal policies on housing, because I think  
16 there's a fair amount of misunderstanding about  
17 actually what the laws require.

18                   Has the mayor or has your office  
19 worked with the folks that are doing the  
20 collections of the legal barriers, so that you  
21 kind of have a clear idea of what's required by  
22 law?

23                   I mean, I'm just sort of curious,  
24 because I think there is a lot of  
25 misunderstanding.

1 MR. GRIFFIN: We are privy to  
2 a lot of those discussions and we are part of the  
3 Reentry Leadership Coalition, as well.

4 We also have a person that is  
5 dedicated to nothing but the reentry issue in our  
6 community, so she updates us on some of these  
7 policies, but to our knowledge there's not a  
8 product being developed at this time that we are  
9 a part of, so I would have to look into that  
10 further, because I don't think there is a product  
11 that we're involved in at this time.

12 MS. LOVE: Okay. Yeah,  
13 it's wonderful that you all are in your lane, so  
14 to speak, you know, and doing what you're doing,  
15 and it seems like it would be kind of an example  
16 to the people who are involved with you in the  
17 private sector, and I guess I'm just really  
18 curious whether you've noticed a change in the  
19 way they treat people with a criminal record, in  
20 their policies, in the kind of standards that  
21 they apply?

22 MR. GRIFFIN: I won't say a  
23 change but, once again, the people who have been  
24 hiring former incarcerated and people with a  
25 criminal past have been, you know, continuing to

1 do it.

2 I mean, so I think now we're just at  
3 a point where we're really trying to congregate a  
4 lot of this data. I think a lot of this was  
5 being done informally, and a lot of these types  
6 of things were being done in order to -- you  
7 know, in good-faith efforts, but now I think it's  
8 being defined more, the policies are being  
9 developed more in order to make sure that  
10 everything is adhered to, not in a subjective  
11 way. So I think that some of this is still in  
12 the formulation and is still being developed.

13 And what I would tell you about, you  
14 know, the study that you're talking about as  
15 being involved, the city does always get involved  
16 with the larger group.

17 Even though we run our lane, we make  
18 sure we are involved and have input on the  
19 policies that are being developed. We just don't  
20 feel like we're the sole source of all of the  
21 information, that there are other groups that are  
22 equipped to help advise us better than we are in  
23 some cases.

24 MR. JONES: I've got to stop  
25 this discussion here. Thank you very much,

1 Mr. Griffin, for your time.

2                   Please take back to Mayor Jackson and  
3 the folks of the City of Cleveland our  
4 appreciation for your time and your efforts.  
5 Thank you.

6                   MR. GRIFFIN:                   Thank you.

7                   MR. JONES:                   We're going to  
8 reconvene in five minutes.

9   - - -

10                                       (Whereupon there was a recess in  
11 the proceedings from 10:05 a.m. to  
12 10:14 a.m.)

13                   MR. JONES:                   Good morning,  
14 gentlemen. Welcome, we're happy to have you  
15 here, appreciate you being here.

16                                       The way that we operate is that we're  
17 going to give each of you about five or ten  
18 minutes to introduce yourself, tell us a little  
19 bit about the work that you're doing and how it  
20 impacts on our interests and then we've got lots  
21 of questions for you.

22                                       The way that we do the questioning is  
23 that one of us will lead the discussion and then,  
24 if there's time at the end, the rest of us will  
25 join in.

1                   For the purposes of this panel Penny  
2 Strong will be the primary questioner and without  
3 any further ado, I'm going to turn the floor over  
4 to you and I will leave it up to the three of you  
5 to decide who is going to go first.

6                   DR. DUNN:                   Good morning.  
7 I'm Ronnie Dunn, professor of urban studies at  
8 Cleveland State University. I teach classes in  
9 the area of urban issues, contemporary urban  
10 issues, public safety management, which would be  
11 relevant to this discussion today, as well as  
12 African American images in film.

13                   But my primary research area and area  
14 of interest is in the area of race crime in the  
15 criminal justice system, with a specialized focus  
16 on the issue of racial profiling. I've conducted  
17 research on that issue. I've been engaged in  
18 that area of research since 1998.

19                   Actually I'm not sure how familiar  
20 you are with the City of Cleveland but the city  
21 has traffic cameras positioned throughout the  
22 city in various areas.

23                   Well, those cameras are actually a  
24 recommendation from my study that concluded and  
25 conducted in 2004, that found significant racial



1 disparities in traffic ticketing patterns  
2 throughout the city, after analyzing two years  
3 worth of traffic ticketing data.

4           And the recommendation was, well,  
5 obviously, the traffic cameras are objective,  
6 they don't care what a person's race or ethnicity  
7 or any of that is.

8           Now, naturally the placement of them  
9 is another potential problem, but that is some of  
10 my research.

11           And I've actually published a couple  
12 of scholarly journal articles out of that work,  
13 as well as a book that is used as a college  
14 textbook on the subject of racial profiling.

15           I'm currently replicating that study  
16 looking not only at the City of Cleveland but  
17 surrounding suburban jurisdictions.

18           That stems from a request from the  
19 county prosecutor's office to look at the issue  
20 of police discretion as it relates to racial  
21 disparities that were found in the criminal  
22 justice system in the county.

23           So that work is currently underway  
24 and the preliminary results are that some of the  
25 numbers have gotten worse rather than better, but

1 that is not including the traffic camera  
2 ticketing data.

3           As I'm sure you all are well aware,  
4 racial profiling, along with various other  
5 issues, the 100-to-1 sentencing disparity of  
6 powder and crack cocaine, and the war on drugs in  
7 general, have exacerbated the issue of mass  
8 incarceration in our country and are drivers of  
9 the whole reentry issue.

10           That is kind of a general overview of  
11 my area of work on the subject.

12           MR. JONES:                    Thank you, sir.  
13 I will just remind all three of you that not only  
14 are you being videotaped, but we also are  
15 transcribing these proceedings, so when you  
16 speak, make sure that the microphone is turned on  
17 and you speak in a good voice.   Thank you.

18           Whoever is next.

19           MR. MCGEE:                    Good morning.  
20 My name is Illya McGee and I'm the vice president  
21 of programs for Oriana House, Cuyahoga County  
22 residential program and facilities.

23           A little bit about our agency:   We  
24 have been in existence since 1981.   It was  
25 founded by our president and CEO, James Lawrence,

1 who started it as a small DUI school.

2 We currently operate facilities in  
3 Cleveland, Ohio; Tiffin, Ohio; our home base is  
4 Akron, Ohio; and we've opened facilities in  
5 Sandusky.

6 We are focused on drug and alcohol  
7 treatment with different components such as  
8 education, employment services and a wide base of  
9 cognitive-based programs.

10 We've serviced, during that span, a  
11 little over 250,000 clients during the time that  
12 we've been in operation.

13 Our programs are evidence-based,  
14 accredited by the American Correctional  
15 Association, and we also have utilized various  
16 risk assessment tools to identify needs or risk  
17 levels of offenders that we are currently working  
18 with.

19 I guess that's a brief history of  
20 what we do as far as community correction.

21 We also operate a resource center  
22 here and in Cleveland, Ohio, which is involved  
23 with reentry, and we work directly with Cuyahoga  
24 County and a number of different providers in the  
25 Cleveland area.

1           The resource center is a catalyst for  
2 the linkages of services in the community and  
3 we've collaborated with some providers to operate  
4 employment programs and provide different  
5 services at our resource center.

6           Our primary focus as an agency has  
7 been community corrections. And I'm proud to say  
8 that I think that we've, as an agency, done a  
9 really dynamic job as far as working to reduce  
10 recidivism based on the program, the  
11 evidence-based programming, which we conduct in  
12 our programs.

13           That's pretty much a highlight of  
14 what we do and I guess as we go on I can kind of  
15 filter some more of the questions.

16           MR. JONES:                    Okay. Thank  
17 you. I would just say that when we first got to  
18 Cleveland, we had an opportunity to tour both  
19 Oriana House and the North Star Resource Center  
20 and that certainly was a great way to have a us  
21 start our couple of days here, in Cleveland, so  
22 we appreciate that hospitality.

23           MR. BOROS:                    Good morning.  
24 My name is Alec Boros. I'm a research manager at  
25 Oriana House for the last 13 years and I'm very

1 proud to be part of an organization that puts  
2 such an emphasis on research.

3           Included in a packet that Mr. McGee  
4 brought is a little handout with stats, and I'm  
5 not going to go over them in great detail, but I  
6 just want to show you the main emphasis here is  
7 the differences in the types of offenders we  
8 have, the different types of programs we have,  
9 and the different types of interventions that we  
10 work with.

11           So on the first page we have a little  
12 sampling of information. We have four of our  
13 many facilities listed along the top, our  
14 Cleveland halfway house, our Summit County  
15 halfway house, our Summit County CBCF and our  
16 facility in Tiffin CBCF.

17           And there are striking differences in  
18 the populations here, particularly in the Tiffin  
19 CBCF, very low population of African Americans,  
20 tend to be younger.

21           It's a very rural population, so  
22 employment is a very big issue, particularly out  
23 there, and so there's a number of statistics  
24 there.

25           Also, the second half of the graph

1 there shows the different kinds of felony levels  
2 that the immediate offense was, the highest  
3 offense at the time.

4 Cleveland halfway house has the  
5 highest level of felonies there.

6 We also do outcome studies at Oriana  
7 House, we follow up many of our clients after  
8 they're replaced for one year, and there's a  
9 comparison of incarceration rates after one year,  
10 from the various programs there and a breakdown  
11 between African American and Caucasian clients or  
12 offenders.

13 Offenders are different on the second  
14 page. We use a thing called the Ohio Risk  
15 Assessment System, we used to use the LSI Level  
16 Service Inventory.

17 This kind of shows a breakdown of  
18 both risks and needs of our offenders or clients,  
19 and most of them, as you can see, slightly over  
20 half, are in the moderate risk range and need  
21 range.

22 So that assessment looks at both risk  
23 to the community, risk to reoffending and also  
24 needs, what kind of needs do they have:  
25 Substance abuse, mental health, education,

1 employment, and that type of thing.

2           On the third page you have a  
3 breakdown of what offenders feel are important to  
4 them while they're in community corrections.

5           We do a very extensive satisfaction  
6 kind of survey with like 40 questions on it, and  
7 the two areas that offenders really feel that  
8 they really want help with when they're in a  
9 community correction program are with  
10 caseworkers. They deem that is very important,  
11 their interaction with caseworkers, as well as  
12 they're post-release plan, what am I going to do  
13 when I get released from the community correction  
14 program.

15           On the next page after that there is  
16 a nice graph showing that there are different  
17 risk distributions for different clients and  
18 different needs.

19           Here we have a graph showing the  
20 comparison between the drug court nonresidential  
21 program and our halfway house, male halfway  
22 house.

23           As you can see, the green bars  
24 indicate the distribution of risk levels for the  
25 residential programs, much higher risk, much

1 higher need; the drug court clients are much  
2 lower risk, much lower need, just to give you an  
3 indication of the distribution there.

4           As far as recidivism rates, I just  
5 gave you kind of a sampling of different one-year  
6 conviction rates after they are released from our  
7 programs. We have quite a range.

8           The first three programs to your left  
9 are nonresidential programs and as you go further  
10 to the right are more residential, more  
11 restrictive programs.

12           So those bold numbers there are the  
13 percent reconvicted after one year of release  
14 from some of these programs here.

15           Illya alluded to this a few minutes  
16 ago, on the next page, the interventions are  
17 different. We use the ORAS, as I mentioned, the  
18 higher risk assessment instrument but we use a  
19 variety of other assessment tools to cater our  
20 programming specifically to the client's needs.

21           The table there just kind of  
22 indicates, based on the score of two different  
23 kinds of assessments, the ORAS and the Criminal  
24 Thinking Scale, what kind of interventions would  
25 we give a client or an offender.



1                   And then the last two graphs on the  
2 handout kind of show -- the first one looks at  
3 the number of referrals a client would get should  
4 increase as their risk level increases. So as  
5 they're more risky, more needy, they would  
6 require more intervention.

7                   And this kind of graph shows that we  
8 want to say within a range. As you get higher  
9 risk score, we would like to see more  
10 intervention.

11                   And the last, the very last graph on  
12 the handout also shows days served. The higher  
13 the risk, the higher the need, the longer the  
14 stay. There's a lot of complicating factors to  
15 that but that's what we aim for. Thank you.

16                   MR. JONES:                   Thank you.

17                   Penny?

18                   MS. STRONG:                   Thank you.

19 Professor Dunn, welcome, good morning.

20                   DR. DUNN:                   Good morning.

21                   MS. STRONG:                   I have some  
22 questions for you that -- you come from a  
23 different sort of very fascinating perspective in  
24 terms of the reentry issue, which is something as  
25 criminal defense attorneys we very interested in,

1 that is, of course, how people enter the criminal  
2 justice system and the extreme disparities and  
3 the impact of certain laws.

4 A specific question about the traffic  
5 cameras. Do those result in the detection of  
6 felony crimes such as drug street crime, gang  
7 activity, as well or is that geared specifically  
8 for traffic offenses?

9 DR. DUNN: Specifically for  
10 traffic offenses. The cameras were, once again,  
11 suggested as a means to reduce the bias used.

12 And basically what researchers and  
13 lawyers refer to as "pretextual stops," as police  
14 tend to target their law enforcement and drug  
15 enforcement practices in primarily inner city,  
16 minority communities and often use traffic stops  
17 as a guise to conduct further investigations for  
18 drugs or other forms of contraband, thus the  
19 cameras was suggested as a means to remove that  
20 human subjectivity and the practice of the  
21 pretext stops.

22 MS. STRONG: So the pretext  
23 traffic stops can have actually a direct  
24 correlation with an increase in detection and  
25 felony convictions because it can lead to

1 drug-based activity, gang activity, those type of  
2 allegations, correct?

3 DR. DUNN: Yes, well --  
4 yes, to some degree. Now there's debate as to  
5 the effectiveness of those stops, because  
6 research has consistently shown, that while  
7 minorities, blacks and Hispanics in particular,  
8 are the majority of those stopped and searched  
9 for drugs and contraband, that the hit rates are  
10 lower in the majority of jurisdictions where  
11 research has been done in that regard.

12 New York City is a perfect example,  
13 they use the stop-and-frisk tactics more on  
14 pedestrian stops. Where in cities such as  
15 Cleveland the majority of contacts with the  
16 police comes through traffic stops, as that's the  
17 case throughout the nation, with the exception of  
18 cities such as New York and Philadelphia, where  
19 there's higher commuting the rails or transit and  
20 pedestrians.

21 The majority of stops or contact with  
22 the police comes in the form of traffic stops  
23 throughout the majority of the country.

24 MS. STRONG: I'm going to ask  
25 you a question in terms of how certain

1 populations, in particular Afro Americans, are  
2 impacted, in terms of your studies.

3           Do you take a position then in terms  
4 of the legalization of certain drugs such as  
5 marijuana, and in that regard we had a handout  
6 here for some state legislation and it seemed  
7 there was a provision on decriminalizing or  
8 legalizing small amounts of marijuana? Can you  
9 speak to that issue?

10           DR. DUNN:                   Well, I really  
11 haven't taken a position on that from a research  
12 perspective.

13           Personally, the legalization of  
14 marijuana, I think that would be a good step,  
15 truthfully, but other drugs -- I'm somewhat in  
16 disagreement with the legalization of other  
17 drugs, primarily because you then have to ask  
18 yourself where will whatever system is put in  
19 place to distribute the drugs or whatever, what  
20 communities are most likely going to have those  
21 facilities and can they stand another social  
22 burden such as that.

23           MS. STRONG:                Have you done  
24 any studies in terms of the reentry of formerly  
25 incarcerated individuals and how, if you will,

1 the current laws regarding criminal reporting of  
2 conviction impacts certain minority populations?

3 DR. DUNN: I haven't done  
4 any research recently specifically dealing with  
5 reentry. Now I look at, as I stated, the issue  
6 of reentry, looking at what creates this problem  
7 in the first place.

8 Now, I have in the past done some  
9 work, research for the Cleveland Catholic  
10 Diocese. They have a program that focused  
11 more -- it was specifically looking at the impact  
12 of incarceration on the children of incarcerated  
13 parents.

14 Now that research has concluded. I  
15 think, maybe in 2007 was the last, when that  
16 research ended.

17 MS. STRONG: What was the  
18 result of that research?

19 DR. DUNN: Well, the  
20 incarceration of a parent has significant adverse  
21 effect or impacts on the children, minor age  
22 children in particular.

23 Mr. Jones asked the prior panelist,  
24 Director Griffin, about the impacts of  
25 incarceration on children's school performance.

1                   It clearly has an impact on the  
2 school performance, as well as their social and  
3 emotional development.

4                   And a child of an incarcerated parent  
5 has a 70 percent or greater likelihood of  
6 ultimately winding up in the criminal justice  
7 system themselves sometime during their lifetime.

8                   MS. STRONG:                   Are you familiar  
9 with the current legal system for sealing  
10 criminal records in Ohio, and do you have any  
11 comments on reforms for that system?

12                  DR. DUNN:                   No, I can't say  
13 that I am too knowledgable of that, the current  
14 system in that regard.

15                  MS. STRONG:                   But I imagine  
16 you would be supportive of reforms that would  
17 allow for a broader base of sealing or even  
18 expungements?

19                  DR. DUNN:                   Yes, yes,  
20 because that's clearly an impediment to  
21 employment, a person's criminal record. Yes, I  
22 would.

23                  MS. STRONG:                   Mr. McGee,  
24 congratulations on your facility's 30 year  
25 anniversary. That is a significant achievement.

1 I looked at the website for Oriana House and it  
2 is a very impressive organization and group of  
3 facilities that have been developed over your  
4 30-year history.

5 I do have a question regarding how, I  
6 guess, your agencies, you refer to them as  
7 clients, how that breaks down between  
8 misdemeanors and felonies. Is that something  
9 that you can respond to?

10 MR. MCGEE: The majority of  
11 our offenders that are in our programs come from  
12 a wide variety of sources.

13 We have federal contracts where we  
14 get inmates from the Federal Bureau of Prisons.  
15 We have state contracts where we receive clients  
16 from the state institutions, of course, with  
17 felony-type offenses.

18 We also have those that have come  
19 directly from court with felony convictions, that  
20 in lieu of prison have been sentenced to maybe  
21 one of our halfway houses or our community-based  
22 correctional facilities.

23 Our misdemeanor-type offenders  
24 have -- more than likely they've been placed in  
25 more our diversionary-type program, to work on

1 different skills, maybe drug/alcohol, assisting  
2 with employment services.

3           And those programs, normally they are  
4 reported differently and may not be as intense as  
5 some of our more residential-type programs, and  
6 with the ability to possibly have those offenses  
7 removed after successful completion.

8           MS. STRONG:                   Do you have any  
9 sex offenders in any of your programs?

10           MR. MCGEE:                   For initial  
11 offenses, we don't have sex offenders. We may  
12 have someone who was a sex offender, who may have  
13 been violated, have been out in the community,  
14 who may have been picked up a new offense, who  
15 may have come to one of our programs, but for the  
16 most part we don't have initial sex offenders on  
17 their initial case, but we may have some who may  
18 have had a sex offense charge.

19           MS. STRONG:                   This might be a  
20 question that is more appropriate for your  
21 colleague, Mr. Boros, but what percentage of  
22 formerly incarcerated in your programs come  
23 actually reentering back from the prison system,  
24 either state or federal?

25           MR. MCGEE:                   What percentage?



1 MS. STRONG: I'm speaking of  
2 people who come directly on parole or as a  
3 halfway house placement, from either a state or a  
4 federal prison facility, as opposed to people who  
5 might be sentenced as an alternative to the state  
6 prison, to one of your facilities.

7 MR. MCGEE: I don't have  
8 that number that I can recall. I can't answer  
9 that right now.

10 MS. STRONG: I imagine you do  
11 service that population?

12 MR. MCGEE: Yes, yes, we do.

13 MS. STRONG: I noticed on  
14 your website that you also get some funding from  
15 the Federal Bureau of Prisons.

16 MR. MCGEE: Correct. I  
17 don't know the exact numbers of those returning,  
18 as far as returning to our facilities, I just  
19 don't have that number off the top of my head.

20 MS. STRONG: Now, your  
21 operations are focused in -- is it the three  
22 largest counties in Ohio -- Summit, Cuyahoga and  
23 I forgot the other one?

24 MR. MCGEE: No, no, Seneca  
25 County. Cuyahoga County being one of the larger

1 ones we actually operate in, the ones that we're  
2 currently in. We're in Cuyahoga County,  
3 Summit County, Sandusky and Tiffin. Cuyahoga  
4 being the largest county and Summit County being  
5 the county in which our operations began, which  
6 we have more programs and services.

7 MR. BOROS: We're in two of  
8 the five largest counties.

9 MR. MCGEE: Right.

10 MS. STRONG: Are there any  
11 plans or do you have satellite programs for any  
12 of the more rural counties? How are those  
13 counties, if you can speak to that, sir, with  
14 these type of populations?

15 MR. MCGEE: I would say our  
16 Tiffin facilities and our Sandusky facilities are  
17 pretty much more satellite and they service --  
18 our Tiffin facility serves 13 counties and  
19 they're equipped with some of the same services  
20 that we currently have in our other programs,  
21 from evidence-based practices to employment  
22 services, chemical dependency services.

23 So our programs, our residential  
24 programs, when you look at our halfway houses and  
25 our community-based correctional facilities, they

1 are similar in practices and services in the way  
2 we operate.

3           The one difference being the  
4 geographic area, which kind of renders itself to  
5 the type of people -- the type of offenders that  
6 you get are a little different from what you may  
7 have as offenders in Cuyahoga County, as opposed  
8 to the satellite in a more rural area, being in  
9 Seneca County and those counties, but services  
10 are similar, the way we do business is similar.

11           MS. STRONG:                    I notice that  
12 you have a specialized facility for the severely  
13 mentally ill, correct?

14           MR. MCGEE:                    Correct.

15           MS. STRONG:                    And you service  
16 both male and female populations?

17           MR. MCGEE:                    Correct.

18           MS. STRONG:                    Is that  
19 exclusively in Cuyahoga County?

20           MR. MCGEE:                    Excuse me,  
21 that's in Summit County at this time.

22           We operate a Sharp Facility for  
23 females and we also operate a Sharp Facility for  
24 our male clients, that's currently in Summit  
25 County, at this time.

1 MS. STRONG: Is that  
2 something that is through a grant from the State  
3 of Ohio or -- I'm kind of curious in how those  
4 specialized programs emerged.

5 MR. MCGEE: We actually  
6 receive grant funding through the ADAMHS Board,  
7 which is the mental health board, and with some  
8 funding from the state and -- but most of it is  
9 just through the county's mental health board and  
10 that pretty much secures the operation for that.

11 MS. STRONG: You do have a  
12 specific reentry program, correct?

13 MR. MCGEE: Yes.

14 MS. STRONG: That is here, in  
15 Cuyahoga County?

16 MR. MCGEE: Yes, correct.

17 MS. STRONG: How long have  
18 you had that program and could you describe that  
19 in a little more detail for us?

20 MR. MCGEE: You have a  
21 brochure, as well. It's our North Star Resource  
22 Reentry Center. It's located on East 55th  
23 Street, and we've actually been in operation its  
24 second year and it's been a very positive program  
25 and resource for those in the community.

1                   We have operated an employment  
2 program, life skills programming out of there.

3                   We offer a wide variety of services  
4 from assisting people with clothing vouchers,  
5 housing information. It's a whole gamut of  
6 services that we've been able to provide out of  
7 there.

8                   And we currently, in the last year we  
9 had over 1,400 members come to the North Star  
10 facility to receive some type of service in  
11 regards to reentry.

12                   Now, with the North Star facility one  
13 thing that's really unique, it's open to anyone  
14 that's in the criminal justice system, as well as  
15 family and friends, so everyone has the ability  
16 to come into that facility and receive some type  
17 of services and as well receive a membership.

18                   The membership is just pretty much a  
19 belongingness to a pro-social atmosphere. They  
20 have the ability to get a case manager to help  
21 them with services that they're in need of.

22                   Along with different linkages, we do  
23 a lot of in-between work, as far as establishing  
24 the contacts, follow-through, follow-up, and it's  
25 going very well, and I has been very successful

1 with a lot of the reentry initiative that has  
2 been done here, in Cuyahoga County.

3 MS. STRONG: What's your  
4 primary funding source for the North Star Center?

5 MR. MCGEE: We're funded  
6 through the Cuyahoga County Office of Reentry,  
7 that's our main funding source for that program,  
8 and they've been great as far as supporting the  
9 program.

10 Over the last year we've looked at a  
11 small sample of what we would say is our  
12 recidivism rate for people who join; and we  
13 looked at those people who were involved in our  
14 employment program; and I think we took a look at  
15 about 300-plus people; and looked at the arrest  
16 rate for a year, was it; and I think it was right  
17 about 4 percent, so we would like to think that  
18 the resource center is impacting those that are  
19 involved and coming to the center.

20 MS. STRONG: I have a lot  
21 more questions for you but I'm going to move on  
22 to Mr. Boros so the rest of the panel has an  
23 opportunity.

24 Mr. Boros, you appear to have a  
25 unique position. How long have you been involved

1 in doing research and maintaining statistics for  
2 Oriana House?

3 MR. BOROS: 13 years, since  
4 1999, and we have really expanded a lot of the  
5 things that we do in the research department.

6 As I mentioned, we're very fortunate  
7 to have -- a lot of nonprofits don't have a  
8 research branch. We not only look at offender  
9 behavior after they are released from a facility,  
10 we also maintain their input, what their input  
11 is, and how to improve programming.

12 We also look at diverse things such  
13 as how clients or offenders interact with our  
14 staff and improve that conversation and  
15 interaction that occurs to increase the odds of  
16 not recidivating.

17 MS. STRONG: Whose idea was  
18 you're position and your department? Was it  
19 something that was driven by the need to maintain  
20 statistics to obtain grants or was it some idea  
21 of quality control and client satisfaction behind  
22 your department?

23 MR. BOROS: Our CEO created  
24 this position before I got there and I think it  
25 was kind of all of the above.

1                   You know, the fact that it informs  
2 the agency on how to move forward, whether it's  
3 information from the clients, whether it is  
4 information from the staff, whether it's  
5 information from other sources, I feel the CEO  
6 felt that it was very important to have that in a  
7 very easily -- so it can be distributed  
8 throughout the agency now, people that need the  
9 information.

10                   MS. STRONG:                   I have a  
11 question, in looking at your website you have a  
12 client outcome study that you say informs the  
13 staff on behavior of the clients after they  
14 leave.

15                   How do you actually capture that  
16 data? Do you go to their probation or parole  
17 agent or do you mail out questionnaires to the  
18 clients after they've left?

19                   MR. BOROS:                   Well, I think  
20 the behavior is criminal behavior, I think that's  
21 what you're referring to.

22                   MS. STRONG:                   All right.

23                   MR. BOROS:                   So we -- as  
24 Illya has mentioned -- we do recidivism studies  
25 on many of our programs, to see what the arrests,



1 conviction, reincarceration rates are. There's a  
2 wide variety of differences that occur between  
3 programs as far as reincarceration and the  
4 different statuses.

5 Misdemeanants tend to recidivate  
6 actually even higher, at a even higher rate than  
7 some of our felony programs.

8 Our tolerance level is a Misdemeanor  
9 1 or above. Things like driving with a suspended  
10 driver's license is a recidivism.

11 We break down those statistics so  
12 people that read them can decide for themselves,  
13 because recidivism is a very difficult term to  
14 define, so we kind of give a menu of different  
15 recidivism rates so people can use the one they  
16 feel is appropriate.

17 MS. STRONG: Some of us  
18 toured the Nancy O'Connell --

19 MR. MCGEE: Nancy McDonnell.

20 MS. STRONG: Nancy  
21 McDonnell -- thank you for the correction --  
22 facility yesterday and I know they said, when  
23 asking about their recidivism rates, they said,  
24 well, we're just a little too new, so once we get  
25 passed that window of time, of course, you would

1 be producing your research in terms of that  
2 population.

3 I noticed also that you do a  
4 survey -- this was under the public relations  
5 section of your website -- you do a survey  
6 annually of judges, bailiffs, probation and  
7 parole officers.

8 Can you tell us about that and what  
9 function it serves your organization?

10 MR. BOROS: Yes, we're doing  
11 that right now. We do it once a year, as you  
12 mentioned, and we do it for the three basic  
13 geographic regions of Tiffin, Cuyahoga County and  
14 Summit County.

15 We want to incorporate the input from  
16 these people that refer clients to our programs  
17 in improving our programs.

18 We ask, you know, how do they feel,  
19 how easy was it to refer a client there, what  
20 kind of communications, and just basic  
21 satisfaction with our interaction with these  
22 other players in the criminal justice system.

23 This information gets distributed to  
24 the executive staff and they can make programming  
25 changes based on those results.

1 MS. STRONG: Thank you, I  
2 have no further questions.

3 MR. JONES: Margy?

4 MS. LOVE: Good morning.  
5 Our task as a group generally is to look into the  
6 kinds of legal mechanisms that are available to  
7 people as they're attempting to reintegrate into  
8 the community and yesterday we heard a number of  
9 people talking about how individuals after a  
10 conviction, coming out of prison, or maybe they  
11 don't go to prison at all, how they find out what  
12 their rights are, what rights they've lost, how  
13 to get them back.

14 Particularly Oriana House, I was  
15 thinking that there was some suggestion that kind  
16 of the last institution to see an individual  
17 ought to have some responsibility, or the  
18 correction's system should or defense lawyers  
19 should, and we're trying to, you know, locate  
20 that responsibility.

21 Do you all ever talk with people who  
22 are in your institution about the rights that  
23 they've lost as a result of conviction and how to  
24 get them back.

25 MR. MCGEE: One of the

1 things that we try to do with our clients, if we  
2 find or determine that there is a need in certain  
3 areas that limit them from progressing or doing  
4 something within the community in a pro-social  
5 manner, we've tried to link them to certain  
6 services or providers that can answer those  
7 questions or persons that could get them  
8 assistance.

9                   One of the things that we've been  
10 fortunate about at Oriana House, here in  
11 Cuyahoga County, at our North Star Resource  
12 Center we have a legal clinic, so in having a  
13 legal clinic, we're able to refer our clients to  
14 those attorneys for legal advise on any issues  
15 that they may have and it's pro bono, and that's  
16 been offered here, in Cuyahoga County, which has  
17 been very rewarding, not only for our clients in  
18 our program but for other offenders that are  
19 returning to Cuyahoga County as far as reentry.

20                   MS. LOVE:                   So where do the  
21 lawyers come from, are they on staff with North  
22 Star, are they volunteers?

23                   MR. MCGEE:                   No, they are  
24 part of the bar association here, in Cuyahoga  
25 County, and they do a pro bono clinic for us once

1 a month.

2                   It's normally four to five attorneys  
3 who come in, they meet with the clients for about  
4 a half an hour, talk about different issues and  
5 things of that nature.

6                   We've been doing that right about a  
7 year and a half and it actually has worked out  
8 very well in regards to services, not only again  
9 for our clients but for people in reentry, as  
10 well as family and friends.

11                   MS. LOVE:                   So can you just  
12 give me a couple of examples of the kinds of  
13 services that these lawyers have provided to  
14 particular individuals?

15                   MR. MCGEE:                   They may  
16 potentially asked them in regards to rights and  
17 cases or if they have outstanding issues in the  
18 legal system, discussions of those, how they go  
19 about handling those situations. It may be  
20 things that come about with family issues, rents,  
21 eviction notices and different things that  
22 require attention, that they're not very familiar  
23 with.

24                   But having the ability to go to a  
25 legal counsel and just inquire about those

1 questions and to be able to take that back to a  
2 family member has bridged the gap tremendously.

3 MS. LOVE: We've heard  
4 there are a lot of ways that people can lose  
5 driver's licenses here in Ohio, owing child  
6 support or something even less connected --  
7 that's not very connected with driving a car -- I  
8 guess there's lot of ways, but that seems to be  
9 sort of the preferred way of making people do  
10 things.

11 Are there ways that -- is child  
12 support one of the areas that lawyers help your  
13 folks with?

14 MR. MCGEE: Correct. We  
15 also -- and I guess I really need to say, when  
16 you look at our North Star Resource Center, we  
17 offer a variety of clinics, so we offer an  
18 expungement clinic, we offer a legal clinic, we  
19 offer employment services. So it's a wide  
20 variety of services that are being offered in  
21 there, where we educate those clients that are  
22 coming back from the institutions, as well as  
23 those clients that are currently in our program,  
24 that's what makes the North Star Resource Center  
25 so unique, because these people have the ability

1 to come and all they have to do is sign up, be a  
2 member and they have the ability to get access to  
3 these services.

4           We have probably about anywhere from  
5 a hundred to 150 new members each month who have  
6 heard about our North Star center from either in  
7 the institutions or family or friends or other  
8 providers in that continuum who said, hey, go  
9 over to North Star, they will be able to help you  
10 with these issues.

11           In addition to that, our staff has  
12 been trained and we are a benefit bank site. So  
13 we do a lot of different things out of North Star  
14 that we would like to say really contribute to  
15 helping people get back and being a positive  
16 reintegration.

17           MS. LOVE:                   This is my last  
18 question: Is the expungement or sealing clinic,  
19 is that part of the legal? Who staffs that?

20           MR. MCGEE:                 It's in  
21 conjunction. Initially, when we started, it was  
22 two different entities, so they've kind of merged  
23 them and work together as one entity now, which  
24 is actually going very well.

25           It's amazing because now people are

1 coming and they really want to hear about the  
2 different things that they have to do for  
3 expungement, how they're eligible and really  
4 looking and taking it back and sharing that  
5 information.

