

1
2 NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
3

4 NACDL TASK FORCE ON RESTORATION OF RIGHTS
5

6 AND STATUS AFTER CONVICTION
7

8 WASHINGTON, D.C. WITNESS SCHEDULE
9

10 Day 2
11 Thursday, February 21, 2013
12

13 National Association of Criminal
14 Defense Lawyers
15 1660 L Street, N.W.
16 12th Floor
17 Washington, D.C. 20036
18

19 The hearing convened, pursuant to notice, at
20 9:02 a.m.
21

22 BEFORE:

23 RICK JONES, Task Force Chairman
24

25 ANGELYN FRAZER, State Legislative Affairs Director
26

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4 JENNY ROBERTS
4 PENELOPE STRONG
5 GENEVA VANDERHORST
5 CHRISTOPHER WELLBORN
6 VICKI YOUNG

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12 Department of Justice, Washington, D.C.	
13 Pamela Lawrence, U.S. Department of Housing and	
14 Urban Development, Washington, D.C.	
15 Dr. Gabriela Lemus, Department of Labor,	
16 Washington, D.C.	
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18 Honorable Robert Ehrlich, Senior Counsel,	
19 King & Spaulding, Former Governor of	
20 Maryland, Washington, D.C.	
21 Gregory Massoni, King & Spaulding,	
22 Washington, D.C.	

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2	Todd Cox, Equal Employment Opportunity	
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1 P R O C E E D I N G S

2 MR. JONES: All right. Let's get under way.

3 Good morning. Welcome. This is the second
4 day of our hearings in Washington, D.C. and we are
5 looking forward to not only speaking with you and
6 learning from you, but also we've got a full day and
7 so we're excited about that.

8 I think that it is actually colder here in
9 Washington, D.C. than it is New York, which surprises
10 me, but it's pretty serious. We caught the snap all
11 right. It's a serious cold snap.

12 At the outset, I just want to welcome
13 everybody in the room and thank you as well for being
14 here specifically. We have Louisa Tavares in the
15 back from the Open Society Foundation without whose
16 generous support these hearings would not be going
17 forward. So we're pleased to have her here as well
18 as the support of the Foundation for Criminal
19 Justice.

20 We, obviously, have to thank NACDL for
21 providing us with this wonderful space. I see Norman
22 Reimer in the back, the executive director. I know

1 Angelyn, who really has done incredible work putting
2 all this together, is here as well as Elsa Ohman and
3 Chris Glenn, the grass roots advocacy manager. So
4 we're appreciative for all their support and for all
5 the hard work that they've done that makes us look
6 good here.

7 We are anxious to hear from you all. We have
8 been around the country, as you know, taking
9 testimony and really being on a listening tour and
10 learning a lot, and we're excited for the next 90
11 minutes of what you all have to tell us.

12 The way that we work is that we're going to
13 give each of you five or ten minutes to tell us about
14 yourselves and the work that you're doing, and then
15 we've got lots of questions, and the way that we do
16 the questioning is that one of our number sort of
17 leads the discussion, and then to the extent that
18 there's time, the rest of us will also have an
19 opportunity to ask some questions as well.

20 For the purposes of this discussion, Chris
21 Wellborn -- oh, I'm so sorry. Vicki. Vicki -- I was
22 looking at Day 3. My co-chair, Vicki Young, is going

1 to be the questioner.

2 So this seems like a really good time for me
3 to stop talking and to turn it over to you and, once
4 again, welcome, and I'll leave it to you to decide
5 who's going to start.

6 PANEL 1

7 MS. SOLOMON: Thanks.

8 Good morning, everyone. My name is Amy
9 Solomon. I'm with the Department of Justice. I'm a
10 senior advisor to the Assistant Attorney General at
11 the Office of Justice Programs at the Department of
12 Justice. In my current role, I co-chair the Federal
13 Interagency Reentry Council, the staff working group
14 that staffs the cabinet group and I represent the
15 department in other urban policy initiatives.

16 So I'm pleased to be here today and I
17 absolutely commend the work that you're doing to shed
18 light on this important issue that impacts so many
19 people. One recent study, in fact, shows that one of
20 every three people, three U.S. adults, has as an
21 arrest by the age of 23 and they're mostly for
22 relatively minor and nonviolent offenses, sometimes

1 decades in the past. This record will keep many
2 people from obtaining employment, accessing housing,
3 higher ed, loans, credit even if they're qualified
4 and unlikely to re-offend.

5 The long-term and sometimes lifetime impact
6 of a criminal record is of particular concern in the
7 employment area. Background checks are near
8 ubiquitous and overly broad. No-hire policies are
9 not uncommon.

10 Importantly, research sponsored by our
11 National Institute of Justice shows that people who
12 stay out of trouble for just a few years are largely
13 indistinguishable from the general population in
14 terms of their odds of another arrest. At the
15 Department of Justice, we believe there are
16 substantial opportunities to simultaneously improve
17 public safety and also help motivate individuals who
18 have served their time and paid their dues to compete
19 for a job, attain stable housing, support their
20 children and families, and be productive contributing
21 members of our society.

22 Against this backdrop, my statement provides

1 an overview of the Reentry Council with a particular
2 focus on our efforts to address collateral
3 consequences for individuals with a criminal
4 conviction. Attorney General Holder first convened
5 the Reentry Council in January 2011. It now involves
6 leadership from 20 cabinet-level agencies who are
7 working together to make communities safer, assist
8 those coming out of prison and jail in becoming
9 productive citizens, and save taxpayer dollars.

10 The Council has organized its work around
11 three basic activities. We're working to coordinate
12 and leverage resources that are already going out to
13 jurisdictions through our agencies through grants and
14 technical assistance. We're working to remove the
15 federal barriers to reentry, barriers to employment
16 and housing and federal benefits such as food
17 assistance, TANF, veterans benefits and Social
18 Security that we know can help stabilize people when
19 they're released from prison and jail, and the
20 Reentry Council is working to use the bully pulpit to
21 advance the reentry agenda, to provide visibility to
22 programs and policies that work, and to really

1 clarify myths and debunk some of what's out there
2 around the policies in this area.

3 Our collective efforts aim to not only reduce
4 recidivism and high corrections costs, but also to
5 improve public health, child welfare, employment,
6 housing, education, and other key reintegration
7 outcomes. As a part of this effort, Attorney General
8 Holder has personally championed the need to reduce
9 unnecessary collateral consequences, stating that
10 while many may serve public safety purposes, others
11 may be antiquated and create unnecessary barriers to
12 legitimate work and civic opportunities.

13 In the spring of 2011, Attorney General
14 Holder wrote to every State A.G. with a copy to every
15 Governor and he asked them to assess their State
16 statutes and policies to determine if any should be
17 eliminated, quote, so that those who have paid their
18 debt to society are able to live and work
19 productively, end quote.

20 The Attorney General pointed to the ABA, the
21 predecessor of the National Inventory of the
22 Collateral Consequences of Criminal Conviction, to

1 that project and pointed to that inventory as a
2 starting point for this important task, and here, I
3 just want to pause and acknowledge Margi Love and her
4 team for the incredible tireless work that was done
5 and has been done and will continue to be done on
6 that inventory. It is a tremendous resource for the
7 field.

8 In the letter to the State, the Attorney
9 General also said that the federal agencies would do
10 their part to undertake such review. Accordingly, he
11 asked Reentry Council members to nominate staff from
12 their agencies to review their agency's regulations
13 with an eye to how and where they could eliminate or
14 tailor certain bars without compromising public
15 safety. This is a big undertaking. It's taking a
16 lot of time, but agencies are at the table and they
17 are committed to the process, and this process is
18 coordinated by our civil rights policy section.

19 Staff attorney reviewing the regulations are
20 looking for opportunities just, for example, to
21 shorten the lookback period so that a bar might not
22 -- might extend back for five or ten years and not

1 indefinitely or to limit the type of conviction
2 considered to only felonies and not misdemeanors or
3 to certain felonies that have a specific nexus to a
4 job, just for example. They're also considering the
5 use of guidance to help to give context to an issue,
6 clarify certain aspects of a given regulation, point
7 out unintended consequences or highlight areas where
8 administrative discretion may be possible.

9 Unfortunately, and I shared this in advance,
10 I'm really not in a position to report out on any of
11 our findings or our intended actions just yet, and
12 it's important to point out that all of the decisions
13 resulting from this working group are really owned by
14 the agencies themselves and none of this is directed
15 by the Department of Justice or the Civil Rights
16 Section.

17 What I can say is that most agencies are
18 expected to complete their reviews by the end of this
19 month and I know that a handful of agencies have
20 meaningful regulation changes under some level of
21 review.

22 It's also important -- so on that, I'll just

1 pause and, obviously, there's an OMB process that
2 takes some time too that needs to happen after the
3 agencies put these forward, but I do expect that in
4 the next coming months, we have every intention and
5 want the public to hear about this, and hopefully by
6 your next meeting, we'll have some specifics to
7 share.

8 It's also important to point out that more
9 than -- or about 50 percent of the collateral
10 penalties have to do with barriers to employment, and
11 the Reentry Council is taking action on many fronts
12 in addition to the collateral consequences review.

13 Reentry Council agencies have published five
14 myth busters that tackle both employer obligations
15 and incentives, and I'm sure you'll hear more about
16 this from colleagues at Labor and the EEOC later
17 today. The Federal Trade Commission, the Office of
18 Personnel Management, and the Small Business
19 Administration are also very engaged in this aspect
20 of our work, and taken together, we really are making
21 and hope to make some large-scale changes or some
22 inroads to the large-scale challenge.

1 I can also say that the Department of Justice
2 leaders continue to draw attention to this important
3 issue. Our Attorney General, Deputy Attorney
4 General, Associate Attorney General, Assistant
5 Attorney General, they're all frequently talking
6 about reentry and the collateral consequences issues
7 specifically in public speeches and in private
8 meetings to prosecutors and defenders alike. They're
9 encouraging State, Local, and Federal partners to do
10 more in this area and they're going to continue to do
11 so.

12 Another concrete action we've taken on this
13 front relates to legal services. The White House
14 Domestic Policy Council and the Justice Department
15 have recently launched a high-level legal aid
16 interagency roundtable, LAIR as it's fondly called.

17 I see Melanca Clark in the back. It has
18 involved 18 participating agencies and it's staffed
19 by our Access to Justice initiative, and Melanca is
20 doing a lot of the heavy lifting for this project.
21 It's working to raise awareness about the profound
22 legal impact -- the profound impact that legal aid

1 programs can have in advancing federal efforts to
2 promote access to health and housing, education, and
3 employment, family stability, and community
4 well-being.

5 As a result of this work, many
6 reentry-related grants such as the Second Chance
7 grants run out of the Department of Justice and the
8 RExO grants run out of the Department of Labor now
9 allow for the use for federal funds to pay for legal
10 assistance to secure driver's licenses, expunge
11 criminal records, litigate inappropriate denials of
12 housing or unemployment and violations of the Fair
13 Credit Reporting Act, and modify child support
14 orders. This is a significant step forward and the
15 reach is broader than the justice grants, as you'll
16 hear in a moment.

17 I'd also like to offer one more example from
18 a Reentry Council agency that's not represented here
19 today, the Department of Veteran Affairs. Each year,
20 the VA surveys homeless and formerly homeless
21 veterans as well as homeless service providers asking
22 about how locally available resources address various

1 needs. In 2012, of the 10 unmet needs that were most
2 frequently identified, three were for legal services,
3 specifically regarding child support,
4 eviction-foreclosure, and restoration of driver's
5 license. Based on this data, the VA has taken steps
6 to encourage all of the grantees of their supportive
7 services for Veterans Family Program to provide these
8 legal services.

9 In addition, the VA, which can't provide
10 legal services directly, has issued a directive
11 encouraging VA medical centers to make space for
12 non-VA legal service providers to work with the
13 veterans on site. As a result, the legal services
14 providers are currently seeing veterans in 30 of
15 their medical centers around the country and more
16 such arrangements are in development. Providers
17 include law school clinic, local Bar Associations,
18 firm-sponsored pro bono projects, and legal aid
19 offices, and the VA's goal here is to reach each of
20 its 152 medical centers with access to legal
21 services.

22 In closing, I'm proud of our collective

1 accomplishments and I'm confident we can make even
2 more progress moving forward. There are so many
3 people who have broken the law, paid their dues, and
4 they're now committed to rejoin our society and fold.
5 I'm optimistic that we can both improve public safety
6 and extend a second chance to strengthen and restore
7 some of our hardest hit communities.

8 I commend this task force for holding the
9 hearing and I'm happy to answer any questions.

10 MR. JONES: Thank you very much.

11 MS. FRAZER: Can I just remind everyone that
12 the mikes are picking for recording purposes, but for
13 the purposes of your audience, they can't hear you so
14 well in the back because they're not amplifying the
15 sound. So I'll just ask everyone to speak up.

16 MS. LAWRENCE: Good morning. I'll do my
17 best. I'm coming to you a little a froggy because of
18 a cold. So can you hear me in the back?

19 All right. If I don't, just raise your
20 finger if I start to slide down.

21 I'm Pam Lawrence. I work for the U.S.
22 Department of HUD. I'm a public housing

1 revitalization specialist and a grant manager. I
2 work with Hope 6 communities that are troubled, such
3 as New Orleans, Miami, and Detroit, and I also work
4 with our Choice Neighborhoods Program, planning
5 grantees, and implementation grantees. I bring my
6 kind of soldier experience, if you will, from the
7 Indianapolis Public Housing Authority where I worked
8 as a director of resident services for 10 years as
9 well as a community corrections counselor, and so
10 this issue is near and dear to my heart as I work to
11 help our residents transition to self-sufficiency and
12 overcome those obstacles.

13 We're committed at HUD and I'm here today to
14 give you an overview of some of our key federal
15 policies, talk a little about local discretion, and
16 to let you know what kinds of steps we're taking to
17 make sure reentry is an industry before our HUD
18 housing authorities, our multifamily owners, our
19 project-based voucher managers, as well as our
20 Section 8 voucher managers, and our SNAPS program,
21 which is our special needs programs and on and on and
22 on. We're all committed around the table.

1 Firstly, HUD has two federal policies that
2 create a lifetime ban to ex-offenders who have a
3 history of sexual activity that prohibits -- let me
4 give you specifics -- must prohibit -- PHAs must
5 prohibit the admission for any household that
6 includes a person subject to a lifetime registration
7 requirement under the State sex offender registration
8 program, and so any individual who is on that State
9 registration is banned for life of ever receiving any
10 subsidized housing from HUD.

11 Further, PHAs must prohibit admission to
12 public housing and Section 8 for anyone convicted of
13 the manufacturing of methamphetamine on the property
14 of a public housing authority or a Section 8 voucher
15 unit, two lifetime bans only. Additionally, PHAs
16 must prohibit admission for any person evicted from
17 federal-assisted housing for drug-related criminal
18 activity for three years from the date of eviction.
19 PHAs may consider evidence of rehabilitation as a
20 mitigating circumstance to allow them to come in in
21 the less than a three-year period of time, two
22 lifetime bans, one three-year restriction for

1 drug-related convictions, and it's important for us
2 to say that up front because, locally, the
3 communication that goes to applicants and housing
4 advocates is that Federal Government disallows us
5 from leasing to criminals who have misdemeanors and
6 felony, only two lifetime bans and the one
7 drug-related three-year ban, which can be mitigated
8 with evidence from a reputable source.

9 PHA and multifamily owners have local
10 discretion to establish local admission and eviction
11 policy in addition to complying with the two lifetime
12 bans and the three-year prohibition on drug related.
13 All of the housing authorities established an
14 admissions and continued occupancy plan which holds
15 their admissions and their eviction criteria and
16 administrative plans that further identifies
17 preferences such as foster children, elderly,
18 disabled, and in some cases in some cities
19 ex-offenders.

20 The multifamily population owners and agents
21 have a tenant selection plan that includes their
22 policies that are established at a local level. It's

1 key that you understand where the authority lies when
2 attempting to try to influence new policy for
3 admissions and evictions as it relates to those with
4 criminal histories.

5 HUD recognizes that there are barriers to
6 ex-offenders and we've taken actions to date to
7 include a letter to all public housing authorities in
8 June of 2011 encouraging housing authorities to do
9 more to extend access to housing in such a way that
10 would not cause harm or reduce safety in their
11 communities. A similar letter was manufactured and
12 signed by our Secretary of HUD and Carol Galante to
13 multifamily owners and agents in March of 2012. In
14 addition to encouraging our owners and providers of
15 housing, the same factual information regarding the
16 lifetime bans and three-year prohibition around
17 drug-related crime was included in that letter in
18 order to continue to give facts about what our
19 federal regulations allow and disallow.