6                   So now each week or each month it  
7 grows, the numbers grow, and we look at them, so  
8 we're very pleased with that aspect.

9                   MS. LOVE:                   We heard from a  
10 DA yesterday, a prosecutor, they handle sealing  
11 cases, that's apparently her sole responsibility.

12                   Does the parole board also -- I think  
13 they have some role in sealing cases or perhaps  
14 not.

15                   Have you had other institutions that  
16 have an interest, other government institutions,  
17 sort of take an interest in what's going on in  
18 your clinics?

19                   MR. MCGEE:                   Well, our parole  
20 and probation departments are involved with our  
21 North Star, so we do get those referrals from  
22 probation and parole.

23                   In addition, we have those people  
24 from parole and actually probation that are on  
25 our advisory board, so they actually get an



1 update of what we do, our goals and our plans.

2                   One of the things that we're looking  
3 at now with our North Star facility is actually  
4 generating a strategic plan to look at where do  
5 we want to go as far as our services and being  
6 additional providers.

7                   I think that's going to be intricate  
8 in when you look at reentry and having the  
9 ability to really reach out and help those  
10 families and those people that are returning from  
11 our institutions.

12                   MS. LOVE:                   Thank you very  
13 much.

14                   MR. JONES:                   One of the  
15 things that we saw, that we learned when we did  
16 the tour of North Star was -- can you hear me --  
17 one of the things that we saw was this concept,  
18 this initiative, I guess, called the Citizens  
19 Circles, are you familiar what that?

20                   MR. MCGEE:                   Correct, I'm  
21 familiar.

22                   MR. JONES:                   Can you just  
23 very briefly describe what those are because I  
24 have not seen those anyplace else in the country  
25 and I thought that was an interesting concept.

1                                   MR. MCGEE:                                   The Citizen  
2 Circle is actually a component -- that's one of  
3 the groups that is run out of our North Star  
4 facility and what that is, it's a group of  
5 what -- our reentry coalition, the reentry  
6 strategy here, in Cuyahoga County, they've  
7 developed a group and they've received training  
8 on Citizen Circle.

9                                   What it does is those offenders that  
10 are returning or people that are in the reentry  
11 world, they assist them with linkages, they do  
12 discussions about things that are barriers, as  
13 far as their return or them having some type of  
14 criminal record, and they kind of work them  
15 through some of the concerns, put them in touch  
16 or link them to services or individuals that they  
17 can receive assistance from.

18                                   One of the good things about having  
19 it at North Star is a lot of those things are  
20 already at North Star, so with the Citizen  
21 Circle, if a person comes in and say they're  
22 really struggling with writing a resume, you  
23 know, we say, well, you have the ability, you can  
24 work here in North Star or you may be able to go  
25 down to the library where they have a resume

1 building class, and those are the type of things  
2 that the Citizens Circle does. It more of a  
3 support-type groups to assist with linkages.

4 MR. JONES: What I took I  
5 way from it, you correct me if I am wrong, is  
6 that these are small groups of citizens who have,  
7 sort of, I guess, volunteered almost, to work  
8 one-on-one with the person who is coming back and  
9 attempting to reenter.

10 MR. MCGEE: It's a group of  
11 citizens, along with other entities that -- there  
12 may be other providers, as well.

13 As I said earlier, those individuals  
14 that's part of those Citizen Circles have all  
15 been trained and they've been kind of prepped to  
16 actually deal with those people that are  
17 returning from the institutions or the community,  
18 who have high needs, and to be able to deal with  
19 those and point them in the right direction.

20 MR. JONES: Right. Thank  
21 you.

22 Chris.

23 MR. WELLBORN: Thank you. My  
24 first question is for Dr. Dunn.

25 You mentioned the 2007 study

1 regarding the impact on children of formerly  
2 incarcerated individuals and you quoted a figure  
3 of 70 percent of those people were likely, as  
4 they became adults, to be incarcerated  
5 themselves.

6 My question for you actually is  
7 several folds. First of all, since this 2007  
8 study have there been any follow-up studies in  
9 that area, that you're aware of?

10 DR. DUNN: None that I'm  
11 personally aware of.

12 MR. WELLBORN: The second  
13 question is: Did this study come up with any  
14 reasons why, other than just that this was the  
15 base figure?

16 DR. DUNN: No, other than  
17 looking at the social and psychological impact  
18 that the absence of a parent has on the child.

19 We began to see or clearly recognize  
20 that a lot the behavioral issues that often are  
21 manifest in children in low-income, inner city  
22 schools very well could be as a result of the  
23 incarcerated of a parent, whereas the school  
24 officials might clearly miss that, might not be  
25 aware of it, and it could have other detrimental

1 consequences for that child, that they're  
2 somewhat labeled and tracked in a certain way.

3 MR. WELLBORN: Are you aware of  
4 any studies that have tracked the impact on the  
5 children of people who have been released or  
6 ex-offenders, but their kids are still in the  
7 school system, in a situation where the parents  
8 aren't able to find suitable housing and/or  
9 employment because of their ex-offender status?  
10 Have there been any studies that you're aware of  
11 that have done any of that tracking?

12 DR. DUNN: No, I can't say  
13 that I am. Again, once that study was concluded,  
14 the funding was no longer in place and I kind of  
15 moved on to other areas.

16 MR. WELLBORN: Thank you very  
17 much. My next question is for Mr. Boros.

18 One of your positions is you do  
19 research for Oriana. Has anyone in government,  
20 whether it's State of Ohio, Cuyahoga County or  
21 the City of Cleveland, either been interested in,  
22 been receptive to or used your research for  
23 purposes of driving public policy, that you're  
24 aware of?

25 MR. BOROS: Well, in our

1 North Star facility, the funding agency is very  
2 interested in some of the stats that we use  
3 because they quite frankly justify the  
4 programming, the necessary elements of  
5 programming, so they can justify it to their --  
6 you know, the people that they need to.

7           So I know very recently, in fact  
8 right now we're developing statistics for them so  
9 that they can, you know, use that.

10           MR. MCGEE:                   Can I answer,  
11 jump in on that question?

12           MR. WELLBORN:               Please.

13           MR. MCGEE:               One of the  
14 things that our agency has been involved with,  
15 we're part of an association called Ohio  
16 Correction Association and our research numbers  
17 and the data from our agency, it has been  
18 data-driven to support studies in regards to how  
19 community corrections assist and reduce  
20 recidivism, and how it supports decreasing the  
21 number of people that we send to the  
22 institutions, and that's played a major part when  
23 you look at cost-saving measures.

24           When you look at to incarcerate a  
25 person annually in an institution, it's right

1 about twenty-five thousand a year, and when you  
2 look at placing them in what we consider a CBCF,  
3 Community-Based Correctional Facility, such as  
4 the Nancy McDonnell, around about nine thousand  
5 and a halfway house, about six thousand, and you  
6 look at a person who has a mental health capacity  
7 in an institution runs about thirty-one thousand.

8           So our numbers, in regards to success  
9 rates, recidivism, those people returning, those  
10 numbers are generated over a continuum through  
11 that whole association and it's produced for the  
12 state.

13           And we look at those numbers, cost  
14 measures, to determine what we would like to  
15 think as good legislative practices, to discuss  
16 potentially looking at people that we're sending  
17 to the institutions as opposed to being able to  
18 place them in community correction programs.

19           MR. WELLBORN:           As a follow-up  
20 to that, are either of you gentlemen aware of  
21 whether anyone in the court system, whether it's  
22 defense lawyers, prosecutors or judges,  
23 referenced or used your research or the evidence  
24 or statistics that you've gathered for purposes  
25 of making decisions regarding these individuals?

1                   MR. MCGEE:                   That has been  
2 the case. When you look at the numbers and you  
3 look at the success rates of our programs and you  
4 look at the people that are actually returning to  
5 institutions, being reincarcerated, based on  
6 successful releases, those numbers have been  
7 looked upon and been factors for discussion in  
8 legislation for additional revenues to support  
9 community corrections.

10                   And it's definitely been a catalyst,  
11 because, again, we feel that if you have good  
12 practice, everyday practices in the program, and  
13 you're doing what works and with fidelity, then  
14 you have a more successful type of person coming  
15 back and reintegrating back into the community.

16                   MR. WELLBORN:                   I guess I  
17 apologize. What I really wanted to get at was  
18 whether in the court system itself, whether  
19 prosecutors are referencing your success rate,  
20 the statistics that you have to back up you're  
21 success rate and/or whether judges are  
22 referencing this perhaps in a way that might  
23 foster more public support, more legislative  
24 support for what you're doing?

25                   MR. MCGEE:                   Again, I would



1 say, yes. I think that was one of the catalysts,  
2 our numbers, our success rates. And what we've  
3 done as an agency has been one of the main  
4 catalysts in support of us being able to operate  
5 the Judge Nancy McDonnell CBCF here in  
6 Cuyahoga County.

7                   So those numbers, our success rate  
8 with our clients, our recidivism studies, our  
9 programming, our evidence-based practices, all of  
10 those things, accompanied with the numbers, has  
11 driven us to be able to go into different areas,  
12 to be able to develop programming and continue to  
13 run what we like to think of as positive, strong  
14 programs.

15                   MR. BOROS:                    Could I real  
16 quick?

17                   MR. WELLBORN:                    Sure.

18                   MR. BOROS:                    I know we  
19 recently did a recidivism study for federal  
20 clients in our community corrections halfway  
21 house in Cleveland, and that was specifically  
22 requested by the federal probation and pretrial  
23 and it was shared with the judges.

24                   I'm not sure exactly what they did  
25 with that information but they were very

1 interested in that report and the findings that  
2 came out of that.

3 MR. WELLBORN: When was that  
4 study completed, if you may?

5 MR. BOROS: Last year.

6 MR. WELLBORN: Last question,  
7 and I guess I direct this again to Mr. Boros, and  
8 anybody else who may be able to weigh-in on it:  
9 Has anybody done any studies in Cuyahoga County  
10 or the Cleveland metro area, again that you  
11 gentlemen might be aware of, of the school  
12 dropout rates for kids of ex-offenders who can't  
13 find jobs or stable housing and/or the impact on  
14 social resources, in other words, the financial  
15 drain for the county or city as a result  
16 ex-offenders not being able to find jobs or  
17 social housing?

18 MR. BOROS: I think there  
19 was a study by the Urban Institute that came out  
20 a couple years ago that dealt with reentry,  
21 specifically in Cleveland and the impacts. It  
22 may have information that deals specifically with  
23 your question.

24 If we could maybe communicate after  
25 this meeting, I think we would be able to find it

1 somehow for you.

2 MR. WELLBORN: Thank you very  
3 much.

4 DR. DUNN: If I might, that  
5 study came out, I think it was 2005, but to the  
6 best of my knowledge it didn't include data on  
7 the economic impact and I'm not aware of any  
8 studies that have been done on that issue.

9 MR. WELLBORN: Thank you.

10 MS. VANDERHORST: Dr. Dunn, you  
11 did an article that referred to the study of  
12 racial disparities within this county, in the  
13 criminal justice system, it was a 2009 article.

14 Can you tell us a little bit about  
15 what the population -- what kind of racial  
16 impacts there have been within the criminal  
17 justice system for this county specifically?

18 DR. DUNN: Yes, the county,  
19 Cuyahoga County, I'm sure you've probably heard  
20 this over the past two days, but they  
21 contribute -- roughly a fifth of the state's  
22 prison population, comes out of Cuyahoga County,  
23 comes out of and returns to Cuyahoga County.

24 In 2011 that figure was 19 percent.  
25 69 percent, if I'm not mistaken, of those

1 ex-offenders come from the City of Cleveland,  
2 felony, and those numbers are primarily as a  
3 result of felony drug arrests.

4           The City of Cleveland had one  
5 specific policy that they were following, drug  
6 paraphernalia cases that have been in place for  
7 over a 23-year period, I think, 1985 or '86 till  
8 2009 they ended the policy.

9           But that policy was referred to as  
10 crack pipe cases. And the city averaged between  
11 1,200 and 1,500 of those cases annually.

12           Now, over the life of that policy  
13 that equates to as many as 34,500 people saddled  
14 with a felony drug conviction.

15           Now, if you think about it, if a  
16 person is caught with a crack pipe, they're not a  
17 major drug dealer, which the war on drugs was  
18 supposed to be targeting, they're a drug addict.

19           So basically the city was following a  
20 mental health, public health issue with a  
21 criminal justice approach, and once again, that  
22 exacerbates the economic vitality, the employment  
23 issues that that creates for this subgroup of  
24 citizens coming back to the area.

25           Now, the majority of those cases,

1 those felony convictions, come out of five  
2 neighborhoods on the east side of the  
3 City of Cleveland, and it's not often discussed  
4 but Cleveland is one of the most racially  
5 segregated cities in the country.

6 As of the 2000 census we were  
7 Number 3. As of the 2010 supposedly that number  
8 has decreased, we're now Number 6.

9 But the point is it's primarily  
10 segregated black, east side of the city and  
11 county and entering suburbs, and whites primarily  
12 on the west side, as well as the outer ring  
13 suburbs on the east side. So it has a disparate  
14 racial impact, following such policies.

15 The city, as I said, they did  
16 discontinue that policy in 2009, but at that  
17 point so much damage had already been done.

18 And at the time when the mayor's  
19 office announced they were going to reform that  
20 policy, the safety director stated that the city  
21 had been following a failed drug policy for 23  
22 years. Well, you have to look at the human cost  
23 and impact that that has.

24 MS. VANDERHORST: We've looked at  
25 expungements or what you all call sealings here.

1 Do you have any idea of whether or  
2 not the charges that came out of particularly the  
3 drug cases were the type that would make people  
4 eligible for sealings or were they like the one  
5 case with multiple charges for multiple cases,  
6 where they would not qualify for  
7 first-time-offender sealing?

8 DR. DUNN: Well, I'm not  
9 specifically aware of those sealings and what  
10 they are, but I do know that as a result of that  
11 policy that I just mentioned, The Plain Dealer  
12 did a series on the disparities in the county's  
13 criminal justice system, particularly looking at  
14 drug offenses, and it was found that blacks  
15 weren't as likely to be given first offender  
16 diversions programs and things as a result of  
17 being charged with felony drug crime in  
18 comparison to white. Now, what those sealings  
19 are, I don't know, I didn't delve that deeply.

20 My work primarily focuses more on the  
21 policing piece that drives these numbers.

22 And actually the study I made  
23 reference to earlier, that I'm currently engaged  
24 in, the county prosecutor's office, as a result  
25 of the series run by The Plain Dealer,

1 commissioned this study and they contracted  
2 myself and some colleagues at CSU to specifically  
3 look at police discretion, whereas the University  
4 of Cincinnati was commissioned to look at  
5 everything from arrests through sentencing, so  
6 they would have looked more at the issues you're  
7 referring to.

8 MS. VANDERHORST: Did you see any  
9 disparities in terms of what police, the charges  
10 that police were arresting people for and the  
11 charges that they actually were going to trial  
12 on, charges that were actually being paid for by  
13 the prosecutor's office?

14 DR. DUNN: Well, no. Once  
15 again I didn't look specifically at that aspect  
16 of it. I am aware, though, that it has been  
17 found that people are often overcharged in order  
18 to get a plea deal or what have you. I am aware  
19 that that is an issue.

20 MS. VANDERHORST: Okay. Thank  
21 you.

22 MR. JONES: Elissa?

23 MS. HEINRICHS: No questions.

24 MR. JONES: Larry?

25 MR. GOLDMAN: Professor Dunn,

1 let me ask you something. I know you will  
2 probably preface this by saying you haven't done  
3 a study on this precise issue, but you're, I  
4 assume, as much an expert as anyone I know, so  
5 excuse me.

6 You mentioned the racial component  
7 and one of the areas we're focusing on, reentry,  
8 getting jobs.

9 We were made aware -- I haven't read  
10 it -- of Dr. Pager. Devah Pager, just did a  
11 study, which essentially said, as it was  
12 distilled to us, that her study showed that a  
13 white person with a criminal conviction will be  
14 treated for job purposes more favorably than an  
15 African American with no conviction, which by  
16 itself, in a simplest sense, seems to say a lot.

17 And you mentioned before that  
18 there's, I guess, an inherent racism in terms of  
19 hiring -- I don't want to put words in your  
20 mouth, you tell me if I'm wrong -- aside from the  
21 mere fact of conviction; is that true?

22 DR. DUNN: Could you repeat  
23 your question?

24 MR. GOLDMAN: Yeah, it's a  
25 lawyer's question.



1                   That in fact, aside from the mere  
2 fact of conviction, and in practical terms, an  
3 African American with a criminal record seeking  
4 the job has faced -- is going to have -- there's  
5 going to be some racial discrimination in a  
6 decision not to hire?

7                   DR. DUNN:                   Once again, yes.  
8 As you stated, I would preface it. I have not  
9 done research on that particular issue but I  
10 would think, yes, they would, they would have to  
11 not only deal with the felony as a barrier but  
12 also the racial component also.

13                   MR. GOLDMAN:                   Now, you  
14 mentioned the crack pipe situation, and I think  
15 one answer I would give, that would be more of a  
16 law enforcement problem, say stop emphasizing  
17 arrests for crack pipes for the obvious reasons,  
18 that crack pipe users are unlikely to be dealers  
19 certainly.

20                   DR. DUNN:                   Uh-huh.

21                   MR. GOLDMAN:                   Do you have any  
22 suggestion about how government by rule,  
23 legislation, could deal with the issue of racism,  
24 specifically in terms of people with criminal  
25 convictions, in terms of reentry jobs?

1 DR. DUNN: Well, in dealing  
2 with the racial component? Well, you know, once  
3 again -- and I commend yourselves and everyone on  
4 the panel for the work that you do on the reentry  
5 end -- my focus has been let's keep the bodies  
6 out of the system. First of all, let's make it  
7 an equitable system, let's make sure we're  
8 incarcerating the correct people.

9 So in that regard I've been a strong  
10 proponent for first of all legislation, enacting  
11 legislation prohibiting the use of racial  
12 profiling.

13 So that, as I see it, is the first  
14 step for beginning to address some of these  
15 racial disparities.

16 I actually just returned from  
17 Washington last week, lobbying our Congressional  
18 representative to pass the end Racial Profiling  
19 Act, where hearings were held on Tuesday on  
20 Capital Hill. I think it would have a  
21 significant impact in the City of Cleveland and  
22 the State of Ohio.

23 As I said, the majority of felons or  
24 ex-offenders come out of Cuyahoga County, and to  
25 me Cleveland would be the most logical place to

1 begin that effort to address this issue, in that  
2 Cleveland has the largest African American  
3 population in the State of Ohio, we send the most  
4 offenders to our state's prisons.

5           So if we put that legislation in  
6 place here, I think then we could try to move it  
7 up to the state level, and that will begin to  
8 address some of the racial disparities, as well  
9 as the crime problems because, once again,  
10 getting into the specific issue of racial  
11 profiling, it creates distrust within minority,  
12 and particularly African American communities, of  
13 law enforcement, when they see these practices  
14 and thus make citizens less willing to work along  
15 and cooperate with the police to reduce real  
16 issues of crime in those communities.

17           So I probably didn't answer your  
18 question specifically as far as policies to  
19 address the employment piece, but once again, I  
20 think that that's a start.

21           MR. GOLDMAN:                   Thank you. You  
22 know what's interesting, criminal defense  
23 lawyers, of which I've been one for a long time,  
24 have generally not viewed, as part of their  
25 responsibility, anything that happens after

1 sentencing, and historically, frankly, there has  
2 not been a hell of a lot of legal attention to  
3 it.

4                   Lawyers -- it's appealed. We haven't  
5 paid attention to it for all kinds of reasons.  
6 Historically the role of the criminal defense  
7 lawyer is to fight the case, a sentence and we're  
8 finished, sir.

9                   DR. DUNN:                   Right.

10                   MR. GOLDMAN:                So we are trying  
11 to address that historic lack and deal with  
12 issues and ways to deal with it, among other  
13 things, legislation.

14                   Let me ask, any of you can answer  
15 this question: We've heard about the ban the box  
16 rule in Cleveland.

17                   Has there been anyone -- maybe you  
18 gentlemen have a better sense of this -- has it  
19 had any practical effect in the city, having  
20 people with criminal records get jobs?

21                   MR. MCGEE:                   Well, the  
22 City of Cleveland kicked off with the whole ban  
23 the box initiative, and it's kind of filtered  
24 throughout the county with other supportive  
25 agencies through our reentry coalition.

1                   Being a part of that initiative I  
2 think it is fairly new right now. I don't know  
3 if the impact -- as of now, one of the things,  
4 our agency, being a part of that reentry spectrum  
5 and being in support of people in reentry  
6 returning and having the opportunity, has gone to  
7 ban the box, at our agency.

8                   And, you know, we understand that it  
9 allows for a person that's returning to at least  
10 have an opportunity to be able to sell themselves  
11 and have a discussion on why they're capable of  
12 doing certain jobs and having that opportunity,  
13 and I think from that perspective it definitely  
14 opens doors for people in the reentry field.

15                   I don't know it's impact right now  
16 but hopefully, if the initiative continues, it  
17 will open some doors and give those people who  
18 checked the box initially, that didn't get the  
19 opportunity, it will give a lot more of those  
20 people the opportunity.

21                   MR. JONES:                   We are very soon  
22 going to be out of time and I just want to give  
23 Jenny Roberts, our reporter, an opportunity to  
24 round out the discussion.

25                   MS. ROBERTS:                   Thanks. I had

1 two follow-up questions, one for Professor Dunn,  
2 just on the paraphernalia felony, which is quite  
3 unusual and presumably Ohio state law, criminal  
4 law, which makes that a felony.

5           Can you just clarify, when you talked  
6 about the policy change, are you talking about at  
7 the policing level, exercising discretion not to  
8 make those arrests or what policy are you  
9 referring to?

10           And I ask this because I agree with  
11 you, that it's a very important distinction  
12 between the front end of things, in keeping  
13 things out of the system so we have a smaller  
14 reentry problem to deal with than and what we've  
15 largely focused on, so you do bring a very unique  
16 perspective to us.

17           DR. DUNN:                   Well, the policy  
18 was changed in that, yes, the police orders --  
19 well, it was no longer charged as a felony by the  
20 City of Cleveland, so the law director had to  
21 revise the city's policy, and to the best of my  
22 knowledge, I've inquired from time to time, they  
23 haven't seen any detrimental effect. They no  
24 longer have any of those cases in the system, the  
25 crack pipe cases.

1                   Now, those cases were charged  
2 misdemeanor in all other jurisdictions in the  
3 state other than the City of Cleveland, so a  
4 person could literally be on one side of the  
5 street, up on the border of Cleveland and Shaker,  
6 and be charged with a felony, whereas, if they  
7 stepped across the street, it would have been  
8 treated at a misdemeanor.

9                   MS. ROBERTS:                   So presumably  
10 Ohio state law allowed it could have been brought  
11 under different provisions.

12                  DR. DUNN:                   Yes.

13                  MS. ROBERTS:                Thank you. The  
14 other follow-up question I had was for either of  
15 our witnesses from Oriana House about the  
16 expungement clinics.

17                  I guess one of the questions we have  
18 that Margy Love referred to early on is where  
19 does the responsibility lie for giving people  
20 information about things like sealing of criminal  
21 records and assisting people with doing that?

22                  And so you mentioned these clinics  
23 and I was looking on the website about the  
24 expungement clinics, do you feel that a county  
25 bar association, pro bono attorneys project, is

1 sufficient to address the needs for sealing?

2           And I guess one of the questions  
3 wrapped up in that is whether these attorneys  
4 continue to work with people, if, say, the  
5 prosecutors's office opposes the sealing or are  
6 those simply informational clinics, where the  
7 attorneys don't continue representation?

8           MR. MCGEE:                   They're strictly  
9 informational clinics.

10          MS. ROBERTS:                Okay.

11          MR. MCGEE:                   They're  
12 basically informational on rights, also how they  
13 go about getting expungement and things of that  
14 nature.

15               From that perspective, just being  
16 able to be educated on your rights, your  
17 abilities, who you have to see, the process  
18 itself, it goes a long way with educating those  
19 people who want to Excel and reintegrate back  
20 into the community.

21          MS. ROBERTS:                For those who  
22 want to follow up on that and need legal  
23 assistance in the follow up, do your programs  
24 have that?

25          MR. MCGEE:                   Well, what we've



1 done is we've just pretty much pointed them or  
2 linked them with services in the community where  
3 they could get assistance, so we don't actually  
4 do it within our program but our case managers in  
5 our agencies link them to the necessary providers  
6 or locations where they can get the assistance  
7 that they need.

8 MS. ROBERTS: Do you happen to  
9 know offhand -- this is my last question -- do  
10 you happen to know offhand who those legal  
11 assistance providers would be here?

12 MR. MCGEE: No, I don't.

13 MS. ROBERTS: I'll come up  
14 later and give you a card.

15 MR. JONES: Gentleman, thank  
16 you. This has been a particularly  
17 informational -- informative is the word I'm  
18 trying to find -- session and we appreciate it  
19 very much. Thank you very much.

20 It is lunchtime. We're going to  
21 reconvene in one hour.

22 - - -

23 (Whereupon there was a recess in  
24 the proceedings from 11:32 a.m. to  
25 12:34 p.m.)

1                   MR. JONES:                   All right.

2                   Professors Blumstein and Nakamura, we  
3 are pleased to have you here. I understand that  
4 you guys are going to put on a show for us, which  
5 we're excited to see, and once that is done and  
6 you have walked us through your presentation,  
7 we've got a number of questions and are  
8 interested in having a conversation with you.

9                   The way that we operate here is that  
10 one of us will be leading the discussion and that  
11 will be Margy Love, and assuming that there is  
12 time after she's done with her questioning, the  
13 rest of us will participate and we've got some  
14 other questions for you as well.

15                   So I am going to, at this point, turn  
16 the floor over to the two of you, and along with  
17 everyone else, watch what you've got to present  
18 to us.

19                   Welcome. Thank you.

20                   MR. BLUMSTEIN:                   We're delighted  
21 with the opportunity to be here with you. This  
22 is an issue that we have been concerned about for  
23 a long time and realize that there are a very  
24 large and growing number of people who have a  
25 criminal history record, and that that record

1 stays with them for a very long time.

2                   That compelled us to look at the  
3 issue of when that record should no longer be  
4 used as an indicator against them, in terms of  
5 whatever risk they may pose to a community, to an  
6 employer and so on.

7                   That's where the construct of  
8 redemption comes in and what we want to do is  
9 just say something about why this has become an  
10 increasingly important problem, and the first  
11 relates to the technology.

12                   It used to be that criminal records  
13 sort of faded away in a wide variety of ways  
14 because they weren't used, they were old, they  
15 were filling up the storage rooms, but the  
16 technology has made it very easy and, as a  
17 result, terribly ubiquitous.

18                   Most large companies do the  
19 background checks, statutes often increasingly --  
20 because of the ease of it, statutes often require  
21 background checks for jobs and to get licenses  
22 for certain jobs, and what's particularly  
23 troublesome is when new statutes come in that  
24 retroactively invoke for somebody who has been  
25 working at the job, invoke the inability to

1 continue in the job because an event that may  
2 have happened very long ago.

3           The other issue that's nowhere as  
4 widely appreciated is the ubiquity of the  
5 criminal records.

6           There are 14 million arrests a year,  
7 there are 92 million criminal records in the  
8 state repositories.

9           There has been a recent estimate that  
10 by age 23 about a third of the men and women,  
11 much more for men, about a third of them would be  
12 arrested for a non-traffic offense.

13           This was a striking contrast to a  
14 paper that Ron Christianson did about 45 years  
15 ago, that showed that the probability that a male  
16 would be arrested sometime in his life was 50  
17 percent.

18           I was sure he had missed a decimal  
19 point. We had been working together on this. I  
20 was sure 50 percent was the wrong number, that  
21 would be sometime in his life.

22           The counterpart to this 30 percent  
23 was 23 percent, going back to the records of 45  
24 years ago, but since then we hadn't done much  
25 arresting for drug offenses, we didn't do much

1 arresting for domestic violence.

2           There's a lot of stuff that we now  
3 arrest for. There is much more interaction  
4 between individual citizens and the criminal  
5 justice system and that's a growing phenomena.

6           So most people are much closer to my  
7 perception, that it would be more like 5 percent  
8 rather than 50 percent or 3 percent rather than  
9 30 percent, so that ubiquity of arrest is just  
10 nowhere adequately appreciated.

11           So lots of people can't get a job  
12 because of something that happened long ago, and  
13 so that's why we got started a few years ago to  
14 explore when relief from that prior mark of the  
15 crime, what we're calling redemption, should be  
16 granted.

17           Okay. It's clear that the recidivism  
18 probability, the risk of a new crime or a new  
19 arrest, declines with time clean after an arrest  
20 or a conviction; the longer you stay clean, the  
21 lower the probability of a new event.

22           So if an individual with a prior  
23 criminal record stays crime-free long enough,  
24 then his risks should become less than some  
25 comparison group and part of the issue is what's

1 the comparison group, what's the comparison  
2 standard, but it is clear if it stays long  
3 enough, it comes down.

4           What we're bringing to the table, not  
5 just the conception that it's coming down but  
6 some empirical estimates of when that redemption  
7 is and should be appropriate, and when it crosses  
8 some standard, that's what we're calling  
9 redemption time.

10           MR. JONES:                   That first  
11 bullet where you say, "time clean."

12           MR. BLUMSTEIN:           Time clean.

13           MR. JONES:                   That means time  
14 without an arrest, not time free of drugs, right?

15           MR. BLUMSTEIN:           Correct. It  
16 means time clean of any crime.

17           MR. JONES:                   Free of arrest.

18           MR. BLUMSTEIN:           What we're  
19 talking about, criminal history record, and it's  
20 clean of a criminal history record.

21           MR. JONES:                   Got you.

22           MS. LOVE:                   But it's arrest,  
23 not conviction?

24           MR. BLUMSTEIN:           It's arrest. We  
25 can get into this in much greater detail. We

1 will try to be explicit about what we're talking  
2 about when we say arrest, and when we say  
3 conviction and the way we use it, but most of our  
4 data, you will see, starts with arrest and then  
5 we draw a subset of the population who have been  
6 convicted, but arrest is an important element in  
7 the criminal justice records.

8                   Okay. And that's what we're  
9 referring to as the redemption time.

10                   Let me turn it over to Kiminori  
11 Nakamura who is going to fill you in on some of  
12 the specifics of the research findings, what  
13 we've done and how you might use them.

14                   MR. NAKAMURA:               All right. So  
15 there are several symbols we're going to be using  
16 throughout the presentation, so I'm just going to  
17 present all of that in one slide here.

18                   We're going to be referring to T1 as  
19 a redemption time, that's when the redemption  
20 happens in relation to general population, we  
21 talk about two types of comparison groups.

22                   And T2 refers to another redemption  
23 time, using more rigorous, more sort of a serious  
24 benchmark or comparison group.

25                   A1 refers to age at first arrest,

1 that's when people in our data had their first  
2 arrest.

3 C1 refers to the crime type of their  
4 first arrest.

5 And C2 refers to the crime type of  
6 the second arrest or residivism risk, that is of  
7 most concern to the employers.

8 So our research project is based on  
9 data from New York State Criminal History  
10 Repository.

11 In our data we capture basically  
12 everyone who was first time arrested in New York,  
13 in 1980, of adults, and we have about 88,000  
14 people who fit that criteria.

15 So from 1980 onward we can capture  
16 their criminal history, so we have a follow-up of  
17 over 25 years, so that's a much longer follow-up  
18 than typical recidivism studies which tend to  
19 follow up people for about three to five years.

20 It is important that all our numbers  
21 are based on those who were convicted, not just  
22 arrested and. You know, basically those who were  
23 convicted constitute a subset of those who were  
24 arrested in 1980.

25 A1, as we introduce age at first



1 arrest. So that's their age in 1980. We look at  
2 the younger cohort and the older ones; 19 to 20  
3 for younger people, 25 to 30 for older people at  
4 the time of their arrest.

5 C1, the crime type of the first  
6 arrest, we look at different types of crime  
7 types, violent, property, drugs, those are the --  
8 especially violent property crimes we're going to  
9 be focusing in this presentation.

10 In terms of recidivism risk, we are  
11 looking at the risk of rearrest, so we are  
12 looking at the population who was initially  
13 convicted, and look at their subsequent rearrest.

14 And the recidivism risk in this  
15 presentation is the probability of a new arrest  
16 at some point after 1980, T, for those who have  
17 stayed clean. Again, stayed clean here means  
18 stayed free of crime until that time point.

19 So what's the probability of rearrest  
20 or new arrest after staying clean for five years,  
21 what about after staying clean for ten years,  
22 that's the recidivism risk that we're going to be  
23 looking at.

24 So first we're going to be showing  
25 numbers based on any new arrests, so new arrest

1 could be for, you know, violent crime or property  
2 or drug crimes, any crimes, but we're going to be  
3 talking about C2 issue, specific crime type.

4           What if the employers are interested  
5 in, you know, the risk of rearrest or residivism  
6 for just violent crime, so that's the concern  
7 we're going to be addressing later.

8           Recidivism studies have shown, you  
9 know, many times that the probability of  
10 recidivism declines with time clean, right. As  
11 long as they stay clean, stay clear of future  
12 crime, then their recidivism risk declines.

13           So at what point can we declare that  
14 recidivism risk is sufficiently low?

15           To make that determination we need to  
16 introduce some sort of benchmarks, some sort of  
17 comparison groups.

18           We are going to be introducing two  
19 benchmarks, the first one is the risk of arrests  
20 among the general population of the same age, and  
21 the second benchmark, the second comparison group  
22 which is more rigorous, that's the risk of arrest  
23 for those who have no prior record.

24           So the general population might  
25 include people who have no record, those

1 innocents, as well as those who have, you know,  
2 been arrested and convicted recently, so they  
3 tend to have a higher risk of recidivism, so the  
4 general population is a more sort of lenient  
5 comparison or benchmark.

6           So first we're going to be talking  
7 about the comparison to the first benchmark, the  
8 general population of the same age.

9           So the benchmark is based on the rate  
10 of arrests among the general population in  
11 criminology, that is represented as an age/crime  
12 curve, age specific rate of arrest, which is  
13 calculated by the number of arrests divided by  
14 the population for a given age.

15           So time to redemption,  $T_1$ , is  
16 estimated at a time point when the recidivism  
17 risk, those who already have a prior record,  
18 drops below this benchmark, the risk of arrest  
19 among the general population.

20           I'm going to show that in a visual  
21 manner. So the red curve here represents the  
22 recidivism risk of those who are initially  
23 arrested and convicted 1980 and their age 19, 20  
24 and  $C_1$  here is for violent crime.

25           So first it is important to notice

1 that the recidivism risk again declines with time  
2 clean. So the longer they stay clear of crime,  
3 the smaller the probability of rearrest or the  
4 smaller the probability of recidivism.

5 Here is the first benchmark of the  
6 risk of arrest among the general population, the  
7 green curve here.

8 So after 3.8 years, those two curves  
9 cross. So after 3.8 years the risk of recidivism  
10 drops below the benchmark, the risk of arrest  
11 among the general population.

12 At that point, after 3.8 years of  
13 time clean, the probability of rearrest and  
14 recidivism is about .1, that's where the  
15 intersection occurs.

16 So now I'm moving onto the second  
17 benchmark. The second comparison group is those  
18 who have no prior record. Data presents a much  
19 less riskier population.

20 So using this benchmark, the  
21 intersection method that we used to calculate T1,  
22 the first time redemption time, might not really  
23 work, because those who have no prior record,  
24 their risk might be consistently below the  
25 recidivism risk of those who have a prior record.

1           So we have to sort of quantify when  
2 those two curves, the recidivism risk and this  
3 new benchmark, become close enough and here we  
4 introduce this concept of risk tolerance.

5           So what is risk tolerance? This  
6 basically translates to how much extra risk an  
7 employer is willing to accept, willing to  
8 tolerate, over the risk represented by those who  
9 have no prior records.

10           You know, in some cases job  
11 applicants with a prior record might be better  
12 qualified than job applicants without a prior  
13 record but no good qualifications. So it's not  
14 always true that those with a record are less of  
15 a candidate for employers.

16           So how can we calculate this new  
17 redemption time,  $T_2$ , using this more severe, more  
18 serious benchmark?

19           So here is a risk, the green curve  
20 here represents the risk of arrest for those who  
21 have no prior record. We call this the never  
22 arrested.

23           And here is the same recidivism risk  
24 curve for those arrested in 1980 and convicted in  
25 1980, when they are 19 and 20, for violent crime.

1                   So first you notice there is a big  
2 gap, big difference, between those two curves but  
3 at the same time you can see that this difference  
4 seems to diminish over time.

5                   So the question is at what point  
6 these two curves are close enough. Are they  
7 close enough after five years, after ten years,  
8 15 years?

9                   Rather than relying on sort of visual  
10 inspection, we introduce a little more  
11 statistical rigor.

12                   We first take into account some sort  
13 of uncertainty around this recidivism risk, so  
14 that's sort of like a margin of error, and now,  
15 since we're interested in close enough, which is  
16 translated by risk tolerance, after 12.6 years,  
17 the risk of recidivism for those who have a prior  
18 record in 1980 becomes close enough to the risk  
19 of arrest for those who have no prior record.

20                   That's when employers can say that,  
21 you know, with some risk tolerance, some  
22 additional risk that they accept, that people  
23 with a prior record, their risk is sufficiently  
24 low, at least close enough to those that have no  
25 record.

1                   So presented two benchmarks, the risk  
2 of arrest for the general population and the risk  
3 of arrest among those who have no prior record,  
4 which comparison group that employer should use  
5 and which redemption times that employers should  
6 adopt, T1 or T2?

7                   There are several factors employers  
8 should be considering. The first one is the  
9 applicant pool. If the applicant pool consists  
10 of people with prior records, they should be  
11 using -- they can be using T1, more lenient  
12 redemption time, and if the applicant pool  
13 consists mostly of people who have no prior  
14 record and then maybe employers want to set that  
15 threshold a little harder, a little more  
16 rigorous, a more conservative benchmark, and  
17 using T2 redemption time estimate.

18                   Employers can also consider the  
19 nature of the job and their risk sensitivity.

20                   If the job position is reasonably  
21 risk tolerant, the employers can adopt T1, a more  
22 lenient benchmark, and if the employers have this  
23 job position that's very risk sensitive, dealing  
24 with, you know, vulnerable populations like  
25 children and elderly, the employers may want to

1 use T2, more rigorous, more conservative  
2 redemption time.

3           So depending on multiple factors,  
4 employers have a choice of using -- employers can  
5 choose from these two benchmarks and redemption  
6 times.

7           So far all of the estimates of  
8 redemption times come from data from New York  
9 State repository, so in a sense those who look  
10 clean in New York, those who look like they have  
11 no subsequent criminal history record in  
12 New York, might have been arrested elsewhere,  
13 might have a criminal record in other states,  
14 that New York State Repository cannot capture.

15           So to address this issue, we obtained  
16 data from FBI, to get a sense of how prevalent  
17 out of state arrests are.

18           About 23 percent of those who look  
19 clean in New York, those who look like they have  
20 no subsequent criminal history record in  
21 New York, have arrests elsewhere, so that's a  
22 large enough number to warrant some sort of  
23 adjustment to a recidivism risk and redemption  
24 times, and our estimates presented here are based  
25 on that adjustment.



1                   So far our analyses have been based  
2 on those who are arrested and convicted for their  
3 first crime in 1980, and sometimes a distinction  
4 between conviction records and arrest records is  
5 important for hiring and employment situations,  
6 and in some states employers are not allowed to  
7 use arrest records.

8                   We basically compare these two  
9 populations, those who are just merely arrested,  
10 their recidivism risk, and those who are arrested  
11 and convicted.

12                   And it turned out, for this younger  
13 violent offenders, their recidivism risk pattern  
14 or profile over time is not that different  
15 between these two populations. So a base  
16 population is different but, again, the  
17 recidivism risk is based on their rearrest.

18                   Another issue that we have to address  
19 is the issue of incarceration. Again, those who  
20 look clean in our New York State Repository data  
21 look clean because they have been incarcerated,  
22 so they're not at risk of recidivism to them in  
23 some cases.

24                   In our data, since these are sort of  
25 first-time offenders, a very small fraction of

1 our cohort was incarcerated as a result of their  
2 first conviction. It was first arrest and  
3 conviction. So we determined that there is no  
4 need to adjust our recidivism risk estimates and  
5 redemption times.

6 But if you deal with the population  
7 the majority of whom have been incarcerated, we  
8 should start the clock for the redemption time or  
9 residivism risk at the time of their release, so  
10 that we can observe the potential recidivism.

11 To take into account the  
12 incarceration time, you know, we need more  
13 information about the release time and time  
14 served, and that type of information might not be  
15 available from rap sheets but obviously known to  
16 job applicants if they have been incarcerated.

17 Now we're going to be turning to the  
18 concern about the robustness of estimates,  
19 redemption time and recidivism risk estimates.

20 So far the estimates of redemption  
21 times come from New York and their first record  
22 is in 1980, so some might say that's rather  
23 limited.

24 So we like to look at how reliable  
25 our estimates from 1980 New York data are, and we

1 are going to test that against different times  
2 and different places.

3           So we receive subsequent data, again  
4 from New York, for those who are arrested and  
5 convicted in 1985 and 1990 respectively. So now  
6 we have three different cohorts, 1980 cohort, '85  
7 cohort and '90 cohort, all from New York.

8           And, as you may know '80, '85, '90  
9 represent very different crime rates: '80 was a  
10 crime peak; '85 was a rather crime sort of  
11 trough; and close to '90, early '90s, had also a  
12 crime peak.

13           So, you know, testing our robustness  
14 against these three different, very different  
15 times, will give us some confidence that our  
16 redemption estimates will be robust.

17           We also received subsequent data from  
18 two additional states, Florida and Illinois, both  
19 from 1980, so we can test the robustness of our  
20 estimates against these three different states.

21           We found that the recidivism risks,  
22 the estimates of that are quite different, about  
23 in the first five to ten years. That differences  
24 might reflect those crime rate differences across  
25 times or those differences might reflect

1 different conditions in different states in 1980.

2           We also found that the recidivism  
3 risk patterns are very close after five to ten  
4 years. So after five to ten years recidivism  
5 risk patterns are the same, regardless of where  
6 they're from, right, Florida, Illinois, New York,  
7 or when the sample was drawn, '80, '85 or '90.

8           So after five to ten years is the  
9 most sort of relevant years for consideration of  
10 redemption time, based on the fact that the  
11 recidivism risk estimates themselves are  
12 reasonably robust, especially after five to ten  
13 years, we can estimate redemption times based on  
14 all three states, New York, Florida, and  
15 Illinois, as well as those three sampling years,  
16 '80, '85 and '90.

17           This table basically represents sort  
18 of approximate redemption times across different,  
19 you know, crime types, C1, and using the two  
20 benchmarks, probability of rearrest.

21           .1 represents the redemption time  
22 based on the first benchmark, the general  
23 population's risk of arrest; and .03 represents  
24 the second benchmark, more conservative  
25 benchmark, compared against those who have no

1 prior record. So that's why the probability is  
2 much lower than this probability here.

3 So first you notice that if you use a  
4 more conservative benchmark, redemption times  
5 tend to be a little longer than using the more  
6 lenient benchmark.

7 And if you look at these three crime  
8 types, C1, you also notice that the violent  
9 offenders tend to have longer redemption times  
10 across these two benchmarks and usually followed  
11 by drug crimes, drug offenders, and the last one  
12 is property offenders.

13 Now I was going to talk about the  
14 issue of C2, specific crime types for the  
15 recidivism event.

16 MR. BLUMSTEIN: You'll remember  
17 that all of the prior estimates of redemption  
18 times that we talked about are for any crime, any  
19 arrest other than traffic and DUIs.

20 Throughout our analysis we made DUI  
21 totally transparent, because otherwise we'd just  
22 be talking about DUI, so we omitted all DUI  
23 arrests.

24 So the previous analyses are based on  
25 any kind of new arrest, but different employers

1 will have different concerns. They may be  
2 property crimes, they may be violent crimes,  
3 particularly for those dealing with venerable  
4 populations.

5           And so there's an issue of not any  
6 crime but there is a necessity, and the type of  
7 crime is relevant to the business necessity in  
8 using that crime type.

9           So the future, the concern about the  
10 future, should be job-related and that would  
11 differ, depending on what kind of issue you care  
12 about.

13           In order to get at that, we've  
14 generated what we call a crime switch matrix.

15           The first column there indicates what  
16 was the crime type of C1, the initial crime that  
17 got them arrested in 1980.

18           The columns of this matrix are what  
19 kind of crimes they might get arrested for in the  
20 future.

21           We can generate this matrix from the  
22 data of our total population. We know what crime  
23 they did in the past and what kind of -- of those  
24 who got arrested, what kind of crime did they get  
25 arrested for in the future.

1                   Notice that about 40 to 50 percent  
2 had no second arrest, that's the initial case.  
3 When we corrected it for those who were sampled  
4 to have had arrests outside, it brought it back  
5 down to about 30 percent.

6                   When you look at that matrix, the  
7 first thing you'll notice is the diagonal of the  
8 matrix, which is these figures in red.

9                   So those who did violent as their  
10 first crime in 1980, 21 percent of them who were  
11 arrested -- I'm sorry -- 21 percent of them were  
12 rearrested for a violent crime and smaller  
13 numbers for other kinds of crimes; similarly for  
14 property, 26 percent were arrested for another  
15 property crime, smaller numbers for the other  
16 crime types and so on.

17                   So the diagonal is somewhat larger  
18 and we can look at the ratio of the diagonal to  
19 the average of the off-diagonal terms, and so  
20 they averaged about 2.7 times as large.

21                   So there's a greater propensity for  
22 the second crime to be the same as the first but  
23 by no means necessarily so. It gives one an  
24 indication of what the risks are for different  
25 kind of crimes.

1                   Is there any question about what that  
2 matrix is talking about? Yes.

3                   MR. WELLBORN:                   Is this crime  
4 switch matrix talking about subsequent arrests?

5                   MR. BLUMSTEIN:                   Yes, subsequent  
6 arrests.

7                   MR. WELLBORN:                   So what we're  
8 talking about -- just to be clear, we're talking  
9 about unproven allegations?

10                  MR. BLUMSTEIN:                   We are talking  
11 about subsequent arrests.

12                  MR. WELLBORN:                   Right, which  
13 are, unproven allegations.

14                  MR. BLUMSTEIN:                   Let me say we're  
15 talking about subsequent arrests, and we can get  
16 into whether they're proven or unproven or  
17 otherwise.

18                  MR. WELLBORN:                   Thank you.

19                  MS. ROBERTS:                   I have a  
20 question about the no second arrest. You said  
21 that goes down to 30 percent when you factor in  
22 the FBI --

23                  MR. BLUMSTEIN:                   Because of the  
24 one quarter or so that had a second arrest  
25 elsewhere than New York.



1 MS. ROBERTS: So 70 percent of  
2 the 1980 cohort has a rearrest?

3 MR. BLUMSTEIN: Yes. Any other  
4 questions on what this matrix is saying?

5 MS. LOVE: Over what period  
6 of time, Al?

7 MR. BLUMSTEIN: 27 years.

8 MS. LOVE: Sorry. Got it.

9 MR. BLUMSTEIN: We had a  
10 observation over 27 years, 1980 people.

11 Obviously, the great majority of  
12 those second arrests -- and we've broken this out  
13 by the way -- we've broken this out in zero to  
14 five, five to ten, greater than ten, and as I  
15 remember it was about 10 or 15 percent who were  
16 left over in the greater than ten, okay?

17 And the diagonal, as you can  
18 anticipate, would be lower as you take a  
19 further-out window.

20 Okay. So we're concerned about a  
21 violent crime as the second arrest, we're looking  
22 at the young population. And most of the data  
23 you're going to see here relate to this young  
24 population, there are similar results for the  
25 older population, and we want to know what the

1 risks are as a function of what C1 was.

2           So this tells you the -- the red  
3 curve is for those people whose first crime was a  
4 violent crime and that comes down, but his  
5 highest reflecting the magnitude of that matrix  
6 as a second crime, and lower for those who did  
7 property, which is green, and drugs are the  
8 yellow and they converge at about this point, get  
9 very close to each other.

10           And it will be somewhat different for  
11 those who are concerned about property crimes  
12 because very quickly, indeed property is the most  
13 likely -- people who did property the first time,  
14 these guys, have the highest risk of next doing a  
15 property crime, but the fact that they did a  
16 property crime at this point becomes quite  
17 irrelevant, because it's -- the property crime  
18 was a more generic offense, where the violent  
19 crime was more distinctive.

20           And so we can generate a similar  
21 indication of the recidivism risk, and this is of  
22 particular concern for violence, because the  
23 violent crime indicates the higher risk.

24           So the redemption times, with a  
25 similar high being red, high over ten years or

1 more; medium, four to ten; low, less than four  
2 years.

3                   So based on your concern about the  
4 next crime, which is the first column here. If  
5 you're concerned about violent, you'll look at  
6 this segment of the matrix; if you look at  
7 property, you'll look at this segment of the  
8 matrix.

9                   And depending on what you did at C1,  
10 it will vary highest at violent, medium for the  
11 others and for the older folks, lower and medium  
12 for property to property, but lower for all of  
13 the others.

14                   The older folks have less  
15 involvement, either in terms of the comparison  
16 with the age crime curve and certainly with the  
17 T2, the comparison to those with no priors.

18                   Let me say something about where  
19 we're headed. We're working at more precise  
20 detail of those redemption times and those should  
21 be out sometime this year. But we're now looking  
22 at the special case of prison releasees.

23                   There's clearly prejudice against  
24 prisoners and we would like to consider people  
25 with more complex prior records than the ones

1 we've dealt with so far, even though it's clear  
2 that there are lots of people with one prior who  
3 have no further arrests, and that prior can haunt  
4 them for a long time after, and we've got lots of  
5 war stories of individuals who have that as a  
6 problem.

7                   Clearly the greater prior involvement  
8 is associated with a higher risk of recidivism,  
9 but those folks certainly warrant redemption, but  
10 they may have to wait a longer time to that  
11 redemption, but we need estimates of those  
12 redemption times.

13                   And we're going to get from New York  
14 a sample of first-time releasees from prison, and  
15 they will have more prior records. They will be  
16 a cohort of releasees, but they won't be a cohort  
17 of arrestees.

18                   It's clear that they will vary in  
19 what kind of treatment programs, programs while  
20 incarcerated, programs in the community. And  
21 that, too, will have to factor into where we're  
22 headed and that's where we are moving in the  
23 future.

24                   Let me just summarize where we've  
25 been, where we are and what we've been trying to

1 say.

2 Our focus has been strongly on  
3 employers, who are the ones who are the most  
4 demanding in many ways of criminal history  
5 records.

6 It's clear they should be informed  
7 about the low relevance of the stale records and  
8 there ought be a lot of information to provide  
9 that low relevance information to potential  
10 employers.

11 We argue that for the employers who  
12 adopt reasonable risk tolerance, who follow  
13 limits on the availability of data, that they  
14 ought to be protected from due diligence  
15 liability, which is a major concern of theirs.

16 They obviously have concern about  
17 reputation, they have concern about other aspects  
18 of risk, but certainly a major one they  
19 articulate is due diligence in hiring.

20 It's certainly the case that waiting  
21 for redemption should not interfere with reentry  
22 support; it's clear that employment is an  
23 important issue in avoiding recidivism; it's  
24 clear that the people we're thinking about for  
25 redemption are people that come through that

1 first wave of high recidivism risk, who are  
2 committed in various ways to staying clean, but  
3 that employment is important and should be  
4 facilitated, but typically that would be in  
5 employment situations that are much more risk  
6 tolerant than the ones who are deeply concerned  
7 about prior records. That would be teamwork,  
8 that would be construction jobs, other places  
9 where the risk issue is not a salient one, as  
10 well as other information about that individual,  
11 that individual's positive work history, marriage  
12 situation, a whole variety of factors that  
13 contribute to both avoiding crime and indicative  
14 of not doing crime.

15           The issue then goes to the  
16 repositories, as well as the commercial vendors  
17 that provide the criminal history records.

18           The state repositories could withhold  
19 stale records, as Massachusetts has decided to  
20 do, I believe, in May.

21           Starting in May, they will only  
22 distribute felony records less than ten years,  
23 and misdemeanor records less than five years.  
24 There's a sense that there's a growing interest  
25 in doing things like that at that state level,

1 and they obviously could seal, as many do, or  
2 perhaps expunge, sufficiently stale records.

3           So where are we? It's clear that the  
4 recidivism risk does decline with time clean;  
5 it's clear that this should be an important  
6 consideration to employers and government  
7 regulators and the people who have written the  
8 statutes that talk about prior record concerns.

9           The redemption times we've estimated,  
10 we've called T1 and T2, identify important points  
11 when the criminal record starts to lose its value  
12 in any kind of risk prediction.

13           We do have strong estimates of those  
14 redemption times, based on strong empirical  
15 database, based on New York but tested for  
16 robustness in other times and other places, and  
17 so with a large set of official data.

18           Other researchers have produced  
19 similar estimates. We think these are stronger,  
20 in part because the analysis is more rigorous and  
21 the evidence is richer.

22           It's is clear that the prior crime  
23 type provides an indication of what the future  
24 crime type will be, and that provides an  
25 indication of special concern for violence,

1 particularly in the future.

2           Our analysis provides a basis for  
3 responding to user needs.

4           Different users may have different  
5 concerns about T1 or T2; that is, the general  
6 population or compared to people with no priors;  
7 or different ages of first arrest; or the crime  
8 type at first arrest; or the concern about the  
9 crime type at later arrest; what risk tolerance  
10 they're interested in, but the models are broadly  
11 applicable and the data is broadly applicable.

12           So this hopefully will avoid  
13 inappropriately denying jobs to people that are  
14 at low risk.

15           And one thing that we're particularly  
16 concerned about, many corporations and many  
17 statutes have forever rules that prohibit  
18 somebody with a particular prior record from ever  
19 being hired.

20           And we think those are inappropriate  
21 and we've argued that 20 years should be an  
22 outlier for those forever rules, it should be  
23 brought down from infinity to something at most  
24 20 years, but reconsider with a heavy burden of  
25 proof for keeping anything longer than 20 years.



1                   And we raised that in an op-ed piece  
2 that was published on January 10th of this year  
3 in the New York Times, that we've gotten and  
4 apparently a lot of other folks have gotten, a  
5 very strong support, including many letters we've  
6 gotten, many e-mails we've gotten by people who  
7 themselves are in their older years and are still  
8 plagued by something that happened long ago, so  
9 it's the sort of thing that -- and the major  
10 thrust here was getting rid of the forever rules.

11                   Okay. We've had our say.

12                   Margy, off with the stilettos.

13                   MR. JONES:                   Thank you. We  
14 have a small amount of time for questions and  
15 we're going to turn that to over to Margy Love.

16                   MS. LOVE:                   I have just two,  
17 perhaps three, questions. I really would also  
18 like to give my fellow panelists an opportunity.

19                   MR. BLUMSTEIN:                We are at your  
20 call.

21                   MS. LOVE:                   Well, look, you  
22 know I am concerned with these forever rules.

23                   MR. BLUMSTEIN:                I'm delighted.

24                   MS. LOVE:                   That's a major  
25 concern of mine and the population I deal with as

1 my clients are never going to commit another  
2 crime, so you kind of wonder what is this risk.

3 MR. BLUMSTEIN: You kind of  
4 wonder what?

5 MS. LOVE: What the risk is  
6 that the forever rules are really concerned with.

7 MR. BLUMSTEIN: Right.

8 MS. LOVE: That's one  
9 question that I would like to ask you, sort of  
10 what's your opinion, after working in this field  
11 for a while, about what's really going on with  
12 the forever rules?

13 MR. BLUMSTEIN: Let me say two  
14 things about it: Number one, the statutes. The  
15 statutes get enacted when somebody did something  
16 heinous and then, as a response, the legislature  
17 doesn't think of the subtle tension between the  
18 social benefits of providing job opportunities  
19 and the private risks of employers or the social  
20 or the public risk of someone doing something.  
21 It's a knee-jerk response and legislative bodies,  
22 as you well know, have lots of knee-jerk  
23 responses, which show up as a forever rule.

24 One that I found particularly  
25 troublesome was a rule adopted by the

1 Pennsylvania Legislature, I think within the past  
2 year, that any teacher -- that a school may not  
3 hire a teacher who has been convicted of some set  
4 of crimes. That applied not only to people  
5 applying for a job but people who had been on the  
6 job for 40 years, who had been convicted of one  
7 of those crimes when they were young.

8           Lots of people do lots of stupid  
9 things when they are young, that grow out of  
10 that, but these were people -- the forever rule  
11 became retroactive to people who were then  
12 employed, so that's the statute kind.

13           The corporate kind is we just don't  
14 want somebody who might do that, even though they  
15 don't appreciate the finiteness of redemption  
16 times.

17           MS. LOVE:                   I guess what I  
18 would really like to get you to say, if you will,  
19 when I said what's really going on here is: Is  
20 this a genuine concern with risk, risk of  
21 somebody doing something bad again, or is there  
22 some other impulse going on?

23           MR. BLUMSTEIN:           Are you  
24 suggesting the other impulse is we're separating  
25 good people from bad people? Good people never

1 got arrested or convicted, bad people did and we  
2 don't want to hire any bad people?

3 MS. LOVE: Something along  
4 those lines, yes.

5 MR. BLUMSTEIN: That could well  
6 be and that's where it runs up against the social  
7 policy concern about facilitating employment, and  
8 they have a right to protect themselves against  
9 risk.

10 I think our analyses helped them  
11 assess the risks they want to protect themselves  
12 against, but they don't have a right, as  
13 reflected in EEOC policy, to have their own rules  
14 that ignore the low values of risk that they're  
15 likely to face.

16 MS. LOVE: I have to tell  
17 you that while you were talking, we conducted a  
18 little survey among the commissioners, as to how  
19 many of us had been arrested.

20 MR. BLUMSTEIN: For a  
21 non-traffic offense?

22 MS. LOVE: For a  
23 non-traffic offense. I think it is fair to say  
24 that the vast majority of this commission has  
25 been arrested.

1                   MR. BLUMSTEIN:                Has been  
2 arrested.

3                   MS. LOVE:                            So I just want  
4 to make that. I will fess up that I am among  
5 them, so there you go. I don't know what any of  
6 that says, but here's my second question for you.

7                   MR. BLUMSTEIN:                Let me also say,  
8 looking around, I suspect that most of you had  
9 that happen at least 20 years ago.

10                  MS. LOVE:                            Yes, yes, that  
11 was at least 20 years ago.

12                  MS. VANDERHORST:            You're assuming  
13 we were at least 20 years old.

14                  MS. LOVE:                            You're right.  
15 Here's my second question, Al, and then I really  
16 do want to turn it over.

17                   I guess I'm a little concerned about  
18 your C2, in other words the C2 being the  
19 second event. That is your tag for determining  
20 redemption times, C2 being a subsequent arrest?

21                  MR. BLUMSTEIN:                Yes.

22                  MS. LOVE:                            Which all of us  
23 on the panel are proud to say could happen to  
24 anybody, as Chris mentioned could happen for no  
25 reason at all, and not really be indicative

1 necessarily of criminal behavior.

2                   So I'd like to ask you, were you able  
3 to or could you, did you consider trying to get  
4 ahold of actual conviction records as your C2  
5 marker?

6                   MR. BLUMSTEIN:               We considered it  
7 and considered that in any such marker there are  
8 two kinds of errors: One, is an error of  
9 commission, which would be a false arrest, using  
10 arrest, the other would be errors of omission,  
11 which would be people who did what they were  
12 charged with, but the evidence was not sufficient  
13 to gain a conviction, and so those are errors of  
14 commission.

15                   Weighing the false arrests against  
16 the failed convictions, we chose to use arrest,  
17 because it wasn't attributed to a particular  
18 individual, but it was an aggregate probability  
19 of a kind of crime that somebody might be  
20 concerned about in the future.

21                   That's why we used conviction for the  
22 people who had the first arrest, but we used a  
23 probability assessment where we thought we were  
24 getting the lesser of the two kinds of error,  
25 errors of omission and errors of commission by

1 using arrest.

2 MS. LOVE: But you included  
3 both the omission and the commission in that.

4 MR. BLUMSTEIN: We didn't weigh  
5 those specific errors. Our judgment was -- my  
6 judgment was that errors of commission would be  
7 much larger of people who did something like what  
8 they were arrested for but failed a conviction  
9 because of all of the reasons we know that people  
10 don't get convicted. That was the consideration  
11 that entered into the probabilities.

12 It's also the case that the data  
13 were -- we were able to take the subset of  
14 arrestees who were convicted in the first  
15 instance, but we would have lost a lot of our  
16 population if we stayed with conviction on the  
17 second arrest.

18 MS. LOVE: Yeah, yeah.

19 MR. BLUMSTEIN: And there might  
20 have been a third, but we're looking at people  
21 reasonably downstream from the high recidivism  
22 probability, which is those first three to five  
23 years.

24 MS. LOVE: Right.

25 MR. JONES: We are almost

1 out of time, and I see that our next panel is  
2 here, but I do want to give our reporter, Jenny  
3 Roberts, an opportunity to ask a couple  
4 questions.

5 MR. BLUMSTEIN: Okay. Good  
6 morning.

7 MS. ROBERTS: I am going to  
8 ask two questions at once and we will see if we  
9 have time.

10 You said, I think it was in your  
11 redemption policies slide, that you don't want it  
12 to interfere with reentry support.

13 And I guess the fear is that, of  
14 course, people will use it in that way if you  
15 have to make a triage or allocation of resource,  
16 difficult decisions.

17 So I wonder if you have seen this  
18 used in ways in which one might not want it to be  
19 used, but the numbers might justify using it that  
20 way.

21 And my second point, which we talked  
22 about earlier, which I would just like to have on  
23 the record, a response to, is that: As you  
24 described your own judgment about errors of  
25 omission outweighing errors of commission, I



1 would challenge that when it comes to misdemeanor  
2 arrests, for reasons I explained to you earlier,  
3 where I think it's far easier for there to -- I  
4 think the innocence iceberg might be much --

5                   MR. BLUMSTEIN:            I think you have  
6 raised the issue, and it's something that I would  
7 have anticipated, that the false arrests would be  
8 a much smaller fraction than the failure  
9 conviction, but let me just tell you, we will go  
10 back and look at that issue and see to what  
11 extent that might be justified.

12                   MS. ROBERTS:            We have 30  
13 seconds on the first question I asked you, about  
14 how people might use this.

15                   MR. BLUMSTEIN:            I don't know of  
16 uses that have been abusive. I do know of the  
17 degree to which it has been stimulated, limiting  
18 the dissemination of repository information.

19                                   And so we've been in touch with --  
20 there is this national search group, which is the  
21 Association of Repository Managers and they've  
22 been quite sensitive to the issue that we're  
23 talking about, and they're looking to see how  
24 they could facilitate better use of redemption  
25 information in the limitation of the

1 dissemination of their materials.

2           And I'm quite certain that these  
3 limits that Massachusetts has some imposed had  
4 some inkling of our work contributing to their  
5 decision to limit accessibility of their  
6 repository information.

7           I don't know of anybody -- I mean  
8 it's clear that there are lots of efforts going  
9 on as part of reentry, to get people out there  
10 and employed early, but they're going to be  
11 employed in jobs that are not very risk  
12 sensitive.

13           It's the employers who have this  
14 infinite forever rule, who are going to see a  
15 pressure to bring those down.

16           MR. JONES:                   Thank you both  
17 very much. There is never enough time for any of  
18 these panels, but we appreciate you being here,  
19 and if you guys are not in a rush, we would ask,  
20 if you could, to stick around, because I know  
21 some of my colleagues want to meet with you at  
22 sidebar. So if that's possible, we would love it  
23 if you stick around.

24           I know our next panel is waiting.  
25 We're going to break five minutes and reconvene.

1 Thank you very much.

2 - - -

3 (Whereupon there was a recess in  
4 the proceedings from 1:32 p.m. to  
5 1:50 p.m.)

6 MR. JONES: Welcome. We are  
7 pleased to have both of you here and looking  
8 forward to your testimony.

9 The way that we operate, and I think  
10 Mr. Mohr has seen at least one of our panels, so  
11 he has some sense of it, we offer you both the  
12 opportunity to give us ten minutes or so of  
13 introduction, a little bit about who you are and  
14 the work that you're doing, and particularly as  
15 it relates to the mission of this task force.

16 After you've done that, we have a  
17 number of questions that we're interested in  
18 posing and really just sort of having a  
19 discussion with both of you.

20 The way that we do our questioning is  
21 that one of us on the task force is primarily  
22 responsible for the questioning and in this  
23 particular case it is going to be Geneva  
24 Vanderhorst, and assuming there is time left over  
25 after she's finished with her questions, the rest

1 of us will jump in and will have questions of our  
2 own.

3                   So really with no further ado I think  
4 I will -- unless you guys have some other  
5 thought -- turn the floor over to Senator Smith.

6                   SENATOR SMITH:            Thank you very  
7 much.   Good afternoon everyone.   I am State  
8 Senator Shirley Smith, I am state senator for the  
9 21st district.   I like to make that distinction.

10                   I have served in the Ohio House of  
11 Representatives prior to going to the Senate for  
12 eight years and I've served in the Senate for six  
13 years and I am on my way out because of term  
14 limits.

15                   I have enjoyed the ride very much.  
16 It has been a great learning experience.   I  
17 continue to learn.   I feel like I am in college  
18 every day because it is always something new.

19                   Since I have been in the legislature  
20 my passion has been reentry and also prison  
21 reform, so that's where most of my work has been,  
22 although I have worked in the area of health  
23 disparities, as well, but my passion has been in  
24 reentry and prison reform simply somewhat because  
25 of my environment where I grew up and the people

1 that I have been surrounded by for most of my  
2 life.

3           What I have found is that most people  
4 that talk to me about the problems they're having  
5 in reentry, found it hard that once they served  
6 their time, that they still were faced with the  
7 issue of not being able to be employed because of  
8 youthful indiscretions, I should say, those  
9 things that they've done maybe early in their  
10 lifetime prohibit them from getting a job once  
11 they get out.

12           What I did some years ago is  
13 introduce a bill, and that bill has to do with  
14 expungement, sealing a person's record.

15           What the bill does is to give  
16 non-violent offenders a opportunity, only an  
17 opportunity, to apply to have their records  
18 expunged or sealed, only if they have been good  
19 for five years.

20           And the reason for that is for the  
21 reasons I've already mentioned, in doing so I  
22 think -- let me just preface it by saying Ohio  
23 already will allow a person to have their records  
24 expunged for one felony or one misdemeanor and my  
25 bill works the same way. It's not for the

1 heinous crimes, murder, rape, those kind of  
2 sex-offenders-type crimes, nothing that is  
3 heinous, I should say Felony 1s or Felony 2s.

4           So what I'm doing is asking if we  
5 could have people's records expunged for multiple  
6 felonies.

7           Now how many felonies, that will be  
8 decided upon committee, in committee.

9           And I think the reason I'm going this  
10 route is because what I've discovered is most  
11 people that are in jail or have done jail time,  
12 are in jail because they got mixed up in drugs,  
13 and that causes them to do repeat crimes because  
14 they're trying to fulfill a habit, and it causes  
15 them to do that same crime, whether it's stealing  
16 hubcaps or writing bad checks.