20 We've also been one of many HUD agencies that
21 have produced a myth buster that gives our public,
22 the user, and other advocates information about our

1 federal laws and the local discretion and encouraging
2 those who are trying to move public policy forward,
3 admissions and eviction criteria forward, to make
4 contact with those public housing authorities, those
5 State housing authorities, as well as those
6 multifamily owners and agents.

7 The HUD reentry -- HUD has also established
8 reentry points of contact in each of our field
9 offices. That means that in every single field
10 office, there is one individual who is becoming aware
11 of reentry and then learning ways to participate,
12 influence, and help the discussion around reentry in
13 their communities in hopes of influencing public
14 housing authorities and multifamily owners in doing
15 more to serve the public. An example of, probably a
16 good example of, some of that progress is in New York
17 City where the field office is actually establishing
18 a Reentry Council that is comprised of not only
19 HUD, but also Health and Human Services, Department
20 of Labor, Department of Education, VA, and other
21 mirroring federal agencies that we have at the
22 Reentry Council, and so we're hoping that we'll see

1 more of those kinds of initiatives that can start the
2 conversation about reentry in the local communities.

3 HUD is also compiling -- when I say HUD, it's
4 like me -- compiling an inventory of public housing
5 authorities that will profile what is working in our
6 public housing authorities. There are 24 housing
7 authorities that have programs serving ex-offenders.
8 Some have set aside Section 8 vouchers. Some have
9 created transitional living environments for women,
10 reuniting them with children. Some have actually put
11 units aside specifically for ex-offenders getting new
12 leases. Some are allowing reunification of
13 ex-offenders with their families, and so we're now
14 looking to profile what they've done to get to that
15 level, what kinds of resources they've structured to
16 wrap around the individuals that are coming into our
17 public housing authority so that we can then share
18 that information with the rest of our 3300 housing
19 authorities so that they too can see that there is an
20 avenue for them to play in his game.

21 We're also supporting research to better
22 inform housing industry about public and private

1 reentry programs that are working. There is none out
2 there that we've been able to uncover. So that's a
3 bit of an information deficit for us as we try to
4 influence next actions.

5 We are also supporting housing programs that
6 are being implemented through the Health and Human
7 Services entity through the Meriton Family grant that
8 are reunifying ex-offenders with their families, some
9 in public housing, Section 8 and multifamily units,
10 and so we're looking forward to the research outcomes
11 from that particular endeavor.

12 Now, one of the most significant undertakings
13 that HUD is involved in and will have potential
14 impact on the nation is our look at collateral
15 consequences of those with criminal convictions, and
16 I know that's the one that's of the most interest to
17 you. We're commonly referring to this as the four
18 Cs. These are additional penalties that are mandated
19 by statute or regulation that attach to criminal
20 offenses. They are not a part of direct consequences
21 of criminal convictions, such as incarceration,
22 fines, or probation. They are further actions that

1 are triggered as consequences of the conviction.

2 So the Secretary of HUD, Shaun Donovan, has
3 charged our Office of General Counsel to identify
4 potential collateral consequences. We've identified
5 14. Unfortunately, I can't give you're the specifics
6 on what those 14 are, and then, further, our
7 Assistant Secretary, Sandy Henriquez, has allowed us
8 to form a work group internally that is
9 representative of all major HUD programs, the
10 multifamily, the public housing, the Section 8, our
11 special needs, our assets, our fair housing, our
12 react center.

13 We have community planning and development.
14 We have representatives from all of our major housing
15 programs looking at the collateral consequences and
16 how we can find ways to enhance our policies, our
17 regulations, and our statutes or get our information
18 out to community. We anticipate that responses to
19 this process will include educational materials to
20 inform our stakeholders.

21 That's probably the minimal kind of
22 information that will come that can better educate

1 folks to what our policy says and how it can be
2 utilized. We believe that there will be some
3 required training, conferences, and tool kits to
4 further skill and direct our housing providers.

5 We also believe that there may be guidance
6 which will assist housing providers in being
7 consistent and considerate of factors that may
8 mitigate denial or eviction, and to the extreme, we
9 may see regulation or statute amendments which is
10 clarifying language, better defined terms which will
11 entail a more extensive process and concrete evidence
12 to support that change.

13 The liberations must be discussed in the
14 context of housing as it exists today and how it may
15 exist in the future, and if you follow any of the HUD
16 movement as we look at how we can better manage our
17 public housing units, there is a movement toward
18 transitioning public housing to multifamily and
19 Section 8 based, and given that factor, we have to
20 consider how that particular housing system will also
21 have to be considered in new policy changes moving
22 forward.

1 We're challenged, as I stated earlier, by the
2 lack of housing-specific data, trend analysis, and
3 research, and we welcome any information you can
4 provide around housing barriers, recidivism, reentry,
5 and housing models that are working. We're committed
6 to hearing from our stakeholders before any final
7 recommendations are submitted and our Collateral
8 Consequences Committee will be holding several
9 listening sessions as we propose what our preliminary
10 recommendations will be, and that will be occurring
11 in the next few months.

12 I want you to understand that HUD is firmly
13 committed to addressing the housing needs of
14 ex-offenders as indicated by our 2010-2015 Strategic
15 Plan Goal 3 which says we'll utilize housing as a
16 platform to improve the quality of housing and
17 specifically will improve stability through
18 supportive services for vulnerable populations,
19 including the elderly, people with disabilities,
20 homeless people, and those individuals and families
21 at risk of becoming homeless. Further, we'll utilize
22 HUD assistance to improve public safety.

1 HUD is not naive and we recognize that
2 housing cannot be the sole solution to the successful
3 transition of ex-offenders to communities, but we
4 must be a partner working in collaboration with
5 education, employment, mental health, justice, family
6 supports as exhibited by our involvement in the
7 Federal Interagency Reentry Council. Secretary
8 Donovan's 2011 and 2012 letters to housing providers
9 and to multifamily owners and the continued
10 commitment and work of the HUD staff is an example of
11 our commitment.

12 I welcome your questions at the appropriate
13 time.

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

15 Ms. Lemus.

16 MS. LEMUS: Good morning and thank you so
17 much for inviting me and representing the Department
18 of Labor.

19 I'm not quite sure where to start. As you
20 heard, we're all kind of part of pieces of the
21 puzzle, each one of us contributing to ensuring that
22 we're reducing recidivism rates and that these

1 individuals are getting the support that they need.
2 From our perspective -- and I apologize, we're going
3 kind of through a transitional process. My secretary
4 just stepped down. I have an acting secretary
5 waiting on my new secretary, but I can assure you we
6 are committed to continuing with the holistic
7 approach that Secretary Solice brought to the table.
8 This is an issue that was near and dear to her heart.
9 Obviously, she comes from Los Angeles where we're
10 seeing in California a number of challenges with the
11 folks reentering, actually now being mandated for
12 reentry. So it's something that she's seen on a
13 personal level throughout much of her career, and so
14 she tasked me with coming here, ensuring that there
15 would be representation. So I just want to assure
16 you that this commitment continues.

17 So I guess really for us, where we're seeing
18 the most -- I wouldn't call them shifts, but really
19 refocusing, has been on two levels. One is on the
20 funding side of our grants program for ex-offenders
21 through our RExO program that Amy mentioned, but also
22 through the enforcement side from the Office of

1 Federal Contract Compliance Programs.

2 On the funding side, I think what we see
3 really are two points, one on the adult reentry side
4 and the other on the juvenile justice side, but I
5 think both of them with the same intent, what are the
6 best ways to use our very limited resources that are
7 increasingly shrinking to really get to the heart of
8 the problem and get these folks into training
9 programs that are hopefully going to be successful at
10 a point that is demonstrated that we've seen from our
11 constituents in particular and our grantees.

12 In terms of the adult reentry, what we are
13 doing right now is we're getting ready to put out
14 approximately \$20 million in grant funds for training
15 to work, adult reentry grants. This will compose of
16 approximately 14 grants, approximately \$1,400,000
17 each. ETA has invested for the last five generations
18 of adult RExO programs that have been historically
19 employment centered with a workforce component;
20 however, and thanks to the Reentry Council and our
21 partnership with DOJ, DOL and DOJ research shows that
22 ex-offenders have a better chance of attaining

1 employment and a higher degree career growth if they
2 acquire industry-recognized credentials.

3 So this is a policy across the board at the
4 Department of Labor in terms of getting folks into
5 work, is this credentialing process, ensuring -- one
6 of the things our data shows from the Bureau of Labor
7 Statistics is if you are unemployed -- this is
8 irrespective of who you -- you are more likely to get
9 reemployed with some type of credentialing.

10 Post-secondary education, unfortunately, is not
11 something that is optional any longer. We're really
12 seeing more and more this is a requirement.

13 So with a special population group like this,
14 how do we help them be more competitive?

15 So as of 2011, grant awards and for future
16 RExO grants, ETA has required grantees to provide
17 training that leads to an industry-recognized
18 credential prior to the end of the performance period
19 of the grants, which I think, again, is an additional
20 leveraging point that we can use. Additionally, we
21 have found that programs offering prerelease services
22 have increased enrollment after release and reported

1 more successful program outcomes for those
2 participants. So that's part of innovation piece
3 that we're looking at because we want to see higher
4 success rates. So, obviously, logically, you're
5 going to support those.

6 The training-to-work adult reentry program
7 will combine these learnings and minimize the risk of
8 funds being wasted by providing services to offenders
9 that are not released. This program provides
10 training and employment for inmates age 18 and older
11 participating in State and/or local work release
12 programs. These participants have approved release
13 dates typically ranging from six to nine months and
14 are still under State or local correctional
15 supervision.

16 What we've learned from many of our
17 constituents is if they can reach them prior to being
18 released -- and by constituents, I mean our grantees
19 -- that they are more likely to be able to have a
20 more successful program and get these folks more
21 successfully reentering and reducing recidivism.

22 Individuals 18 years old and older who have

1 been convicted as an adult and imprisoned under
2 Federal or State Law and who have never been
3 convicted of a sex-related offense other than
4 prostitution can also be served with these grants.
5 So we're trying to reach as many populations as
6 possible, but there are also certain limitations that
7 have been challenging for us.

8 Grantees have the discretion to enroll
9 individuals convicted of either violent or nonviolent
10 offenses; however, there is a caveat here. The
11 grantee must have a clear and consistent enrollment
12 policy that addresses how enrollment of program
13 applicants with either type of conviction will be
14 treated. So, in other words, they need to be
15 prepared.

16 On the issue of juvenile offenders, we have
17 an SGA of approximately -- let's see. It looks like
18 a total of \$26,243,000 for what is called the Face
19 Forward Diversion and Expungement Grants. The
20 department will award 10 grants of up to a million
21 dollars each to serve court-involved youth through
22 DOL diversion programs and 12 grants of up to

1 \$1,356,000 each to provide expungement services
2 provided by three legal service providers, which
3 include nonprofit legal service providers, law school
4 clinics, and nonprofit organization to juvenile
5 offenders enrolled in DOL workforce programs. These
6 grants will focus on giving youth a second chance of
7 succeeding in the workplace by evading the stigma of
8 having a juvenile record. Juvenile arrests can
9 follow youth through the rest of their lives, as you
10 well know, and becomes a major barrier to include
11 advancement in the workforce.

12 The Face Forward pilot project will offer the
13 opportunity to develop programs that address this
14 issue while developing the skills and opportunity for
15 court-involved youth to move forward successfully
16 into the workforce. Again, much of what we're seeing
17 through our juvenile programs is this idea that we're
18 not just getting kids a skill set and especially
19 these young people, but it's more, you know, let's
20 really look at next steps, let's really have a more
21 holistic approach and think about career pathway as
22 opposed to just getting you through the next few

1 steps.

2 There is a deep belief in our department that
3 this is a better way of approaching the ultimate
4 long-term employment for young people and for anyone
5 for that matter.

6 The purpose of these grants is to improve the
7 long-term labor market prospects of juvenile
8 offenders aged 16 to 24 years in the high-poverty,
9 high-crime communities. So youth between the ages of
10 16 to 24 that are currently involved in the juvenile
11 justice system or have been involved with the
12 juvenile justice system and have never been involved
13 with the adult criminal system will have the
14 opportunity to either be channeled out of the
15 juvenile system prior to adjudication through DOL
16 diversion programs or have the opportunity to have
17 their records expunged if they have already been
18 adjudicated.

19 So in terms of the grantees, they must
20 provide services directly related to increasing
21 employment outcomes, which includes case management,
22 mentoring, educational attainment, training that

1 leads to industry-recognized credentials in demand
2 industries, in high-demand industries, in their State
3 and local area, service learning, workforce
4 activities, and post-program support and follow-up
5 services. Grantees must also provide assistance to
6 connecting with providers of supportive services.

7 So, again, it's this wraparound concept. The
8 more we are able to get all those pieces together,
9 the more likely these young folks are going to be
10 successful, and I think there is also an additional
11 issue. As we meet with different local community
12 leaders, we find that for them, they're also looking
13 at what is -- and I'm sorry if this is cynical, but
14 it's got to be cost effective as well, and given the
15 current economy, how do you get folks who have
16 already got, you know -- I hate to use the term
17 "strike", but some barrier to employment into
18 employment. It really is that that wraparound piece
19 really becomes increasingly important.

20 The last piece that I want to raise to you --
21 because I know you have a lot of questions. I can
22 see it in your faces -- is our new OFCCP directive.

1 On January 29th, the OFCCP issued a directive very
2 similar --

3 MS. LAWRENCE: Say what OFCCP is.

4 MS. LEMUS: Office of Federal Contract
5 Compliance Programs that in partnership -- so let me
6 go back a little bit just to give you some
7 background. In '11, 2011, we hosted a reentry
8 conference as well as in 2012, and the first
9 conference was really a big learning process. It was
10 part of the Secretary's idea for a holistic approach
11 to addressing these issues as part of the larger
12 whole of DOL, not just as a special population, but
13 really as the bigger picture of how do we get all
14 Americans employed and keep them in positions of
15 improving their lives and improving their
16 communities, and for that conference, we invited EEOC
17 to speak. The head of OFCCP was present. They had a
18 long conversation, this is how these work, and
19 subsequent to that, OFCCP began working on this
20 directive which says that it might be unlawful -- and
21 I'm not a lawyer. So I apologize if I get this a
22 little off -- which says that it might be unlawful

1 discrimination for federal contractors to exclude
2 people with federal records and federal contractors
3 to examine their employment practices to make sure
4 they are not discriminatory, and I brought a copy of
5 it. It's hot off the press. Like I said, it came
6 out on January 29th. You can download it off our
7 website and look at it more closely. I only brought
8 one copy, but I'm happy to share it.

9 So, basically, we are really looking at every
10 level of what we can do to help these populations to
11 attain employment, get the credentialing that they
12 need. It's not just a conversation that's had solely
13 at the employment training and administration offices
14 or at OFCCP. It really is across the board.

15 You mentioned veterans earlier. We have
16 veterans employment training services. They,
17 themselves, have smaller grants. They're looking to
18 ensure that veterans were looking at this issue.
19 Unfortunately, some of our veterans come back. They
20 self-medicate. They get themselves in trouble. They
21 end up in the system. How do we help them
22 transition? Because they almost have like a double

1 transaction, not only from military to civilian
2 society, but now again from having gone into the
3 prison system, and also through our Office of
4 Disability and Employment Policy, for example, we
5 have hosted an HIV-AIDS conference, the issue of the
6 formerly incarcerated, how does it relate to HIV-AIDS
7 and what can we do if we look at the disability side
8 of things and the health aspects, how can we ensure
9 that folks are employed and employable.

10 So I will leave it there and look forward to
11 answering any questions. Thank you.

12 MR. JONES: Thank you, and thank you all.

13 Vicki.

14 MS. YOUNG: Thank you. Ms. Solomon, one
15 thing I'm not entirely clear on is the Reentry
16 Council or program that you described. Does that
17 encompass also HUD and Labor or is everybody doing --
18 addressing the issue, but in their own worlds versus
19 a convergence?

20 MS. SOLOMON: Yes. So the Reentry Council,
21 and I did -- there is a one-pager that was passed
22 out, and I just want to draw attention to it, because

1 on the back, it has links to all of the letters and
2 guidances and myth busters that have been mentioned
3 except for this new hot off the press one. So there
4 is access. All of these things, we're trying to make
5 very public.

6 So the Reentry Council includes 20 agencies,
7 including Labor and HUD are just central to that, but
8 also -- should I try and name them? HHS, Education,
9 Small Business, Veterans, OMB.