17           I find that people who write bad  
18 checks most times are people who are doing it out  
19 of desperation, maybe to feed their families or  
20 whatever reason, but not because they're hardened  
21 criminals.

22           But I don't want you to mistake that  
23 I condone these type of activities, because when  
24 I come outside and I find that my hubcaps are  
25 gone, I want that person to pay the crime, do

1 their time.

2                   When they've paid that time, I expect  
3 that they should come out and become a citizen, a  
4 normal citizen, but that's not what happens.

5                   Once a person serves their time and  
6 they're able to get a job, then that also lifts  
7 their self-esteem, they become a tax-paying  
8 citizen, and they, most times, get back involved  
9 with their communities, their neighborhoods and  
10 they become better people.

11                   The other thing that it does is it  
12 makes them better fathers, better mothers and it  
13 makes them better employees, because that person  
14 knows that they don't have the ability to screw  
15 up again, for lack of better words, so it does a  
16 lot of things for a person, if we allow them the  
17 opportunity to have their records expunged.

18                   The other thing that's good about  
19 expunging a person's records is that it decreases  
20 the recidivism rate.

21                   It also lends us to at least that  
22 person having financial responsibility, at least  
23 the state, because the state pays about  
24 twenty-five thousand or it could be a little bit  
25 more now, for each person that goes to jail.

1 Whether they spend six months or a year, it's  
2 \$25,000, and also it's for public safety.

3 So it's not only a jobs bill but I  
4 look at it also as a second chance for a person  
5 to get their lives back and do the things they  
6 can to become better citizens.

7 I always tell people that this is not  
8 a -- sometimes people look at it, because I've  
9 been carrying the bill for so long and this has  
10 been my issue and I jump up and down and I scream  
11 about it, that it's a black issue.

12 It is not a black issue. It's a  
13 white issue, it's a black issue, it's everybody's  
14 issue; it's not a Democratic bill, it's not a  
15 Republican bill, because it affects everybody.

16 What I find is that most people, at  
17 least the ones I come in contact with, there is  
18 always somebody in one of our families who has  
19 been in jail or prison and is affected by this.

20 So that's my story and thank you.

21 MR. JONES: Thank you.

22 Mr. Mohr?

23 MR. MOHR: I'm Gary Mohr,  
24 Director of the Department of Rehabilitation and  
25 Corrections, and I put a little emphasis on that



1 word because there are not many states left that  
2 have that term in it.

3 I want to talk about a few things  
4 here and I'll try to be as brief as the Senator,  
5 which Shirley and I spend a lot of time together,  
6 so you've heard all of this, Shirley, before.

7 Everything that we do starts with our  
8 purpose. You know the old saying, seek and you  
9 shall find, I think that is as true as anything  
10 and I think whatever we start out to look for,  
11 we're going to find.

12 So as I came back after a hiatus of  
13 being retired and gone many years, and come back  
14 to this position, I started looking at things  
15 like what's the mission, what is our mission,  
16 what is our vision.

17 I soon found out -- Shirley, you have  
18 to know this -- we don't have a vision statement  
19 or mission statement and our vision statement was  
20 three paragraphs long and filled a page.

21 And every group that I could get in  
22 front of I asked our staff what is our mission  
23 statement and I have not found one person of  
24 13,000 employees that know, including this  
25 director.

1                   So let me just simply say this, and  
2 I'm going to say this because my fellow directors  
3 do not support me on this around the country, but  
4 first of all, our vision of our agency is to  
5 reduce crime in Ohio and our mission is to reduce  
6 recidivism among those people that we touch, that  
7 includes our 50,000 inmates, our 30,000 on parole  
8 and another forty to 50,000 offenders that we are  
9 working with, our community agencies that we work  
10 with, and if we do that, it changes everything.  
11 It changes who we hire, it changes the type of  
12 programs we deliver, it changes how we train  
13 staff, it changes who we put into programs, based  
14 on risks and based on dosage of those programs.

15                   And quite frankly, at the end of my  
16 time, I want to be measured by recidivism rate,  
17 because I think it says a lot. I think it's  
18 clear.

19                   To that point we have launched a  
20 pretty exhaustive campaign to not only continue  
21 to evaluate our recidivism, but to do it by  
22 prison, something that the Pew Institute has now  
23 great interest in, because I think we could do  
24 that with certain cohorts that spend a great deal  
25 of time there.

1                   And we already have now data,  
2 recidivism, by county, so that we can take a look  
3 at local systems and what's working, what's not  
4 working and the kind of relationship we have with  
5 those folks.

6                   And by drilling down -- I think the  
7 researchers will argue whether it is valid or not  
8 to do that, I really don't care -- but what I do  
9 care about is while we're in this business, every  
10 one of our staff, whether it's prison or parole  
11 or community partners, will be focused on those  
12 kind of elements, of delivering evidence-based  
13 practices, ensuring that we have the right  
14 protocol set up to do that.

15                   Secondly, we have an ongoing  
16 commitment to reentry. We are establishing  
17 reentry coalitions and our goal during this  
18 administration is that every county would be  
19 covered by a reentry coalition, a group of people  
20 who care, a group of diverse people with diverse  
21 types of experiences that care, and we are about  
22 halfway there but we will get there.

23                   Beyond that the litmus test is that  
24 there should never be an offender released from  
25 one of the state facilities unless they've had

1 face-to-face contact with someone that they'll be  
2 working with in the community, and people think  
3 that's absolutely nuts and unattainable. I don't  
4 know why it isn't in this age of technology, when  
5 we have other pieces.

6           We know that by doing that we're  
7 starting to erase and shave off some of those  
8 abrupt changes and make them into some  
9 transitions.

10           The next piece I just want to mention  
11 briefly is the Ohio Risk Assessment System, ORAS,  
12 which is -- for the first time in about the last  
13 12 months I think, we've implemented a system  
14 where judges and probation and prison folk and  
15 people after release and our community partners  
16 can take a look at a common set of measures that  
17 evaluates a person's risk to reoffend.

18           And then working with the University  
19 of Cincinnati, starting to take a look at the  
20 types of programs that are applicable to each of  
21 those types of levels.

22           And if again we're serious about our  
23 mission of reducing recidivism, as these folks go  
24 through programs, we need to ensure that our high  
25 risk to reoffend people are given priority to

1 certain types of programs, because that gives us  
2 the greatest opportunity to have an impact on  
3 numbers.

4 Briefly, Senator Smith, we spent a  
5 lot of time last year, we're pretty impatient. I  
6 don't know whether we're nearing the end of our  
7 particular jobs, I don't know what it is, but the  
8 issue is we're pretty impatient.

9 So last year Ohio passed a sentencing  
10 reform piece that Senator Smith was critical in  
11 pushing through, that basically said it doesn't  
12 make a lot of sense for Ohio to continue to take  
13 in -- have 12,000 offenders that it takes into  
14 its prisons annually, that are doing less than a  
15 year, in some cases just a few months, in some  
16 cases even less, and then go out without any  
17 supervision at all, and then start to develop all  
18 of the collateral consequences that are built  
19 around going to prison.

20 So with that we passed -- I didn't  
21 pass, I didn't vote, but you did -- the package  
22 on our sentencing reform piece, which had a  
23 number of elements, primarily diverting first  
24 time Felony 4's and 5s, saying there's a better  
25 way to do that, saying you just can't send these

1 folks to prison, and we will help find community  
2 placements for these folks, that's great,  
3 allowing an enhanced risk reduction, so that  
4 individuals that have demonstrated evidence-based  
5 programs, behavior or compliant at 80 percent, we  
6 can petition to get them released, and to go  
7 through the community supervision programs,  
8 whether it is Oriana House -- and I saw Jim back  
9 there -- or other types of programs that have  
10 demonstrated great success.

11           Judicial release, earned credit. I'm  
12 a believer you treat people differently. I think  
13 that we have treated people the same for too  
14 long, so people that go through programs that  
15 have demonstrated the reduced recidivism and  
16 behaved properly should be given earned credit.

17           Ohio had a very liberal policy of one  
18 day of earned credit for a month for being  
19 involved in these types of programs, that was  
20 expanded to five in this program, and a  
21 Certificate of Achievement and Employability.

22           So that inmates that have gone  
23 through evidence-based programs, have taken job  
24 training, have been behaviorally compliant, I  
25 have the ability now to give them a Certificate

1 of Achievement and Employability, so that it  
2 starts to reduce the -- give some immunities to  
3 employers that are hiring people, but again,  
4 we're doing it based on the performance of the  
5 offenders.

6                   And then lastly, with the help of  
7 councils, state governments, reinvesting  
8 \$10 million in January for the first time, a fund  
9 to start out in the communities with also the  
10 metric, developing programs and filling in gaps  
11 to reduce recidivism and that will be their  
12 metric.

13                   Shirley -- Senator Smith, I should  
14 say --

15                   SENATOR SMITH:                Shirley.

16                   MR. MOHR:                         Shirley, is  
17 co-sponsoring and we've traveled the State of  
18 Ohio together, five public sectors, to talk about  
19 collateral consequences and collateral sanctions.

20                   We've introduced a bill -- I act like  
21 I'm part of the legislature and I'm not -- this  
22 week to look at collateral consequences in this  
23 state, to take a look at the fact that an unarmed  
24 person that is guarding a building that's vacant,  
25 should not have a life ban on those people that

1 have come out of prison that have demonstrated  
2 that, and a whole series of licenses, of crafts,  
3 that people cannot own a business or act as an  
4 independent contractor in certain trade skills  
5 because they have been convicted of a felony.

6           And in Ohio 1.9 million or 17 percent  
7 of Ohio's population has been convicted of a  
8 felony or misdemeanor that does carry some  
9 collateral consequences or sanctions, that's a  
10 pretty good-sized number, as we move through  
11 there and the elements within the collateral  
12 consequence piece.

13           Again, let me just say this: We're  
14 going to pass this darn legislation before the  
15 end of July because we don't have time, we don't  
16 have time to waste by being governmental.

17           So given that, we've stayed middle of  
18 the road, we've tried not to do this, but we're  
19 going to get these passed looking at some  
20 fair-hiring practices, looking at the State of  
21 Ohio not just dictating what can be on  
22 applications, but moving the box on the  
23 application so it's not the first thing you see.

24           Very quickly I have to tell a story  
25 because these people will be upset.



1 I'm at this therapeutic community  
2 graduation, we bring alumni back into this, and a  
3 guy stopped me, he says, "Director, I'm making  
4 it, I'm clean, I'm sober, I'm trying to make it  
5 with my family but I can't get a job."

6 Then something hit me, based on my  
7 gray hair, that I didn't realize. It used to be,  
8 July 1st, 1974, when I started in this business,  
9 I could walk in, hand an application to a prison  
10 warden and get a job, that's how I got a job.  
11 Two applicants, two jobs, I was hired.

12 Today it's all electronic and if, in  
13 fact, the first thing a person sees is the box  
14 that I've been convicted of a felony and there's  
15 no ability to provide any kind of personal, sell  
16 yourself personally, then our people seldom get a  
17 job.

18 So we're going to look -- in Ohio,  
19 we're going to walk the talk and look at moving  
20 that box out of the application and putting it  
21 where people are seriously being considered for a  
22 job and not the first thing.

23 And continue to look at issues like  
24 child support, the ability to modify child  
25 support to the point that a person leaving prison

1 isn't hampered with twenty, thirty, \$40,000 of  
2 child support, and then is looking over their  
3 shoulder to see if they're going to be rearrested  
4 because they can't make it up.

5                   Driver's license suspensions. In  
6 Ohio we found a large number of sanctions that  
7 take driver's licenses away, that have nothing to  
8 do with driving, and it's tough enough to get a  
9 job, I can only imagine trying to get a job  
10 without a driver's license, and again, supporting  
11 the kind of expungement or Order of Limited  
12 Relief that we see there.

13                   And then also looking at the ability  
14 to reduce some of the lifetime restrictions on  
15 people being able to get jobs in certain crafts  
16 and certain trades, HVAC, those kinds of things  
17 that are really a lifetime sentence.

18                   So with that we are going down a  
19 journey now to make continued change and it has  
20 been, quite frankly, a bipartisan effort in the  
21 state.

22                   MR. JONES:                   Thank you.

23                   Geneva?

24                   MS. VANDERHORST:           I want to thank  
25 you all for coming to talk with us. You are

1 offering information, very important components  
2 of our mission.

3 I want to invite Senator Smith to use  
4 the microphone there to your left. There is a  
5 button on the bottom you can turn it on, to make  
6 sure we're getting you're information on the  
7 record.

8 Your opening comments have already  
9 kind of introduced some of the key topics that  
10 we've been looking at.

11 You may know that this is now our  
12 third jurisdiction since we started and my  
13 questions are focused on some of the themes that  
14 we've seen coming from our other two visits, as  
15 well as things that we've heard yesterday and  
16 even some things we learned this morning, and  
17 then I'm going to open it up to my colleagues.

18 Senator Smith, one of the things that  
19 we heard about is something that's referred to as  
20 sunset provisions, where the proposal is that a  
21 person who has not committed any kind of offenses  
22 or had any contact with the criminal justice  
23 system for a period of years, would automatically  
24 have their initial record or first offense record  
25 in Ohio -- it would be sealed and not available

1 to the public, not available to employers  
2 landowners.

3 Is that something that the Ohio  
4 legislators have considered doing in Ohio?

5 SENATOR SMITH: I don't think in  
6 terms of sunseting. I don't know, other than  
7 expungement, if that discussion has taken place.

8 But the other side of that is, and it  
9 just came to my mind when you spoke of it, is  
10 even though the records are sealed, what we're  
11 finding is, because of modern-day technology,  
12 they're never sealed, because you have these  
13 background check companies who can go in and get  
14 the information and they never update it.

15 For instance, if I got my records  
16 expunged today, if there was a sunset law, they  
17 have this information and they still report it to  
18 employers.

19 And the problem with that is Ohio  
20 does not govern that law, it's a federal law, so  
21 in order for that to not take place, we would  
22 have to change at the federal level, so there is  
23 a problem.

24 MS. VANDERHORST: That kind of  
25 goes to another question that I have about -- I

1 understand that each state has the ability to get  
2 Second Chance Act funding, to get funding from  
3 the Adam Walsh Act, Megan's Law.

4           Has Ohio considered introducing  
5 policy, state policy, particularly for state  
6 agencies or private employers who act as state  
7 contractors, that would limit an employer's  
8 ability to ask questions in an interview process  
9 about records that have already been sealed?

10           SENATOR SMITH:           Well, I think  
11 the Director, he addressed that when he talked  
12 about the box.

13           MS. VANDERHORST:        Banning the box?

14           SENATOR SMITH:           What banning the  
15 box will do -- we don't call it banning the box,  
16 we try not to.

17           MR. MOHR:                Moving it.

18           SENATOR SMITH:           Moving the box,  
19 what that does is give a person a chance to get  
20 in the door and if he's considered for a  
21 position, then the next time he comes in or she  
22 comes in, they must reveal that, because if they  
23 don't, they're going to have a background check  
24 anyway, but at least it gives a person a chance  
25 to get he or she in the door.

1                   MS. VANDERHORST:           My understanding  
2 is that when a person's record is sealed in Ohio,  
3 it is supposed to project that that arrest never  
4 occurred, so that -- particularly for a  
5 first-time offender -- and so if a person -- even  
6 going beyond the paperwork of not having the box  
7 there, but if they -- are they asked in interview  
8 questions? Is there anything to prevent  
9 employers from asking questions about sealed  
10 records, that would not show up in a background  
11 check?

12                   SENATOR SMITH:           No, there is  
13 nothing to prevent that.

14                   MS. VANDERHORST:           Is that  
15 something that you think the Ohio legislators  
16 would move towards doing, so that you have some  
17 protection from those private databases that  
18 don't correct their records?

19                   SENATOR SMITH:           Well, let's say  
20 there's nothing to prevent it, but I don't think  
21 it's very common that a person asks in an  
22 interview if you've done time, if you've been to  
23 prison, that's why the box is there, because that  
24 could be embarrassing to the particular  
25 employee -- the employer, as well as a potential

1 employee.

2 Will Ohio move to do that? I'm not  
3 very sure because, as we know, Ohio is very  
4 conservative when it comes to prison issues, the  
5 reentry issues.

6 I think we have progressed further  
7 since we've had Director Mohr than we have, well,  
8 in a long time.

9 He's very progressive in his  
10 thinking, he's fair and we -- I don't know how he  
11 is convincing these people that this is the right  
12 thing to do, but he's done a very good job. I'm  
13 not just saying this because we travel as an act,  
14 but he has done a very good job in changing the  
15 way these people think.

16 MS. VANDERHORST: There was a bill  
17 that we learned about yesterday from one of our  
18 other witnesses who created a one-page summary  
19 for us, it's called the House Bill 524,  
20 Collateral Sanctions Reform Bill, and we were  
21 told that it was introduced on April 24th, which  
22 was just a few days before we got here.

23 There's two particular provisions  
24 that I am interested in. My colleagues will  
25 probably ask about some of the others.

1           One is the fair-hiring policy and it  
2 refers to what we were just talking about,  
3 sealing records.

4           There's a particular question that  
5 says there are factors that may be asked in an  
6 interview such as, quote, "How many years of  
7 crime-free living does a job applicant have since  
8 their last offense?"

9           Some of our clients who may have gone  
10 through the process of having their records  
11 sealed, may not understand that once their record  
12 is sealed, they no longer have to discuss that  
13 record and may actually start talking about an  
14 offense that's sealed, that didn't come up in a  
15 background check, and that could very well weigh  
16 on whether or not they get employed.

17           Are there any incentives that the  
18 legislature is considering or has already put in  
19 place, that would allow private employers or even  
20 state agencies -- well, I guess more so private  
21 employers -- any kind of tax incentives, for  
22 instance, where they would hire persons with  
23 minor records?

24                   SENATOR SMITH:           Are you asking  
25 if those people are or can be employed?



1 MS. VANDERHORST: Whether or not  
2 the state is actually giving private employers  
3 incentives to hire persons with prior records or  
4 prior contacts.

5 Some jurisdictions we understand have  
6 used things like tax incentives. Beyond like the  
7 bonding for liability issues that we understand  
8 comes mostly from federal money, are there any  
9 additional tax incentives in Ohio?

10 SENATOR SMITH: I'm not aware of  
11 those, maybe the Director is. I'm not aware of  
12 any incentives from the state.

13 MR. MOHR: In our five  
14 meetings around the state, that certainly has  
15 been something that we have discussed, and my  
16 sense is that that will continue to come up as we  
17 talk about the collateral consequence bill that  
18 has just been introduced this week, but there's  
19 nothing specifically in that legislation that  
20 would endorse that, that would provide specific  
21 funds, state funds.

22 MS. VANDERHORST: Okay. The  
23 second part of that house bill that I'm  
24 particularly interested in is a section that  
25 refers to record sealing eligibility and the

1 effect.

2           It refers to, I guess, a similar  
3 provision to the bill that you were telling us  
4 about, that you introduced, that would allow  
5 multiple offenses to be expunged or sealed at the  
6 same time.

7           This particular provision seems to  
8 focus specifically on one felony and one  
9 misdemeanor as opposed to if a person gets  
10 arrested and within -- let's say they get  
11 arrested on a felony gun charge, they are  
12 released, they get out, they pick up a traffic  
13 misdemeanor charge, so that before the first case  
14 is resolved, they already have a second, which if  
15 they were convicted of both would kind of put  
16 them out of eligibility for first-time offender  
17 sealing. This provision would allow them to go  
18 forward with a sealing because it is one felony  
19 and one misdemeanor on their record.

20           Can you talk to us a little bit how  
21 that works in Ohio or how it would be implemented  
22 in Ohio?

23           SENATOR SMITH:           I may have to  
24 have the Director talk to that but what I  
25 understand, that provision only applies to

1 juveniles; is that right?

2 MR. MOHR: No.

3 SENATOR SMITH: I will let him  
4 speak to that one.

5 MR. MOHR: Again, I'm  
6 probably not the best person to be discussing  
7 this at this point, but the purpose was exactly  
8 that.

9 Let me just say this: There were a  
10 lot of discussions about expanding that beyond  
11 one felony and one misdemeanor and to deal with  
12 time lines, but if you go to the original  
13 discussion or the original guiding principle of  
14 trying to get something passed this June, in a  
15 sentencing reform that was passed, that Shirley  
16 was critical in last year, has been talked about  
17 for three years, we just don't have time for  
18 that.

19 This was a negotiated piece of  
20 language that will be endorsed on both sides of  
21 the aisle, which is seen as being reasonable and  
22 appropriate and moving beyond where we are today.

23 Now, next year we may come back with  
24 more legislation, I don't know, based on data,  
25 but this was seen as a kind of consistent step

1 beyond where we are today, and it was part of  
2 these meetings and it was, quite frankly, part of  
3 something that we believe we can get passed by  
4 the end of June this year.

5 MS. VANDERHORST: So the  
6 information that you gave us in your introductory  
7 comments about diverting Felony 4 and Felony 5  
8 felonies, in the same conversation as having one  
9 felony and one misdemeanor expunged, is it all  
10 wrapped up in the same citizen reform?

11 MR. MOHR: No, and I was  
12 speaking about 110 miles an hour at that time.

13 Sentencing reform was passed in June  
14 of 2011 and that dealt with diverting first time,  
15 low-level, 4 and 5s, in fact they're not coming  
16 to prison, they are being diverted into the  
17 community.

18 That piece of legislation dealt with  
19 expansion of earned credit and those kind of  
20 elements. That was passed successfully in June  
21 of '11.

22 The collateral consequence piece,  
23 which we're talking about here, which includes  
24 this, it deals with a section on child support,  
25 Order of Limited Relief, the fair-hiring

1 practices, all of this is contained in a bill  
2 that was introduced this week on collateral  
3 consequences.

4           So that is pending and certainly our  
5 goal and our intent is to have that passed by the  
6 end of June this year.

7           I want to ensure that the legislators  
8 don't forget my face, so I'm back every year with  
9 these kind of things.

10           MS. VANDERHORST:           I do want to  
11 commend you on having a correctional department  
12 that puts rehabilitation as its primary focus.

13           When I looked at your website, I  
14 think it's the first time in my 15 years that I  
15 have seen rehabilitation publicly proclaimed for  
16 a correctional department, and your website has  
17 an entire list of services that focus on reentry,  
18 so we know that you are amongst one of the most  
19 progressive departments that we've dealt with so  
20 far.

21           Some of the things that -- one of the  
22 key things that I wanted to ask you, that is  
23 important to us in looking at reentry, is who do  
24 you think is responsible for telling inmates  
25 about their collateral consequences, particularly

1 information for persons who do not get detained,  
2 what information they may need in order to get a  
3 sealing?

4 MR. MOHR: Let me just say  
5 you've just outlined the complexity of this  
6 process.

7 I believe that we own the  
8 responsibility for those people that we have  
9 first of all in our custodial care, and as part  
10 of our reform we have a three-tier system where  
11 our top tier, we're creating reintegration units,  
12 where we are living like we expect to live in a  
13 community, the requirement of working eight hours  
14 a day in a job or training that is relevant to a  
15 job that they will be able to get, using private  
16 sector employers coming in and providing work  
17 experiences for our fellows and our ladies at  
18 Marysville, so we expect that.

19 And during that time we own the  
20 responsibility to transist folks in, which means  
21 we own the responsibility for advising -- first  
22 of all for training people with skills where  
23 there's not a prohibition on them getting a job.

24 I mean, we train and work in asbestos  
25 removal. Well, there are huge collateral

1 consequences and sanctions in Ohio regarding  
2 asbestos removal. I don't think we made that  
3 connection.

4           Let me just say this: The first  
5 thing is the database needs to be updated and  
6 clear, and Dr. Travis, out of the  
7 University of Cincinnati, I think has the best  
8 handle, at least in our state, on this and the  
9 database is being made accurate.

10           Second of all, for those people we  
11 meet as we go through the reintegration center,  
12 that needs to be a phase, and we do align our  
13 programs with that.

14           As we work in the communities, we  
15 need to figure out -- we now are aligning  
16 community -- I want to say reinvestment --  
17 liaisons. We're creating parole officers whose  
18 job is to do nothing but be linkages with the  
19 community resources and the folks being released,  
20 either out of parole or out of our prisons, to  
21 ensure that they have a linkage with the reentry  
22 coalitions.

23           Then finally, we just need to  
24 establish these reentry coalitions that have a  
25 focus on jobs, that have a focus on substance

1 abuse issues, that have a mental health focus,  
2 that are holistically wrapped around our folks.

3           Those people need to be in our  
4 prisons, we need to be with them, and it's not  
5 one day it's an inmate, the next day it's a  
6 returning citizen.

7           We just need to start bridging that  
8 gap in our top tier or reintegration units that  
9 we're creating as designed to bridge that gap, to  
10 allow inmates that are still inmates in these  
11 centers to go out and interview for jobs, to do  
12 those kind of things that typically we wait until  
13 they're in the community and then, all of a  
14 sudden it's an abrupt change and we're looking  
15 and there are too many things changing and it is  
16 very difficult for them to focus on this, trying  
17 to transist.

18           MS. VANDERHORST:           We've kind of  
19 come full circle, particularly when you said the  
20 asbestos training.

21           I believe it was yesterday we were  
22 informed that there are folks who are getting the  
23 asbestos training, ready to do it when they get  
24 out. When they try to actually get licensed to  
25 do it, they can't get licensed to do it because



1 they have these prior offenses.

2                   So we understand the circle, what  
3 we're trying to understand is how to break it,  
4 how to actually get them employed, because the  
5 training is good, it gives them self-esteem, it  
6 gives them some skills, but they can't use it in  
7 Ohio because their record that put them in the  
8 position to get the training is the same record  
9 that's preventing them from actually getting to  
10 do the work.

11                   So for either one of you, how are you  
12 dealing with the licensing end of that?

13                   SENATOR SMITH:           There is a  
14 certificate of eligibility that they can obtain  
15 once they're out of prison and they can take that  
16 to the employer, saying that the Department of  
17 Rehabilitation has given them a rubber stamp to  
18 say they're okay to work, they have a good --  
19 well, they have good character now and integrity  
20 and they stand behind them, so that's one way we  
21 have dealt with that in Ohio.

22                   MR. MOHR:                   I think the  
23 other thing is, in the collateral consequence  
24 legislation that was introduced this week, we are  
25 dealing with those series of vocational

1 certificates.

2           Asbestos is one, HVAC is another.  
3 There's a whole series of these in the collateral  
4 consequence bill, that we're attempting to  
5 eliminate that barrier for certain offenders,  
6 particularly those, as the Senator said, who have  
7 gone through and achieved that.

8           We're attempting through this  
9 legislation to start reducing the limitations on  
10 being able to go out -- they can get a job, but  
11 they can't be an independent contractor, they  
12 can't own their own business.

13           And as you know, one of the most  
14 effective ways to become employed is the  
15 entrepreneurial approach, where they go out and  
16 they have a skill and they say, okay, I've got a  
17 truck, I'm going to go do a business.

18           Well, they can't function currently  
19 in Ohio under those circumstances because they  
20 are independent, and that's part of the element  
21 in the collateral consequence bill that we want  
22 to change.

23           MS. VANDERHORST:           You may know, at  
24 least in the jurisdictions that we've looked at,  
25 they can't do it in a lot of states, because that

1 seems to be the wall that hits in so many  
2 different jurisdictions.

3           One of the things we're looking at  
4 are best practices. So as an act, as you call  
5 it, have the two of you talked about ways that  
6 people can maybe get around that or other ways  
7 that they can become entrepreneurs or one of the  
8 things that you're proposing in your sentencing  
9 reform efforts, to try and -- there may be other  
10 jurisdictions that might be able to look at and  
11 follow you.

12                   MR. MOHR:                   In the  
13 collateral consequence legislation that is  
14 proposed, it will reduce those restrictions for  
15 certain offenders, so I think it's a start.

16           I think the second thing is, there  
17 are a lot of issues -- we were talking on the way  
18 up -- do you realize there are 200,000 open jobs  
19 right now in the trucking industry, 200,000.

20           I met with the truckers this week,  
21 and the biggest concern for Ohio, as we get into  
22 the fracking and all of the oil producing,  
23 harvesting issues, is that the water that comes  
24 back up is determined to be hazardous.

25           So we have a plan in Ohio. We are

1 going to train inmates to get CDLs. We're  
2 working with private sector companies that will  
3 give us a tractor-trailer for a dollar a year;  
4 we've got the BMV, the Bureau of Motor Vehicles  
5 and the State Patrol, that are going to test our  
6 inmates while they're still inmates.

7           These folks are going to leave our  
8 prisons and we've got a commitment from a company  
9 to hire 700 of these folks, CDL in hands, job in  
10 hand, and ready to move. That's within the  
11 state.

12           Nationally, the biggest barrier we  
13 have are CDLs to haul hazardous materials, and  
14 what we talked about on the way up, along with  
15 the trucker's association and some folks in  
16 Washington, is to take hazardous material and  
17 start -- not all hazardous material is the same,  
18 folks, hairspray is different than certain  
19 chemicals and yet the federal legislation that  
20 bans and restricts CDLs does not see a  
21 difference. We think right now the climate is  
22 right to be able to do that, and if we're serious  
23 about trying to find meaningful employment for  
24 our people, then I can't think of another  
25 occupation that has 200,000 vacant jobs.

1           And if you've been in a semi lately,  
2 you know all of the technology, I mean, it's like  
3 a spaceship. I mean, it's certainly probably  
4 more identifiable than a bracelet, in terms of  
5 where these folks are. There are ways to manage  
6 these folks, particularly as we go through these  
7 fellows that have achieved a standard of the  
8 Certificate of Achievement and Employability.

9           So those are some opportunities but  
10 we've got to stretch this into D.C., too, quite  
11 frankly, and this whole conceptual spirit of  
12 looking at people and not giving a lifetime  
13 sentence for somebody that made a mistake.

14           MS. VANDERHORST:           I have one more  
15 area and then I'm going to open it up to my  
16 colleagues, that I'm interested in from the  
17 collateral sanctions bill, and that's the section  
18 that deals with child support modifications.

19           I practice in Washington, D.C., not  
20 federal, the local level, and we have the  
21 ability -- our judges at least have the ability  
22 to have a child support order stayed for persons  
23 who are going to be in some kind of custodial  
24 detention, so that they're -- they are still  
25 responsible for what they owe at the time they go

1 in, but nothing is accruing while they are there,  
2 you know. Their fines are not increasing,  
3 there's no interest that is put on, so that it  
4 makes it even more difficult for them to get  
5 through paying their fees and fines when they get  
6 out and get back into or are reentering society.

7           It's my understanding that if a  
8 person goes into custody in Ohio, that child  
9 support, not only just related to general  
10 payments but interest, any fees or fines that are  
11 associated with not paying them on time, also  
12 accumulate, so that you may have a person who  
13 gets locked up on a ten-year offense, they get  
14 enough good time credit to get out in five to  
15 seven, but they've got five to seven years of  
16 child support, as well as fees and fines that  
17 have accumulated, and they have to pay all of  
18 that, with perhaps very little job training,  
19 having to find another job. Sometimes if they've  
20 been a Section 8, having to try and find another  
21 place to live because they may not qualify for  
22 Section 8 any more because of their charge, and  
23 still have to make those payments even before  
24 they get their driver's license back.

25           I know that you talked a bit about

1 impediments to getting a driver's license. How  
2 difficult would it be to just have something,  
3 whether it is state or county, to just have  
4 something that would give a judge the ability to  
5 stay a court order on child support until a  
6 person is released?

7                   SENATOR SMITH:            I don't know how  
8 difficult that would be, but I know what we've  
9 done, at least in this bill, is that once a  
10 person goes to prison and they get out -- now  
11 that piece I'm going to have to think about for a  
12 minute -- but I know once they get out, we no  
13 longer base their amount to pay on whatever they  
14 went in -- on that same salary they went in with.

15                   What we do is say, okay, now John has  
16 been in jail for X amount of years, he went in as  
17 an attorney, he cannot find a job making an  
18 attorney's pay anymore because of the situation,  
19 so now what we'll base that salary on is his  
20 ability to earn. So that's one way we've looked  
21 at it and we've kind of reformulated what that  
22 person will have to pay. We did not do that  
23 before this collateral sanctions bill.

24                   Now, whether it is stayed or not I  
25 really can't remember. Is it stayed now in the

1 bill?

2 MR. MOHR: Yeah, the  
3 opportunity for it to be, just as you said, is  
4 now allowed. So if we're able to pass this, it  
5 sounds like we will be functioning similarly to  
6 what you're used to doing.

7 MS. VANDERHORST: Does the  
8 recalculation on ability to earn, does that start  
9 with day one that he's out or is he given six  
10 months to nine month or to a year to get a job  
11 and get another income going?

12 SENATOR SMITH: No, that would  
13 be based on the day he gets out.

14 MS. VANDERHORST: The day he gets  
15 out, thank you.

16 MR. JONES: Penny?

17 MS. STRONG: Mr. Mohr, I have  
18 some questions for you on the, I think, most  
19 stigmatized and difficult correctional population  
20 to work with and that is sex offenders.

21 In looking at the Ohio code and the  
22 legislative purposes behind a number of the  
23 statutes that drive what occurs with sex  
24 offenders, in particular when they come out of  
25 your correctional system, I notice that there are



1 some legislative policy findings on risk and that  
2 they are found to be at a higher risk to  
3 reoffend, so my first question to you is in terms  
4 of the Ohio ORAS system that you've developed.

5 Do you have something specialized  
6 that is particular to the sex offender  
7 population? And could you also speak generally  
8 to what you are doing in terms of providing  
9 reentry services?

10 And as you were testifying, sort of a  
11 phrase popped into my mind, of course, no child  
12 left behind.

13 In terms of all of the state and  
14 national initiatives, what is Ohio doing to make  
15 sure that no Ohioan is left behind, including the  
16 population of sexual offenders?