10 MS. LAWRENCE: USDA.

11 MS. SOLOMON: USDA. So we've got listed the
12 20 agencies. This cabinet-level group has come
13 together three times, and the next meeting is
14 scheduled for April 25th. So it's around the corner
15 for us. The staff-level group of not only each
16 agency, but many, many parts of each agency comes
17 together once a month as a whole. Plus each group
18 working on employment and housing and health and
19 benefits, all of these groups also meet on their own
20 with specialists from the group.

21 So our 20 agencies are working together not
22 only on a -- I would say on a many times a week kind

1 of level, and while each agency -- Justice is
2 certainly not directing what's going on, but we're
3 trying to provide a coordinating and motivating body
4 for all the agencies to see what all of their policy
5 and programmatic levers are to work so that we're
6 harnessing. We know that there's an early
7 recognition that this reentry population is not one
8 that's just dealt within prisons and jails, but we
9 also see the same group in the unemployment offices
10 and the one-stops and the housing authorities and the
11 emergency rooms in the VA Hospital and that we're
12 really trying to work with a lot of the same
13 population and families and communities.

14 So we really are trying to earnestly harness
15 what we've got and the levers we've got to work
16 together so that we can make more of an impact. So
17 it's a volunteer body, but with a lot of high-level
18 engagement and a lot career staff experts who are
19 working together to coordinate this work.

20 MS. YOUNG: All right. And then since you're
21 with the Department of Justice, and correct me if
22 hearing -- if I'm understanding it incorrectly, the

1 current focus is to review existing policies to see
2 whether or not some of the barriers to admission or
3 employment should be revised. Is that the current --

4 MS. SOLOMON: Yeah. So we are doing many,
5 many things for the Reentry Council. That's the one
6 that I thought that this group would be most
7 interested in, was doing this collateral consequences
8 review. So it's one of the things that the council
9 is doing right now.

10 MS. YOUNG: All right. And then as part of
11 that, the Reentry Council started in 2011?

12 MS. SOLOMON: Yes.

13 MS. YOUNG: And do you have a timeframe or is
14 it, you know, your mission statement is to go for a
15 certain period of time?

16 MS. SOLOMON: We don't have a timeframe.
17 We're continuing -- you know, in the first term, I
18 think there was a lot of emphasis on identifying what
19 some of the levers or consequences or places we could
20 take action were. We developed a number of what we
21 call myth busters. These are one-pagers that try to
22 shed light on where there's already a reasonable

1 policy in place, but a lot of people don't know about
2 it, and so we've tried to do a lot of public
3 education through these myth busters and the letters
4 to shine light on these issues and the discretion the
5 agencies and communities have.

6 Right now, in second term, we really are
7 looking at the more ambiguous agenda that the Reentry
8 Council, the cabinet-level members, will actually
9 discuss at their next meeting. They do include some
10 changes that we'd like to see made that will help
11 this population and communities to be, we hope,
12 stronger and safer.

13 MS. YOUNG: All right. So this myth buster
14 seems to be handouts that you say, you know, educate.
15 Is the education directed to the agency themselves or
16 to the public and how is it disseminated?

17 MS. SOLOMON: So let me give you one example
18 and then I'll turn to Pamela to give a second example
19 in the housing arena.

20 One example is in the employment area -- I
21 know you're going to hear from Todd Cox today from
22 the EEOC, and they're an important part of the

1 Reentry Council, and the guidance that he'll talk
2 about around employment is captured in a myth buster,
3 and the Department of Labor in addition to this new
4 guidance has also -- they put out myth busters
5 drawing people to some of the incentives.

6 Again, I can turn to you if you want to talk
7 about federal bonding and work opportunity tax
8 credits, who employers know about this, who want to
9 get it out to employers and people who work with this
10 population and employers so they know about these
11 incentives, but also worked with the EEOC guidance
12 and made sure that all of the public workforce
13 systems know about.

14 So there was guidance that went out to all of
15 the one-stops, which are now called America's Work --

16 MS. LEMUS: America's Job Centers.

17 MS. SOLOMON: Job Centers.

18 We're really trying to educate the
19 stakeholders that work with this population and
20 employers or housing providers, etc., and the general
21 public and individuals so that they can have access
22 to what the policy is and point them to resources

1 that can be helpful. So we've tried to use them as
2 kind of simple tools to untangle a big web of federal
3 resources that we know are hard to navigate.

4 The issue that started this myth buster
5 series was the urban legend around public housing.
6 So let me just turn to Pamela on this piece.

7 MS. LAWRENCE: It was believed that if you
8 have any kind of conviction, you are no longer
9 eligible for housing, whether it's Public Housing
10 Section Multifamily or 811 or 202 for elderly or
11 disabled, if you have any conviction, just don't
12 apply. As a matter of fact, there were some
13 Department of Corrections reentry specialists
14 training ex-offenders on how to find housing and
15 informing them during those information sessions
16 don't even apply to public housing, you're not
17 eligible.

18 So that misinformation was the reason why the
19 myth buster was important to us. We needed to put
20 the facts on the street, what our federal
21 requirements are, and the fact that local housing
22 authorities, multifamily owners set their own

1 admissions and eviction criteria beyond those that
2 we've given.

3 So we've used the myth buster to take to
4 conferences, to public defender conferences, to
5 correctional conferences, to our social service
6 conferences, our support services conferences,
7 whatever conference, our NAHRO, which is our National
8 Association of Housing and Rental Organizations, to
9 any audience who will listen.

10 Most of -- all the information that's
11 produced out of Reentry Council is also housed on
12 National Reentry Resource Center website which we
13 reuse to uplift and share throughout our HUD website,
14 that this is a central place to get information not
15 only about what HUD is promoting, but also what the
16 other federal agencies are promoting.

17 MS. SOLOMON: Can I just say so we are trying
18 to -- we now have people we're encouraging. All this
19 information is public. So they can take it. We have
20 lots of stories of people taking these letters and
21 myth busters to their housing authorities and saying,
22 Look, this is the rule and this is what HUD says; and

1 just building on one other thing that Gabriela said,
2 is some of these, as we expand information to the
3 stakeholders about what's already in place, this new
4 office of OFCCP, the Contract Compliance Office, this
5 goes to 22 percent of the U.S. workforce. So the
6 group that's getting this information and held
7 accountable around it is a huge percentage of
8 employers and the workforce in this country.

9 So we really are trying to use information
10 and policy that's there and share in the way that we
11 hope will be influential around this area.

12 MS. LEMUS: That 22 percent is 22 percent of
13 all employees in the United States work in a
14 corporation or company that has federal contracts.
15 So that's where the federal contract compliance piece
16 kicks in.

17 MS. YOUNG: So going to the myth buster
18 regarding housing, because, quite frankly, you know,
19 once a year or fairly often, you're going to see a
20 story in the newspaper about someone no longer can --
21 is being evicted from public housing because a
22 relative who came back. It was a drug deal or

1 something like that, and everybody else is now on the
2 street, and I think you've seen the story a number of
3 times.

4 And if I'm hearing you correctly, are you
5 saying that HUD's specific regulations may be more
6 inclusive than what the local housing authority has
7 in place or less inclusive?

8 MS. LAWRENCE: It's more inclusive. Local
9 admissions criteria tends to be more restrictive than
10 what our federal regulations and statutes call for,
11 and that's the local discretion option that's in our
12 federal regulations. For example, you can -- you
13 don't have to evict an entire family for the act of
14 one individual.

15 You can remove that one individual from the
16 household and retain the others who were not involved
17 in criminal activity according to our regulations;
18 whereas, in some of the local admissions, they may
19 have an eviction of entire family for fear that that
20 individual may still come back and live there and
21 just be off the record, and I think that we don't
22 want to be naive in this process of looking at our

1 HUD regulations. We know already that there a number
2 of individuals that are living in public housing,
3 Section 8 vouchers and other subsidized units, that
4 are not on the lease. They can't get on the lease
5 because the local criteria disallows them, and in
6 some cases, they're even in violation of our federal
7 regulations, the two lifetime bans.

8 So we know that is happening. What we are
9 promoting to our housing authorities who are very
10 fearful of becoming the dumping grounds, if you will,
11 is that we're working with our other federal partners
12 to create a system of support that allows that
13 ex-offender to successfully transition. That's why
14 employment, education, mental health services are
15 paramount to our movement. We cannot talk housing
16 without those other resources because they'll need to
17 transition to employment so that they can then pay
18 rent and then be an asset to that family unit and to
19 the community.

20 MS. YOUNG: So if, in fact, someone may fall
21 within the HUD requirements, but not the local ones,
22 is there a procedure that one can apply for a waiver

1 or anything to the local authority to still be
2 allowed to stay in that unit or not?

3 MS. LAWRENCE: So every housing authority has
4 an appeal process. So let me restate: There's the
5 federal regulations that have the two lifetime bans
6 and the three-year prohibition for those who have
7 drug-related offenses with the opportunity to
8 mitigate with evidence.

9 From that, there's local admissions that
10 might be more restrictive. They might say in
11 addition to those two federal bans, we are not going
12 to allow any felons. So that makes it more
13 restrictive, and if they are denied, then they can
14 appeal and provide information that might mitigate
15 that decision, meaning I've been out of the
16 Department of Corrections, I'm working, earning, no
17 other criminal offenses for 10 years; I'm no longer a
18 health-safety potential risk to the community; please
19 reconsider.

20 It's that opportunity that they might then be
21 allowed to either reunite with the family or secure
22 their own individual lease. If they don't do that,

1 they could then complain to our field offices, and
2 that's why our field reentry points of contact are
3 important, so that they can then be informed about
4 how they can negotiate with their housing authorities
5 and support the transition of ex-offenders into
6 families or into those units where there's no risk.

7 MS. YOUNG: Is that where you're saying maybe
8 that they're trying to also provide some sort of
9 legal assistance for people trying to do the
10 challenge or was that in a different agency?

11 MS. LAWRENCE: That was in a different
12 agency, but we do have a Fair Housing Office that
13 does receive complaints and will investigate and then
14 advise the housing authority if they've been in
15 violation of any of our regulations or statutes and
16 also to give them further guidance on how they might
17 better manage those kinds of circumstances to ensure
18 consistency, because that tends to be more the issue
19 at the local level, that one management might say yes
20 and another management is in another side of town may
21 say no. So they are more so looking at whether or
22 not they're consistent in the implementation of their

1 own admissions and eviction criteria.

2 MS. YOUNG: And just one question, and I'm
3 not sure who it actually goes to, but in considering
4 collateral consequences to the conviction and you're
5 talking about reentry, is this council considering at
6 all addressing the fact of the conviction itself?

7 You're saying, Well, we're saying maybe, you know,
8 there's a lookback period of five years or ten years,
9 but you're within the Department of Justice.

10 Are you examining at all whether or not there
11 are expungement procedures, pardon, any way of
12 vacating those convictions? Is that something your
13 council is addressing or that's outside the purview?

14 MS. SOLOMON: If I understand your question
15 correctly, then it's not something that we're looking
16 at specifically.

17 Melanca, I don't know if there is any
18 addition.

19 MS. CLARK: I would agree with Amy at this
20 stage.

21 MS. YOUNG: So it's assuming the conviction?

22 MS. SOLOMON: Yes. Yes.

1 MR. JONES: Can I just have Melanca identify
2 herself for the record since we have the
3 stenographer.

4 MS. CLARK: Sure. I'm Melanca Clark from the
5 Access to Justice Initiative with the Department of
6 Justice.

7 MR. JONES: Thank you.

8 MS. LAWRENCE: So from a housing perspective,
9 some housing authorities admission criteria is based
10 on arrests and not conviction, not all, but some and,
11 unfortunately, we don't have a database that compiles
12 how many housing authorities have that particular
13 restriction, but we are looking at how we can better
14 manage that as a part of our collateral consequences
15 so that it's not based upon arrests.

16 We're also challenged with the fact that many
17 of our owners are private owners and they utilize
18 databases that are not always up to date when they're
19 doing the criminal history checks, and if there is an
20 expungement or if there is, you know, no procedure
21 filed past the point of arrest and cases were
22 dropped, they do not have all that information, and

1 so we are also looking at what sources are being
2 utilized to inform their housing decisions.

3 MS. YOUNG: Dr. Lemus, in discussing the
4 Department of Labor and the contract compliance and
5 the grantees that you're discussing, the grantees
6 themselves are sort of the service providers on the
7 ground level for training. Is that what I'm hearing
8 correctly?

9 MS. LEMUS: That's correct, and they compete
10 for grants.

11 MS. YOUNG: And one thing I'm having a hard
12 time learning about as we're going and speaking to
13 different groups is you're funding the trainer and
14 the trainers say we need certification, we need this.
15 How much information do you have from the business
16 community, the employers that actually validate if
17 they have this certification, that really will lead
18 to employment?

19 MS. LEMUS: That's a very good question, and
20 this is the tricky part for the grantee, because the
21 grantee has to be able at the end of the process, in
22 theory is supposed to tie -- and this is on all of

1 our programs -- get that person into employment, not
2 just receive the credentialing and the training; but
3 this is why we have -- the programs are supposed to
4 work with the employers while they're in the process,
5 almost like apprentice programs in some cases where
6 they move forward, and many times, they do hire on
7 the folks that they're actually training and for
8 which the credentials are being received.

9 It's not a perfect system. It doesn't -- you
10 know, it varies, I think, region by region. A lot of
11 it is locally driven, and in some of the --
12 especially some of the more harder hit areas by the
13 recession where unemployment overall has really not
14 been a good situation, some of the inner cities, for
15 example, it's a little bit harder to make those
16 connects, but the goal is that the training and the
17 credentialing lead to ultimate employment.

18 MS. SOLOMON: If I can just add that through
19 the Reentry Council process, we have definitely
20 identified training and technical assistance and
21 information sharing around -- towards employers and
22 the workforce development community that works with

1 this population about all of these tools and
2 incentives and guidances, because we're finding that
3 there is, you know, just a big disconnect between
4 understanding what the rules are around this and,
5 again, what the incentives are around this and their
6 reality.

7 So I'm looking, again, at Melanca who's
8 chairing the employment barrier working group, and
9 there's just a lot of work that between Labor and
10 Justice and EEOC and others and all of our technical
11 providers, we're talking about ways that we can
12 really do some targeted outreach to the employers.

13 MS. LEMUS: And the employers are very much a
14 part of our constituency group as well. We have
15 regular meetings at the local level between our RExO
16 managers and employers in the local area, but
17 additionally, you were talking about incentives and
18 you mentioned the myth busters. I wanted to mention,
19 for example, one of the incentives, which is the
20 federal bonding program which goes back to 1966,
21 which I didn't realize it was that old, but it's an
22 employer job hire incentive that guarantees job

1 honesty of at-risk job seekers. Federal financing of
2 fidelity bond insurance issued free of charge to
3 employers enables the delivery of bonding services as
4 a unique job placement tool to assist ex-offenders
5 and other at-risk hard-to-place job applicants,
6 such as recovering drug abusers, for example.

7 And, essentially, these folks are bondable.
8 It's not a very widely known program, but what I can
9 tell you from what we've seen is those folks who do
10 engage in that bonding program, they have -- I think
11 it's a very high rate of success, something in the 90
12 percentile or close to it so that, you know, if the
13 employer sees -- they take them on this bonding
14 program and then they see this is successful, this
15 person is honest, etc., and they feel more
16 comfortable, and then they begin hiring these folks.

17 MS. YOUNG: And what kind of companies -- is
18 it private -- are eligible for the bonding program?

19 MS. LEMUS: Let me check since I opened up
20 that can of worms.

21 Okay. It is any -- okay. So it's not for
22 self-employed, obviously. I'm looking. I'm sorry.

1 I apologize. I'm not an expert on this part.

2 It seems to be open to any employer. Here,
3 it says, Who's eligible for bonding services? Any
4 at-risk job applicant is eligible for bonding
5 services, including ex-offenders, recovering
6 substance abusers, welfare recipients, persons with
7 poor financial credit, etc.

8 The focus seems to be on the workers, not so
9 much on the employers. Bond insurance ranges from
10 5,000 to 25,000 in coverage for a six-month period,
11 no deductible amount. Employer gets a hundred
12 percent insurance coverage. When this bond coverage
13 expires, continued bond coverage can be purchased
14 from Travelers Insurance Company by the employer.

15 There doesn't appear to be any limitations.
16 It does seem that there is a number States and local
17 municipalities that have also engaged in it.

18 MS. SOLOMON: As I understand it too, you
19 know, it's only going to be very high-risk people who
20 are bonded and only one percent, I think, is -- one
21 percent have actually had to be used, and so it
22 speaks to, again, in the employer education basket.

1 There's a perception that liability is high for
2 hiring people with a record, and the reality is not
3 borne out. So that's one of the areas that we want
4 to do some educating.