17 MR. MOHR: You know, it's  
18 interesting. We take a lot of time and effort to  
19 assess every sex offender that comes in, in a  
20 special assessment sense, and identify risks and  
21 identify appropriate programs and placements for  
22 them.

23 The reality is that as we have gone  
24 the middle of the road on sentencing reform and  
25 collateral consequences, there are offenders that

1 are, in fact, left behind and sex offenders are  
2 left behind.

3           In terms of many of these benefits  
4 and programs, we believe that the most effective  
5 way to bring them back into the community is to  
6 have functioning reentry coalitions for every  
7 county with those professionals, whether it be  
8 those with credentials and continuing -- I got a  
9 couple of things I want to say about this -- but  
10 we think that that linkage -- and our officers  
11 that are linking the prisoners, the institutions  
12 to the communities, having them physically assist  
13 those offenders in getting to the reentry  
14 coalitions is critical.

15           So I think we're trying to bridge  
16 that gap, we're trying to link them with reentry  
17 coalitions, in ensuring that there are job  
18 issues, there are program issues, we're doing our  
19 best with that.

20           However, a number of the elements, in  
21 the collateral consequence piece, the vocational  
22 certifications for HVAC, et cetera, and reducing  
23 some of the sanctions there, do not apply to sex  
24 offenders, and it is simply because we would  
25 be -- correct me if I am wrong, Senator -- we

1 would be -- we would not get this bill passed,  
2 maybe three or four years down the way.

3           And that's why people, the Senator  
4 and I specifically, have taken a stance that we  
5 want to get some things passed and that every  
6 year we're going to continue to progress this,  
7 but they are left behind in many of these pieces  
8 of legislation.

9           MS. STRONG:                   A couple more  
10 inquiries about that. Has there been any effort  
11 to make an inquiry, and I think an analysis, of  
12 perhaps occupations, professions and businesses  
13 that former sex offenders could operate in, that  
14 do not bring them in contact with children or  
15 vulnerable populations?

16           And if I can reference some of the  
17 prior testimony that we had yesterday, we had  
18 entrepreneurs and business people who have taken  
19 very, very special care and pains to employ sex  
20 offenders, but to make sure that they're  
21 operating in arenas of employment and  
22 entrepreneurship that do not endanger  
23 individuals.

24           The second issue that I wanted to  
25 bring up is, of course, we're all familiar with

1 the housing restrictions that are not only by  
2 state and federal law but now by local ordinance,  
3 and does your department take any official  
4 position on those housing restrictions, I mean,  
5 when they impact that population so heavily?

6                   We have heard of an entire halfway  
7 house that housed about 20 sex offenders, that  
8 was completely obliterated because a local  
9 municipality passed a retroactive law. They were  
10 within a thousand feet. They made their law  
11 1,200 or 1,500 feet and the entire facility had  
12 to close.

13                   MR. MOHR:                   I don't know if  
14 you're referring to a community in Ohio, but it  
15 has happened exactly in Ohio since I have been  
16 director in the last 16 months, exactly the  
17 scenario that you've talked about.

18                   And what we have done was to bring  
19 that community and that facility together and  
20 worked on an accommodation to find an appropriate  
21 designation, that didn't violate the law that was  
22 passed, the local ordinance that was passed, and  
23 still allow those offenders, those folks, to be  
24 housed in that community, but that exact  
25 situation in fact took place in this state during

1 my tenure.

2 MS. STRONG: And I am  
3 referencing that.

4 MR. MOHR: Okay.

5 MS. STRONG: I guess another  
6 on sex offender and reintegrating them is all of  
7 the other impacts on their families, their  
8 children, children being bullied at school.

9 And we're hearing nationally and  
10 internationally about the concept of restorative  
11 justice, which is applied, I think, very commonly  
12 in domestic violence, also in sex offenses,  
13 especially with family members, and if your  
14 department has dealt with that at all in the  
15 context of sex offenders.

16 MR. MOHR: Quite frankly  
17 we've got a long way to go. I believe that again  
18 we are attempting to use evidence-based -- we are  
19 using evidence-based programs institutionally.

20 We are now attempting, with these  
21 particular hard-to-place cases, and cases like  
22 those in trying to find locations, that's why we  
23 plugged our community reinvestment, we've created  
24 these folks because.

25 What was happening before, we were

1 getting ready to release someone or they were  
2 eligible to be released and were looking for  
3 placements, our practice had been to fill out the  
4 typical form, send it out and see if it was going  
5 to be approved.

6           Our practice now is to take, with  
7 these difficult cases, a human being that the  
8 judges know and have had some experience with, to  
9 talk about these folks not as sex offenders but  
10 as individuals.

11           I think just in general we have  
12 created part of the problem when we talk in  
13 general about sex offenders.

14           You know, there's data that describes  
15 some great success rates, and I don't think that  
16 we have delved into and used the data in terms of  
17 recidivism with certain -- we've not really used  
18 that, to tell the truth, and we're still  
19 unsuccessful, obviously, because you see sex  
20 offenders restricted and not included in a lot of  
21 this legislation, not because Shirley or anyone  
22 would not like that, it's the fact that we would  
23 not get this legislation passed right now, that's  
24 the truth.

25                           MS. STRONG:                           Thank you.

1 MR. JONES: Elissa?

2 MS. HEINRICHS: I just have one  
3 question.

4 In taking the legislation from it's  
5 original state to a central place where you're  
6 hopeful that it can be passed -- I guess my  
7 question is two questions -- one, I'm interested  
8 in -- and maybe you answered it talking about a  
9 sex offender component -- but I'm most interested  
10 in hearing if there were other provisions that --  
11 what were the other provisions that you had to  
12 remove in order to remove it to the central  
13 place?

14 And I'm also interested in hearing  
15 who your most unlikely allies have been in  
16 joining you to get this to a place where it can  
17 actually pass?

18 We're looking at -- we've asked in  
19 different jurisdictions about some of these  
20 unlikely allies, and I'm still very curious to  
21 see, because I think that some of the usual  
22 suspects partner together, but we're hearing that  
23 there are other advocacy groups out there, who  
24 may not normally associate with being an allie  
25 for a cause, and I'm wondering what your

1 experience has been, who these organizations are  
2 and if you could just talk a little bit about  
3 that process.

4                   SENATOR SMITH:            I think it  
5 really depends on what provisions it is or they  
6 are.

7                   You know, when it comes to  
8 expungement, believe it or not, it is businesses,  
9 it is corporate America.

10                  They just believe that anybody that  
11 walks in the door, they should know whether or  
12 not they've had a past criminal history, whether  
13 that person has cleaned up their act or not.  
14 They just feel they should and they believe that  
15 because of the liability. They believe that they  
16 could be fined or they could, you know, incur  
17 some kind of a cost that is astronomical, so they  
18 just don't want to have people's records sealed.

19                  MS. HEINRICHS:            Are they  
20 offering any data to support that position?

21                  SENATOR SMITH:            As a matter of  
22 fact I can give them data that supports just the  
23 opposite, you know, that it has been taken to  
24 court in a case -- I can't think of the cite --  
25 Star versus -- I can't remember the case -- but



1 it has been proven to a court that once that  
2 happens, once an incident happens at work, that  
3 the employer is not responsible. But they  
4 still -- I think there is a stigma about people  
5 who have been in prison.

6           But let me say this: I have found,  
7 from the time that this legislation -- at least  
8 when it deals with expungements -- from the time  
9 that it was introduced until now, more people  
10 have moved from where they were to the center,  
11 because now they've become educated and there is  
12 evidence-based things that happened over the  
13 course of time, that educated them and has given  
14 them more insight that these practices work.

15           So coming from where I was ten years  
16 ago to where I am now, it is absolutely amazing  
17 that people's minds have changed.

18           Are there other things in the bill  
19 that have been taken out? I think that this bill  
20 was crafted very carefully. I have not heard too  
21 much opposition about the things that are in this  
22 bill, because I think people are wise now, they  
23 realize that people should work; they realize  
24 that if people go to jail and they do at least  
25 take up courses in hair or barbers or whatever

1 they take lessons in or education in, that when  
2 they come out, they should get a job and they  
3 shouldn't be prohibited from working. I think  
4 people are wise to that now, where years ago they  
5 were not.

6           So I think this bill was crafted very  
7 carefully based on our past history and educating  
8 people, because it took time for us to get where  
9 we are now. It took a lot of time, a lot of  
10 education, a lot of committee hearings, a lot of  
11 advocating from people like Director Mohr.

12           MR. MOHR:                   Gary.

13           SENATOR SMITH:           Gary. So I  
14 think that, believe it or not, we are in a better  
15 place than we were even three years ago.

16           MR. MOHR:                   I want to just  
17 kind of tell a bit of a story.

18           What we're doing in reforming our  
19 system, the collateral consequence bill that was  
20 introduced and sentencing reform are important  
21 parts of our entire reform, reentry coalitions,  
22 evidence-based programs, putting unit management  
23 back, staff back in conjunction, pro-social  
24 communication with inmates, but we've had in the  
25 last two, months -- of course I talked about the

1 Ohio Trucker's Association because they want  
2 jobs. We can help with this. We're willing to  
3 help you in Washington reduce some of these  
4 restrictions.

5                   We met with NFIB the National  
6 Federation of Independent Businesspeople who are  
7 now willing to serve on an advisory group to help  
8 us screen out private sector businesses coming  
9 into prisons, setting up shop offshore. We've  
10 got two China businesses that are shutdown in  
11 China, coming in and setting up in our prisons.

12                   So everybody is concerned about  
13 taking jobs from Ohioans and I will not do that,  
14 but we've got groups like NFIB, the Ohio  
15 Manufacturers Association, who are willing to sit  
16 down and help us with looking at employment  
17 opportunities for inmates and training for these  
18 folks, as well.

19                   The Chamber of Commerce has been with  
20 us at every one of our collateral consequence  
21 meetings, is looking very closely at how we're  
22 changing the state application process, the state  
23 application, and have committed next year --  
24 again, we'll go back next year to look at  
25 employment and applications working in the

1 private sector -- might be adapted based on the  
2 evidence that is produced from our work with the  
3 state.

4           Bureau of Motor Vehicles, think about  
5 taking driver's licenses, they're partners with  
6 us to help us test inmates to get CDLs, and the  
7 State Patrol, our law enforcement, is going to  
8 test these folks.

9           So they are all, I think, on the  
10 surface unlikely partners but the bottom line is  
11 it supports resources.

12           We cut our budget \$190 millions over  
13 the biannual, just our agency budget, but we're  
14 doing it wisely. We've reduced recidivism, 10  
15 percent reduction in the last three year's,  
16 health work, and our prisons are safe from what  
17 they were three years ago.

18           I think we've got to produce and tell  
19 our story, but if we're not producing, then these  
20 people are not going to be onboard, I'll tell  
21 you.

22           MR. JONES:                   Larry?

23           MR. GOLDMAN:                I come from the  
24 state where the district attorneys have a great  
25 deal of political power, and they tend to think

1 they run the legislature, just like they tend to  
2 think they run the courts, and this is New York,  
3 where an expungement bill passed by the fairly  
4 conservative New York State Bar Association and  
5 introduced at the district attorney's opposition.

6 Have the DAs been active in opposing  
7 these policies? There they been complacent?  
8 Have you stuck it in when they didn't know about  
9 it?

10 SENATOR SMITH: We didn't do  
11 that.

12 MR. MOHR: Let me start  
13 with this at one, Shirley. The head of the  
14 prosecutor's association, we know each other real  
15 well, so we didn't sneak it by anyone and, quite  
16 frankly, as we went through sentencing reform, we  
17 were on opposite sides on things like earned  
18 credit, the issue of truth in sentencing being  
19 distorted, those types of things, but the  
20 legislature passed sentencing reform, I think  
21 with three descending votes, just a few, so we  
22 didn't sneak it by anyone.

23 Interestingly, the prosecutors, as it  
24 relates to collateral consequences, are more  
25 aligned than they were with some of the

1 sentencing reform elements there.

2           So we see each other every testimony  
3 and it keeps things lively, which is a good  
4 thing, but with collateral consequences, I think,  
5 Shirley, they're more aligned than they were with  
6 some of the provisions that we passed last year.

7           SENATOR SMITH:           Amazingly so.  
8 The head of the prosecutor's association, he  
9 won't miss anything, he'll never miss anything,  
10 so we don't sneak anything by him, not at all.

11           MR. GOLDMAN:            I didn't mean  
12 that literally.

13           Let me ask one final question,  
14 Mr. Mohr -- well, both of you, either.

15           As we were told yesterday there is  
16 some state legislation dealing with construction  
17 projects that require as a condition that people  
18 no longer, with a criminal record, as I  
19 understood it, work on that, which of course  
20 seems to be at odds with everything you're  
21 saying.

22           Is there anything that can be done  
23 about that? Is it true, whatever?

24           MR. MOHR:                Let me just tell  
25 you, I don't know for sure if the State of Ohio

1 is putting out contracts with those prohibitions.

2 Let me just say this --

3 MR. GOLDMAN: We were told  
4 with respect to school construction, school  
5 construction funding.

6 MS. ROBERTS: It was a bonding  
7 issue.

8 SENATOR SMITH: No, I don't have  
9 the answer to that one.

10 MR. MOHR: I don't either,  
11 but, see, it helps us to be here today because we  
12 will, in fact, be talking with the director of  
13 DAS, that oversees the schools, the construction  
14 piece, because that is counter, not just to  
15 where -- it is also contrary to a conservative  
16 Republican governor, who kicked off the first  
17 collateral consequence conference that we had.

18 MR. GOLDMAN: You never know  
19 when these people build their schools what they  
20 might put into it.

21 MR. MOHR: They don't want  
22 me building a school, I know that, from my lack  
23 of skills, that would be the safety issue, I  
24 think.

25 MR. JONES: Thank you.

1 Chris?

2 MR. WELLBORN: Briefly. I come  
3 from a state that's actually about as  
4 anti-polluting as you can possibly get on these  
5 issues, South Carolina.

6 I know that both of you are cognizant  
7 of the issue that I'm going to raise, but you  
8 specifically had mentioned that the reforms that  
9 have taken place to date have saved your agency  
10 alone about \$190 million, I believe that was the  
11 figure.

12 MR. MOHR: I cut my budget  
13 \$190 million.

14 MR. WELLBORN: Which saves the  
15 State of Ohio \$190 million.

16 MR. MOHR: That's true.

17 MR. WELLBORN: Is the  
18 legislature as a whole -- and I'm thinking in  
19 terms of coalition building and coalition  
20 building where it really matters, which is in the  
21 legislature, which is where these coalition laws  
22 are even enacted or relieved in some way -- are  
23 they aware of the financial impact on local  
24 communities, including municipalities, counties  
25 and ultimately the state, of the collateral



1 consequences, not just for the ex-offenders  
2 themselves, but of how much the state has to  
3 commit to resources not for simply  
4 reincarceration and recidivism, but such things  
5 as people going to hospitals for medical care  
6 because they don't have jobs and they can't  
7 afford medical insurance, such as the dropout  
8 rate from the public school system by families  
9 with kids when the family member who is an  
10 ex-offender can't find a job and they don't have  
11 stable housing -- has there been any kind of, if  
12 not studies, or any talk in the legislature about  
13 that as a concern, as a way to save the  
14 State of Ohio and then, downstream from that, for  
15 example, Cuyahoga County and the City of  
16 Cleveland, these collateral consequences to the  
17 taxpayers of Ohio, as a result of these sort of  
18 inane collateral consequences that exist, not  
19 just here, but all across the United States?

20 MR. MOHR: I know, our  
21 agency, we have not explored kind of that  
22 external impact, that's very real. I mean, there  
23 is absolutely no question about that.

24 We do have a relationship, and  
25 Shirley just mentioned this, that was critical to

1 us in this process, and that's the Council of  
2 State Governments.

3           The State of North Carolina, your  
4 northern neighbor there, was actively part of  
5 that, and I would suggest that might be kind of a  
6 national source for looking at some of that data,  
7 but we have -- I'll just be honest -- we have not  
8 gone there, but it's real, it is real.

9           MR. WELLBORN:           It just seems to  
10 me that you have, in terms of allies, built-in  
11 allies with every single -- on every level,  
12 whether it is municipality, county, whatever it  
13 may be, folks who are trying to figure out how  
14 are we going to pay for all of the stuff we need  
15 the pay for, and at the same time their budgets  
16 are being drained by supporting people that  
17 otherwise could be self-supporting, were these  
18 collateral consequence not in place.

19           It seems like such a winner across,  
20 you know, bipartisanly, and that's why I'm  
21 asking, because Senator Smith deals with other  
22 legislators, whether it's something they're even  
23 concerned about or thinking about or they're  
24 getting flack from their own districts about it?

25           SENATOR SMITH:           I think they

1 are. I think that legislators are beginning to  
2 talk about it and look at it from a financial  
3 point of view.

4 I think before the way we looked at  
5 it as -- may I say this?

6 MR. MOHR: You can say  
7 whatever you want.

8 SENATOR SMITH: I think most  
9 legislators looked at it -- I don't know if I  
10 should or not -- within terms of election, you  
11 know, and now they see the strain that it has on  
12 our state financially, and they're beginning to  
13 look differently about it and do the right thing.

14 Although it was looked at some years  
15 ago as an election issue, it is beginning to be  
16 looked at as a moral issue now, and what we  
17 should do as a right thing for our state and the  
18 people in it.

19 I think the more we invest in doing  
20 the right thing, the better results we have  
21 gotten and that's why we are able to get things  
22 like this through the legislature, because people  
23 are becoming more wise and they know what we  
24 should do, in terms of morals and putting people  
25 back together with their families and creating

1 jobs and getting more money in the system, in  
2 terms of taxes and those kinds of things, yeah.

3 MR. MOHR: That was  
4 certainly an element, I think, last year as we  
5 deferred, particularly these people who are  
6 spending a year in prison, going out with no  
7 supervision, that whole element of keeping them  
8 in the community, keeping them with family.

9 We have certainly learned in prison  
10 that we need to bring the family into prison and  
11 help that before they get out and have an abrupt  
12 change, and try to figure out who's who. So I  
13 think that was an element that really helped us,  
14 along with the economics.

15 I think there is a sensitivity to try  
16 to do the right thing for people, although there  
17 are certain people that there is not as much  
18 concern about.

19 MR. WELLBORN: Just taking it  
20 from a purely cynical standpoint of somebody  
21 being reelected to their position in the  
22 legislature, it's about deliverables and  
23 deliverables for their constituents, and if their  
24 constituents are facing the economic crunch  
25 because resources are expended unnecessarily, it

1 seems that could become a winning election issue  
2 or at least something that gains support from the  
3 business community or people that might be  
4 campaign contributors.

5 MR. JONES: Margy?

6 MS. LOVE: We've talked a  
7 lot about in connection with collateral  
8 consequences the sort of two competing ideas of  
9 how to deal with sort of graduation, if you will?

10 We have talked a lot about sort of  
11 two competing approaches to graduation from the  
12 justice system: One is sort of the forgiveness  
13 approach, and the other one is what I'd call a  
14 sort of forgetfulness, concealment, hide it,  
15 expungement, get-rid-of-it approach.

16 I see that some of the approaches  
17 that Director Mohr has been espousing, the  
18 certificate of achievement and accountability or  
19 whatever, and then the Order of Limited Relief,  
20 that's another -- that's sort of a -- I would put  
21 that in the forgiveness bag. The sealing bag  
22 sort of is the other approach.

23 Can I ask you both to just sort or  
24 comment on what you think, in light of your  
25 experience dealing with, you know, some of you're

1 opponents in the business community, perhaps the  
2 DAs, what you think is the most promising sort of  
3 theoretical approach going forward, to dealing  
4 with collateral consequences, is it the  
5 forgiveness or the forgetfulness?

6                   SENATOR SMITH:            I think it's  
7 both. I think you have to do both in order for  
8 it to work. I hate to say it's not -- well, it  
9 is something that we want to forget but forget  
10 for the right reasons.

11                   It's forgetfulness on one hand, but  
12 what it says on the other is that a person has a  
13 brand new life. So I would love to forget the  
14 past, what I've done in the past, but it should  
15 make me a better person.

16                   So the other part of your question  
17 was the forgetfulness and the --

18                   MS. LOVE:                    Well, I guess I  
19 would ask you to follow-up on what you just said.  
20 I think I agree with what you said. I guess I  
21 would say, how do you accomplish that?

22                   I mean, we're a bunch of lawyers  
23 sitting up here, we have to deal with the legal  
24 system.

25                   How do you accomplish avoiding or

1 mitigating these collateral consequences?

2           One approach is the Order of Limited  
3 Relief, another approach is the certificate of  
4 accountability, yet another approach is sealing.

5           I guess I personally have some doubts  
6 about how much you can get away with actually  
7 hiding these days, with technology the way it is,  
8 but that's just my own personal view and I know  
9 not everybody agrees.

10           Do you have a view about what is the  
11 best sort of legal mechanism for accomplishing?

12           SENATOR SMITH:           I don't  
13 necessarily think it has to be legal -- well,  
14 once you put it into effect, from a legislative  
15 point of view, but I think education, because  
16 most things in this realm are stigmatized,  
17 because once you look at a person -- people who  
18 go to jail and come out, for some reason those  
19 who can't seem to open up their minds seem to  
20 think of those people as criminals for the rest  
21 of their lives because they've been locked up.

22           So when you educate people, as we  
23 have done in the Ohio Legislature, I think we get  
24 things done, I think that is the key to it all.

25           Then again it's experience, because

1 once it happens to somebody in your family or  
2 somebody that you know or somebody that you're  
3 very close to, then it changes, the whole scope  
4 it of it changes.

5           But what we've worked with is  
6 educating people and using these evidence-based  
7 type of programs to prove to people that these  
8 things actually work and we've had some very,  
9 very good responses from them and they do work.  
10 So to answer your question, I would say  
11 education.

12           MR. MOHR:                           I focus on what  
13 I have the greatest degree of control over which  
14 isn't much, but we believe that -- I think it is  
15 the forgiveness model, and in the event that  
16 we're bringing private sector folks into our  
17 prisons, we're setting up shop, we're getting  
18 them to get to know our people, we're telling the  
19 story, we've got two-hundred-plus employers  
20 notified to offer opportunities for this kind of  
21 thing.

22           We believe that once people get a  
23 chance to know these folks, to work with them, to  
24 select them -- we're going to let them select  
25 them, help select them into our programs. We're



1 not going to exclude them until the end, we're  
2 going to get them involved early. We believe  
3 that they will be able to tell their story best.

4 I think there are times that  
5 expungement is right, the other thing we  
6 believe that -- and we believe in judicial -- I  
7 believe judicial discretion doesn't exist today.

8 I think it's absolutely horrible that  
9 if someone -- and we have a testimony of someone  
10 that never went to prison -- was convicted of an  
11 issue of child support, a misdemeanor, not sent  
12 to prison, eight years later, they've been back  
13 with their family, back with their kids, and  
14 could not get that expunged because the  
15 requirement of Ohio law, even though they were  
16 married and that restriction hampered that person  
17 from an employment standpoint.

18 The stories are unbelievable, so I  
19 believe what we have control over is bringing  
20 people in, letting them know, as Shirley says,  
21 educating them, and taking it head on.

22 SENATOR SMITH: You really won't  
23 start to forgive if you don't know what you're  
24 forgiving and why you're forgiving. That's why  
25 education it is so important.

1 MS. LOVE: Thank you very  
2 much.

3 MR. JONES: I just have, I  
4 guess, since we have time, a few minutes, to take  
5 us back sort of to the beginning and  
6 Director Mohr started by saying that sort of one  
7 of his -- I guess, I don't want to be misquoting  
8 you -- guiding sort of principle was seek and ye  
9 shall find.

10 And I think that another one that I  
11 would suggest is where there's a will, there's a  
12 way, and I really want to get to the question of  
13 will and what's behind whether or not there is  
14 the will.

15 One of the things we've learned since  
16 we've been here, and not just in Ohio, obviously  
17 across the country, is that there's an overlay of  
18 racism that sort of impacts all of this, and that  
19 a significant number of people involved in the  
20 criminal justice system and returning to society  
21 in the criminal justice system in Ohio, and  
22 particularly in Cuyahoga County, come from four  
23 or five east side communities where the majority  
24 of the population is African American.

25 In addition to the forgiving and

1 forgetting notion, I really want to get your  
2 sense of whether or not, despite all of the  
3 legislation, despite all of the mechanisms,  
4 despite all of the implementations that people  
5 sort of suggest, and to greater or lesser degree  
6 try to implement, are we really sort of banging  
7 our head against the wall because there really  
8 isn't the will to get this done, and that's  
9 because we're talking about largely communities  
10 of color and largely African American populations  
11 and young, African American men, to put even a  
12 more precise point on it?

13                   What is your sense of that in  
14 connection with this question of the overlay of  
15 racism?

16                   SENATOR SMITH:           Well, it is  
17 definitely the thousand pound elephant in the  
18 room. It is that. Certainly that's a  
19 conversation that it seems that most people, not  
20 only legislators but most people, are afraid to  
21 address and that's racism. It is a very  
22 difficult issue to address especially when you  
23 have a majority of the legislators who are white.

24                   I think one of the difficult problems  
25 in discussing it is because they feel that

1 they're being incriminated or indicted, you know,  
2 because the conversation, it almost seems that  
3 when we have to address that issue, that we're  
4 saying it's you, and that's not really the issue,  
5 the issue is there's a problem and let's face it.

6           So there is that problem of racism  
7 because nobody wants to address it.

8           Now, one of the things I sit on --  
9 one of the committees that I sit on is the death  
10 penalty issue. We're looking at a study of the  
11 death penalty, and that was one of the most  
12 interesting issues that we had to talk about,  
13 because nobody really wanted to address the race  
14 end when you talk about the death penalty.

15           We are doing it, we are addressing  
16 it, but it's the same when it comes to prisons  
17 and it comes to jails, nobody wants to talk about  
18 it.

19           Now do we talk about it, would we  
20 address this reentry issue? Not directly,  
21 because for some reason people want to pretend  
22 that there's not a problem.

23           So maybe Director Mohr can address it  
24 a little bit more in-depth.

25           MR. MOHR:                           Well, I don't

1 know if I can in-depth. I mean, number one, the  
2 numbers say a whole lot, you know, 48 percent of  
3 our population is African American inside our  
4 prisons.

5           It seems to me that where we start is  
6 those people. We need to reduce, continue to  
7 reduce our prison population. We need the  
8 continue to reinvest monies back into the local  
9 communities and ask and try to have them identify  
10 the opportunities, both before they come to  
11 prison as well as after.

12           We need to do more deflecting folks,  
13 and ideally more before crimes are committed, but  
14 to give more resources to the local communities,  
15 who manage or live in that population, to allow  
16 discretion for them to expend those resources,  
17 and then the safeguard issue, measure.

18           I mean, we now have the ability to  
19 measure -- speaking in Cuyahoga County, we  
20 always -- on the negative -- on the positive  
21 side, three years ago they were 19.8 percent of  
22 the intake into our prison system, one county,  
23 they're down to 16 and a half percent because of  
24 a much more active set of diversified folks that  
25 are looking at this whole issue of how we deal

1 with Cuyahoga County. They've done a wonderful  
2 job and they're continuing to do that.

3           So I'm a believer of home rule state  
4 I guess, I don't know, Shirley, but I don't  
5 think -- as I said this, as I drive closer to  
6 Columbus from my home, I lose intelligence.

7           Think about this -- no, I'm serious,  
8 think about this: I used to be a prison warden.  
9 I saw staff, inmates, and policies all intersect.  
10 I saw a community. I saw these things and I was  
11 much, I think, better able to take a look at  
12 ideas to improve things. I drive to Columbus, I  
13 lose that intelligence.

14           I think the communities have a lot to  
15 offer. I think we need to continue to develop,  
16 as we've established in many of our prisons,  
17 relationships between our local NAACP chapters  
18 inside our prisons, as we have, with locals on  
19 the outside, that includes that. It also  
20 includes things like veteran's organizations.

21           We need to start bridging the kind of  
22 organizations on the outside and inside to start  
23 developing relationships in all kinds of  
24 pro-social, community kind of ways, and I don't  
25 think we've really worked hard up to this point

1 in trying to do those things.

2           So I think local communities have a  
3 lot to offer and I think the states need the  
4 realize that they may be a little keener on this  
5 issue than we are.

6           SENATOR SMITH:           Not only that, I  
7 think if you address the issues of racism in the  
8 prison industry, quite frankly, it's going to  
9 open up a can of worms, because then you have to  
10 address education, employment, health, and why it  
11 impacts blacks more so than whites.

12           So when you talk about the prison  
13 industry, you almost have to talk about it all,  
14 and I don't think people are ready to do that.

15           MS. VANDERHORST:        But if they  
16 don't do that, how do they address it? How do  
17 they deal with racism, any racisms, and the  
18 impact on people of color who are going through  
19 the revolving door?

20           SENATOR SMITH:           I think we have  
21 to keep stabbing at it and we have to keep  
22 talking about it. We have to kind of force it,  
23 where it doesn't fit and that's one of the  
24 problems that we have, and most legislators have.

25           Not only that, a lot of black people

1 don't want to talk about it, a lot of Hispanics  
2 don't want to talk about it. Those that are in  
3 those positions, that can talk about it, they  
4 won't, because they're in a position and making  
5 their standard of living and they want to stay in  
6 that position and they refuse to talk about it.

7                   So even though you grow and groom  
8 yourself to get to a position, once you get  
9 there, you want to stay there, so now we don't  
10 want to talk about it, it's not an issue anymore.

11                   MR. JONES:                   We're  
12 unfortunately out of time, actually over time.

13                   Thank you both for your candor and  
14 for sharing your expertise with us, we greatly  
15 appreciate it.

16                   We will reconvene in ten minutes.

17                   - - -

18                   (Whereupon there was a recess in  
19 the proceedings from 3:20 p.m. to  
20 3:33 p.m.)

21                   MR. JONES:                   Welcome. We are  
22 pleased to have you both here.

23                   You should just know I've been  
24 instructed to remind you all and inform you, if  
25 you don't know, that we're both videotaping this



1 session and it's being transcribed.

2           You should have microphones in front  
3 of you. Make sure that when you speak, you speak  
4 into the microphone until it picks up, and also  
5 to speak in a good voice, and I've been asked to  
6 remind both our witnesses and our panel to speak  
7 slowly, so we can get it transcribed.

8           We are pleased to have you and look  
9 forward to this discussion. Both of you have  
10 reputations that have preceded you here with this  
11 task force, and so if no one else is, I am  
12 excited to hear from both you.

13           The way that we operate our panels is  
14 that we're going give each of you about ten  
15 minutes to tell us a little bit about yourselves  
16 and the work that you do and specifically how it  
17 relates to the issues that we're concerned with,  
18 and then we have a bunch of questions for you.

19           And the way that we do our  
20 questioning is that one of us is primarily  
21 responsible for leading the questioning, and for  
22 this panel that will be Larry Goldman, and to the  
23 extent there is time, when he has finished, the  
24 rest of us will get ourselves involved in the  
25 discussion as well.

1                   So I am going to stop talking and  
2 turn the floor over to you. You can decide  
3 amongst yourselves who wants to go first, but the  
4 floor is yours.

5                   JUDGE RUSSO:                   I'm Judge Nancy  
6 Margaret Russo and I am a general division judge,  
7 on the same bench as Judge Synenberg. We handle  
8 both civil and adult felony cases and bind over  
9 from juvenile court to felony court.

10                   I also have a specialized docket  
11 called the Reentry Court Docket, which was formed  
12 in 2007 originally, with a grant from the Bush  
13 administration, sent through the U.S. Attorney's  
14 office here, and from the U.S. Attorney's office,  
15 they asked the Common Pleas Court in  
16 Cuyahoga County to run it. We took our first  
17 clients in in January.

18                   It was originally conceived by the  
19 federal government as being a reentry court for  
20 gang members, but as we began the probation of  
21 the reentry court, it became clear that that was  
22 not going to work for a variety of reasons, one  
23 of which being that the people at the federal  
24 level, at the funding level, didn't understand  
25 that most people in gangs aren't going to tell

1 you they're in gangs.

2           So I tried to explain we were going  
3 to have a hard time identifying people, if that's  
4 going to be initial criteria, is admission of a  
5 gang.

6           What we did instead was just create  
7 an open criteria, and if they're in a gang, it  
8 doesn't exclude them, should that come up, but  
9 that's not a definite criteria.

10           They funded us for approximately 18  
11 months, I'm going to say, and since that point  
12 now we've been funded through the Office of  
13 Reentry of Cuyahoga County.

14           Our funding is \$50,000 a year, that  
15 pays for my probation officer. The other funds  
16 that I get, I really am piggybacking the service  
17 contracts that the county has with other  
18 providers.

19           The biggest challenge to us right now  
20 is really funding.

21           As you know, Ohio is doing a lot of  
22 things to reduce prison population, but so far  
23 there has not been a lot of funding for substance  
24 abuse treatment, mental health and other services  
25 that they need.

1           So that's really the challenge, is  
2 more and more people not going to prison or being  
3 released early, for instance, through reentry  
4 court, but not getting the services that they  
5 need.

6           So far, so good. We have a small  
7 population. Currently about 33 people in the  
8 program. We've graduated over a hundred in the  
9 last few years.

10           There is talk about expanding the  
11 program but absent additional funding for  
12 services, we have basically said no, the reentry  
13 team said no, we're not going to expand it. It's  
14 important to us that the people that are in the  
15 program successfully complete it, as opposed to  
16 just filling it with a lot of people that don't  
17 get a lot of services.

18           We have approximately an 80 percent  
19 success rate, and our measure of success is  
20 following them for one year after completion of  
21 the program, which is a much more rigorous  
22 measure than what is being used by the other  
23 reentry groups funded by the county, which deal  
24 with people after their sentence is over.