5 MS. YOUNG: We heard yesterday that D.C. just
6 passed some sort of limiting liability if, in fact,
7 ex-offenders are hired, and you're saying that that
8 also could have been covered under the bonding
9 scenario?

10 MS. SOLOMON: It's different than the
11 liability coverage, but this bonding is some
12 financial protection.

13 MS. YOUNG: Okay. Thank you.

14 MR. JONES: We've been joined by Lisa Wayne,
15 NACDL's immediate past president. So we're happy to
16 have her here.

17 Elissa.

18 MS. HEINRICHES: I have a question regarding
19 the bonding process. Are there exclusions for
20 individuals that have convictions records that
21 include sex offenses?

22 MS. LEMUS: I'm going to have to get back to

1 you on that. It doesn't appear to be in my talking
2 points.

3 MS. HEINRICHES: In your presentation, you
4 talked about, I guess, the population with sex
5 offense convictions as being -- I don't want to
6 mischaracterize what you said, but it was an area
7 that you acknowledged you weren't dealing with at
8 this point. Is that right?

9 MS. LEMUS: It appears not, at least in terms
10 of the grants and with the exception of prostitution.

11 MS. HEINRICHES: I guess I don't know if this
12 is a question or a proposal, but it seems that when
13 there are people who are on parole or probation for
14 sex offenses, they often have to participate in --
15 they have to participate in therapy, and within that
16 therapy, I've seen obstacles where I would
17 characterize as arbitrary decisions made by the
18 therapist about what type of employment would place
19 them at risk for re-offending, and I'm wondering if
20 there's a role that the Department of Labor could
21 play in perhaps working in a collaborative way with
22 the therapy community, other stakeholders in trying

1 to identify, I guess, employment areas that may be
2 inappropriate or identify those areas that have no
3 proven risk.

4 For instance, I had a client who couldn't
5 work in a car wash. He had charges of child
6 pornography, and he couldn't work in a car wash
7 because of the possibility that a child could be in a
8 car that drove through the car wash. There are other
9 examples of those who cannot work in residential
10 carpet cleaning because they could be in a home where
11 there are children.

12 So there are different levels, but I'm
13 wondering if they could be -- rather than have a
14 therapist say this could be a problem, is there's a
15 role that you can play in helping to identify actual
16 risks so that a population that is having an
17 extremely difficult time entering the labor force
18 could have an actual opportunity for employment?

19 MS. LEMUS: I think this is something that we
20 would look at through the Reentry Council, maybe
21 bringing together our folks from HHS and DOJ and our
22 DOL experts on employment. I mean, we have sort of

1 the converse issue where a number of folks with
2 health issues, their employers are trying to make
3 decisions about what kind of benefits they can -- you
4 know what kind of -- not benefits, but medical
5 therapies they can receive.

6 So I imagine we would be completely open to
7 at least sitting down and having that conversation.
8 We do have some limitations that are placed on us by
9 virtue of the actual parameters that the -- what do
10 they call them? The SGAs. That's the grant
11 applications -- that are sometimes placed, but I know
12 that the Assistant Secretary we have in place right
13 now, Jane Oates, she's always been open to listening
14 to folks like yourselves who are experts in the area
15 and sitting down and having those conversations and
16 seeing how we can adapt and innovate. That's how we
17 began in adapting and innovating a lot of our grants
18 processes.

19 So I'm sure we'd be open to it, but I think
20 it would be helpful to have someone with mental
21 expertise in place to also have that discussion with
22 us.

1 MS. SOLOMON: Just two quick notes to respond
2 to this too: I know sex offenses are always
3 different, but the principles that Todd is going to
4 talk about this afternoon are that what matters is
5 the nature of the conviction, when it occurred, and
6 how it relates to the job, usually the major EEOC
7 principles in their guidance, and we're thinking the
8 application of those are in all the labor guidances,
9 you know, other pieces that we're working on to have
10 some consistency, and so that piece of how the
11 specific offense relates to the specific job comes
12 into your question, and I don't think that sex
13 offenses are categorically excluded.

14 So that's one point. The second point is our
15 grants and Labor's grants used to often focus
16 specifically on low-risk population, certainly, no
17 sex offenses, no violent offenses, etc., because it
18 was thought to be that that was an easier group to
19 work with. Because the research really points us to
20 working with high-risk offenders because that's where
21 we're going to have -- make more of a difference in
22 their lives and future victimization, that's where a

1 lot of our grant dollars are going and certainly our
2 reentry grant dollars, and so I would just say that a
3 lot of our grants and Labor's grants and others are
4 focused now on targeting specifically people with
5 risks.

6 Again, sex offenses are always different, but
7 I just wanted to make that point because we think
8 that it's important and that's where we can make the
9 big difference with our dollars in this area.

10 MR. JONES: I don't see him, but I'm told
11 that Jerry Cox, NACDL's president-elect, is here.

12 MS. FRAZER: He just stepped out.

13 MR. JONES: See how that works? But we are
14 happy to have him as well.

15 Penny, do you have questions?

16 MS. STRONG: I do.

17 My name is Penelope Strong, and I do have a
18 couple of questions for Ms. Lawrence. I appreciate
19 your coming here, because I think next to employment,
20 housing is just one of the backbones of the
21 complements of the reentry system and other civil
22 rights; and the question I have is who decided the

1 policy that no sex offenders will be allowed in
2 HUD-based housing, if you know? If you don't know, I
3 guess I would redirect the question to Ms. Solomon.

4 Was that made at the departmental level?
5 Higher? Collaborative? Do you know what the source
6 of that decision was?

7 MS. LAWRENCE: Unfortunately, I don't, but I
8 say it is a decision that was made at the federal
9 level and I can certainly get you more information
10 about when it was done and what influenced that
11 decision.

12 MS. STRONG: And while you did begin your
13 presentation with the exclusions, and we understand
14 there's the two lifetime exclusions as well as the
15 more limited drug exclusion, is there any discussion
16 within HUD or within, if you will, the Reentry
17 Council in general at fine tuning the blanket
18 exclusion, if you will, of sex offenders, for
19 example, for folks who have very old convictions who
20 are actually elderly individuals who have convictions
21 that really are not in high-risk categories, if you
22 will? We have individuals where we have, if you

1 will, what we used to call statutory rape offenses or
2 consensual sex really within their peer group,
3 because with the nationalization, if you will, of the
4 registration requirements for SARS with Adam Walsh, I
5 guess our question as a group very keenly interested
6 in reentry is is there a national effort to assist
7 sex offenders on other end, in particular with
8 housing? Because we're hearing some pretty grim
9 stories in the press of these folks being -- you
10 know, not even being able to live with the families
11 and their own children, maybe in homes that they
12 actually own, which I believe I understand to be
13 beyond the reach of HUD, but certainly is something
14 that we have noticed and we would like to know if
15 anyone within the Federal Government is even talking
16 about those particular issues and what can be done.

17 MS. LAWRENCE: HUD recognizes that housing is
18 a right and that no matter what the criminal offense,
19 everyone deserves and requires housing. This
20 particular work group that we've convened internally
21 is not looking at the sexual offense and/or the
22 methamphetamine specific lifetime bans for a reason.

1 One, another group of individuals internally are
2 addressing it, speaking with housing advocates,
3 looking at opportunities to influence the private
4 market to be more readily acceptive and provide
5 housing.

6 I know nothing more from that point, but you
7 can imagine that if we did take on those two
8 particular issues, everything else would probably not
9 be considered, and so in an effort to move forward on
10 other offender issues and housing issues for other
11 felons and misdemeanors, we've elected not to address
12 those while the other side of the house in HUD is
13 addressing those.

14 But I can, again, get you more information
15 and a point of contact if you'd like to have more
16 information about where that conversation is and what
17 direction it might be going in.

18 MS. SOLOMON: If I can make one point, and
19 Pamela can make sure that I'm right here, but if I
20 understand your question, you're asking about the
21 blanket -- the blanket against -- ban against people
22 with sex offenses, and it's not that broad. It's

1 just for people with a lifetime registration on the
2 sex offender list.

3 So people with a sex offense in their past,
4 even a conviction, if they're not on that lifetime
5 registration list, then they're not banned by this
6 exclusion. Correct?

7 MS. LAWRENCE: That's correct.

8 MS. STRONG: Thank you. I appreciate your
9 response.

10 MR. JONES: Chris.

11 MR. WELLBORN: What I would like to address,
12 first of all, is in the Reentry Council, as you
13 indicated, that one of the major drives is to
14 identify and address federal bars. Has there been
15 any discussion about the idea of at the point of
16 conviction or the point of sentencing, a federal
17 judge having the authority, a district judge having
18 the authority, to waive certain bars?

19 And the reason I mention that is that was
20 addressed by a federal judge when we had our hearings
21 in Cleveland, that if given such authority, in
22 certain cases, he would welcome that opportunity,

1 such as Section 8 bars for certain federal offenses.

2 And following up on Penny's question, being
3 able for a judge who is at the point of sentencing to
4 say, Hey, look, I've got an 89-year-old person in a
5 wheelchair who downloaded Live Wire and has been
6 living by themselves and why should we have this
7 person suddenly homeless; it doesn't make any sense.

8 So has there been any discussion about giving
9 judges that authority, and if -- or is that something
10 that your office might consider?

11 MS. SOLOMON: So there hasn't been that
12 discussion. The Reentry Council is just the
13 Executive Branch representatives; however, that is a
14 fascinating idea, and we also, not through the
15 Reentry Council, but the Justice Department also is
16 working with meeting with other federal criminal
17 justice agencies on a separate track to talk about
18 coordination in the federal system, including the
19 judiciary.

20 So my suggestion is if there's a way to
21 communicate that with us, that we can pass that along
22 as something to put on the table. I think that's

1 interesting and there's another place, you know,
2 where that conversation may fit.

3 MR. WELLBORN: Well, I mean, not to sound all
4 cavalier, but this is the communication.

5 MS. SOLOMON: Okay. Got it. Let me put it
6 this way: I would like to learn a little bit more
7 about what that judge said.

8 MR. WELLBORN: All right.

9 MR. JONES: Margi.

10 MS. LOVE: Hi, Amy, in particular, who I've
11 know for a long time, though all of you.

12 This evil inventory, Amy, that you supported
13 has given me some degree of -- I don't know what to
14 call it, but I'm just sort of looking through some of
15 the federal laws. My interest is, as you well know,
16 not so much with reentry type of issues. It's sort
17 with the larger scheme of things.

18 I represent people who may have been
19 convicted 20 years ago, 25 years ago, who are still
20 subject to various restrictions and
21 disqualifications. I was just looking at the
22 contracting area. Sixty-five collateral consequences

1 limit people in federal contracting in one way or
2 another, and I hope that the review of collateral
3 consequences is covering areas that are as broad, and
4 I'm wondering, for example, restrictions that apply
5 to contractors, are those within your review for
6 sensibleness or whatever standard that you're
7 applying?

8 Maybe I ought to speak to Dr. Lemus on that,
9 because that's sort of your bailiwick.

10 MS. LEMUS: To be honest --

11 MS. SOLOMON: I can say, generally, that yes,
12 they are under our review, and even though we're
13 talking about this through a reentry frame, the
14 collateral consequences issue and so many others that
15 we're talking about are really about people with a
16 criminal conviction or sometimes even just an arrest,
17 which we know is a much broader lens.

18 So I would say, generally, those are within
19 the frame that are being considered.

20 MS. LOVE: Is the Defense Department involved
21 in the -- because defense contracting is a huge area.

22 MS. SOLOMON: It's not. There are certain

1 areas that as people -- you know, in addition to
2 looking at the inventory, we look at reports like
3 your internal exile and other recommendations that
4 interest groups and stakeholders share with us, and
5 sometimes -- two of them were just brought to light
6 to us by agencies that are not part of the Reentry
7 Council. So we're separately looking at those regs
8 and reaching out to them, and we could do the same in
9 the case of defense. We haven't, but we could.

10 MS. LOVE: Yeah. Well, I guess I'd like to
11 make that recommendation, because defense contracting
12 is a tremendous large segment of the economy, and
13 there are laws in place, as there appear to be, and
14 regulations which are a little bit more under the
15 control of the Executive Branch, obviously, than bar
16 people with convictions from various programs, it
17 might be a good idea to -- my experience with the
18 Defense Department is that they're pretty creative in
19 being able to get around these bars. They want to
20 deal with the people that can provide them with
21 whatever it is, and a lot of times, those people have
22 criminal records. So they usually get around it, but

1 it's pretty daunting, at least, to see the array of
2 exclusions.

3 I want to also -- I was interested in
4 Dr. Lemus' mention of the support of the expungement.

5 MS. LEMUS: For the youth.

6 MS. LOVE: It's not clear to me whether you
7 all are encouraging States to develop expungement
8 programs or have an idea of what you mean by
9 expungement, which it's not clear to me whether that
10 word has a single meaning, and it doesn't appear,
11 actually, as a wide-ranging concept.

12 Is there a federal effort to encourage States
13 to develop some sort of ceiling or expungement
14 approach to juvenile records?

15 MS. LEMUS: Well, I don't know that we have
16 it at the DOL. I know that in our work, we encourage
17 that process to happen because it's clear to us that
18 when those records are in place, the youth, the
19 juveniles have a much harder time of moving forward
20 in their lives.

21 That's the extent of what I have. What I can
22 do, though, is go back to ETA and see if they have

1 more specifics, but, I mean, it really relates to
2 employment and training. I don't know that it goes
3 any more broadly than that. I think that's really
4 something --

5 MS. SOLOMON: If it's okay for us to let
6 Melanca Clark back up there to speak --

7 MS. CLARK: I would just add, and this is
8 because access is -- okay.

9 I'll just add what I can. Because of the
10 legal services piece, ETA did consult a bit -- I'm
11 with the Access to Justice initiates. I'll share
12 what I can share.

13 Just to your point, Margi, from I understand,
14 the grant was looking at sort of existing protocols
15 throughout the States, but I think the intent is
16 actually to cover jurisdictions that do more than
17 what the narrow definition of expungement would be.

18 So, presumably, it would also cover
19 jurisdictions that have a ceiling process and even in
20 places like New York where there are certificates of
21 rehabilitation that people can get help with sort of
22 having that evidence of rehabilitation. So it may be

1 less narrow than it may sound just from the title as
2 it was being developed.

3 MS. LOVE: So when you say "cover", Melanca,
4 I guess what I'm interested in is whether there's a
5 federal effort to encourage jurisdictions to develop
6 relief provisions.

7 MS. SOLOMON: Not specifically.

8 MS. CLARK: Yeah. Not specifically.

9 MS. LOVE: Well, I think that might be very
10 helpful. I mean, that's the burden of our inquiry
11 here, is to find out what is going on around the
12 country by way of restoration mechanisms, second
13 chance mechanisms, ways to pay your debt to society,
14 all the different kinds of ways to formulate it.

15 So that's what we're looking into, and I
16 think it's obviously pretty important to give people
17 not just at the point that they hit the streets, but
18 five, seven, ten, "X", years later a way to put their
19 past behind them, and I really hope that you all will
20 turn to that.

21 And as a little correlative to that, the
22 whole area of federal offenders is one which seems to

1 be of particular interest to the Justice Department.
2 What is the Justice Department doing to develop the
3 restoration mechanism for people with federal
4 convictions?

5 Maybe this a little unfair to ask Amy, but
6 she probably knew I would anyway, because she's in
7 the OJP side, which is the good guys side of the
8 Justice Department which helps States do the right
9 thing, and then we have Maine, which I spent many
10 years in, including a few on the board. So I am well
11 aware of the difficulties.

12 But let me just ask you for the record, Amy,
13 are you aware of any effort in Justice to develop a
14 restoration mechanism for federal offenders?

15 MS. SOLOMON: I can't speak to that because
16 it is out of my area.

17 MS. LOVE: Could you find out?

18 MS. SOLOMON: I can take it back. I can pose
19 the questions. I can find out and get back to you,
20 sure.

21 MS. LAWRENCE: If I may also respond to the
22 expungement topic, we have no federal level policy

1 being proposed, but we do have some progressive
2 public housing authorities and other grant recipients
3 of Home 6 and Choice that are working toward
4 expungement. It's very difficult for our residents
5 to be rehoused in mixed-income communities because
6 the lease requirements tend to become more
7 restrictive when private owners are involved, and so
8 expungement has been one of the tactics used by our
9 progressive housing authorities to ensure their right
10 to return.

11 So we're looking at that model to role that
12 out to other housing authorities as they redevelop
13 their communities so that we don't see the low levels
14 of return to communities that have been revitalized.

15 MR. JONES: We are running up against the
16 clock. So I want to give Jenny an opportunity to
17 just ask one or two questions, and then we're going
18 to give you guys an opportunity to give us your final
19 thoughts.

20 MS. ROBERTS: Thank you. I just want to
21 clarify a couple of things on the record.

22 This, I think, is for Mr. Lawrence: On the

1 HUD regulation, I believe, that gives discretion to
2 the local PHAs to -- let me see. I've got the
3 language right here -- that allows them to prohibit
4 admission to a household member based on any criminal
5 activity that may threaten the health, safety, or
6 right to peaceful enjoyment of the premises, I had a
7 question about that.

8 So you've been speaking about the balance
9 between the need for local discretion in the PHAs,
10 but also encouraging them to use that wisely. If we
11 wanted local PHAs to be more inclusive in their
12 policies, is that the regulation that needs to be
13 perhaps changed? Is there any discussion about that,
14 or would something have to be done at the federal
15 legislative level?

16 MS. LAWRENCE: So it certainly is part of our
17 discussions and we're looking at potential guidance
18 that can direct our PHAs and our multiple family
19 owners and agents so we can have the broadest
20 picture, that it's more than just public housing
21 authorities. It's the project-based Section 8 units
22 as well that they would then look at the nature of

1 the conviction, look at how long ago that conviction
2 actually occurred and whether or not there is some
3 reason it would influence their ability not to
4 maintain a lease or create safety and health within
5 that particular community.

6 So guidance to those decisionmakers is what
7 we're proposing at this point, but it has not yet
8 been fully developed or approved. The group is just
9 in the process of talking in the last two months when
10 it convened all the other sides of the house. Ron
11 Ashford and I have been involved for two years, and
12 some of them have only been involved for two months,
13 and so we've got a bit of a learning curve to bring
14 them up to speed on what some of the challenges are,
15 how large the issues might be, and what direction
16 might be in their best interest without sacrificing
17 some of the local discretion that is so much enjoyed
18 and also necessary because of economic conditions,
19 crime conditions, and other housing priorities that
20 might exist in those communities.

21 MS. ROBERTS: Thank you. I guess one more
22 question while I'm with you.

1 MS. LAWRENCE: Okay.

2 MS. ROBERTS: Then I'll ask the corollary
3 question.

4 If California came to you and said every
5 person in California who's on the sex offender
6 registry is on the lifetime sex offender registry,
7 which is true, and that includes people convicted of
8 public urination -- we've had testimony about this --
9 if they came to you and said this is a public safety
10 problem, can we do something about this, would that
11 require, again, federal legislative action? Is that
12 something that HUD is discussing at this date,
13 starting to come back specifically on the sex
14 offender issue where there has been a lot of movement
15 around public safety?

16 MS. LAWRENCE: So our work group is not
17 specifically addressing that particular aspect of our
18 regs. There is yet another set of folk that have
19 been addressing it with stakeholders, but if I can
20 broaden that from just that particular circumstance,
21 we're looking at how we can better define what is an
22 appropriate consideration, what kinds of crime, the

1 length of crime, the nature of that crime, and trying
2 to influence our regulations and our statutes on a
3 broad base, but not that specific regulation.

4 MS. ROBERTS: Thank you. Probably this
5 should be my last question, Rick tells me.

6 I can't remember if it was Ms. Solomon or
7 Dr. Lemus who raised the issue of funds for legal
8 services. Actually, it was to get past housing
9 barriers, but I don't think Ms. Lawrence mentioned
10 it.

11 Can somebody speak a little bit more about --
12 I believe they were grants to develop legal services,
13 and I ask this from the perspective of how they
14 represented people in the housing cases based on
15 criminal convictions where legal representation can
16 make an enormous difference. So I want to just hear
17 a little bit more about that.

18 MS. FRAZER: We need to change the tape
19 because we're going to run out of tape. So let's do
20 that and have some deep thought about that question.

21 [Pause to change the videotape.]

22 MR. JONES: All right.

1 MS. ROBERTS: Did you get the question?

2 MS. SOLOMON: The short answer is that our
3 reentry grants are second chance grants, which have
4 been 300 million over the last three fiscal years.
5 The Department of Labor's RExO grant, a subset of the
6 VA grants, those grants now can be used for legal
7 services to do any number as well as the other
8 services that can provide treatment, job training,
9 community supervision, etc.

10 So it's now expanded explicitly to say
11 grantees can use these funds for legal services.

12 Is that about right Melanca?

13 MS. CLARK: Yeah, and in many instances, I
14 mean, the purpose of the language in these new grants
15 is to advance the purpose of that grant. So in many
16 instances, it won't be that the legal service
17 provider will be the primary grantee, but that the
18 grantees themselves can subcontract or subgrant to
19 legal service providers to help them to achieve the
20 goals.

21 MR. JONES: Do you have something else?

22 MS. ROBERTS: I think Margi had one more.

1 MR. JONES: Real short, one question.

2 MS. LOVE: All right. Yesterday, we heard
3 from Judy Conti of the National Employment Law
4 Project on the laws that were passed in the wake of
5 9-11 governing the transportation industry, which
6 seemed to be pretty enlightened. The unions were
7 very much involved in negotiating those regs.

8 I was wondering if you all had considered
9 adopting the approach in the Patriot Act, in the
10 Maritime Security Act, laws governing HAZMAT
11 endorsements in other types of federal program so
12 that only certain convictions are disqualifying.
13 Have you all looked at those?

14 MS. SOLOMON: I can say we've certainly
15 looked at them and NELP has done a really good job of
16 sharing case studies and others. So they've
17 certainly been shared and discussed.

18 I'll leave it at that for now. They're good
19 models.

20 MR. JONES: We are, unfortunately, out of
21 time, and as you can see, we could carry this
22 discussion on for some time, but this has been

1 fantastic for us and we've really gotten a lot out of
2 it. We appreciate your time and your coming here and
3 sharing with us.

4 Thank you, and you're welcome to stick around
5 for the other panels. Thank you very much.

We're going to take, I guess it's about a
13-minute break now and reconvene at 10:45.

8 [Recess.]

PANEL 2

10 MR. JONES: All right. I think we are ready
11 to reconvene.

12 Welcome. We are happy to have you and
13 excited to engage you guys in the discussion about
14 some of the wonderful work that you've done and the
15 wonderful work that you're continuing to do.

16 As you know, we have been going around the
17 country on a listening tour, taking testimony from
18 folks, and so far, this is the start of Day 2 for us
19 in D.C. and it's already been an incredible learning
20 experience for us.

21 The way that we run these sessions is to give
22 you guys each five or ten minutes to give us sort of

1 an introduction to who you are and the benefit of
2 your thoughts, and then we've got lots of questions,
3 and the way that we do the questioning is that one of
4 us leads the discussion, and then to the extent that
5 there's time -- and there never really is enough
6 time. We always sort run out at the end -- the rest
7 of us will have an opportunity to question as well.

8 For purposes of this discussion, Chris
9 Wellborn is going to lead the conversation, and at
10 this point, I'm going to stop talking and I'm going
11 to turn it over to you, and the floor is yours.

12 GOVERNOR EHRLICH: Well, it's a pleasure to
13 be here. I've brought Greg Massoni, my former press
14 secretary who actually acts as my present press
15 secretary as well. Greg is here with me at King &
16 Spaulding as a non-lawyer consultant lobbyist and one
17 of my great friends and someone who has been in on
18 all of my initiatives from Ground Zero, including
19 clemency. I'll get to that in a second.

20 I don't have to repeat the numbers with
21 regard to the state of criminal justice in our
22 country to anyone in this room. Suffice to say that

1 leaving Congress, looking to run for Governor, I had
2 always assumed as a student of history that pardon
3 power, clemency, criminal justice reform is simply a
4 part of the job description; it simply was what
5 Governors did.

6 Now, interestingly, I'm a Republican --
7 guilty -- in Maryland. I'm here representing all
8 living Maryland Republican Governors, by the way. My
9 progressive colleagues or predecessors as Governor
10 had little or no interest in clemency. In fact, my
11 immediate predecessor, Governor Glendening, has
12 famously said my clemency is life means life and end
13 of discussion, which meant that we had literally no
14 act to follow in assuming office in 2003.

15 So long story short, I knew certain things
16 coming from State legislature, coming from Congress
17 and becoming Governor, which was we had to create a
18 normal process. All of you know the media hates to
19 be surprised. Reporters who follow you on a daily
20 basis do not like surprises, and to the extent they
21 are surprised, they will exact a toll in the daily
22 papers, and that's where Greg came in as well.

1 So I knew we had to normalize the process in
2 the State of Maryland. We did begin a process. I
3 set some ground rules, some guidelines. We only took
4 referrals from the Maryland Parole Commission. I had
5 five lawyers, direct reports to me, in the Office of
6 Counsel, Governor's Counsel. I fully had two and a
7 half of those folks on a daily basis devoted to this
8 project, to clemency, to commutations and pardons.

9 We got a little bit of a break because of my
10 past activities in Maryland legislature, my
11 sponsorship to certain bills that victims rights
12 organizations, particularly the major victims right
13 organization in our State, did not oppose my
14 initiative. That could have been problematic for us,
15 but again, it's all politics. It's personal
16 relationships, and that did not occur and that was
17 certainly helpful.

18 We established a process, as I said, of
19 monthly meetings. I would be presented with 30 to 40
20 petitions a month. Some, we would dispose of
21 immediately. Some, obviously, took longer. As you
22 can imagine, that ran the gamut from the bar fight at

1 17 and now the person was 48 years old and needed a
2 clearance to work at NSA, easy cases, all the way up
3 to lifer cases, all the way up to 25, no parole,
4 daytime housebreakers and the like.

5 We knew that communication was an essential
6 element if we were going to be successful, and that's
7 where Greg came in as well. Again, going back to the
8 press, I wanted to establish a process wherein they
9 knew we were in monthly meetings. They knew that
10 this was going to be a regular thing that I did, that
11 I believed in it, and so the situation that many
12 Governors, particularly -- and Margi has lived this
13 -- or Presidents fall into where they'll just wait to
14 do a whole lot of pardons at the end of the term.
15 The press is not acclimated to it. Some will be
16 controversial.

17 We've seen this happen with Governor Barber,
18 for example, a few months ago, bad result always,
19 voluminous pardons with very little notice at the end
20 of term, typically end up in really bad stories and
21 tend to tarnish your legacy as an executive as well.

22 Like everything else, as Governor or in life,

1 if everything is a priority, nothing is a priority.
2 As I say, I devoted half of my resources in my legal
3 office to this project.

4 Interestingly and not surprising to anybody
5 in this room, some of these cold cases, these lifer
6 cases we revisited were exactly welcomed when the
7 call from my office to the former prosecutor or the
8 judge or the public defender with regard to a case
9 that was 20 years old, closed, but didn't smell right
10 to me; and probably we see some of that with regard
11 to the broken nature of the Pardons Office today, in
12 fact, at DOJ.

13 So we relied on my common sense, our common
14 sense. We would have monthly meetings. We would
15 vote, but it was really not a democracy. My vote was
16 the only one that counted, but in close cases and
17 difficult cases and cases I knew would generate some
18 media attention, usually negative media attention, I
19 wanted certainly to get the feel for what my staff
20 thought.

21 Interestingly to some, I had certain markers.
22 My one marker was veracity. As you would expect, if

1 it was someone I thought was lying to us, that was
2 the end of that. With regard to pardons,
3 particularly for folks who were out many years or
4 minor offenses, if they were in arrears with regard
5 to their child support, I would not grant relief. It
6 was just my hot button. If you need extraordinary
7 relief from the Governor, you're going to take care
8 of your kids, and everybody knew it.

9 A couple of observations and then I'll turn
10 it over to Greg: Interesting dilemma for the folks
11 in this room as you try to educate and lobby and
12 become advocates for more of these activities across
13 the States and the Federal Government, politically,
14 it's basically a loser. The left gives you very
15 little credit. It's never been a priority of the
16 right. It's simply a function of doing justice.
17 It's simply a function of doing the right thing, and
18 if you think they're going to have a parade for you
19 and everybody's going to thank you outside of the
20 immediate family, you have another notion coming.

21 So your political courage quotient will
22 certainly be tested, particularly in more difficult

1 cases, no doubt about it. We did not keep score. I
2 wasn't interested in race, ethnicity, income, sex.
3 We just did what we thought was right and we took the
4 cases as they came across my desk.

5 Because of Margi, particularly, writing nice
6 things about me over the years, my activism here has
7 become even stronger post public office, and as a
8 result of a lot of conversations over the last couple
9 of years, I gave notice, I guess, six to eight months
10 ago that I was interested in starting a partnership
11 at a local law school with regard to clemency and not
12 just in an advocacy role, by the way, but also a
13 clinical experience where law students would
14 entertain applications and the like.

15 After a lot of discussions, a lot of
16 negotiation, I announced last week that we would have
17 this partnership at Catholic University at Columbus.
18 We were at the National Press Club yesterday, in
19 fact, formalizing this as well. So I'm pretty
20 excited about this.

21 There are basically three elements with
22 regard to this program, one, advocacy. We're going

1 to have some major speakers. Bobby Scott from
2 Virginia was there yesterday. Ed Meese was there
3 yesterday and the Attorney General was terrific. I
4 think Margi would attest to that.

5 There is a clinical experience here, as I
6 said, and a training experience, and the training
7 experience will be hopefully new Governors,
8 newly-elected Governors or new-elected chiefs of
9 staff coming to Catholic for seminars for a little
10 introduction into how important this is and what the
11 criminal justice system looks like in his or her
12 State and maybe you should make this a priority
13 coming into office.

14 So with that, I've gone on a little bit too
15 long. I'll turn it over to Greg who had an
16 interesting job with regard to this process,
17 including the statutory requirement in Maryland that
18 my decisions be published in the newspapers, which he
19 hated it because it made our erstwhile friends, in
20 quotes, in the media, gave them a lot of meat and
21 potatoes if they want to come after me.

22 Greg.

1 MR. MASSONI: Thank you.

2 Thank you for having us. Let me just tell

3 you a little bit about myself. I'm a consultant

4 today for the Government Practice Group at King &

5 Spaulding, and in 2003 to 2007, I was press secretary

6 to who I consider to be the best Governor in the

7 United States.

8 GOVERNOR EHRLICH: I pay him to say that.

9 MR. MASSONI: I didn't attend the best of

10 schools. I'm not proud of that. I grew up in a blue

11 collar neighborhood in Baltimore called Dundalk, and

12 we were very poor. I didn't commit crimes and didn't

13 get in trouble and I didn't take drugs.

14 Let me fast forward to 2002 when my best

15 friend became the sixtieth Governor of Maryland, was

16 elected then. Candidate Ehrlich campaigned on

17 pardons and commutations, and I would sit and listen

18 to many of his speeches and wonder who's he appealing

19 -- who does that appeal to. Governor Ehrlich made it

20 a priority in his administration. He put a system in

21 place. You had to submit your application to the

22 Parole Board. We had monthly meetings, as he stated,

1 dedicated half of his legal staff to this project,
2 but there were other things that were all combined in
3 his whole approach to this.

4 We had a program called RESTART, which was
5 Reentry Enforcement Services Targeting Addiction,
6 Rehabilitation, and Treatment. We'd educate, use
7 drug treatment, mental health, and job training for
8 those behind bars for their reentry.

9 He was also tough on crime. There was
10 Project Exile. If you committed a crime with a gun,
11 you were going to pay a higher price. His judicial
12 picks, he would interview every one of them
13 personally. So it was a well rounded way to get
14 where he was.

15 My naivete all thought that this would all be
16 very well received, and we got zero support, as the
17 Governor mentioned. Whether you live on the left or
18 on the right, no one was supportive of these
19 decisions.

20 To complicate matters, as the Governor
21 mentioned, once he made his decisions to grant
22 pardons and commutations, we had to advertise those

1 for two weeks in a major paper. The major paper in
2 Baltimore, obviously, is "The Baltimore Sun". They
3 sued us, you might recall. They were the very paper
4 that it made it their duty, their job, to hate our
5 administration, and it was death by a thousand cuts.

6 So we would put these advertisements in. Was
7 there a political favor? Did someone ask him to help
8 pardon? Was it someone who was well connected? Was
9 it someone who donated to his campaign? Was it to
10 please some constituency? It was never was it the
11 right thing to do, was it justice.

12 What if someone couldn't adjust once they
13 were given that pardon or that commutation? What if
14 they committed another crime? You know, Republican
15 Governors only get elected in Maryland every 40 or so
16 years. So this was not an easy decision.

17 When questioned by me, his response was this
18 is justice, this is the right thing to do.

19 Since working to make this partnership at
20 Catholic University, I've not done a 360 here, but
21 I've come around to the fact that the last perfect
22 person on this Earth lived 2,000 years ago and we

1 jail way too many people in this country. So we need
2 executives like this guy and we need people to step
3 up.