25           My court interrupts their sentence.

1 It's a form of judicial release with reentry.

2           Their statistics that I looked at  
3 last week are running between 30 to 40 percent,  
4 and their only measure is does the person finish  
5 the program, so they are not even following them  
6 for a year.

7           I think, based on the statistics we  
8 have and the success we have, this model really  
9 is working, it's always in flux.

10           As I explained to your members that  
11 were there yesterday, we are always open to  
12 suggestion, but this is an evolving project, it's  
13 a brand new concept. We don't really have  
14 anybody to look to.

15           We have people coming to us for  
16 ideas, and we're just really reaching out. We  
17 have clients giving us ideas. We have people in  
18 the community giving us ideas. We would try to  
19 keep a dialogue, including with the people in the  
20 program.

21           So they're starting to help us  
22 develop the program. It has become very  
23 collaborative with the people? For your guests  
24 that were there or your people that were guests  
25 of mine yesterday, they were there for much of

1 the afternoon and I know they got a chance to  
2 talk to some of the participants individually and  
3 see how it works.

4           It's a very exciting program. The  
5 people are wonderful to work with. They're very  
6 invested in each other. They are very connected  
7 to the program even after they leave, and they've  
8 taken to heart the idea that if they do well,  
9 they can reach back into the prison and take  
10 another person out, and they take that very  
11 seriously.

12           I appreciate your interest in the  
13 reentry court. Any interest we have, any  
14 suggestions we get always helps us to make a  
15 better program, and I would like to see every  
16 county in Ohio do this. I actually would like to  
17 see this go across the country because it has  
18 been a really good program.

19           MR. JONES:                   Thank you.

20           JUDGE SYNENBERG:       Thank you very  
21 much. I'm a colleague of Judge Nancy Margaret  
22 Russo, also on the Cuyahoga County Common Pleas  
23 Court bench, and before I begin telling you a  
24 little bit about my experiences, I would like to  
25 commend what Judge Russo does.

1                   Clearly we have seen that people who  
2 have had troubles in their lives do want to make  
3 changes, they do want to make positive changes.

4                   And Judge Nancy didn't tell you that  
5 not only does she do this for herself, but she is  
6 willing to take any motion for judicial release,  
7 which would get someone under her docket, from  
8 any one of the 34 of us that serve on the Common  
9 Pleas bench.

10                  She has a team that takes a look at  
11 all of these motions, they do a thorough job, and  
12 I'm very grateful to her for what she has done to  
13 help all of us on the bench and also to help  
14 people who want to make a positive change in  
15 their life.

16                  I also want to say that we were so  
17 happy that NACDL chose to come to Cleveland. I'm  
18 a former criminal defense attorney of 16 years  
19 before I started on the bench close to eight  
20 years ago, and I used to find that attending  
21 NACDL meetings always made me feel invigorated, I  
22 appreciated the basics were reinforced, and I  
23 felt like I had learned some new things, and met  
24 some people that made me feel very inspired to do  
25 what I think is such important work of helping

1 other people.

2                   Before I served on the Cuyahoga  
3 County Common Pleas Court I did have a couple of  
4 years on the Cleveland Municipal Court, and when  
5 I first began there, I was approached by a member  
6 of the faith-based community and he asked me what  
7 I thought about expungement, and I told him that  
8 I never really thought about it that often but  
9 what I did think was that people were not really  
10 aware of the opportunity that some people have,  
11 and granted it is narrow, to perhaps have their  
12 criminal records sealed.

13                   With the blessing of my then  
14 presiding judge a few of us went on a little bit  
15 of a tour, trying to do expungement education  
16 forums in the community, where we would go to  
17 different churches on a weekly bases, to let  
18 people know the mechanism, that the law does  
19 allow for some people who have eligibility met  
20 through an absence -- well, I'll get into that in  
21 a minute, but the eligibility that the law does  
22 allow for some offenders to get their criminal  
23 records sealed.

24                   The first forum that we had, about  
25 ten people came to, and the last forum that we



1 had about 700 people came to, so word spread.

2                   And what we did see is that people  
3 make mistakes and they want to make a change and  
4 that sometimes, especially with a low-level  
5 offense.

6                   And if you're an ineligible offender,  
7 we would hear heartbreaking story after  
8 heartbreaking story of people who could not have  
9 positive change in their lives because they felt  
10 that with a criminal conviction it was almost  
11 like a life sentence.

12                   So they would pay their debt to  
13 society but then have all of the fallout that you  
14 have as a convicted felon, especially if you have  
15 more than one conviction.

16                   In Ohio, if you are seeking to have  
17 your criminal records sealed, you file a motion  
18 to have your records sealed, it's 2953.31 of the  
19 revised code that governs it.

20                   To be eligible for expungement, you  
21 have to be able to, as the law stands today, have  
22 no criminal record; you have to be a first  
23 offender, and this is pretty strictly interpreted  
24 as the law stands currently; you may not have any  
25 pending cases; it cannot be a felony of the first

1 or second degree; and in Ohio we have five levels  
2 of felony.

3           A first degree felony is the most  
4 serious, a fifth degree felony is the least  
5 serious. If it's a Felony 1 or 2, you're  
6 automatically ineligible; it cannot be a sex  
7 offense of which you are convicted, you may not  
8 get that record sealed; it cannot be an offense  
9 of violence, with one exception and that is a  
10 misdemeanor of the first degree of assault, that  
11 is an offense that is an eligible offense,  
12 provided that you meet the other statutory  
13 criteria; it cannot be an offense against a  
14 minor.

15           As far as timing, after three years  
16 of having served your sanction on a felony case,  
17 you're eligible to apply for sealing and one year  
18 post-sanction on the misdemeanor.

19           Misdemeanors will render you  
20 ineligible, with the exception of minor  
21 misdemeanors. So in other words, which I'm sure  
22 is something that is difficult for very many  
23 people who are seeking to have their records  
24 sealed, a driving under suspension offense would  
25 render you ineligible for any subsequent

1 offenses.

2           A minor misdemeanor, such as a minor  
3 misdemeanor possession of marijuana, would not  
4 render you ineligible.

5           The statute, as it stands now with  
6 respect to first offender, has some language that  
7 would permit eligibility for someone who had  
8 multiple convictions. This pursuant to  
9 2951.31(A), when multiple convictions could be  
10 considered as one conviction for purposes of a  
11 record being sealed.

12           And the way that the language reads  
13 now is that you could have two or three  
14 convictions within the three-month period with  
15 related criminal acts from the same indictment,  
16 plea or official proceeding and as long as the  
17 court makes a finding, that finding that offender  
18 to be a first offender, is not against public  
19 interest.

20           It does not require that the offenses  
21 necessarily occur simultaneously, but there must  
22 be a link either logically or coherently, as it  
23 reads, to be considered the same act.

24           Procedurally, to file a motion for  
25 sealing records it is \$50, and from what I

1 understand -- I've been a lawyer for close to 25  
2 years -- I don't think that fee has ever changed,  
3 it hasn't gone up. I don't know if you're  
4 interested in that, but I will tell you it has  
5 been \$50 for as long as I can remember.

6           The prosecutor must be notified of  
7 this and must have an opportunity to respond.

8           After the motion is filed, we request  
9 a report from the probation department, and that  
10 is an expungement report, which gives us an  
11 update on eligibility.

12           I do think it's important to take a  
13 careful look at that, because sometimes they will  
14 conclude that someone may not be eligible and I  
15 may reach a different conclusion.

16           2953.32(C) gives the courts a  
17 balancing test and asks or directs courts to  
18 liberally construe the statute in favor of an  
19 individual's right to privacy, and the courts  
20 should deny the request only when the right to  
21 privacy is outweighed by a legitimate  
22 governmental interest.

23           The effect of a sealing, if it is  
24 granted, is that all official records are sealed,  
25 all index references are sealed, and the

1 proceedings are considered legally to not have  
2 occurred. The conviction is sealed.

3 If an offender is subsequently  
4 convicted, the court may consider the sealed  
5 record with respect to sentencing, the  
6 dispositive proceeding.

7 The defendant's rights are restored  
8 that would otherwise not be restored with  
9 termination of whatever sanctions were imposed,  
10 whether it's prison or community control  
11 sanctions or the final release on post-release  
12 control supervision, which is the supervision  
13 that commences when a prison term ends, that  
14 supervision by the adult parole authority.

15 Employers may not question a  
16 defendant about the sealed adult conviction  
17 unless the question bears directly and  
18 substantially in relationship to the position  
19 sought, this pursuant to 2953.33(B)(1).

20 A sealed record may be considered in  
21 subsequent proceedings for purposes of sentencing  
22 and it may be considered in determining whether  
23 to seal subsequent convictions; it may be  
24 considered in subsequent charges, for instance,  
25 whether a subsequent charge would be enhanced by

1 virtue of that prior conviction that is sealed;  
2 it may be accessed by law enforcement, so if  
3 someone is apprehended on the street, that is  
4 something of which law enforcement would be  
5 aware; and it may be accessed by state agencies  
6 in connection with some forms of employment,  
7 notably healthcare and education.

8 I understand that you did hear from  
9 Shirley Smith, one of our state senators, who has  
10 been a champion of trying to get reformation  
11 here.

12 I did testify for her several years  
13 ago with some proposed legislation, and I will  
14 say this, I do believe that there needs to be an  
15 expansion of eligibility.

16 The stories that I heard when we did  
17 expungement education forums would be that  
18 terrible story where some people would not even  
19 be aware of having had a prior conviction that  
20 would render them ineligible.

21 For instance, if somebody had a petty  
22 theft from 25 years ago and maybe picked up  
23 something shortly thereafter, petitioned the  
24 court years later, after being declined a job  
25 because of a record that they were really not

1 aware was even what it was.

2 I think that people who have  
3 established that they are worthy of more  
4 consideration should be given it.

5 I think, perhaps, I feel that from a  
6 position of compassion, I care about people, but  
7 if don't, I think that there's an economic  
8 interest in it, because with the criminal justice  
9 system expanding as it has, and with the number  
10 of people who get to prison, not that it  
11 necessarily matters that you have to go to prison  
12 to be looking for this, but the number of people  
13 whose lives intersect with the criminal justice  
14 system, they're rendered unemployable, they are  
15 rendered in a position where they can't even get  
16 professional licenses, in some instances a  
17 housing loan, because of that.

18 So what it does is it really cripples  
19 the entire community economically, and if we  
20 think that we're getting justice in getting our  
21 pound of flesh, I think that there comes a point  
22 in time where the sanctions have to stop and the  
23 sentence has been served.

24 Senator Smith is tenacious, to date  
25 her efforts have been unsuccessful, but when I

1 went to our state capital to testify for her, I  
2 will tell you, and I'm sad to say this, but I  
3 felt that what I had to say fell on deaf ears.

4           There is a house bill proposed, as  
5 I'm sure you have had discussion about, 524,  
6 sponsored my McGregor and Heard, on April 24th,  
7 and this would make some changes that are  
8 significant.

9           The proposed change from first  
10 offender to eligible offender and an eligible  
11 offender would mean anyone who has been convicted  
12 of an offense in this state or any other  
13 jurisdiction; and who has not had more than one  
14 felony conviction; and not more than one  
15 misdemeanor conviction in this state or any  
16 other; and when two or more convictions result  
17 from or are connected with the same act or result  
18 from offenses committed at the same time, they  
19 shall be considered as one conviction; also, when  
20 two or three convictions result from the same  
21 indictment or plea or official proceeding and  
22 result from related criminal acts within a  
23 three-month period, that may be eligible.

24           There is a Certificate of  
25 Employability and Achievement that was part of



1 House Bill 86, that was enacted in September of  
2 last year, September 30th of 2011.

3 In the event that any of you are  
4 interested, I have a blank copy of it here.

5 This can be provided to an offender  
6 by either the Department of Rehabilitation and  
7 Corrections or the Adult Parole Authority.

8 It does restore legal rights; it does  
9 distinguish one applicant from another to  
10 prospective employers; it does give coverage to  
11 prospective employers in the event that they are  
12 sued for hiring that person, having this  
13 certificate of employability is, from what I  
14 understand, a complete defense.

15 To qualify for a certificate of  
16 employability the offender, if imprisoned, must  
17 establish that they have completed one or more  
18 in-prison vocational programs; they must be able  
19 to establish exemplary performance in one or more  
20 cognitive or behavioral improvement programs  
21 while incarcerated on under community control  
22 sanctions; they must have completed all of their  
23 community work service hours.

24 And as far as timing, the application  
25 cannot be any earlier than one year before the

1 scheduled release dates from their sanctions from  
2 PRC or community control sanctions.

3 I have a few statistics if you are  
4 interested: Every year in Cuyahoga County  
5 approximately 15,000 criminal indictments are  
6 brought.

7 I understand that there's roughly 130  
8 to 150 applications for sealing that are filed  
9 each month in Cuyahoga County. Now, there are a  
10 few programs where a sealing is automatic.

11 Have you heard about our drug court  
12 program, it's a diversionary program, and if you  
13 are an eligible offender, the case is diverted to  
14 our drug court docket, presided over by Judge  
15 Matia.

16 And if you successfully complete that  
17 drug court program, which is 13 months, which  
18 includes a therapeutic element to it, at the  
19 conclusion of it which, just like Judge Russo  
20 does.

21 And I have to commend her, she's very  
22 good at positive feedback with people on her  
23 docket, she has the reentry court.

24 I know that you had the privilege of  
25 being there yesterday -- but drug court, people

1 who successfully complete it, actually graduate  
2 and the motion is made for the sealing of the  
3 records at the graduation and it gets granted, as  
4 well.

5           There are a number of other programs  
6 that do result in automatic sealing. There's an  
7 intervention in lieu of conviction program in  
8 Cuyahoga County, and if you are an eligible  
9 offender, you enter a guilty plea, you're sent to  
10 a treatment program, and if you successfully  
11 complete that, the case is dismissed at the  
12 conclusion of that period of supervision.

13           If the offender violates, the judge  
14 could make a finding of guilty on the plea that  
15 was entered, revise the proceedings and proceed  
16 to sentence them.

17           HB 86, that took place on September  
18 30th, did expand intervention in lieu, that you  
19 can have one prior conviction rather than just  
20 being a first offender, so that was very good  
21 news as well.

22           Diversion is a program in  
23 Cuyahoga County where an eligible first offender  
24 can participate. No plea is entered but they  
25 must make a written statement of their

1 involvement in the case. The case is diverted,  
2 they are supervised. If they are successfully  
3 supervised, the charges are automatically  
4 expunged.

5 In Ohio, if you are arrested and it  
6 doesn't result in a charge or if you are  
7 acquitted, there is no waiting period to get the  
8 record sealed.

9 I do understand that in the last  
10 year, of the motions that were filed of requests  
11 to seal a record, 250 of them were denied.

12 I have also heard -- and I can just  
13 say what I've heard -- that when there's a  
14 questionable call and the judge grants a motion  
15 to seal, that an appeal by the state is not  
16 necessarily automatic, they're going to give it a  
17 careful look.

18 As far as our perspective on the  
19 bench, what we can do to help restore rights and  
20 status of people who are eligible offenders --  
21 and of course we have discretion, we can eyeball  
22 people, we can get a sense of who is really  
23 sincere and trying to get a positive change in  
24 their lives -- but we've got to make sure that we  
25 do our order correctly and make sure that we are

1 correctly sealing in the appropriate  
2 jurisdictions that record.

3           For instance, if a warrant arose out  
4 of one municipality and a different municipality  
5 had made the arrest, both departments need to  
6 seal their records.

7           We need to be, as judges, mindful of  
8 alternative disposition programs and, of course,  
9 it's incumbent on defense counsel to be aware of  
10 the changes that their client faces; and if  
11 they're going to enter into some sort of a plea  
12 agreement, if there's some plea agreement that  
13 they can get into that would save them that  
14 felony conviction and that label that carries --  
15 some plea agreement, I believe it's incumbent on  
16 defense counsel to make every effort, if their  
17 client would be otherwise eligible, to make it an  
18 offense that would render them eligible to have  
19 that record sealed.

20           I was speaking on expungement a  
21 couple of days ago at a community group meeting  
22 and I was approached afterward by a young man, he  
23 had a question for me. He said he had a domestic  
24 violence case, and he asked if he would be  
25 eligible to get his record sealed.

1                   And I said, "No."

2                   And he said, "I was afraid of that."

3                   I said, "Have you talked to your  
4 lawyer about this?"

5                   He said, "Yes." He said, "My lawyer  
6 was Zone."

7                   And I said, "No, that's the judge."

8                   And he said, "I didn't have a  
9 lawyer."

10                  I said, "Well, you did have a lawyer.  
11 I know we make sure you have a lawyer when you're  
12 facing losing your liberty."

13                  He said, "I didn't have a lawyer, I  
14 had a public defender."

15                  Of course, you know, yeah, that  
16 hurts, right.

17                  Okay. As it turned out, as he went  
18 on to tell me a little bit more, the case had  
19 resolved by the way of a first degree misdemeanor  
20 of assault.

21                  I told him, you know, if what you're  
22 telling me is true, that you have no other  
23 criminal record, your lawyer did a solid job for  
24 you, because he took an otherwise ineligible  
25 offense, same level of offense, both are

1 first-degree misdemeanors if you're a first  
2 offender, but by virtue of the plea rendered him  
3 eligible because that's the only offense of  
4 violence where you can petition that.

5           So I thought that that was something  
6 important, of course, for lawyers to be mindful  
7 of this.

8           Issues presented in technology make  
9 it very difficult if a record is sealed, to make  
10 sure that someone can't, through the mining of  
11 information that is done from organizations that  
12 are gathering data on people and their records  
13 and then turning around and selling it, to make  
14 sure that, of course, if a record is sealed, that  
15 that is also part of the information that they  
16 get.

17           The impact, of course, is that a  
18 conviction may appear in a background check even  
19 if it has been sealed.

20           This has proven to be so problematic  
21 that our probation department advises people that  
22 have completed their supervision and have gotten  
23 their record sealed, including in these  
24 diversionary programs, to disclose it to a  
25 prospective employer.

1           That surprised me because what if the  
2 prospective employer didn't know and, apparently,  
3 their experience in the probation department has  
4 been that so often these mining -- when the data  
5 is mined, it may be that today Joan Synenberg has  
6 a conviction and tomorrow it's sealed, and if the  
7 information is not current, then that person who  
8 is seeking it has a problem.

9           Model legislation would call upon  
10 agencies that sell criminal record checks to  
11 determine that the information is good and to  
12 show that the status of the defendant is current.  
13 This would hopefully include the imposition of  
14 fines if the information was inaccurate and, of  
15 course, there would have to be some policing  
16 mechanism.

17           I appreciate being here and I want to  
18 thank you again for the investigation. The work  
19 that you do is important and I am very grateful  
20 that you included me in being here this  
21 afternoon. Thank you very much.

22           MR. JONES:                    Thank you.

23           Larry?

24           MR. GOLDMAN:                 First of all,  
25 let me tell you, I spent a few hours in Judge



1 Russo's court yesterday, and, I'm moving to  
2 Cleveland. It is really -- I mean, yesterday I  
3 said I wanted to clone you, Judge Russo, and my  
4 colleagues, they said they wanted a copy each,  
5 too.

6 Thank you very much and thank you for  
7 being such as you are.

8 Let me kind of ask you first, as a  
9 matter of law, does an expungement -- this case  
10 about -- New York, for instance, you can say I  
11 was never convicted, you can do that also?

12 JUDGE SYNENBERG: You can at  
13 peril. The prospective employer may know, but,  
14 yes, legally to answer you're question, yes, you  
15 can.

16 MR. GOLDMAN: There was once  
17 in New York, by the way, a federal indictment  
18 that passed, the feds didn't recognize it, they  
19 did eventually but not initially.

20 Let me ask you both first about the  
21 role of a lawyer.

22 It kind of hit me that you shouldn't  
23 be the one who's going after, telling defendants,  
24 by the way, you have a right to get an expunged  
25 record.

1                   What do you both think the lawyer has  
2 an obligation to advise a client about collateral  
3 consequences?

4                   We know the law now requires that the  
5 lawyer give advice, not only say I don't know,  
6 but the law is unclear as to anything beyond  
7 that.

8                   What about things like expungement?

9                   JUDGE SYNENBERG:       Well, I don't  
10 believe it is my place to advise someone on their  
11 eligibility for expungement.

12                   First of all, I don't know if someone  
13 is an eligible offender. It may not be available  
14 to me or readily, something that I can determine  
15 based on what I have in front of me.

16                   But I do believe it's incumbent on  
17 counsel to contemplate, in the resolution of a  
18 case, in the event that they have someone who  
19 might be otherwise eligible, if they're not going  
20 to try the case, to try to get something for them  
21 that could be sealable.

22                   In Ohio there are approximately 800  
23 collateral consequences of conviction, and it can  
24 be anything from whether you can sit to take a  
25 test to be licensed in HVAC repairing or a barber

1 to getting loans, so the consequences are far and  
2 wide, we see this.

3           There's a mandatory Ohio Driver's  
4 License suspension with any drug offense, that  
5 far exceeds a maximum penalty.

6           You get convicted of an F5, there's a  
7 presumption, if you have no record, that you're  
8 not going to prison. The most you can get is a  
9 year, and the longest on probation is five years,  
10 which I have really never heard of anybody being  
11 placed on as a first offender in an F5, and you  
12 can have your Ohio Driver's License suspended for  
13 six months to five years, so the consequences are  
14 great.

15           We do advise defendants of the  
16 consequences -- some of these collateral  
17 consequences, such as an Ohio Driver's License  
18 being suspended and others.

19           But I believe that if you're going to  
20 represent your client, they need to know, for a  
21 fair process, what they face as a result of a  
22 conviction, the same way that you have to know  
23 what a restitution amount would be, what a prison  
24 term would be or what the conditions of your  
25 supervision should be, because it really does end

1 up being a form of punishment.

2 MR. GOLDMAN: Let me ask you  
3 both this: In New York, at least when you plead  
4 guilty, they immediately throw in front of you a  
5 notice of appeal form.

6 That is, on the one hand arguably,  
7 letting the defendant know that he or she has the  
8 right to appeal, on the other hand to prevent a  
9 later post-conviction thing.

10 What about the idea of the court,  
11 through the court, giving a notice as to  
12 post-conviction remedies?

13 I mean, lawyers know they're going to  
14 get disbarred or suspended, depending on the  
15 state.

16 I assume there are a fairly  
17 considerable number of people who do not know  
18 they're not going to be able to get the job that  
19 they want to do or that they're studying for six  
20 years at night.

21 JUDGE RUSSO: I think that  
22 most of the lawyers that I see far, far, like  
23 99.9 percent, always have in the back of their  
24 mind this issue, of what is the other damage that  
25 is going to happen as a result of this

1 conviction.

2           Even the clients who have prior  
3 records, that they know they can't get  
4 expungements, they're still working really hard  
5 to get those felonies down.

6           Unfortunately I characterize Cuyahoga  
7 County's indictment process like the Mexican  
8 bazaar, is my name for it, because you might may  
9 have a crime that -- like in Lake County, where I  
10 grew up -- would be indicted as one felony in the  
11 third degree and there's very little plea  
12 bargaining, they're confident they can make that  
13 case, that's what they're going on and that's  
14 where you work from.

15           In Cuyahoga County that felony in a  
16 third degree might be four counts of an F2, an F1  
17 thrown in, a couple F5s, a little PCT, you know,  
18 that's why I call it the Mexican bazaar, and then  
19 they all come in and try to reduce it.

20           So our lawyers, I think, are really  
21 overwhelmed in a sense. They're trying to guess  
22 in the mind of the prosecutor what is the deal  
23 they're going to take, because also here it's the  
24 defense lawyer's job to say to the prosecutor, my  
25 client would be willing to plead to X if you can

1 get the file marked to X and then bargaining  
2 begins.

3 I find them very mindful of these  
4 programs, but on some of our programs the  
5 prosecutor's office has to agree that they go  
6 into the program. So it's not just judicial  
7 discretion, that's part of the plea bargaining  
8 process.

9 I don't think that I personally would  
10 be comfortable going beyond what I do in a plea,  
11 in satisfying Rule 11, and going into  
12 post-conviction remedies or appeals, other than  
13 as a matter of right, when I explain it to them,  
14 because I don't want to interfere -- I'm very  
15 conscious about not interfering in the process of  
16 the lawyer and the client.

17 And I think there comes a point where  
18 people, when they stand in front of the judge,  
19 they think maybe the judge is telling them  
20 something that they want to believe more than  
21 they want to believe their lawyer, and I think it  
22 would interfere with that attorney/client  
23 relationship.

24 Because let's say that the lawyer had  
25 a conversation with them about some particular

1 issue, like expungement, and say, look, I'm going  
2 to do what I can for you, but you have this and  
3 this and this, you're not eligible for  
4 expungement.

5           So then I go out and say you may  
6 apply for an expungement, you may not be  
7 eligible. If I just give this general language,  
8 then the clients look at the lawyer like the  
9 lawyer is not telling him the truth.

10           So I'm not personally comfortable  
11 with that. I think that we give them sufficient  
12 information. I think a lot has to do with  
13 education of the bar.

14           I would say this: I think that from  
15 my own standpoint of a reentry court, I don't  
16 find the lawyers going out of their way to learn  
17 about it. I don't find them bringing me clients,  
18 and I don't understand that, because they all  
19 have a file of clients and they all should be  
20 coming to me saying what about this person, what  
21 about this person, instead I'm out there trying  
22 to find people by working with the prison and by  
23 working with all of the motions that are coming  
24 in.

25           To me that's kind of frustrating. I

1 anticipated the defense bar would be my first  
2 line of clients, that the lawyers would go  
3 through and identify good people, and that has  
4 not happened.

5           The education I think is important on  
6 both issues, whether it is reentry issues or  
7 expungement issues, but the lawyers need to spend  
8 more time thinking about those ideas.

9           MR. GOLDMAN:                   Let me be  
10 cynical. I assume that a significant portion of  
11 the lawyers who appear before you are assigned  
12 counsel?

13           JUDGE RUSSO:                I would say many  
14 of them. We have a public defenders office, but  
15 we also is have a number of private counsel who  
16 take assigned cases for very little money, which  
17 we would be lost without them.

18           You know, we haven't had a raise in  
19 20 years, their assigned counsel fees, and  
20 they're paid less than half here in Cleveland  
21 than they are in Cincinnati or Columbus.

22           I served on the Chief Justice's  
23 Indigent Pro Se Task Force. When I told the  
24 State public defender what the rates were for  
25 Ohio, he actually told me I was lying.



1 I said, "No, I'm not lying, I'm  
2 serious.

3 He said, "No, you have to be lying."

4 I said, "I'm not lying. I will get  
5 it for you."

6 I got off the panel, when to the  
7 phone, had it faxed, they could not believe it.  
8 From a Felony 5, which paid at \$400 in Cuyahoga  
9 County paid at \$1,000 in Franklin County, to  
10 homicides and capital murder cases, which are  
11 paid at \$25,000 in Cuyahoga County, \$50,000 in  
12 Hamilton County.

13 So, you know, I personally -- I first  
14 met Judge Synenberg when she was doing  
15 assigned-counsel cases. Her husband has taken  
16 assigned-counsel cases. My husband takes  
17 assigned-counsel cases. The best lawyers in our  
18 county are still doing assigned-counsel work in  
19 addition to their retained work.

20 Our public defender's office is very  
21 strong and we would truly be lost without them,  
22 but that's another issue.

23 They're very overwhelmed, as you  
24 heard Judge Synenberg say 15,000 indictments a  
25 year. This is a lot of cases that are coming in.

1                   There is a lot of pressure because,  
2 again, we go back to the Mexican bazaar, none of  
3 them are simple, they all have lots of counts.

4                   MR. GOLDMAN:                   The lawyer is  
5 paid by a flat fee?

6                   JUDGE RUSSO:                   A flat fee.

7                   MR. GOLDMAN:                   Not by the hour?

8                   JUDGE RUSSO:                   Not by the hour.

9                   MR. GOLDMAN:                   Theoretically  
10 does that mean it could consist of  
11 post-conviction work as well?

12                   JUDGE RUSSO:                   No, they would  
13 have to have a separate assignment.

14                   MR. GOLDMAN:                   I'm a lawyer, I  
15 represent someone, I do a good job, I'm finished,  
16 and it's assumed I then, after he or she finishes  
17 probation, say, if I want to -- will I get paid  
18 if I bring a motion to expunge?

19                   JUDGE RUSSO:                   We don't assign  
20 at all for expungement. We don't pay any  
21 expungement fees. We can assign an attorney for  
22 purposes of an appeal or filing a post-conviction  
23 or filing of judicial release.

24                   MR. GOLDMAN:                   Even if a lawyer  
25 comes before you and says I would like to be

1 assigned to this, you have no power?

2 JUDGE RUSSO: We have never  
3 assigned for expungement, that we just don't do.

4 MR. GOLDMAN: Let me ask, with  
5 respect to the DA position on expungement -- and  
6 I understand there was a DA present yesterday --  
7 so do you find they take reasonable positions or  
8 do you agree with them most of the time?

9 JUDGE SYNENBERG: Diane Smilanick,  
10 I believe, who testified here yesterday, my  
11 experience with her, she is reasonable.

12 I think when it comes to  
13 expungements, they are more reasonable than they  
14 are with what Judge Russo deals with, which are  
15 the motions for judicial release, where you will  
16 receive a brief in opposition that says we object  
17 because of the prior record and/or the attitude  
18 of the defendant and/or the circumstance.

19 I'll say, well, which one is it?

20 I have not seen that with Diane  
21 Smilanick. I think she takes a look at it with a  
22 statutorily analytical approach.

23 There can be, you know, a little  
24 difference of opinion, and if she and I have  
25 differed in opinion, she seems to respect what

1 the court does.

2 I have had an instance where someone  
3 was a first offender and she just, you know, gave  
4 the public interest argument, and that's happened  
5 more than one occasion and, you know -- but she  
6 doesn't do it in every case, so I think that  
7 lends some credibility to it, and she takes it  
8 okay if you disagree with her, takes it  
9 gracefully, which we like, don't we?

10 JUDGE RUSSO: Right. Nice  
11 change.

12 JUDGE SYNENBERG: I think that  
13 particular proceeding here doesn't seem to be  
14 where -- I mean, believe me, not that I'm -- this  
15 is nonresponsive, but there's plenty of instances  
16 where I think our county prosecutor's office is  
17 unreasonable.

18 I don't think this is necessarily one  
19 of them, but you did identify a gap, Mr. Goldman,  
20 when it comes to the availability for the  
21 indigent person to seek to have their record  
22 getting sealed.

23 They may not know about it, which was  
24 back to what I talked about earlier, getting out  
25 there and informing the people. And for those

1 who don't know about it, they may never get it  
2 done, and not learn until it's too late, just how  
3 detrimental it is.

4 MR. GOLDMAN: Does the DA take  
5 an active position?

6 JUDGE RUSSO: The prosecutor's  
7 position on reentry?

8 MR. GOLDMAN: Yes.

9 JUDGE RUSSO: They have, for  
10 the most part, been supportive. And when we  
11 originally started the process, as I was  
12 explaining to you yesterday, the idea was we were  
13 going to pick crimes together, and that we were  
14 all going to agree on what crimes would go into  
15 the reentry court.

16 That was not something that felt  
17 appropriate to me, and I thought that it was  
18 going to cause problems in the end because it was  
19 going to restrict the program.

20 And I don't like to do things by  
21 committee, of having somebody's papers in front  
22 of me and having a public defender advocating and  
23 a prosecutor either advocating or opposing, I  
24 don't think it's an appropriate discussion,  
25 because in the end I have to make a decision

1 about judicial release, and don't like that idea  
2 of quid pro quo, you get this one, I get this  
3 one.

4           So what I said to the prosecutors was  
5 how about if you just maintain your adversarial  
6 position, and any time you want to oppose it,  
7 oppose it; any time you want to write a brief in  
8 opposition, do that; and any time you want to  
9 come to the hearing, I will always notify you of  
10 the hearing; any time you want to appeal me,  
11 appeal me.

12           I was more comfortable with that and  
13 I think in the end they were more comfortable  
14 with that, because deciding what was going to be  
15 an okay crime, it was just too hard to define.

16           So my experience has been that, with  
17 the exception of two times, I have not had to  
18 have an adversarial hearings. I've had an  
19 adversarial hearing two times in three and a half  
20 years.

21           I've had briefs in opposition, but  
22 they're the standard briefs like Judge Synenberg  
23 was responding to, they're templates. They go  
24 into the computer and put things in. They are  
25 just filing them so that they can be on record

1 for objecting.

2                   That's fine, I say they filed a brief  
3 in opposition. They don't show up in hearing,  
4 though, they don't bring evidence or anything,  
5 it's just a rote filing.

6                   I would say that in the reentry end  
7 they've been very supportive, and the two they  
8 were against were two that I'm not surprised they  
9 fought against. They were high profile, high  
10 media crimes. They were things I understood they  
11 had victims that didn't want them to go along  
12 with it.

13                   But I will say this, neither was  
14 appealed. I granted both over their objections  
15 after full hearing and they did not seek an  
16 appeal. I will say from my perspective on this  
17 program they've been very supportive.

18                   MR. GOLDMAN:                   You said you had  
19 80 percent, I think, success rate, which is  
20 laudable.

21                   Have you had any of the 20 percent  
22 commit serious crimes? Have you ever gotten your  
23 name on Page 1?

24                   JUDGE RUSSO:                   Watch the news  
25 at night and hold my breath?

1           I have had one commit a robbery while  
2 he was at large from my program. He had dropped  
3 out of the program and was capias, and he --  
4 fortunately, he wasn't the ring leader, he was  
5 in it, he was indicted with four other people and  
6 he was a go-along, so I wasn't happy about it but  
7 he wasn't the mastermind so there was no feedback  
8 on it, there was not even a recognition he was in  
9 the reentry court program, probably because of  
10 his minor role in the robbery.