4 My favorite definition of integrity is doing
5 the right thing when no one is watching. I think
6 what we should add to that where this is concerned is
7 doing the right thing when everyone is watching.

8 MR. JONES: Thank you very much, both of you.
9 Chris.

10 MR. WELLBORN: Thank you. Governor, I want
11 to start with the quote from you, which was political
12 loser, and the reason I'm starting with that quote is
13 there are two facets that I would like to address
14 coming from that comment. One is -- and I'll address
15 them in order. One is building allies to make it
16 politically or potentially less a loser and the other
17 is how to take the politics out of it altogether.

18 So what I'll do is how to take the politics
19 out of it altogether, which it seems to me that if we
20 do a national review of Governors and legislators and
21 various other chief executives of municipalities,
22 whoever they may be, not everyone does something

1 because it's the right thing to do. We know there
2 are politically weak chief executives out there.
3 There are chief executives that are going to feel
4 very susceptible and vulnerable to not making any
5 waves and just not do something because it's the
6 right thing to do, because, golly, gee, I'm not going
7 to get re-elected.

8 So the first question is although you were
9 willing to take a bull by the horns in Maryland and
10 do this because it was the right thing to do, is the
11 concept of taking clemency and some of these other
12 avenues towards restoration, the idea of perhaps
13 taking the politics out of it by simply removing from
14 the chief executive's hands and putting it in the
15 hands of the courts a possibility that --

16 GOVERNOR EHRLICH: Well, that's not going
17 de-politicize it, putting it in the hands of the
18 courts.

19 MR. WELLBORN: Well, that's my question.
20 That's my question.

21 GOVERNOR EHRLICH: I think we were able to
22 de-politicize it at the very beginning of the process

1 by stating a policy which read we will only take
2 referrals from the Parole Commission. So you had
3 that first level and no bypass. So everybody knew
4 that's where they had to begin. They couldn't come
5 right to me, whether it was a supporter or whoever it
6 happened to be.

7 So I think that really sets a very strong
8 structure, and when you do this, you have to set a
9 structure. One of the reasons I think the federal
10 process is so broken, the structure has fallen down.
11 Obviously, as a former Governor and someone who
12 appreciates the executive power, I would not want to
13 see this sort of turned on its head.

14 This has been traditionally a prerogative of
15 the chief executive. Any reading of American history
16 -- we just saw "Lincoln" the other night and folks
17 were lining up outside his office to petition him
18 with regard to pardons.

19 Margi is the absolute expert with regard to
20 American history. The framers certainly had this and
21 stated as much in mind.

22 So particularly in a State like Maryland

1 where the executive enjoys a lot of power, it's
2 simply a function of -- I hate to put it like this,
3 but it's a function of individual motivation, not
4 integrity, but intellectual interest maybe of the
5 executive. I'm not sure you would get to your goal
6 of de-politicizing it turning it over to the courts.

7 MR. WELLBORN: Second question, which is also
8 addressing the political aspect and building allies,
9 we've obviously been in multiple cities and we've
10 heard from a lot of folks. One of the more
11 interesting places that we were in in terms of
12 testimony was San Francisco, and the testimony was
13 not interesting from the aspect of, Gosh, this is the
14 right thing to do and it's really forward thinking
15 and just is a better society, but it was this is a
16 more efficiently functioning, more cost effective,
17 and safer society; and so who we heard it from
18 specifically, we heard it from some police chiefs.
19 We heard it from parole people. We heard it from a
20 lot of people that talked about the downside of not
21 granting pardons, the downside of not granting, you
22 know, whether it's clemency, pardons, whatever it may

1 be, that it makes people, A, as we all know,
2 effectively in this world unemployable and some
3 aspects of it makes people have a huge bar for
4 housing.

5 It affects their kids. It affects their
6 family. It affects the communities that have to now
7 pay extra money to figure out where they're going to
8 live and require extra policing to keep tabs on folks
9 that they really shouldn't have to keep tabs on,
10 because again, it's the smart on crime versus tough
11 on crime issue.

12 So engaging those people with what one might
13 in a knee jerk response call hard line law
14 enforcement folks, at least from what we're hearing
15 from other jurisdictions seemed to be the best allies
16 for Governors or other folks that would be
17 considering what you did in Maryland to build allies
18 and perhaps help with political fallout.

19 I'm interested in your thoughts on that.

20 GOVERNOR EHRLICH: I used to have organized
21 labor come visit me to lobby against free trade
22 agreements. Regardless of how you view the merits

1 and demerits of trade, they were coming to generally
2 lobby against their own interests, a little bit
3 counterintuitive to me.

4 I just thought of that because making the
5 case, as you rightfully stated, and the case is there
6 and I think it's meritorious, it's counterintuitive
7 to a lot of people. Now, separate our observations.
8 With regard to the fiscal consequences, I think you
9 can make that case easily, overcrowded jails in
10 California today, the whole nine yards.

11 So that's sort of not real difficult to
12 understand. Making the case that it makes society
13 safer is somewhat counterintuitive to a lot of folks.
14 I'm not sure I have enough time, you all have enough
15 time, and energy to make that case. It's certainly
16 there. I understand it. It's much easier made on
17 the lower end of the spectrum when you have the
18 17-year-old bar fight and now 30 years later, the
19 guys needs a security clearance. It's much more
20 difficult when you're talking about drug distribution
21 or violent crimes despite the fact that the person
22 may have been out for a long time or has a good

1 record while incarcerated or whatever.

2 So I think that it's part of the dialogue. I
3 think you hit on something that is very true, that's
4 it's less radioactive than it's been in the past.
5 This has gotten bogged down with Willie Horton
6 sometimes and race sometimes and tough on crime
7 sometimes and mandatory minimums sometimes.

8 I do believe that it's an easier sell
9 politically because more families than ever have been
10 impacted by the criminal justice system. So when a
11 politician goes out there and does the sort of stuff
12 that was very risky 10, 20, 30 years ago, there is
13 just less downside. There's still downside, and,
14 look, when you get to the serious crimes and you get
15 to the lifer cases, one bad call and you're done and
16 everybody knows that and you're always going to have
17 to overcome that obstacle. That's why you throw a
18 lot of resources into it.

19 So I hope I answered your question. I think
20 that on the fiscal end, it's a much easier argument
21 to make. On the public safety end, despite the
22 merits of your point, it's just much more difficult.

1 MR. WELLBORN: Perhaps Greg can answer this,
2 but is there any traction for the phrase "smart on
3 crime versus tough on crime" starting to develop
4 within public discussion and the public domain and/or
5 within the political community?

6 MR. MASSONI: I think there should be. You
7 know, to those that live on the right, it's a dollars
8 and cents issue and it makes sense. For those that
9 live on the left, it's a family issue. You know,
10 we're locking way too many people away. So we need
11 to be smart on who we lock up and with new tools that
12 are available to see whether someone is actually
13 guilty or those issues shouldn't exist anymore.

14 So I don't know. I can't answer your
15 question and say that there is a call for that, but I
16 think there has to be some sort of marketing plan
17 that's put in place that moves the ball forward.

18 MR. WELLBORN: Let me narrow it some. Is
19 there any traction for the concept that from pure
20 policing and public safety, from the police
21 standpoint that constantly having to do knock checks
22 on parolees versus we can really kind of narrow down

1 and if we can help -- as a police force, if we can
2 help the parolees reintegrate, that cut downs our
3 time having to deal with these guys and we can go
4 after the people who actually are committing crimes
5 and the neighborhoods are a lot safer, which is some
6 of the stuff that we're hearing from other
7 municipalities. That evidence-based stuff that
8 they're bringing back is actually making their
9 communities safer.

10 Is that something that either of you see as a
11 way forward in helping if not de-politicize the
12 problem, at least make the politics good and
13 positive?

14 GOVERNOR EHRLICH: Of course, and it needs to
15 be evidenced based, but you need -- like any other
16 good idea, you need the right folks out there willing
17 to lead, and because there is either lack of interest
18 in some cases or fear in others, you're not going to
19 have 50 Governors coming forward all at once and
20 saying smart on crime is the way forward.

21 So you need to have articulate, charismatic
22 leadership like on any other issue where you're

1 trying to move public opinion, and as Margi will tell
2 you, there's some Governors out there today who fall
3 in that category, but they have to, again, be willing
4 to do something which is not going to pay an
5 immediate political benefit.

6 MR. WELLBORN: Thank you very much.

7 MR. JONES: Is that it Chris?

8 MR. WELLBORN: Yes.

9 MR. JONES: Larry.

10 MR. GOLDMAN: No.

11 MR. JONES: Margi.

12 MS. LOVE: Let me say that I really
13 personally appreciate your leadership on these issues
14 and this has really been helpful, I think.

15 I do want to press you a little bit on the
16 issue that Chris raised about the role of the courts,
17 and you'll remember yesterday at the our press
18 conference, General Meese was talking about how he
19 used to work in California and when he worked for
20 then Governor Reagan in California, the way the
21 pardon process works in that State is that -- and
22 it's pretty unique, actually, is that people go to

1 the courts to get something called a certificate of
2 rehabilitation and then they go to the Governor, and
3 that's kind of the first step.

4 And now I know you used the Parole Board. I
5 know you used your staff also. I mean, there's a lot
6 of resources put into this, this process, and you did
7 a lot of pardons, but there are a lot more people in
8 your State with convictions.

9 So I guess my question to you is could you
10 imagine if you could do it again or if you could make
11 a policy recommendation, would there be a way that
12 you could see a broader type of relief, because
13 there's only so much you can do, and to a certain
14 extent, your pardoning or any chief executive
15 pardoning is kind of a use of the bully pulpit. You
16 do what you can, as many cases as you can, but
17 there's a big world out there.

18 So what would -- have you given any thought
19 to how you might structure a kind of more broadly
20 applicable relief mechanism?

21 GOVERNOR EHRLICH: The courts are already
22 crowded and the judges are already busy. So anything

1 that adds to their workload may not be well received.
2 Your point is well taken though, Margi. It's simply
3 a function of if I had six lawyers, I could have had
4 three doing this and the numbers would have been
5 greater. We had obviously pretty big numbers, but
6 the demand is basically limitless.

7 I'm for anything that expedites the process,
8 that gets to larger numbers, but does not cheat the
9 public, anything that makes sense; and, again, I
10 think that Governors can do a lot of things, and if
11 you make it a priority, it will be a priority. If
12 you devote your resources, you can generate big
13 numbers as well.

14 MR. JONES: Vicki.

15 MS. YOUNG: Governor, you stated that the
16 pardons that you granted, at least as I understood
17 it, came through the; Parole Board. Pardon Board or
18 Parole Board?

19 GOVERNOR EHRLICH: Parole.

20 MS. YOUNG: Parole Board, and I'm assuming
21 that they were positive recommendations.

22 GOVERNOR EHRLICH: Correct. Correct.

1 MS. YOUNG: What did someone have to do to
2 get to the Parole Board? They initiated that?

3 GOVERNOR EHRLICH: Fill out an application,
4 correct.

5 MS. YOUNG: And do you have any idea what the
6 timeframe was on, you know --

7 GOVERNOR EHRLICH: Well, since no other chief
8 executive in Maryland in recent memory had done
9 anything here, there was a huge backlog. I forgot
10 the numbers, but there were piles.

11 MS. YOUNG: Just waiting for the Governor to
12 --

13 GOVERNOR EHRLICH: Exactly, and so as I said
14 in the answer to the previous question, if I would
15 have had six lawyers or seven lawyers or eight
16 lawyers instead of five lawyers, I could have
17 actually done more, but we did a lot and I spent a
18 lot of my time, but it was so broken and so -- such a
19 nonissue in the State. There was literally no hope,
20 and there were, obviously, a lot of letters from,
21 obviously, offenders, incarcerated offenders,
22 thanking me for just having the interest in issue.

1 They were given some hope even if they were at the
2 bottom of the pile.

3 But we inherited a huge backlog.

4 MS. YOUNG: And were you able to make it
5 through the backlog in your time there?

6 GOVERNOR EHRLICH: We hit a lot. I believe
7 we reviewed -- I forgot. I'll get you the numbers,
8 but it was five or six hundred cases.

9 MR. MASSONI: It was a loss. I don't know
10 the number.

11 GOVERNOR EHRLICH: Obviously, with monthly
12 meetings, you can knock off -- obviously, a fair
13 amount of these petitions were minor offenses. They
14 were pardon cases. The commutations take a great
15 deal of energy and time and staff time as well.

16 MS. YOUNG: And would those also go through
17 the Parole Board?

18 GOVERNOR EHRLICH: Yes.

19 MS. YOUNG: They do? Are there instances
20 where there were recommendations for pardon or parole
21 that were not granted?

22 GOVERNOR EHRLICH: Correct.

1 MS. YOUNG: And do you have any idea about
2 what your percentage would be?

3 GOVERNOR EHRLICH: What the batting average
4 was?

5 MS. YOUNG: Yeah.

6 GOVERNOR EHRLICH: I don't. I don't. I
7 could probably get those numbers for you. I do not.

8 MS. YOUNG: In Maryland, if, in fact, the
9 Parole Board had recommended release and the Governor
10 had not granted a parole, parole or pardon, was there
11 an avenue that they would then go to the court or did
12 that end it?

13 GOVERNOR EHRLICH: That was it.

14 MS. YOUNG: How much discussion, if any, is
15 there within the rather small community of Governors
16 or former Governors about the evolution of the
17 clemency or thoughts on it or trends?

18 GOVERNOR EHRLICH: Very little, which is why
19 this is so important, which is why we're doing our
20 clinic, which is why I do speeches, which is why that
21 lady does what she does, which as I said, in a
22 negative context, there's more interest than ever

1 because more families have been impacted by the
2 criminal justice system than ever before. Those
3 numbers that you're all very familiar with speak for
4 themselves.

5 So it's just not anything that most
6 candidates are going to place on the front burner
7 with regard to their platform: I'm going to allow
8 more criminals out of jail, elect me, that kind of
9 stuff. I means, it's a function of a lot of things,
10 and what's really interesting about this, again, is
11 that -- and this is when you generalize, you have to
12 be careful, but probably more Republican Governors
13 are interested in this than Democratic Governors,
14 more conservative than liberal, which might be
15 counterintuitive, but I was accused of the Nixon goes
16 the China syndrome, Oh, Ehrlich could this do this
17 because his record is strong crime, so he can afford
18 to do this.

19 So you can't win sometimes. You know,
20 someone is always going to attribute a negative
21 motivation to you and you can't be bogged down with
22 that, but if you are always concerned about politics

1 and how the press is reporting what you do, you would
2 be concerned about it.

3 MS. YOUNG: Did the press ever come around?

4 GOVERNOR EHRLICH: No.

5 MR. MASSONI: No.

6 GOVERNOR EHRLICH: I mean, there was one case
7 I remember specifically. It was a murder case and it
8 was a lady defendant, Orthodox Jewish community. It
9 was a cause celeb and rabbis were just inundating us
10 with lobbying on her behalf. So I give relief.
11 We're always trying to placate the Jewish vote. You
12 know, it's Maryland and the Jewish vote counts. So,
13 I mean, you can't win on this stuff. You just take
14 them as you see them.

15 Whenever there was a innocence pardon, the
16 process in Maryland is exculpatory evidence comes
17 about, the whole nine yards. We had a guy who did 33
18 years behind bars. We have what's called the Board
19 of Public Works and we vote on major State contracts,
20 and part of the charter for that board is to decide
21 on the dollars that would be directed to someone who
22 falls in that category.

1 So my job as Governor was to sit on a panel
2 and have someone who has been incarcerated for 33
3 years and first apologize on behalf of six and half
4 million people and, secondly, tell that person, Well,
5 here's your \$900,000, sorry, which is not a very good
6 result if you've been behind bars for 30 years.

7 But what we do is when those innocence
8 pardons came about, we would make a big deal of them
9 because we wanted to influence public opinion, and
10 nobody opposes an innocence pardon, obviously. So we
11 wanted to move public opinion and get the public more
12 acclimated to the fact that we were going to issue a
13 lot of pardons.

14 MR. MASSONI: I would just add that just
15 recently or semi-recently, Governor Barber on his way
16 out of office did all the wrong things, did a number
17 of pardons as he was leaving office. Some of them
18 were people that worked at the house and all kinds of
19 negative press came about. Never once did I read an
20 article or see a show or hear anybody say, But you
21 know what, of the hundred people he gave relief to,
22 95 of them really deserved it; you know, they've been

1 really good; they've done a really good job for the
2 last 10, 15, 20 years.

3 You never heard that story because it doesn't
4 exist, and so that's the kind of thing that has to
5 happen. Public relations have to happen, that people
6 jump to his defense and say, You know what; he did
7 this the wrong way; he should have had a program in
8 place; he should have done this all eight years that
9 he was in office; however, there were a lot of people
10 that deserved relief here and good for him.

11 MR. JONES: Elissa.

12 MS. HEINRICH: No questions.

13 MR. JONES: Penny.

14 MS. STRONG: Good morning. I do have a
15 question for Mr. Massoni. You may have answered it.

16 So you were never able within this wonderful
17 process to find any poster child or any one case that
18 either the press within Maryland or outside would be
19 interested enough in to highlight, so to speak?

20 MR. MASSONI: The innocent case, it certainly
21 was.

22 GOVERNOR EHRLICH: Innocence cases, sure.

1 MR. MASSONI: And yes. That brought a lot of
2 interest and goodwill, but no. No. There were no
3 takers.

4 There was never -- we didn't get support,
5 obviously, from Republicans that just didn't see the
6 value in this. We didn't get support from Democrats,
7 and I understood some of that, but the Black Caucus
8 in Maryland would have died to have somebody make
9 these decisions in Maryland. They were never
10 supportive. Privately, they were very supportive,
11 but never publicly, and I found that to be just
12 incredibly disappointing, because he had an "R" next
13 to his name.

14 GOVERNOR EHRLICH: Sometimes the help comes
15 from the inappropriate political source, as I said,
16 but again, if you're going through that, if you're
17 beginning this process with the idea that you are
18 going to placate some interest group, it's just the
19 wrong motivation in the first place. It's just
20 interesting that some folks who might have otherwise
21 praised you for your initiatives because of politics
22 would not do so.

1 MS. STRONG: I have one more small question
2 for you, but the meetings that you had monthly, were
3 those open to the public?

4 GOVERNOR EHRLICH: They were not. In fact,
5 they weren't open to -- I had them at the house, at
6 the mansion. I wanted prying eyes away. I had my
7 legal staff, my Lieutenant Governor, Michael Steele.
8 I had my press secretary and I had one or two other
9 staffers there, and we would just -- the assigned
10 lawyer in the Office of Counsel would present the
11 case and we'd commence discussion and we'd just run
12 through our agenda.

13 MS. STRONG: And of the pardons that you
14 granted, when we had our hearings in Chicago in
15 October of 2011, we heard the Governor's pardon
16 counsel there and we heard, I think, that there were
17 pardons granted by that Governor in the thousands of
18 petty misdemeanor offenses that were quite old,
19 primarily in the possession of drug or drug arena
20 that were holding people back from employment and
21 education that were decades years old.

22 I'm wondering if you had a similar experience

1 in Maryland or if they were more felony convictions.

2 GOVERNOR EHRLICH: They run the gamut. They
3 run the gamut, and I think going back to Margi's
4 question, we tried to get the word out particularly
5 with regard to that category of minor offenses that
6 might have been holding somebody back from employment
7 opportunities. Obviously, we tried to do the best we
8 could in getting the word out.

9 MS. STRONG: Thank you.

10 MR. JONES: Jenny, any questions?

11 MS. ROBERTS: Yes. Thanks.

12 I wanted to ask about a couple of the other
13 institutional actors in this process, prosecutors and
14 defense lawyers or prosecutors and lawyers
15 representing people in clemency petitions. So the
16 first question, I suppose, is to both of you about
17 the importance or lack thereof of legal
18 representation in clemency.

19 GOVERNOR EHRLICH: We're laughing at each
20 other because we have a famous case. My great
21 friend, my personal lawyer, the person who actually
22 acted as my Attorney General because the Attorney

1 General in Maryland was the father-in-law of the guy
2 running against me, brought a dirt bag client one
3 day, and I use the term "dirt bag" purposely because
4 he was really a bag actor, but obviously my friend
5 was hired because Bobby was going, Come on, and
6 because it was my great friend, I directed my staff
7 to conduct an exhaustive review, any merits we could
8 find, and we couldn't find one.

9 So I had to say no to my best friend and who
10 was being paid, I'm sure, a lot of money by this guy,
11 but you have to draw the line. We laugh about it now
12 and we still laugh about it with him.

13 But I tried to -- I mean, on the way out of
14 the office, inappropriate contact. I had very
15 inappropriate people try to get ahold of me on my
16 last day in office. Fortunately, I had -- my
17 personal counsel is a former U.S. Attorney who
18 literally took my cell phone that last day and those
19 inappropriate contacts did not occur.

20 Margi can talk about a lot, the inappropriate
21 contacts on your way out of office. Bad things
22 happen usually on your way out of office, but the

1 fact of it is I tried to -- we tried to get to as
2 objective a process as possible, to answer your
3 question, to take the personal relationships, the
4 political contributions, all of the extraneous stuff
5 out of the process.

6 MS. ROBERTS: Let me clarify one thing. I'm
7 not thinking of it so much, although this is
8 interesting certainly, from the negative perspective,
9 but did you see a positive role that counsel played
10 in some of the petitions. So if someone who was
11 uncounseled and came to you --

12 GOVERNOR EHRLICH: They didn't deal with me.
13 They dealt with my lawyers.

14 Oh, absolutely, sure. Sure, particularly in
15 more difficult cases, no doubt about it. In fact,
16 there were many cases where as a result of good
17 lawyering, you know, I would say I'm just not ready
18 here, I need more investigation, I need more
19 resources, I need more, I have a lot of questions,
20 because -- one of the good things about this, because
21 there was no outside process or time constraints, I
22 could devote resources and judgment as much as

1 possible here and I wasn't constrained by anything
2 other than why I came to a decision in my mind, and
3 we had some really close calls, but they were close
4 calls because of good lawyering in many cases.

5 MR. MASSON: I have nothing add to that.

6 MS. ROBERTS: And then I guess on a related
7 note, you talked a little bit about pardons based on
8 innocence, and there have been some very interesting
9 cases of prosecutors who have been resistant.

10 GOVERNOR EHRLICH: Yes. Yes.

11 MS. ROBERTS: I wondered if you talked at all
12 about that and how important -- about that specific
13 issue and then also as a general matter how important
14 the prosecutorial position was when you decided
15 whether or not to exercise your discretion.

16 GOVERNOR EHRLICH: Yeah. I had some really
17 bad feedback, no surprise to you. I had some very
18 bad feedback, what's Bobby doing here, why open this
19 door again, why crack these eggs, why, what are you
20 doing.

21 Very strong defense mechanisms play out in
22 this context, very unwelcome phone calls to retired

1 judges about cases that they'd rather not revisit,
2 defense lawyers, prosecutors.

3 There was a profile of certain cases that
4 sometimes I would smell and the smell was not good,
5 one-day trial, 1979, a certain area of the State,
6 co-defendants are out, your guy is not the shooter,
7 very questionable I.D., race, you know, assistance of
8 counsel, all of these things that for me as a lawyer
9 just got my interest, and they were particularly the
10 lifer cases. They're the ones that we would revisit.

11 So when those phone calls went out, they were
12 most unwelcome.

13 MR. MASSONI: I was truly amazed to learn
14 that someone who was an accessory to a crime could
15 serve more time than the person that committed the
16 actual crime, and I just found that to be absolutely
17 absurd.

18 GOVERNOR EHRLICH: Particularly when the
19 witness, you know, ID'd a guy who was six-five and
20 your guy is five-four.

21 MS. ROBERTS: I have actually been handed a
22 question that I'm going to try to do justice reading.

1 What advice would you give Governors who are now
2 faced with clemency petitions?

3 GOVERNOR EHRLICH: Begin a process, devote
4 the resources, educate the public, and do it.

5 MS. LOVE: So I'll ask the follow-up.

6 MR. JONES: Go ahead. I've got a bunch of
7 questions, but if you've got another one, go ahead.

8 MS. LOVE: Well, why don't you go ahead.

9 MR. JONES: All right. So just a couple of
10 things to sort of try to tie all of this stuff
11 together. You said at the outset that end of term
12 pardons --

13 GOVERNOR EHRLICH: Voluminous pardons.

14 MR. JONES: -- twelfth hour, out the door,
15 bad practice. You said bad press and bad for the
16 pardon process. Could you just --

17 GOVERNOR EHRLICH: And bad for your legacy.

18 MR. JONES: And bad for your legacy.

19 Could you just explain that in a little more
20 detail?

21 GOVERNOR EHRLICH: The press hates to be
22 surprised. If they're not -- the media is such a

1 huge part of what public officials do these days. I
2 don't mean that in a cynical way, by the way.

3 So you have to understand, particularly for
4 me operating in a very hostile environment, to the
5 extent they were surprised, it was never good for us.
6 To the extent they would be -- you could get them
7 acclimated to an expected process, their sniffers
8 would suddenly not be so active.

9 And so our job was to create an objective
10 expected regular process. In Congress, it's regular
11 order, and as a result, they were less surprised.
12 They were less prone to cause you problems.

13 MR. MASSONI: I would go back to my Governor
14 Barber example, and I would ask you to ask the queen,
15 as the Governor refers to her, Margi, and ask
16 President Clinton, was it worth the effort. Again,
17 did you ever read anything that said some of these
18 folks were entitled to this pardon? You never read
19 that ever.

20 MR. JONES: And beyond the press, just in
21 terms of machinery and the actual justice inherent in
22 it, how does it break down the actual, you know,

1 opportunity to --

2 GOVERNOR EHRLICH: That's a great question,

3 because it never made sense to me that you're going

4 to -- if you have a person deserving of relief,

5 you're going to wait until Christmas or you're going

6 to wait until the end of your term to give them

7 relief that can give them. I mean, that's justice

8 denied.

9 GOVERNOR EHRLICH: And the flip side of the

10 coin, I'm also interested in the ruggedization of it,

11 the monthly, you know, just sort of this is the

12 general business that we're in, the work that we do.

13 Could you explain for us in a little more detail how

14 that serves to de-emphasize the politics and make it

15 less sort of a controversial thing?

16 GOVERNOR EHRLICH: Greg is the media expert,

17 but, again, it's when politicians do surprising

18 things, particularly this day and age, the press,

19 your erstwhile enemies, your opponents will always

20 seek a negative motivation particularly in this area

21 where the general public -- if you'd walk outside

22 today and did a poll, anybody who gets a pardon is

1 politically connected, can pay, blah, blah, blah. As
2 I said, that's why we never kept score.

3 I did not meet with the defense counsels. My
4 staff did, but again, we tried to de-everything that
5 we could, de-politicize, everything, but not
6 de-legitimize. We tried to make this as regular a
7 process as we could.

8 MR. MASSONI: I would just say, you know, my
9 job as press secretary was very different. I mean, I
10 could remove myself from the policy of all of this
11 and say my job was to accent the positive and not the
12 negative, to lessen the impact of the negative.

13 He would do functions for families of
14 servicemen that had died or were injured, and it
15 would be a huge thing. People would be in the room
16 and it was a moving event. No press was allowed. I
17 used to beg him to bring press in, just one. We
18 could have a poll, never.

19 I used to beg him not to have these monthly
20 meetings because the outcome was not going to be
21 positive, and it was just -- it was positive for the
22 individual. It was not positive for the two-weeks of

1 dealing with the press. It was not positive if
2 somebody had done something that they should have
3 once they were out. It was not positive at all for
4 the man who was making the decision.

5 So, you know, I've made that point several
6 times, but I don't know that I can impress upon you
7 enough that this was not a good thing, and for a
8 person that -- from point of view, it was not a good
9 thing. So, you know, my job was to always make sure
10 that he got positive press, and he made that
11 impossible by having these monthly meetings.

12 GOVERNOR EHRLICH: He was highly paid though.

13 MR. JONES: You may not know the answer to
14 this question, but to the extent that you do or even
15 anecdotally, we'd be interested in the answer.
16 What's your sense of the value of a pardon? If
17 someone is pardoned, but, you know, if there's been
18 any media attention or there's honesty on the part of
19 the person who's pardoned and they go out and look
20 for a job and the employer, you know, even despite
21 the fact that there's a pardon still doesn't want to
22 -- what's the value in your sense?

1 GOVERNOR EHRLICH: It's substantive. It can
2 be substantive. It can be, Man, I can now qualify
3 for that job, but in many cases, it purely a function
4 of emotion or pride. It's a new start, this is the
5 official stamp that I got my act together, this is
6 the official stamp I can talk to my kids about this.

7 So in many cases, it's not a function of
8 substance. It's a function of emotion and pride.

9 MR. JONES: And is there anything you could
10 do to put more teeth into the substantive aspect of
11 it?

12 GOVERNOR EHRLICH: I mean, folks have to
13 really take some personal responsibility, obviously,
14 and get someone knowledgeable about the system and
15 understand that the bad mistake years ago doesn't
16 sentence you to perpetual unemployment or anything
17 else.

18 MR. JONES: Okay.

19 MR. MASSONI: I would just add, again, you
20 know, I'm not an attorney. So to see -- you know,
21 I've read many cases since we've begun this process,
22 and to see a Marine that is sitting in jail for 25

1 years because of a three-time drug offense or someone
2 that broke into a home three times and they're
3 sitting in jail for tremendous amounts of time as
4 opposed to someone who committed a murder who might
5 be in there for three or four years, I just find the
6 system to be lacking. There's something wrong there,
7 and so from my point of view, you know, life is
8 important and a good person who made a mistake
9 shouldn't necessarily have to throw away a quarter of
10 their life sitting in a jail cell and maybe making
11 them a much worse person living in the environment
12 that they have to live in. There has to be a better
13 way.

14 MR. JONES: I've got just one last batch of
15 questions and it comes from something that you said,
16 Governor. You said I'm for anything that makes sense
17 that does not cheat the public. Right?

18 And I want to take the last half of that
19 sentence first and then the first half. When you say
20 "that does not cheat the public", what do you mean?

21 GOVERNOR EHRLICH: Two things, one that
22 you're fulfilling job one as an executive, which is

1 protecting your people, and did I screw this up?

2 I'm used to doing that to fool the press.

3 Job one is to protect the public and job two

4 is to do justice, and they're not mutually exclusive.

5 MR. JONES: And then this first part of that

6 statement, that I'm for anything that makes sense, it

7 sort of leads me to this philosophical place where

8 we've been for months and months now since our first

9 hearings way back in Chicago. It's this notion of

10 what should sort of this society be about? Should it

11 be about this notion of forgiveness, pardons,

12 clemency? Is it sort of a process of forgiveness

13 rehabilitation or should it be about forgetting,

14 which sort of leads to expungements and ceilings and

15 Ban the Box and not really sort of having to deal

16 with the question, but to, you know, be in the

17 process of forgetting about it as opposed to --

18 GOVERNOR EHRLICH: Forgiving.

19 MR. JONES: -- open forgiveness.

20 GOVERNOR EHRLICH: I'll take "A". I'll take

21 "A".

22 MR. JONES: Okay. Tell us why, because we

1 did have a chief of staff, I believe, from a
2 Governor's office somewhere along our journey who
3 told us that you can't legislate forgiveness, you
4 can't legislate morality, you can't legislate--

5 GOVERNOR EHRLICH: We legislate morality
6 every day. That's the goofiest thing I've ever
7 heard. I mean, the criminal code is our sense of
8 morality. People, politicians, always use these
9 lines that mean nothing.

10 I have been at 18,000 abortion debates,
11 legislature, and Congress. I think it's forgiveness
12 and I think a just society balances interests. The
13 First Amendment is a balancing of interest. The
14 Fourth Amendment is a balancing of interest. The
15 Second Amendment is a balancing of interest, and the
16 Bill of Rights is a balancing of interest, and the
17 balancing of interest that you are engaged in that is
18 part of the job description for a chief executive is
19 protecting the public and creating a more just
20 society, and they're not cliches.

21 MR. JONES: I want to go back to Margi. I
22 know you had a question.

1 MS. LOVE: Well, I was just going to ask one
2 last question of the Governor. What would you
3 recommend to us -- I mean, you're a really articulate
4 advocate for the exercise of executive power to send
5 a message and to do justice and this and that. We're
6 a group of criminal defense lawyers and we want to
7 speak to the public also. We want to write a report
8 that will have an impact. We're trying to hear from
9 as many witnesses from different parts of the
10 spectrum as we possibly can so we can say we've
11 talked to the prosecutors and we've talked to judges
12 and we talked to former Governors.

13 How can we make the most impact in addressing
14 this problem of restoration of rights, sort of how
15 the justice system -- something that General Meese
16 said yesterday really had an impact on me, that we've
17 sort of forgotten that last step of the justice
18 system. We prosecute people. We convict them. We
19 put them in jail. Finally, they get out of jail, but
20 we forgot the last step, which is to close the loop.