11           I still have a couple missing, so I  
12 worry every day, but you know.

13           MR. GOLDMAN:           I think you told  
14 us yesterday that with sex crimes generally they  
15 would be totally ineligible?

16           JUDGE RUSSO:           Sex offenders  
17 with contact are ineligible. In the past all sex  
18 offenses were ineligible, but we have now, in the  
19 last two months, added eligibility to include  
20 those who are viewing pornography. So if we have  
21 somebody with the viewing of child pornography,  
22 we are taking them now into the program.

23           That was one of the expansions that I  
24 went through, was one of the offenses I was  
25 comfortable doing, oddly enough. It doesn't



1 sound like I would be.

2           But what the benefit is,  
3 statistically that offender has a very, very low  
4 rate of recidivism; they are very easy to  
5 monitor; we have internet software they have to  
6 purchase; it's very low-cost supervision; they  
7 tend to be employed; they tend to have families.

8           So that collateral consequence idea  
9 is huge with those offenders, because in the  
10 past, a number of those particular criminals,  
11 like a white-collar criminal, you'll see a family  
12 lose a home, you'll see children pulled out of  
13 schools, you'll see a lot more fallout in those  
14 types of crimes to families than you would, for  
15 instance, like in a possession case, these  
16 because they would have so many counts and  
17 there's so much prison time involved and then  
18 there's the regulation, there's a lot of  
19 backlash, so I found them to be pretty easy to  
20 supervise.

21           Knock on wood, they've all been good  
22 and I don't anticipate a problem with them, but  
23 I'm not comfortable going into any kind of sex  
24 offender with contact.

25           My personal experience is that

1 they -- I've seen them reoffend over and over and  
2 over, and they're a danger, and you're always  
3 balancing that danger to the community and  
4 protection and opportunity for the defendant, but  
5 I also have to worry about my clients, because I  
6 have other people in reentry that they're  
7 reacting with every month and they're with, and I  
8 have to be very conscious of what I'm bringing  
9 into their new family.

10           As you saw yesterday they're their  
11 own family, so I have to be careful who I  
12 introduce to them as well.

13           MR. GOLDMAN:                   Let me go to  
14 kind of a general question. I sort of provided  
15 you with areas of expertise with respect to those  
16 expungements on reentry.

17           A question I kind of wonder is should  
18 this be done by the court as opposed to the --  
19 there's obviously a social-work aspect of  
20 reentry, expungement, theoretically could be  
21 funded by an administrative agency.

22           What is the advantage, if there is  
23 one, of the court handling this as opposed to a  
24 separate agency, as opposed to probation or  
25 parole, as in some places.

1                   JUDGE   SYNENBERG:        I don't know  
2 that I could speak for anybody else doing it.  I  
3 don't know who would be willing to do it, but I  
4 will say one way that we got around this or  
5 helped with it is asking lawyers to do some pro  
6 bono work and here's what we did:

7                   The pro bono work task force here in  
8 the Eighth District celebrates National Pro Bono  
9 Week, along with the week that's established  
10 through the ADA every year.  I'm chair for the  
11 last few years of this task force.

12                  In working with Legal Aid and also  
13 the Cleveland Metropolitan Bar Association we  
14 identified the three areas of greatest legal  
15 needs for people who are either indigent or  
16 insufficient means the hire counsel.

17                  And there's a giant justice gap, at  
18 least here in northeastern Ohio and elsewhere,  
19 but the three areas of greatest need in this  
20 order, I understand, are expungement, foreclosure  
21 and child custody cases.

22                  What we did and what we've done for  
23 to last two days of National Pro Bono Week is  
24 recruit lawyers to attend a complimentary CLE on  
25 the nuts and bolts of the application process,

1 the eligibility process, and where you go from  
2 there.

3           What we have seen, with lawyers that  
4 are willing to give up their time, is sometimes  
5 they're a little concerned about whether they  
6 have enough knowledge in one particular area to  
7 do what needs to be done.

8           Legal Aid was kind enough to say we  
9 will prescreen the clients for you, you get  
10 lawyers to the CLE.

11           I got another colleague on the bench  
12 to conduct the CLE course with me and with our  
13 chief public defender and a few other people, and  
14 we actually had -- the first time we did three  
15 CLEs in two days for those three areas, but with  
16 the expungement CLE, after these 90-plus lawyers  
17 attended, we walked them over from the Marriott  
18 building, which is right downtown, across from  
19 the Justice Center, where the seminar was held,  
20 over to the Legal Aid office, where they sat down  
21 and met with their prescreened clients.

22           Legal Aid stepped up, they do brief  
23 advice clinics. They recognize that in Cuyahoga  
24 County and in northeastern Ohio, there's a giant  
25 population of people who have been crippled

1 because of a criminal conviction.

2 I can't say, Mr. Goldman, who's going  
3 to pick up the glut, but I will say that the bar  
4 overall does want to give back, they need to be  
5 told how to do it in a way that's easy for them,  
6 too.

7 They get the CLEs, they don't have to  
8 pay for it, that appeals to them and then, right  
9 off the bat, we march them over and introduce  
10 them to their client. That worked well.

11 And also CMBA, Cleveland Metropolitan  
12 Bar Association, has assisted with Legal Aid in  
13 doing clinics throughout the community and making  
14 pro bono lawyers available.

15 JUDGE RUSSO: Reentry court, I  
16 would say that it can't be done by anybody other  
17 than the judges, because it's an interruption of  
18 sentence, so we're the only ones with  
19 jurisdiction to do it and that's fine.

20 I was approached last year about  
21 working with the parole board and doing this with  
22 PERC and I declined, because I think there's  
23 nothing worse for a client than to be reporting  
24 to two separate authorities and then having those  
25 authorities in conflict with jurisdiction, and

1 that would have included my judicial release  
2 people and people on PRC.

3           So that's separate and I don't think  
4 that's anything my court's interested in. I like  
5 the way it's working. I like the idea that  
6 they're coming to the court. They also know that  
7 their sentencing judge puts them into Reentry  
8 Court, so they're garnering a respect for the  
9 person who sent them to prison.

10           I know that may sound odd, but many  
11 of my people will tell me that the best thing  
12 that happened to them was that they went to  
13 prison, and the next best thing that happened to  
14 them was that they got into the program, because  
15 they were at that point in their lives where  
16 something had to change.

17           And because you don't have to be a  
18 first offender in my program, we've getting  
19 people up to their fourth prison term -- you can  
20 have a number of offenses -- up to their fourth  
21 prison term and still be in this program.

22           So these are people that judges have  
23 sent to prison along the way for very good  
24 reasons and now for whatever reason have said,  
25 you know, I've had enough, now I'm ready to do

1 this, now I'm ready for change.

2 I will say this: I have had a  
3 several people accepted into the program, come  
4 back for the hearing, sat down with them, told  
5 them what the program is going to be and they  
6 have told me flat out they don't want to do it,  
7 that they're not interested in it, that they just  
8 want to finish their time and tell them okay and  
9 I send them back.

10 It's rare, but some people -- very  
11 few people get the idea, I think, in prison,  
12 well, this is just a way I'm going to get out,  
13 and then, when they find out there is work  
14 involved in it, they just want to finish their  
15 sentence.

16 I told them, I don't disrespect you  
17 for that. I would rather you tell me that  
18 because you know best what you're ready to do,  
19 and I don't want to waste my time and resources  
20 on you when you don't want them. I'm not here to  
21 force it on you, you have to be a participant in  
22 the program.

23 So for us it has to stay this way and  
24 I'm comfortable with it. I like the fact that  
25 judges are involved in this process.

1 MR. JONES: Margy?

2 MS. LOVE: I have two very  
3 quick questions: Number one, this is a question  
4 that we asked the DA yesterday, do you know if  
5 there are judges and lawyers in other parts of  
6 Ohio, that have this same kind of enthusiastic  
7 support for helping people after a conviction?

8 I'm just sort or curious as to  
9 whether Cuyahoga County is unique.

10 JUDGE RUSSO: I know Summit  
11 County has a Reentry Court that's similar to mine  
12 in the idea of judicial release. And I've had  
13 some limited discussions with that judge, because  
14 we shared a client, which was kind of funny.

15 She had somebody on judicial release  
16 in her reentry court, who picked up a case in  
17 Cuyahoga County and just drew me as the judge.

18 So it was a nice opportunity for her  
19 and I because we talked back and forth, and what  
20 I thought was really good about it and why I  
21 would like to see this happen in every court, was  
22 in this discussion she and I fashioned his  
23 sentence together, because I said he's got this  
24 F3 with me, I know he's on reentry court to you,  
25 tell me what you want me to do.



1                   Do you want me to hold him until you  
2 finish your hearing? Do you want to do your  
3 hearing first? And I said, "Are you willing to  
4 take him back?"

5                   She said, "He's doing great. I would  
6 like to take him back. I'm not going to tell you  
7 what to do but I would like to take him back."

8                   I went out on the sentencing record,  
9 I had told him I was going to talk to his judge  
10 and said, you know, Judge Stormer said that  
11 you're doing great, so I'm going to give you  
12 credit for time served under F3 and let you go  
13 back to Judge Stormer.

14                   And then, ironically, three weeks  
15 later one of my guys on reentry court ended up in  
16 her room.

17                   So I think what it does, as we teach  
18 each other these ideas, we have more  
19 conversation. I've had a lot of esoteric  
20 conversations with judges at conferences and I  
21 think that the interest is there, far more the  
22 urban areas, I would say, than there is in the  
23 more rural areas.

24                   But I don't think any county is as  
25 negatively impacted as Cuyahoga, I just don't.

1                   Our bench, we're kind of considered  
2 the wild west when you talk to people in the  
3 county, they call us the State of Cuyahoga,  
4 they've done that for years. We all know, we all  
5 sit in our own corner in conferences.

6                   What's interesting about it is we're  
7 dealing with the most violent crime. We have the  
8 most capital cases, we have the most trials, we  
9 have the most indictments, so these judges here,  
10 34 on our bench, they're moving all the time,  
11 plus we're doing civil cases which are much more  
12 complex in volume than the others.

13                   So I think our bench is just more  
14 proactive. We're always looking for ways to make  
15 things better because it's a very immediate  
16 problem for us, but do I think the interest is  
17 there? I think the interest is there.

18                   JUDGE SYNENBERG: I agree with  
19 Judge Russo. I really believe and feel that the  
20 thinking about punishment has got to take a  
21 shift. I think that lock them up and throw away  
22 the key, be mad at somebody forever and never let  
23 them get passed it is done.

24                   We do have, through the University of  
25 Cincinnati, some truly innovative people when it

1 comes to sentencing, evidence-based practices in  
2 sentencing, and some of it is counterintuitive,  
3 you know.

4           You can get a risk assessment done  
5 and the first thing that surprised me -- Judge,  
6 maybe you felt this way, too -- the higher the  
7 points, the higher the risk of reoffending.

8           An F5, the lowest-level felony, adds  
9 a point where an F1, 2, 3 and 4 doesn't. But as  
10 it turns out, the people who are most likely to  
11 reoffend are the low-level offenders, who wind up  
12 going to prison more often and we can't be  
13 surprised when they go and we send them to a  
14 building with a bunch of other criminals, that  
15 they come out with a higher chance of  
16 reoffending.

17           And when we've been to some of these  
18 evidence-based practices seminars, we have the  
19 opportunity to see some of our colleagues from  
20 throughout the states, and I believe that we are  
21 all trying to shift our thinking and own it,  
22 because that whole idea of -- especially as  
23 elected officials -- thinking that it's popular  
24 to be tough on crime is not necessarily the  
25 smartest approach.

1                   And I do think that there is a shift  
2 and that it is happening and we are seeing so  
3 many lives intersecting with the criminal justice  
4 system that -- now my understanding is -- I know  
5 that in some of the papers that I received in  
6 advance of today, that there are 65 million  
7 people convicted of crimes, but I understand that  
8 it's the population equivalent of Baltimore  
9 released from prisons every year. We have to  
10 respond in some way. This is our community.

11                   I do think, to answer your question,  
12 Ms. Love, that the answer is, yes, I think that  
13 there are people who think like we do.

14                   JUDGE RUSSO:                   And I would add  
15 this: I think in Cuyahoga County for me -- for  
16 30 years I've been a lawyer here in  
17 Cuyahoga County -- and for me the biggest shift  
18 has come with the change in the bench.

19                   When I went on the bench in 1997, I  
20 went on with four other women. All five races  
21 that year were won by women. That is a seed  
22 change for that bench, that really tipped the  
23 scales, that was change.

24                   But more importantly even than the  
25 gender change has been this bench used to be all

1 prosecutors. If you were a prosecutor, you were  
2 just expected to be a judge, that's not the case  
3 anymore. That's where, in being on the bench now  
4 16 years, where I've seen the biggest change is  
5 people are coming into the bench from different  
6 perspectives.

7 I came from corporate America, and  
8 Joan came from criminal defense and others have  
9 come from the probation department.

10 We have one judge down in the court  
11 of appeals, who had been a probation officer and  
12 then went to law school, then went to our bench.

13 I think, if anything in Cuyahoga  
14 County, there has been the cultural shift. It's  
15 no longer a prosecutor's playground in  
16 Cuyahoga County, it's not prosecutors and people  
17 with more of that mindset. Not to say that they  
18 weren't necessarily shifting and being neutral,  
19 but they had a predisposition, so there wasn't a  
20 lot of interest in change or alternative  
21 sentencings.

22 You know, they were used to doing  
23 things and they had a prosecutor who was here for  
24 30 years, so everything was very  
25 institutionalized.

1                   That to me has been the biggest  
2 change, has been the personality of the bench is  
3 very different today than it was when I started  
4 and even different than it was when I came on 16  
5 years ago.

6                   MR. JONES:                   We are actually  
7 over on time but Jenny Roberts has just two last  
8 questions to round out the discussion.

9                   MS. ROBERTS:                   Thanks. I will  
10 ask for a very brief response because I already  
11 know the answer to one of these and I just want  
12 to have it on the record.

13                   Judge Russo, you told us yesterday  
14 about waiving court costs and fees in reentry  
15 court. If you can very quickly tell us about  
16 that and this is, obviously, relevant to the  
17 economic consequences of a conviction; and then,  
18 related to that, can the court waive the \$50 fee  
19 for sealing, as this can be an issue?

20                   JUDGE RUSSO:                   Okay. For the  
21 cost on reentry -- it's another example of the  
22 prosecutor's support -- technically under the  
23 law, once they are imposed, they are final  
24 judgments and they can't be modified.

25                   However, in reentry court, from the

1 beginning that's been part of the program, is to  
2 waive court costs and fines.

3 Restitution is not touched because  
4 that's a final order of judgment at the time,  
5 it's a different issue.

6 The prosecutors have never appealed  
7 it. We have done that in every case. And, in  
8 addition, they pay no cost during reentry, so  
9 they don't pay for any of the hearings on the  
10 record, and they don't pay any transport fees,  
11 which is one of those unknown costs, that in a  
12 traditional judicial release can be thousands of  
13 dollars.

14 So that is one of benefits going in,  
15 is that I erase all of that, so you come out with  
16 a clean slate financially and all you owe is \$100  
17 a year for your supervision.

18 MS. ROBERTS: And waiver? I'm  
19 sorry, you said --

20 JUDGE RUSSO: I would imagine  
21 if we got an affidavit of indigency, that we  
22 could waive it. I don't know how they would  
23 prohibit us from waiving expungement, do you?

24 JUDGE SYNENBERG: No, but I have  
25 never had anyone ask.

1 JUDGE RUSSO: Me either.  
2 MS. ROBERTS: Thank you.  
3 MR. JONES: Thank you both.

4 You certainly lived up to your advance billing.  
5 We are going to take a five-minute  
6 break and reconvene.

7 - - -

8 (Whereupon there was a recess in  
9 the proceedings from 4:33 p.m. to  
10 4:42 p.m.)

11 MR. JONES: All right.  
12 Let's get started. Welcome gentlemen. We are  
13 pleased to have you.

14 JUDGE POLSTER: I'm not used to  
15 being the witness.

16 MR. JONES: We enjoy you in  
17 that position.

18 This is, obviously, the last panel of  
19 a very productive three days in Cleveland, so we  
20 are pleased to have you and look forward to what  
21 you have to offer us by way of the work that we  
22 have to do and we're very pleased to have you.

23 The way that we operate is that we're  
24 going to give each of you about ten minutes to  
25 introduce yourselves and give us a sense of the



1 work that you're doing and then we have lots of  
2 questions for you.

3           The way, as you've seen, I think you  
4 were both here for at least the last panel, that  
5 we do the questioning, is that one of us leads  
6 off and asks the lion's share of the questions,  
7 and then to the extent that there's time, the  
8 rest of us get involved as well.

9           For the purpose of this panel, Chris  
10 Wellborn will be the questioner, inquisitor, keep  
11 you in the hot seat, Judge.

12           JUDGE POLSTER:           Okay.

13           MR. JONES:                We are looking  
14 forward to the discussion. With no further ado,  
15 I'll turn the floor over to you and you can  
16 decide amongst yourselves just who is going to go  
17 first.

18           JUDGE POLSTER:           Thanks very much  
19 for having me. I'm Dan Polster. I'm one of the  
20 11 district judges, here in the Northern District  
21 of Ohio. I've been a federal judge for -- it's  
22 close to 14 years, 1998.

23           I spent 22 years as a federal  
24 prosecutor before then, all in Cleveland. First  
25 with the antitrust division and then with the

1 U.S. Attorney's office, doing white-collar crime,  
2 fraud and corruption cases.

3           What I would like to talk a little  
4 bit about is reentry court. I'm supervising our  
5 reentry courts in Cleveland, and I've been doing  
6 that for just under two years.

7           Our court started reentry court in  
8 Toledo almost three years ago and then we  
9 followed suit.

10           I think it is the most satisfying  
11 thing I do in my job, and I would not have  
12 anticipated it.

13           We were by far from the first court.  
14 I think my colleague, Ann Aiken, in Oregon, was  
15 probably one of the pioneers.

16           I went to a seminar that the FJC had  
17 at Duke Law School to educate us about reentry  
18 court, and I came back from that seminar and said  
19 we ought to do it.

20           The way it works, I do it with two of  
21 our federal magistrate judges and we have a  
22 cohort of approximately ten participants at any  
23 one time.

24           The big difference is: Instead of  
25 the adversarial model, which we typically have in

1 court, we have a team approach, the collaborative  
2 model.

3           We have someone from the federal  
4 defenders and someone from the U.S. Attorney's  
5 office assigned to reentry court, plus a team of  
6 the some of the best and seasoned probation  
7 officers, plus some folks who do cognitive  
8 behavioral therapy, and we work with these  
9 participants.

10           And, in fact, notice I'm not calling  
11 them defendants. One of the things we did was to  
12 change the nomenclature, because, of course, we  
13 used to have parole and about 1986, '87 Congress  
14 did away with parole. They essentially made each  
15 of us a one-man or one-woman parole officer for  
16 everyone we've sentenced, which can be a lot of  
17 people, and it's up to us know when the person  
18 with gets violated and what have you.

19           So we could have cherry picked here  
20 and had great statistics. In other words, pick  
21 people who didn't need a lot of supervision and  
22 we would success, and so our statistics would  
23 look great.

24           But we did just the opposite. I said  
25 that's of no value at all, I want to pick the

1 people who statistically have a 60, 70, 75  
2 percent chance of reoffending, and see what we  
3 can do.

4           Because if we can succeed with those  
5 people, then it makes sense because, of course,  
6 most of the crime is committed by the same people  
7 who do it over and over again, so unless you  
8 break the cycle, you're doing nothing.

9           The participants have to agree to do  
10 it. The probation department suggests people who  
11 will meet the criterion and might succeed, but  
12 they have to say, yes, I want to do it. And the  
13 carrot is, if they get 12 successful months, they  
14 get a substantial reduction off the back end of  
15 supervised release.

16           And that's a big carrot, because  
17 typically, you know, three to five years is the  
18 norm and sometimes eight to ten years, so if you  
19 only have to do one or two, that's a big plus to  
20 someone.

21           Each participant comes in each month  
22 and we address them in a dignified way, one by  
23 one, with the team, to go over their progress  
24 from last month; what they've done well, what  
25 they haven't done well; how we can make the next

1 month successful; if they've had a successful  
2 month, we give all of them an applause; every  
3 three months, if someone gets three good months  
4 in a row, they get a little financial token, like  
5 a coupon for maybe \$10 of free gasoline or some  
6 movie tickets or a restaurant ticket, something  
7 like that, tangible but small.

8           And I would not have envisioned this  
9 in a vacuum, but to see how these individuals are  
10 transformed by having the judge shake their hand,  
11 applaud them instead of whacking them, which is  
12 typically what happens in the court.

13           I mean, generally the defendant sees  
14 me, it's not good. There is no other reason to  
15 see me. But this is a big difference.

16           We graduated three gentlemen last  
17 June. We have graduation ceremonies twice a year  
18 and these men stood up, they were proud of  
19 themselves. They talked about their future and I  
20 was in my mind thinking back 12 months ago, they  
21 wouldn't even look up. They had no clue what  
22 they were doing. They had failed at almost  
23 everything, family, home, school, work, even  
24 crime, they've obviously been caught more than  
25 once.

1                   So, yes, it's small but it is  
2 absolutely redeeming and so we're going to be  
3 starting it in Akron and Toledo, so we'll have it  
4 throughout our district.

5                   You know, when I first described this  
6 to my wife, she says, "Dan, this sounds like  
7 social work. You're not a social worker, you  
8 don't know anything about this."

9                   I said, "Well, you're right, I really  
10 don't know much about it, but I'm smart enough to  
11 know that if something is not working, don't keep  
12 doing it over and over again, try something  
13 different."

14                   So this absolutely works. It doesn't  
15 work for everyone. We have had to kick some  
16 people out: One person just couldn't get on top  
17 of his drug program; one person just basically  
18 didn't care, wasn't following orders, the  
19 directives; one person said he was on suspension  
20 because he was arrested for a fairly serious  
21 crime last month, but that's to be predicted.

22                   Of course we have to enforce the  
23 rules, because if we don't, then the other  
24 participants will see there is no sanction for it  
25 and they won't comply either.

1                   So it absolutely is working. I would  
2 consider other districts to consider doing it,  
3 and I would be happy to be a resource, call me.

4                   MR. JONES:                   Thank you.

5                   MR. TEREZ:                   Good afternoon.  
6 I'm Dennis Terez. I'm the Federal Public  
7 Defender here for our Northern District of Ohio,  
8 a brief overview -- before I do that, though, I  
9 would like to thank the panel, obviously, and the  
10 NACDL for being a part of Cleveland's legal  
11 community for so long, and for being present here  
12 for this hearing, in a community that -- you can  
13 now, just through a little bit of the hearing,  
14 testimony from the others -- I think you're  
15 coming away with the fact that we're pretty  
16 daring here, and we would like to try new things,  
17 that's part of what this testimony is all about.

18                   I've been the Federal Public Defender  
19 here, in this district, since January, 2007.  
20 Prior to that, since 1998 I was an assistant  
21 defender.

22                   But prior to that my background had  
23 nothing to do with criminal work, I was a partner  
24 at Squire Sanders, a law firm here, that's  
25 headquartered in Cleveland, it's an international

1 firm. I was a corporate lawyer before I became a  
2 criminal defense lawyer.

3 So my background shifted  
4 dramatically, kind of midstream, to take up this  
5 work.

6 Does that lend, perhaps, a different  
7 perspective for me? I would think so, I would  
8 hope for the better, actually.

9 It's appropriate then, perhaps part  
10 of your last panel, I'm somewhat the chief cook  
11 and bottle washer on a lot of these issues.

12 Let me give you an overview of how I  
13 have been involved with some of these programs,  
14 so that you're able to ask the questions of us.

15 First of all, I have been involved  
16 with the governor's working group on collateral  
17 sanctions and my involvement and invitation to  
18 that group began when I befriended Gary Mohr, one  
19 of your witnesses, our Director of Ohio's  
20 Department of Rehabilitation and Corrections.

21 Gary's and my meeting arose from the  
22 fact that I had already previously started  
23 working with my probation office, recognizing  
24 that you could be a great criminal defense  
25 lawyer, you could be the most outstanding



1 Clarence Darrow of 2011 or '12, '13 or '14  
2 looking forward, but as Judge Polster reflected,  
3 it's frustrating if you're doing it over and over  
4 again and you find recidivism rates still, in  
5 this state and others across the country, in the  
6 federal system and in the state, are  
7 unfortunately way too high, unacceptably high.

8           When you see not so much the  
9 recidivism in your own clients but the attitude  
10 of recidivism taking over even your offices, you  
11 start realizing you need to take a bigger swing  
12 at this problem, perhaps a more intelligent and  
13 maybe more aggressive approach to this whole  
14 problem, as well.

15           I reached out at a few levels. One  
16 of your other witnesses was Mansfield Frazier.

17           Mansfield and I became friends when  
18 he heard that I was interested in tackling  
19 somewhat this issue of recidivism, trying to get  
20 prisoners involved before they came out, to be a  
21 little bit more productive and more importantly  
22 to tackle the terrible attitude our society has  
23 about people who have been incarcerated.

24           Mansfield and I met at a public  
25 presentation with the ACLU here and the issue

1 came up when the speaker referred to the  
2 ex-offenders as felons and ex-cons and I  
3 protested, I said how about just U.S. citizens,  
4 how about ex-offenders, how about just people,  
5 for crying out loud.

6           The F word here, felon, is a bad  
7 badge that sticks with people forever and I  
8 realize how powerful that badge really can be.

9           I then assisted the probation  
10 officer -- Mansfield and I became friends, we  
11 proposed a few ideas, which we'll get to in a  
12 moment, if we have time during your question -- I  
13 helped the probation officer with a variety of  
14 programs where they tried to enlist employer  
15 support to hire our clients, if you will,  
16 criminal defendants who are now ex-offenders,  
17 clients, just citizens, people who want to work.

18           In that vein, I assisted them with  
19 programs that went to the chambers of commerce,  
20 sometimes just the general public.

21           What we learned was the discouraging  
22 reality that people have a huge fear about  
23 employing ex-offenders, that's the bottom line.

24           It covers a whole range of prejudices,  
25 misconceptions, ill-informed opinions and

1 sometimes just simple ignorance. Many times not  
2 bad will, I might add, it's just there is a  
3 certain sense of fear.

4           One of the probation officers started  
5 his talk by talking about fear and he was right  
6 on the money on that.

7           The unfortunate result is that unless  
8 you push those employers very, very hard, you  
9 won't get them to hire anyone.

10           They'll repeat the comment that we  
11 all can think about recession is such that, my  
12 gosh, how could I do this in a recession all the  
13 way to I can't take the trust of my other  
14 employees and put it at risk.

15           And you can talk to them all about  
16 negligence being not an issue because of the  
17 certificate, you can talk to them about tax  
18 credits and it really seems to go over their  
19 heads, even though on a individual basis many  
20 approached as saying I would like to do  
21 something.

22           There's a certain sense of a  
23 collective fear, that if you got more than a  
24 group together, a large group that is, to do it,  
25 to set a model, maybe recommend that to a group

1 of employers, that they would make progress on  
2 this area.

3 I then became part of Gary's circle  
4 on the governor's task force, because Gary and I  
5 have now engaged in a particular reentry project  
6 of our own.

7 We're working to record prisoner  
8 music within prisons of Ohio. We have a  
9 nonprofit organization created specifically for  
10 the purpose, in part to create a CD of prisoner  
11 music.

12 Now, we all may think that's crazy  
13 and it doesn't mean all that much. One of my  
14 prior clients was a big person in the music  
15 industry and presented me with a challenge. When  
16 I became defender, he sent me a disk of prison  
17 music, composed, played and produced in a  
18 federal, upstate New York prison, now it's here  
19 in Ohio.

20 It is symbolic, of course, it's going  
21 to involve only a certain number of prisoners,  
22 but already has had a huge impact, of giving,  
23 exactly what Judge Polster said, that certain  
24 sense of self-esteem to prisoners.

25 Along that same line, I as the

1 defender decided that we should also send a  
2 message to our community via our office.

3           Our office, the public defenders  
4 office, like the U.S. District Court for the  
5 Northern District of Ohio, like the National  
6 Association of Criminal Defense Lawyers is, in a  
7 certain sense, an institution bigger than any  
8 individual.

9           We decided to decorate all of our  
10 common areas with prisoner art. So every piece  
11 of artwork you will see in our common areas, in  
12 Cleveland, Akron and Toledo, is artwork done by  
13 incarcerated individuals. If the artist is  
14 released, they can't contribute to the  
15 collection. The idea is you have to do it while  
16 you are incarcerated.

17           There were three reasons I did that  
18 project: One is for the general public. It's  
19 gotten some notoriety, but it's important for the  
20 public to understand that as we categorize or  
21 classify or give a definition to this program,  
22 they are artists too, that's our motto for this  
23 program.

24           The second was for present and future  
25 clients and their families. I want them to have

1 the same hope that Judge Polster reflected on  
2 when he has his reentry court at the back end of  
3 the program.

4           At the beginning part of it we as an  
5 office can give them hope and a way of saying  
6 there is hope for me at the end of this rainbow,  
7 it may not be a very pretty rainbow, but there's  
8 still hope for me. And if somebody could do this  
9 while incarcerated and come out with that skill  
10 or to develop it further, there might be hope for  
11 me, too, but maybe another area, but still a  
12 reflection of some other symbolic area.

13           And the third was to our office.  
14 Unquestionably prosecutors and defense lawyers  
15 can become jaded in the work we do. It is very  
16 difficult work.

17           In the civil arena, I swing a bat, I  
18 may get a triple, I may get into the outfield or  
19 heck, I may even hit a home run.

20           In the criminal concept, that same  
21 effort, you're lucky if you get an infield hit,  
22 that's just the truth of the matter.

23           The fact is that the conviction rate  
24 is so high that you could lose hope in what  
25 you're doing.

1           So part of my message with this art  
2 program was to remind all of us in our office  
3 that we are working with a very talented group of  
4 clients, whose talent sometimes is brushed under  
5 the carpet because we don't appreciate them even  
6 for the reasons our public doesn't, our general  
7 public, in that they're incarcerated, they've  
8 done something awful in their lives.

9           We need to push that aside and  
10 realize that if we were in a civil law firm and  
11 we represented, for example, Microsoft, we surely  
12 would advertise all the great products that  
13 Microsoft has by way of putting or artwork or the  
14 light upon it, I've seen it in civil law firms.  
15 There is no reason we can't do that with our  
16 clients who are in the criminal defense arena.

17           The final thing, just by way of  
18 introduction, is our office also continues to be  
19 involved in the reentry program, it is expanding  
20 in this district.

21           We, as Judge Polster so appropriately  
22 said, have agreed to shift out of the advocacy  
23 role.

24           It is an amazing sight I might add,  
25 to see a U.S. attorney, assistant U.S. attorney,

1 defender, assistant defender, sit around a table  
2 with a federal judge, no one has robes on.  
3 Everyone is quite casual.

4           We're not all focusing on the wrongs  
5 that this particular individual has done but  
6 rather the positives, and because they're in a  
7 group, there's some sense of a collective support  
8 for them. That takes away the adversarial roll.

9           Does it take us too far from the  
10 adversarial roll? I'm confident some of my  
11 colleagues would say, yes, indeed it does, just  
12 like Judge Polster's wife may have said you're  
13 doing social work.

14           One of the other fellow judges once  
15 complained to me on a supervised release hearing,  
16 called me to the bench just to say this, all that  
17 we're doing here is social work, yet I would urge  
18 people to consider that's perhaps the most  
19 important work we can do. It unquestionably has  
20 the largest dollar impact.

21           There is no question in my mind that  
22 for twenty-six or seven dollars a year on a  
23 healthy male, incarcerated individual, I  
24 certainly could find a better way to spend that  
25 money, as well as can our community, and we're



1 trying to do that. That's the bottom line.

2 I think it is a wonderful crime  
3 prevention tool. I don't know about you all but  
4 for every one person who feels a certain sense of  
5 hope, we might have four who fall off the table  
6 still, but that one person who might now feel a  
7 different sense of hope and not go back to the  
8 life of crime that he or she might have led  
9 before, that might be the life we now saved.

10 They might, instead of deciding to pick up a gun,  
11 pick up a paintbrush. That means everything.  
12 You can't put a dollar figure on that as much as  
13 you can put an intangible, high value on that.

14 Finally, our community. We're in an  
15 economic recession, the court, I, we all feel the  
16 pinches: We are all on pay freezes; we don't get  
17 salary increases; it's tough to find new  
18 employees because they won't give you the pay to  
19 do it, even those -- you heard from the prior  
20 panel -- defense lawyers are overwhelmed, judges  
21 are overwhelmed, way too many cases.

22 Yet in Ohio and in the federal  
23 system, our prison system is roughly 130 to 135  
24 percent at capacity.

25 We calculated at the end of the 1990s

1 a new jail or prison opened once a week somewhere  
2 in the United States, and if that's not  
3 working -- and I don't think anyone in this room  
4 or outside, in our community for that matter,  
5 thinks that solution's working and we're blowing  
6 a heck of a lot of dough doing it.

7 My view is if we could take some of  
8 that money and rechannel it with some  
9 intelligence behind it, I think we can make a big  
10 impact. Even if, at the risk of sounding  
11 competitive here, they might call us social  
12 workers, I think the risk is worth it.

13 MR. JONES: Thank you.  
14 Chris?

15 MR. WELLBORN: Actually I think  
16 I would like to start with Mr. Terez and this is  
17 really kind of more lawyer stuff that I'm going  
18 to address with.

19 Does your office, in working with  
20 clients, preparing for pleas and sentencing --  
21 because we all know the practice in federal  
22 court, that more people are sentenced per capita  
23 in federal court even than in the state court  
24 where it is resolved by plea. Almost everything  
25 the resolved by plea in federal court -- does

1 your office, through your assistants, advise  
2 people prior to sentencing of not only just the  
3 Padilla consequences but some of these collateral  
4 consequences that are going to be vested upon  
5 them, especially -- even not just the federal  
6 issues, some of the ones are easy, like 922(g)  
7 preclusions, and those sorts of things?

8           But there seem to be, in Ohio, a  
9 whole host of things that flow from a conviction,  
10 in terms of -- as banal as it may seem at first  
11 flush, but it is very serious -- precluding us  
12 from getting driver's licenses.

13           What kinds of advice do people who  
14 are passing through in federal court, even  
15 through the court, better representation or  
16 private counsel, getting prior to entry of a plea  
17 or sentencing regarding those downstream  
18 collateral consequences?

19           MR. TEREZ:                   A lot of  
20 information I believe. We're assisted by the  
21 court. Our bench does a very good job to a  
22 person advising defendants of the collateral  
23 sanctions. No one may innumerate all of the  
24 contributors that Judge Synenberg alluded to, but  
25 we would like to think that we do touch on the

1 key ones, and I believe that gets done.

2 I know in private, when we counsel  
3 our clients, we typically review with them the  
4 serious consequences of having a felony  
5 conviction, whether it be at the federal level or  
6 Ohio.

7 And in addition we recognize, we  
8 advise that person, recognize with them, that  
9 there are sanctions that come just from being a  
10 convicted individual in this community, so beyond  
11 these collateral sanctions are these intangibles,  
12 that I think our office is well sensitized to it.

13 So the answer is yes, I think we do a  
14 good job sensitizing people. We can always do  
15 better.

16 I bring to the panel's attention a  
17 database that is now linked to our home page, our  
18 web page, which we've renovated and continue to  
19 renovate because we're realizing it's an  
20 important communication tool, now has a tab. On  
21 top of our web page you will see a tab called  
22 Clients and Families. The last link of that is a  
23 database. You may have heard about it from other  
24 witnesses who testified. That is a database of  
25 all collateral sanctions in Ohio.

1 I felt that that database was so  
2 important that not only have we linked it to our  
3 web page but sent it out to all of the other  
4 lawyers, and in addition it is part of our tweet  
5 message.

6 We're now on Twitter. We feel that  
7 important technological steps like that have to  
8 be kept up with every office. One of our tweets,  
9 if you will, was that tool, and I intend to make  
10 a lot about this in our annual seminar this  
11 August. Every August we have a seminar.

12 That tool is huge, in that in a  
13 glance you can see, at least on a state level,  
14 get a sense of what that conviction will mean to  
15 that person's life. In short, I think we do a  
16 pretty good job.

17 MR. WELLBORN: Following up  
18 with Judge Polster. Where I practice in federal  
19 court, which is in the District of  
20 South Carolina, we have a wide range, as I'm sure  
21 you do here in Cleveland, of federal  
22 practitioners, some of whom are very, very  
23 detailed with their clients and some of whom are  
24 sort of there at the time of plea and sentencing.

25 What role or do you feel that there

1 is a role, at the time of either entry of plea or  
2 sentencing, for advising defendants of collateral  
3 consequences or potential collateral consequences  
4 or at least a resource, where they can go look up  
5 and see what the collateral consequences might  
6 be, do you feel the court has, if any?

7 JUDGE POLSTER: Well,  
8 Christopher, that's a good question.

9 I know that we always advise  
10 defendants in immigration cases of the likelihood  
11 of deportation.

12 I do a good job of advising people  
13 that they can't have a gun because a lot of  
14 people don't realize that, and they can't even  
15 live in a house with a gun or they can't even get  
16 in a car with someone who is carrying a gun  
17 because they're then in constructive possession.

18 Maybe we should do a little better  
19 job. I mean, I don't typically advise people  
20 that they might have a problem living in public  
21 housing or they may have difficulty getting a  
22 student loan. Maybe we should do a better job of  
23 that.

24 I think people would still enter a  
25 guilty plea if they're doing it for -- well,

1 either the overwhelming evidence or sometimes the  
2 incentives, but I think people should be advised  
3 of that.

4 I might look to see maybe if there's  
5 a form that we can create, that we just have  
6 available, so we don't rely on each of our own  
7 memories for sure, but it is a good idea that  
8 people be advised of it.

9 MR. WELLBORN: If Congress were  
10 to give you authority, either by direct or  
11 congressional act or in some way through the  
12 sentencing commission to deal with, ameliorate or  
13 just out and out vitiate one of the potential  
14 collateral consequences at the time of  
15 sentencing -- let's say hypothetically that a law  
16 was enacted in Congress that said in certain  
17 cases where you feel it is warranted and whatever  
18 they tack onto it, the person has to accept  
19 responsibility prior to plea and have gotten at  
20 least their two-point reduction, but if Congress  
21 were to give you that authority, do you feel as a  
22 sitting judge that that is something you would  
23 welcome, to be able on a case-by-case basis to  
24 perhaps not require somebody to have the 922(g)  
25 preclusion or rule that they should not be

1 subject or their families should not be subject  
2 to preclusion from public housing or the like?

3 JUDGE POLSTER: Well, if I were  
4 given that discretion, I think I would welcome  
5 it. It might be difficult to know when to apply  
6 it, but that's often the case with what we do.

7 I mean, I think it might be better to  
8 revisit some of those penalties all together  
9 because I think the view is all right, you  
10 committed a crime, you've done a bad act or  
11 you've been punished and you go forward, that's  
12 the idea. It's not like the scarlet letter that  
13 you have sinned forever, you go forward.

14 And the whole purpose of supervised  
15 release, sometimes I have to remind myself of  
16 that, is rehabilitation not more punishment, even  
17 though it is sort of set up in a way that, you  
18 know, we're actually supposed to violate someone  
19 every time they have a dirty urine, well, that's  
20 crazy.

21 So someone might look at some of  
22 these collateral consequences overall but, you  
23 know, if we were given a discretion, there would  
24 be times when I would use it.

25 MR. WELLBORN: Going to the



1 issue of the federal reentry court and both you  
2 gentleman probably address this.

3           What sort of barriers -- let's assume  
4 that somebody goes through the reentry court,  
5 they've gone into the court, they have this prior  
6 criminal history, a category of four or five.

7           Obviously with that history category,  
8 they're going to have received a fairly lengthy  
9 term of incarceration, I'm assuming, which would  
10 have precluded them from a Rule 35 motion and  
11 other such avenues of early release, but let's  
12 say that they've gone through the program,  
13 they've been successful, they're really working  
14 well, they are graduating, they're a success  
15 story.

16           Are you getting any feedback on what  
17 kind of barriers, even after graduation, if any,  
18 that they are still getting from the community,  
19 as far as jobs, housing, functioning as folks in  
20 the community?

21           JUDGE POLSTER:           Well, our  
22 program is fairly new. We don't -- you know, you  
23 really can't prove the effectiveness until you  
24 can do a longitudinal study over a number of  
25 years.

1                   My colleagues in the Western District  
2 of Michigan actually have done a longitudinal  
3 study, they've been at it for six or seven years  
4 and they have some very favorable statistics.  
5 They used a control group and their group, the  
6 recidivism rate is significantly lower.

7                   One of the things we try to do by the  
8 12th month, by graduation, is someone doesn't  
9 have a GED, they get a GED; we try to get them  
10 into stable employment, we work very hard at  
11 that; we make sure they're in a safe living  
12 environment.

13                   Some people have family support and,  
14 candidly, some don't, and if they don't, we try  
15 and figure that out. We help them navigate some  
16 of these difficulties.

17                   It took us, I don't know, three or  
18 four months to help someone get his driver's  
19 license back because he had been suspended for  
20 non-payment of fines from eight years ago, and it  
21 was -- it looked virtually impossible for him to  
22 ever amass the kind of money to get it back,  
23 which meant he could never get a job, so we  
24 worked that through. He never could have done it  
25 on his own.

1 I think by the time of graduation  
2 people are in pretty good shape on those basics,  
3 and in fact that's one of the benefits of reentry  
4 court, is you get a lot of focused attention to  
5 get on track.

6 So I haven't heard that any of the  
7 people that graduated last June have had any  
8 difficulty.

9 MR. WELLBORN: That's what I  
10 was really getting towards, away from the  
11 recidivism aspects of just the people that aren't  
12 going to be recidivism.

13 JUDGE POLSTER: It is still no  
14 picnic.

15 MR. WELLBORN: Right.

16 JUDGE POLSTER: Because, you  
17 know, there are a lot of employers who won't hire  
18 you on your record, and some people don't have a  
19 lot of family support.

20 But I think the -- what we give  
21 people is the self-respect and some of the  
22 internal tools to deal with the spitballs that  
23 they're going to get thrown. I think they're  
24 going to get spitballs and they get some  
25 spitballs even during reentry court and they've

1 got to deal with them, and to have sort of a  
2 future orientation.

3 I mean, most of us, we act after we  
4 think, okay, we don't just act and not think and  
5 the thought processes are what are the  
6 consequences of our action. We think personally  
7 of a future, we want it to be a reasonably good  
8 future, so we plan that way.

9 For a lot of these folks, they have  
10 never thought that way. They never thought they  
11 had much of a future, maybe they didn't have  
12 much.

13 So what we're trying to do is help  
14 them through the cognitive behavioral therapy,  
15 through modeling that they do have worth and  
16 dignity, that they think about themselves and the  
17 world and the world and their place in a  
18 different way and give them those tools, and it  
19 doesn't work with everyone, but it clearly is  
20 working with some of them.

21 MR. WELLBORN: This is sort of,  
22 speaking of spitballs, kind of a curve ball  
23 coming your way: Given the fact that there is a  
24 huge statistically -- in terms of recidivism  
25 rates and risk rates -- there's a huge

1 distinction between the internet porn viewers of  
2 child pornography and those that are making these  
3 sort of contact offenses, as was described  
4 earlier by Judge Russo, is there any possibility  
5 or any thought given to the folks that are going  
6 into -- they're usually -- well, I guess not  
7 usually because they're usually shorter  
8 sentences -- but these folks that are coming  
9 through the prison system for internet child  
10 pornography cases being involved in this reentry  
11 program?

12                   JUDGE POLSTER:                   There's no crime  
13 that disqualifies you. We do have a lot of  
14 people that have done sentences for drugs, those  
15 tend to be long, not only that, we have bank  
16 robbery.

17                   I don't think I have yet had someone  
18 who went in for downloading child porn but there  
19 is no reason why we couldn't.

20                   So it's more the risk indicators and  
21 the probation office has to feel we have a shot  
22 with this person, and then that person has to  
23 say, yeah, I'm willing to put up with seeing a  
24 judge every month and going to cognitive  
25 behavior.

1                   There is a lot that's loaded on these  
2 people. In addition to everything else, they've  
3 got to go to the group therapy once -- I think it  
4 is once a week for about three months, plus  
5 they've got to see the job placement person.

6                   There's a lot loaded on them and some  
7 of them just say I don't want to do it, I'll just  
8 do my regular supervised release, but those that  
9 are willing to do it, we've had a pretty good  
10 success rate.

11                   MR. WELLBORN:                   And given your  
12 success rate, is there any possibility downstream  
13 of expanding this to people who are in the system  
14 with a criminal history category of two to three  
15 or something below category four?

16                   JUDGE POLSTER:                   This is the  
17 other thing I should have mentioned: This is an  
18 evidence-based practice and what we're trying to  
19 do is be smarter with our resources, and devote  
20 more of the resources of the probation department  
21 to the people who really need the supervision,  
22 because statistically there are some people who  
23 actually with supervision they do worse, they'd  
24 be fine on, you know, literally nothing, totally  
25 inactive probation, but the supervision

1 interferes with what they're doing. It sort of  
2 throws them off track and they actually do worse.

3           But to a probation officer, you want  
4 to see people who are doing well because it makes  
5 you feel good about your job, and the people with  
6 real problems, you have even a hard time finding,  
7 let alone doing anything with, you might put them  
8 aside. Well, those are the people that really  
9 need it.

10           The idea is to focus the attention on  
11 the people who really need it. Don't give much  
12 attention to the people who would be fine and do  
13 more with less, because candidly we're facing  
14 some Draconian budget cuts.

15           We have not hired a probation officer  
16 in I don't know how long. We have managed to  
17 avoid having to furlough anyone only through  
18 buyouts and attrition, and who knows what's going  
19 to happen come the next fiscal year.

20           But I still think we are committed to  
21 doing this, whatever resources we have, devoting  
22 it to the people who really need the attention,  
23 and that we can make a difference with.

24           And if someone says well, why is the  
25 judge doing this, why is he a social worker, I

1 would say we all need to see our roles a little  
2 bit differently. The world has changed and you  
3 can't live in a silo and if you can accomplish  
4 things by seeing your role, your job a little  
5 differently, gain some new skills, that's what  
6 it's all about.

7 MR. WELLBORN: Thank you very.  
8 I'll open it up.

9 MR. JONES: Penny.

10 MS. STRONG: Thank you. Good  
11 afternoon, gentlemen, thank both of you for  
12 coming here today.

13 I have a question I would like to  
14 address to both of you and that is, as we know  
15 it, under the federal sentencing scheme, there is  
16 no provision currently, realistically for  
17 suspended or deferred sentences, as we know them,  
18 and then there is our state systems.

19 Either or both of you could address  
20 the need for legislation that might change that  
21 or something with the U.S. Sentencing Commission.

22 JUDGE POLSTER: Well, in a way,  
23 I mean, the supervised release, I mean, people at  
24 the lower end can get a short sentence or  
25 community confinement or home detention and then



1 a period of supervised release hanging over  
2 someone's head, and if they do fine, they don't  
3 have any further consequence.

4 I mean, the guidelines are advisory,  
5 so they're a starting point, not necessarily an  
6 ending point, and even if the guidelines call for  
7 a lengthy prison sentence, if I don't think it's  
8 the right thing to do and I can articulate it in  
9 a way that my colleagues on the Sixth Circuit  
10 will accept and understand, that's what I'm going  
11 to do.

12 So it's still up to us to come up  
13 with a sentence and articulate the reasons and if  
14 it's the guideline sentence, so be it; if it's  
15 above or below, so be it, that's what we're  
16 supposed to do.

17 MR. TEREZ: From time to  
18 time some of the district judges will suspend to  
19 supervised release sentences. They'll say to the  
20 defendant, I could send you to prison or I could  
21 put you back in the halfway house or put you back  
22 on the street, whatever additional conditions,  
23 and we'll make you a deal. Let's check you out  
24 and see how you're doing with these drug tests.  
25 I'm going to test you for every week for the next

1 six weeks. If you test positive, you're doing  
2 this three-month additional I'm going to impose  
3 right now but suspend, or if you do fine, at the  
4 end of six weeks I'm going to vacate the sentence  
5 I'm imposing now.

6 That has happened from time to time  
7 on supervised release cases. I would welcome  
8 that type of legislation, because it would give a  
9 district judge further discretion.

10 It has even been suggested in our  
11 office and elsewhere that to put this reentry  
12 program to its real test is to put it in the  
13 front end, so that the benefit right now is that  
14 a defendant gets termination of supervised  
15 release.

16 That could mean an awful lot, by the  
17 way for a child pornography case, that can mean  
18 the rest of the person's life removed from  
19 supervised release. Many supervised release  
20 punishments for child pornography cases could be  
21 a lifetime, so that would be, obviously,  
22 significant.

23 But what would be the reentry court's  
24 effect, I might question, if we said to the  
25 person here's your sentence, guidelines sentence

1 is X. I'm willing to listen to your lawyer who  
2 asked for a departure for X minus Y, I'll suspend  
3 all of that or a portion of that if you complete  
4 this reentry program, or I'll reduce it to X  
5 minus Y minus Z if you successfully pass this  
6 reentry program.

7                   It's a leap of faith everyone, I  
8 recognize that, but as Judge Polster said, we do  
9 need to think differently.

10                   We initially thought that locking  
11 them away would solve our problems, it didn't,  
12 and we all know the graph, once you see the  
13 guidelines come out in the late 1980s, the prison  
14 populations just jumped through the ceilings, so  
15 it didn't work.

16                   We're now left with these  
17 consequences, both practical and humanitarian.  
18 Now maybe we put that to the test, see if these  
19 reentry programs really work.

20                   For the person that says they don't  
21 want to go through the reentry right now, my  
22 guess is they're not thinking much differently  
23 than a lot of defendants who face a particular  
24 judicial view on our court which is -- I have had  
25 this from a number of judges -- Mr. So And So,

1 I'll make you a deal, I'm going to put you back  
2 in prison for one more year or you have three  
3 more years of supervised release, and many times  
4 the individual will just say give me the one year  
5 of prison, Your Honor, it's not worth going  
6 through supervised release.

7           That sends me a message that there is  
8 something more here at play, they don't like the  
9 supervised release stuff, they want to be rid of  
10 the system.

11           My sense, if you offer them some  
12 serious reentry steps that would eliminate or  
13 reduce their sentence, I think they would take  
14 the reentry program very, very seriously.

15           MS. STRONG:                    Just to follow  
16 up on that: I think the minimum mandatory drug  
17 conspiracy sentences, where you only have a  
18 safety valve to escape that, which has five or  
19 six very strict criteria, what I'm speaking to,  
20 people who are in a state court system that get  
21 probation or suspended sentence, are not only  
22 going to prison in the federal system, they're  
23 going for minimum mandatory terms that are  
24 largely controlled by the prosecutors and the  
25 indictments.

1                   And then the last question for the  
2 federal system is obviously an opportunity for an  
3 expungement, a sealing or a deferred sentence,  
4 where first time offenders could have their  
5 sentence wiped out, which we just don't have it.

6                   JUDGE POLSTER:               There is no  
7 federal expungement. I get occasionally motions  
8 for expungement, I have no authority to do that  
9 and there might be a place for that.

10                   The hardest thing that I have to do  
11 in my job is sentence and then making these  
12 supervised release decisions. It is the  
13 loneliest place in the world to me. If you find  
14 a judge in this whole state, local, federal, who  
15 says I like to sentence people, you absolutely  
16 have got the wrong person wearing the robe.

17                   At my investiture my rabbi urged me  
18 to keep both justice and mercy in mind. I was  
19 just starting out and I thought, well, this is  
20 easy, I can do this. I knew nothing until I  
21 started doing it and, of course, what did I learn  
22 everyone wants justice when it's someone else and  
23 mercy when it's them or someone close to them,  
24 the two are irreconcilable.

25                   And I feel that tension every time,

1 because I have to try and balance, you know, five  
2 or six constituents: There's the person, the  
3 person's family; there's the victim, there's the  
4 victim's family; there is society at large; there  
5 might be people who might consider committing a  
6 crime but for the sentence, I have got to just  
7 balance all of that.

8           And if I give someone a break and  
9 they go out and commit a crime, that's sort of on  
10 me, and that victim wouldn't be a victim if I  
11 hadn't given that person a break, so I have to  
12 balance all of that, and when someone comes out  
13 on supervised release, I have to balance that,  
14 too, so I've given sort of like that suspended  
15 sentence on supervised release.

16           A number of times I have said, all  
17 right, I'm going to continue you on supervised  
18 release for 60 or 90 days. I want to see how you  
19 do, you know.

20           So I think we, as federal judges,  
21 have some discretion. With the mandatory  
22 minimum, you know, that's another subject, but it  
23 is just very hard to know how and when to do it  
24 and how to use it and we each, I think, wrestle  
25 with it every day.

1 MR. JONES: Margy?

2 MS. LOVE: I just want to  
3 follow-up real quickly on something Penny just  
4 said.

5 The idea of avoiding a conviction all  
6 together, the front end, 25 or so states have  
7 these deferred adjudication kinds of authorities  
8 and there is actually a federal deferred  
9 adjudication.

10 JUDGE POLSTER: Our U.S.  
11 Attorney's office, Margy, occasionally will do a  
12 deferred prosecution agreement. I did one or two  
13 when I was a prosecutor. They're not widespread  
14 but this district has used them.

15 MS. LOVE: Well, it would  
16 be really nice, it seems to me, if the authority  
17 for the drug possession, deferred adjudication --  
18 it's not really a diversion because it's  
19 post-plea, so it would be something for the  
20 attorneys -- not everybody would want to do it,  
21 either -- so it has seemed to me particularly  
22 that the key thing here is the conviction, that  
23 once somebody has a conviction, it's really hard  
24 to get passed it and our task here at this task  
25 force is to look at mechanisms in the law for

1 restoration of rights, status, trying to get  
2 passed that conviction.

3 In thinking about that particular  
4 thing, there's not much in the federal system.

5 Believe me I know, since I used to  
6 run the only thing there is, but that's kind of  
7 gone even since I left, that has really  
8 disappeared.

9 Do you have a notion, both of you, of  
10 a functional mechanism for restoration of rights  
11 after completion of sentence, after  
12 rehabilitation, to sort of graduate the person,  
13 if you will, from the system? Do you have a  
14 notion of what that would look like?

15 JUDGE POLSTER: I certainly  
16 haven't thought about it much, so let Dennis  
17 tackle that. If I have something the chime in, I  
18 will.

19 MR. TEREZ: I think it is a  
20 mixture of motivation, I almost want to say just  
21 intelligence and then protection. And here's  
22 what I mean by that:

23 Motivation, I think you need to give  
24 these individuals some motivation that you may  
25 not be thinking about right now, that will tell



1 them I'm willing to go through Steps A, B, and C  
2 and it's worth it. It may be hard but it's still  
3 worth it.

4           Judge Polster is absolutely right,  
5 there are way too many individuals that come  
6 through our office hopeless. It is not that  
7 uncommon for us to get a letter from a client who  
8 will say your office, your lawyer so and so, was  
9 the first person to give me hope.

10           Now, that's a little bit of an  
11 exaggeration, I realize. A parent has supported  
12 at one point or family has supported or friends  
13 supported, someone has supported them and gave  
14 them hope, but the fact is that someone in the  
15 system now being called out for giving them hope  
16 means a lot, sends a message to us that they  
17 don't have very much hope in their life, so I  
18 think that motivation has to play a role in it.

19           I say the intelligence part. We as a  
20 part of the system -- I talked about institutions  
21 before -- have to put our heads on this one, our  
22 good sense has to play a role. We're fighting a  
23 lot of prejudices even in our own institutions.

24           While I could tell you all right here  
25 that having supervised release and banning an

1 individual from the use of a computer, any cell  
2 phone, any internet for an entire lifetime,  
3 conditions that are routinely given in a child  
4 pornography case make no sense. At the same time  
5 I would be rather wealthy if you would give me a  
6 thousand dollars for every time a person was so  
7 sentenced this week somewhere in the country.

8           In other words, we don't seem to put  
9 necessarily our actions where our head is, that's  
10 what I mean by putting intelligence around this  
11 whole thing.

12           When we sat down and did some of  
13 these programs that we're talking about, there  
14 were a lot of issues we had to consider, but we  
15 realized for the first time some of these issues  
16 were being considered and there was a certain  
17 persistence that we're going to do this  
18 regardless.

19           Judge Polster put it well -- I liked  
20 what you said, Your Honor -- despite budgetary  
21 things, we're still going to push forward. A lot  
22 of these programs or things start and die, start  
23 and die, so one the of things I think that  
24 intelligence can be played in is also a level of  
25 persistence, just kind of keep pushing forward.

1                   Of course we're going to have  
2 failures. I understand correctly every reentry  
3 program that I have ever encountered has some  
4 massive failure. That's human nature, though.

5                   I mean, who would have thought that a  
6 vice presidential candidate would be on trial as  
7 we speak today, as is the case. He was on a  
8 pathway to the presidency, we don't want to see  
9 that. Our star pitcher for the New York Yankees  
10 was convicted.

11                   Come on, these are things that  
12 happen, we don't want to see them happen. That's  
13 human nature, regardless where we're at, so why  
14 should we think it is so remarkable when we see  
15 it in this context.

16                   And the security issue. By that I  
17 mean, the Judge is right, we have to watch the  
18 public sense about this.

19                   The public has a serious amount of  
20 fear, I know that. I represent people on death  
21 row, we represent over 20 of them now on Ohio's  
22 death row.

23                   There is nothing like a conversation  
24 killer to say, you know, I was in death row  
25 talking to so and so, he's going to be executed

1 in three weeks. Man, does the conversation die  
2 at that point, people don't even want to  
3 associate with me.

4           And I realize being that person,  
5 scale it back, that drug offender, the drug  
6 trafficker, the bank robber, it creates a level  
7 of curiosity from the general public, I know.

8           I have been a party in court when a  
9 classroom came around and everyone wants to see  
10 the bank robber in his jumpsuit. There is a  
11 curiosity to that, but to associate with that  
12 person, we've got to deal with society's feelings  
13 about that.

14           Mansfield Frazier put it well to me,  
15 he goes, you know, the best spot to quibble on,  
16 folks who are fully incarcerated, is, shucks, no  
17 one cares who cooks their food because they're  
18 faceless.

19           Let's take that idea a few steps  
20 further. I don't know who sells me my airplane  
21 ticket. I don't know who runs my internet  
22 service. I can think of a thousand jobs where  
23 faceless service is very critical. Those are  
24 jobs waiting to be filed many times, there's a  
25 role there we can have.

1                   We need to be sensitive to society's  
2 concerns but that means we can address them in  
3 creative ways, I believe.

4                   We might not want the guy sentenced  
5 for a long time for child pornography teaching  
6 our children in elementary school, I realize  
7 that, I'm a parent, too, and people have a  
8 certain revulsion to that.

9                   That may have no basis in reality or  
10 commonsense. That person may be on the straight  
11 and narrow the rest of their life and may have  
12 been, may have fallen into some weird lapse of  
13 judgment, but the fact of the matter is that  
14 school is not going to run that elementary class  
15 with that person as teacher.

16                   We have to realize those burdens and  
17 barriers as well, so that's why I mention the  
18 security issue, that's more like a societal  
19 issue, but that's where I see it, that's where I  
20 would step back, to give the district judge power  
21 to offer expungement. I would be so for that  
22 right now only because I think it would be a tool  
23 that would be wisely used.

24                   I don't think -- some folks in  
25 Congress might feel that it would be abusive. I

1 disagree. There's a certain level of concern in  
2 this field, I just mentioned, already in play in  
3 this system, and if I had to weigh any one  
4 heavily, it would be the latter, so I just see  
5 that that tool would be wisely used.

6 JUDGE POLSTER: Looking at these  
7 collateral consequences to have a balance -- and  
8 when you need them to reasonably protect society,  
9 then they should be there, if it's simply extra  
10 punishment when a person has already been  
11 punished and now they're moving forward -- so  
12 it's not simple. I certainly don't have the all  
13 of the answers, but it has to be balanced.

14 MR. JONES: Jenny?

15 MS. ROBERTS: Just one  
16 question. There are currently -- Margy or I'm  
17 sure the judge can correct me, on this -- I think  
18 that there are currently amendments pending on  
19 Rule 11's advisement sections, to not come into  
20 the clients with Padilla, but because of Padilla,  
21 to add immigration warnings into Rule 11.

22 I wonder, Judge Polster, if you would  
23 support even further revisions for other kinds of  
24 warnings.

25 You talked a little bit about how

1 maybe judges should be warning about things, and  
2 recognizing this is very different from defense  
3 lawyer warnings, but still is there a role to  
4 play -- well, not is there a role to play  
5 question -- would you support amendments to  
6 Rule 11 to include advisement about various types  
7 of collateral consequences?

8                   JUDGE POLSTER:               Well, Rule 11 is  
9 already -- it takes 20 to 30 minutes now to take  
10 a plea properly, and maybe even longer.

11                   As a result of the recent  
12 Supreme Court case, there may be some certain  
13 things we have to start going into that we  
14 didn't. I have been actually doing some of that  
15 already because of a case that came out of our  
16 district.

17                   And, you know, there are some  
18 districts where that's all the judges are doing,  
19 is taking guilty pleas, so I would be leary about  
20 just loading in more things.

21                   I do think, you know, defendants in  
22 particular states, they should be aware of  
23 certain collateral consequences of the plea and  
24 they should know that, they should get it from  
25 the judge or the probation department, they

1 should get it from their lawyer.

2 I don't think I would be in favor of  
3 making us read every single collateral  
4 consequence, we'd never have them all, and then  
5 someone would say I left off Number 33 so the  
6 plea is void, and that would be the problem with  
7 that.

8 MS. ROBERTS: I wasn't  
9 suggesting all but would there be -- let me be  
10 more specific: If you took the most severe so  
11 immigration, the proposed amendment, sex-offender  
12 registration, civil commitment, and guns.

13 JUDGE POLSTER: I think we  
14 generally do advise them that they cannot possess  
15 a gun, be anywhere near a gun. We definitely do  
16 in immigration cases. I know I do at least on  
17 the child porn cases, when they're going to be  
18 the sort of provisions and maybe even a lifetime  
19 supervised release and what that means. I think  
20 those should be included because they are unusual  
21 and they're particularly onerous.

22 I would not be in favor of amending  
23 Rule 11 to say, well, you might not be able to  
24 get a student loan, you might not be able to get  
25 into public housing.



1                   There are a whole lot of things and  
2 you would not get them all, but some of the ones  
3 you just mentioned in your question, I think,  
4 most of us are doing that, and I think it's a  
5 good idea to do it.

6                   MS. ROBERTS:                   Thank you.

7                   MR. TEREZ:                   If I could  
8 answer that very briefly. This is a challenge  
9 for organizations like the National Association  
10 of Criminal Defense Lawyers, maybe to the ABA,  
11 maybe to every major law school in every state in  
12 the union, all 50.

13                   The civic database was created by a  
14 partnership between the University of Toledo Law  
15 School and the Ohio State Bar Foundation, of  
16 which I'm a trustee, so I'm doing a little bit of  
17 advertisement for that, and a few other outside  
18 interests, on a shoestring budget.

19                   I know because they came to our board  
20 yesterday or two days ago to explain how they did  
21 this on a shoestring budget; how wonderful it  
22 would be if, as the federal defender I have a  
23 client in front of me, I could say, we can go to  
24 the general court website and there is a database  
25 on there that will give you the collateral

1 sanctions for your federal conviction.

2           And now the Supreme Court has ruled  
3 that it would be ineffective assistance for a  
4 lawyer not to have discussed that database with  
5 that defendant, just like we do with the  
6 presentence investigation report, it's now  
7 ineffective assistance not to be a part of that  
8 process with the client.

9           We did that database in Ohio.  
10 There's no reason we can't do it in the federal  
11 system with all the resources nationally.

12           Pick one law school of the 50 states  
13 and say you're the repository of this  
14 information. It has to be updated.

15           Judge Polster is right. Number 33,  
16 if you miss it at some point, will have changed,  
17 now you have a problem, but there's no reason  
18 that can't be done.

19           I make that suggestion to you all as  
20 a possible solution to the Padilla issue. I  
21 think Padilla is a huge case in that it's a  
22 starting point to say, defense lawyer, there's  
23 these collateral sanctions that you have to  
24 remind the defendant of. Just like we wouldn't  
25 go to court and say there is no sentence

1 associated with this case, we would never do  
2 that.

3           Now we're not allowed to say there's  
4 no other things beyond that. That's what Padilla  
5 said to us really, to be on the lookout, there  
6 are a lot of things.

7           Once you go down that hill, though,  
8 I'm not sure where you stop because while  
9 immigration consequences might be very important  
10 for the person who is Mexican born, what about  
11 the person who studied long to be a nurse and now  
12 has a felony and can't get a nursing license that  
13 quickly, that's far more important than the  
14 immigration consequences that Judge Polster will  
15 give that person.

16           Guns. I mean, there are clients that  
17 say, look, you've got to be kidding me, everyone  
18 in my family owns a gun. I have had that happen  
19 to me literally while we were walking out of the  
20 courthouse.

21           The flip side, I have had many people  
22 say I'm never going back to this life again.

23           Now, if I could tell you you could  
24 study for being a barber but you can't be a  
25 barber when you get out --

1 I throw that as a challenge, create  
2 the database nationally.

3 JUDGE POLSTER: The other thing,  
4 many citizens aren't aware of all of these  
5 collateral consequences. I only learned about  
6 the barber thing when one of our people in the  
7 reentry court wanted to do it and found out that  
8 he couldn't.

9 We said, "What is this, crazy?"

10 So maybe by bringing this list, a lot  
11 of people would say, all right, why are these  
12 things on here? We didn't we know about this.  
13 Get them off, so.

14 MS. LOVE: There it is.

15 MR. JONES: That's it.

16 Thank you, gentleman. You've brought us to the  
17 end on as strong a note as we started and we  
18 appreciate it. Thank you very much.

19 JUDGE POLSTER: Thank you for  
20 having us.

21 MR. JONES: That concludes  
22 our testimony in Cleveland. This committee will  
23 reconvene on July 26th in San Francisco.  
24 ereupon, the hearing was concluded at 5:43 p.m.)

25 - - -

1 of Ohio, )  
2 y of Cuyahoga. ) SS:  
3

4 C E R T I F I C A T E

5 This certifies that the foregoing is a true  
6 and correct transcript of the proceedings  
7 had at McDonald Hopkins, Cleveland, Ohio,  
8 on April 27, 2012, commencing at 9:00 a.m.

9  
10 In the Matter of:

11 NADCL Task Force on Restoration of Rights  
12 and Status After Conviction.

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18 DEBORAH C. FUREY, COURT REPORTER  
19 Depo.Com  
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**Transcript Edits  
Cleveland Hearing  
Day 2**

**Judge Dan Polster**

Page 529, line 25, “behavior” should be “behavior therapy.”

Page 503, line 21-22, omit “and we would” and replace with “to have.”