21 How can we tell that message most
22 effectively?

1 GOVERNOR EHRLICH: Not through these
2 hearings. You have a bunch of smart people in the
3 room and you're going to create a great white paper
4 that almost nobody is going to read, and I'm not here
5 to degrade this process, because you have to have the
6 substance and that's really important, but it's a
7 very small part of the process.

8 As a member of the legislature, and member of
9 Congress, a Governor, I got reports every day that I
10 didn't have time to read, and I didn't -- and most
11 members of Congress aren't going to read this. This
12 is really Greg's area. This is where public
13 relations counts.

14 You are going to generate, I suspect, a
15 really well-articulated thoughtful piece, but by far
16 the most important part of this process is getting on
17 "60 Minutes" or getting on Fox or getting in front of
18 members of Congress and really influencing public
19 opinion, because you can have the greatest ideas in
20 the world, but if you're influencing public opinion
21 or influencing an elected official, it just doesn't
22 matter.

1 You know, a lot of people have come to me
2 over the years and said I have a great idea. Well,
3 okay. You might have a great idea, but it's not
4 going anywhere.

5 So I would just encourage this group to spend
6 money, resources, talent to do things that count, and
7 in this era, things that count means the media, and
8 as a result, you'll have more friendly
9 Governors-elect, more educated Governors-elect, and
10 what's already started is -- we haven't even talked
11 about it -- the federal pardons process is just --
12 and you're the expert -- is just broken and you have
13 the most progressive President since FDR who doesn't
14 appear to care and I don't get that, and I don't know
15 how many more expos "The Washington Post" needs to
16 do, but somebody somehow somewhere in the Federal
17 Government needs to cry bloody murder because this is
18 really a broken process.

19 So the way you do that is to call the
20 reporters and have press conferences and get friendly
21 members of Congress and just move public opinion.

22 MR. JONES: Jenny, do you have one last

1 question?

2 MS. ROBERTS: No.

3 MR. JONES: All right. We are actually
4 running up against the clock. So I want to give both
5 of you an opportunity to leave us your final
6 thoughts. Those were great, but we'll give you one
7 more.

8 Mr. Massoni, we'll start with you.

9 MR. MASSONI: I really didn't prepare any
10 final thoughts, but this is -- I think what the
11 Governor just there, there's so much truth in that.
12 This has to be a marketing process to get people to
13 understand. This clinic at Catholic is going to be
14 so important just to start the conversation with
15 newly-elected Governors or their chiefs of staff to
16 say there has to be a process, you need to start this
17 process. It's not hard. It's going to be -- the
18 road will be long and hopefully you'll make the right
19 decisions, but you have to start the process. It's
20 justice.

21 Again, you know, my eyes have been opened
22 that we just put way too many people in jail today

1 and it needs to stop. Too many families are being
2 ruined. Too many lives are being ruined, and if you
3 commit a heinous violent crime, then that's what
4 jails are for, and I think all other offenses, we
5 need to have some sort of -- and I'm being very broad
6 here, but we need to have some other way of
7 addressing it than what we have today.

8 MR. JONES: Thank you.

9 GOVERNOR EHRLICH: Greg used the term
10 "marketing" and the Smart on Crime may be the new
11 approach, but then you have to back it up. As I
12 said, I did not mean to denigrate this process,
13 because this is part of it, but it's a very small
14 part.

15 So I thank you very much for having us here
16 today. I wish you God speed.

17 MR. JONES: Thank you. Thank you very much.

18 We will break for lunch and reconvene at one
19 o'clock. Thanks.

20 [Whereupon, a lunch recess was taken at 11:52
21 p.m., to reconvene at 1:00 p.m. this same day.]

22

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

2 [1:00 p.m.]

3 PANEL 3

4 MR. JONES: All right. Welcome. We are
5 pleased to have you all here. I hope everybody got a
6 chance to eat lunch, get some food, refresh,
7 revitalize. We have a fantastic afternoon ahead of
8 us, and it starts with you all.

9 We are very pleased to be here. As you know,
10 we've been going around the country on a listening
11 tour and learning a lot and having some really great
12 interactions, and I have no doubt that this will be
13 another part of that journey.

14 The way that we work is to give each of you
15 five or ten minutes to give us an opening statement,
16 tell us a little bit about who you are, what you do,
17 the benefit of your thoughts and then we've got lots
18 of questions that we want to ask you, and the way
19 that we do the questioning is that one of our number
20 will lead the discussion, and to the extent that
21 there's time, when she or he is done, then the rest
22 of us will participate as well. For the purposes of

1 this discussion and this conversation, Elissa
2 Heinrichs is going to be the person who is
3 predominantly doing the questioning.

4 Unless there are any questions, I would just
5 say that you should speak in good loud voice. The
6 microphones do not project your voice. They simply
7 route it to the camera. So it's not an amplifier.
8 So you should speak in a good loud voice, and I will
9 stop talking and I will turn the floor over to you
10 and whoever among you, maybe Ms. Taxman, wants to
11 start, please do.

12 DR. TAXMAN: Good afternoon and I thank you
13 very much for inviting me this afternoon to share a
14 little bit about my perspective as an scientist. I
15 am a university professor at George Mason University,
16 which is across the river and down the road in
17 Fairfax, Virginia. I am in the Department of
18 Criminology, Law, and Society, and my primary area of
19 research and expertise is on offender programming and
20 sentencing issues and I do quite a bit of work in
21 terms of both developing interventions to help people
22 become more productive citizens, but also, within the

1 last five or seven years, a greater focus on helping
2 criminal justice organizations learn to adopt the
3 evidence-based practice literature and programming in
4 order to help people accelerate their return to
5 becoming productive citizens.

6 So that's an overview. Do you want me to do
7 my talk or --

8 MR. JONES: That's fine.

9 DR. TAXMAN: -- or do you want to have the
10 other folks introduce themselves?

11 MR. JONES: If there's more that you want to
12 say for couple more minutes, that's fine.

13 DR. TAXMAN: Okay. So, you know, I bring a
14 little bit of a different perspective and that
15 perspective has to do with two major issues. One is
16 that, you know, the criminal justice system
17 infrequently, not frequent enough, uses programs and
18 services that, you know, in order as either part of
19 the sentence or as part of what people go through
20 while they're in prison or in jail or on probation or
21 parole, and yet we have not really come to a point in
22 which these programs and services are designed to

1 actually help people be more successful in life and
2 cut the recidivism rate even though we have a very
3 broad knowledge base of sort of about what works, and
4 yet we are at a segue in our programming where we're
5 not that committed to really doing much even though
6 there's a lot of little pockets of activity going on,
7 but it's not really a national effort to really
8 rethink how we deliver programs and services to
9 offender population.

10 So what the evidence-based practice
11 literature, the research literature tells, and this
12 is really important, that, you know, we need to work
13 on motivating people for change and that people
14 aren't necessarily there, but that there are
15 techniques that we can use to really help accelerate
16 that motivation, and these strategies actually are
17 very similar to what happens in other environments,
18 not just in criminal justice settings, in health care
19 environments, in people -- educational environments,
20 and there are techniques that we could have criminal
21 justice actors, probation and parole officers, prison
22 officials, you know, both staff prison correctional

1 officers as well as administrators, public defenders.
2 You know, I put the defense community on the line for
3 being part of that this process, prosecutors, judges,
4 treatment providers to really focus in on helping
5 people motivate for change.

6 It's an important concept, and by doing that,
7 you can then accelerate some of the other things that
8 we hope to accomplish when we sentence people in
9 terms of helping people return to the community as a
10 more productive person and able to better cope and
11 adapt to the challenges that life brings all of us.

12 So the evidence-based practice literature
13 really challenges the criminal justice system, I
14 believe, to rethink how to deal with, you know, what
15 in the corrections world is called noncompliant
16 behavior or, you know, behavior in which people are
17 not complying with the law and really challenges us
18 to think about something that's very effective in
19 substance abuse, which is something called
20 contingency management or use the rewards and
21 incentivizing people to change their behaviors.

22 So within the research literature, the use of

1 contingency management or small rewards -- and they
2 don't necessarily need to be monetary rewards. They
3 could be a form of rewards call social rewards.
4 Those can be very productive in terms of encouraging
5 people to change their behavior.

6 Now, we've done studies of probation agencies
7 trying to adopt rewarding as a technique. I'm not
8 going to say it's an easy process to change the
9 culture of these organizations, but if we're really
10 serious about recidivism reduction and helping people
11 become citizens, then we really need to think about
12 using some of these strategies.

13 The other areas that I would address that
14 have to do with what we know from the evidence-based
15 practice literature is that there are certain types
16 of programs and services that are much better for
17 people and they're more effective in terms of getting
18 better outcomes. Most organizations do not have
19 well-designed matching protocols to try and put
20 people into the right slots. Generally, it's about a
21 first come or what's available in that jurisdiction
22 instead of really trying to do much more in terms of

1 thinking about what is this person's reasons that
2 they're currently engaged in criminal activity and
3 what is it that we could actually do to help that
4 person.

5 So, you know, employing some of what's called
6 in the health services literature as matching
7 techniques could actually also advance a better use
8 of our resources and target people to better
9 outcomes.

10 The other big piece that I think is part of
11 your -- you know, some of the things you're
12 interested in is these concepts about helping people
13 become citizens. In Europe, they actually have as
14 part of some of their prison programs citizenship
15 programs where people basically learn more about what
16 it means to be a productive citizen in the community.

17 You know, I think sometimes in our approach,
18 we assume that people know what citizenship means and
19 we assume that people know how to become a -- how to
20 be a productive citizen, but actually, you know, when
21 you've been engaged in certain types of subcultures
22 or activities for a period of time, we need to

1 rethink and relearn those things, and that happens
2 naturally for all of us as we go through different
3 parts of life.

4 But we really need to think about citizenship
5 and ceremonial processes that really can help people
6 learn, basically segue. You know, one of the things
7 when I was trained in my doctoral program, Andrew Von
8 Hersh, who was one of the gurus of "Just Deserts" in
9 the mid-seventies, you know, and a big retributive
10 justice philosopher, and his big push was that the
11 slate could be clean for people, and, you know, we're
12 at a point, which I think is what you're listening
13 tour is about in which we haven't figured out how to
14 help people clean that slate so they can start their
15 -- you know, they can start sort of with a clean
16 slate.

17 I think, you know, some of the efforts to
18 rethink how we could use ceremonial processes to
19 really begin that cleaning of the slate has a lot of
20 yield and it fits very well with some of the ideas
21 about motivating people for change and also trying to
22 put in place programs and services that serve a

1 greater good.

2 So I will end my overview and, you know, I
3 guess pass it along.

4 MR. JONES: Thank you. Thank you very much.

5 Whoever is next.

6 MR. COX: Go ahead.

7 MR. BAUMANN: All right. Good afternoon,
8 everybody. My name is Chris Baumann. I'm a police
9 officer and I'm also the head of the D.C. Police
10 Union which is the union that represents
11 approximately 3500, 3600 police officers, detectives,
12 and sergeants here in Washington, D.C. They all work
13 for the Metropolitan Police Department. There's
14 about 32 different police agencies in D.C. and most
15 of them are federal. Most of them are much smaller
16 than we are, but it's a tangle, but when you hear
17 Metropolitan Police, that would be my officers, my
18 detectives, my sergeants.

19 One of the things or what I'm going to focus
20 on here is on an idea as you move forward to effect
21 change. I don't have the expertise that Professor
22 Taxman has or any of you do on what is probably going

1 to work best, but what I would like to suggest today
2 is that there is a -- while it may not be intuitive
3 in the beginning a natural ally out there and that is
4 the police.

5 Now, remember in different jurisdictions,
6 you're going to have rank and file officers, meaning
7 if you have a union in my case, then I'm their
8 spokesman. They elect someone to speak for them and
9 to advocate for them. In some jurisdictions, it's
10 going to be a Right to Work State, particularly in
11 the south, and so it may just be command staff and it
12 may be just be working with the chief or the sheriff
13 in that jurisdiction.

14 So, certainly, some of this is going to
15 change on where you are, and whatever that change is,
16 whether it is new administrative rules, whether it is
17 legislation, whether it is a new program that's going
18 to cost tax dollars and so there's going to have to
19 be appropriations, I think that the police could be a
20 very, very good ally and I think a very good advocate
21 for many of these programs, but to get there, I think
22 there are some steps that are going to need to be

1 taken.

2 You know, again, we're police officers and
3 there may be some -- certainly at the beginning
4 some -- you know, the idea of I don't know that we
5 want to be involved in this as a union or as a chief
6 of police, but I think it can happen. I think it
7 does make sense and I think if it's walked through
8 carefully, we would be a terrific ally and be able to
9 really accomplish some things.

10 The first part of that, though, to get to the
11 police and whatever it's going to be -- you decide
12 that there are certain programs that need to be in
13 place or their needs to be changes in the law. The
14 first part is going to be the outreach and the
15 education to the police. When I say police, I'm
16 encompassing both the command side and rank and file.

17 Think about that as you approach them, what
18 is it that you're seeking. For example, here in
19 D.C., D.C. is -- they're a legislative and government
20 structure, and I know this word gets overused a lot,
21 but is it "unique", and D.C. has a D.C. Council with
22 13 members and a Mayor. They take the role of what

1 in a normal State would be both the municipal
2 government, the County Government, and the State
3 Government, and that can be great if you want to rush
4 something through and it can be a disaster if
5 something gets rushed through that shouldn't, but in
6 our case, it does provide us as a police union one
7 place where we can go to advocate, and there have
8 been issues that have come forward from groups that
9 may not seem as if they would be natural allies with
10 us, but we have come forward because we think it
11 makes sense and my membership has supported that.

12 So you're going to do outreach. What do we
13 do to educate the police? What do we do to get them
14 on board to understand that this is good for
15 everybody?

16 Well, I think the most obvious common sense
17 issue is if people are not re-offending, that isn't a
18 drain on your resources. That is less resources that
19 you have to use for a certain area. That makes sense
20 at the command staff level. It makes sense at the
21 budget level and it makes sense at the street level.
22 So I do think you can sort of sweep together those

1 groups and bring that forward.

2 But in order to show that, and this has been
3 for my experience here in D.C., one of the things
4 that is very important, is that the studies or the
5 evidence or whatever it is that is being used is very
6 solid, that it is well done, well prepared, easily
7 understood if that's possible, because I think one of
8 the things that has tripped up some groups in this
9 city is you have certain advocacy groups coming
10 forward, most of the time because they're seeking
11 grants or earmarks that are making claims of what
12 they've done or what they have not done with
13 ex-offenders in the District or in some cases with
14 juveniles and they have not been able to demonstrate
15 anything, and, of course, undercuts our ability to
16 support them if we want to and, in a lot of cases,
17 our willingness to support them because I think we
18 have some questions about what they were doing and
19 whether or not anything was getting done to begin
20 with and even if it was getting done, wasn't
21 effective.

22 So that would be the first one. The second

1 is the resources. If you were going to ask the
2 police group to go before whatever the legislative
3 body is, whoever is doing the appropriations, and say
4 to them, Hey, let's send this much funds to this
5 group, remember, you know, it may be attenuated, but
6 you're taking resources away from the Police
7 Department. It may be in another pot somewhere, but
8 at the end of day, whether it's a municipality, a
9 county, or a State, there's a finite amount of money
10 and resources they have and that's going away.

11 And so if those resources are going to go
12 somewhere, if that money is going to go somewhere,
13 make sure that it is going to the right place and it
14 is being expended in the right manner and it is not a
15 assailable, and I know this falls a little bit into
16 the prior point, which is make sure that the
17 advocates that are able to demonstrate what they're
18 doing, but I do think that it is a separate
19 component, because particularly when budgets are
20 tight, when you start talking about allocating
21 resources, you're going to see, I think, a good deal
22 of people getting their backs up and getting

1 concerned about that. You're going to see it from
2 the management side on overall resources. You're
3 going to see it from the rank and file side on
4 overall resources and other more traditional labor
5 issues, such as raises, compensation increases,
6 because that's where some of that math goes.

7 But again, if it's tied in properly to show
8 that this is better for everybody, I think you can
9 reach there.

10 The last point I will say on this is in
11 moving forward a program or moving forward
12 legislation and trying to built a relationship with
13 the police and trying to work with them on getting
14 these done is don't overreach, and I guess a couple
15 of examples that are local and I realize it may be
16 different elsewhere, one of the ideas that I like and
17 I am a proponent of and I think we're a proponent of
18 is a -- and I call it a -- it's probably a clumsy
19 term, but an absolute expungement. You know, there's
20 concern out there that, you know, you can have your
21 record expunged or whatever the terminology is in the
22 jurisdiction, but it's not really expunged. There's

1 a series of caveats or exceptions or a way you have
2 to do it, but if you're going to do that -- and I
3 think it is a good idea. I mean, if you give someone
4 half a chance and not a real chance, it's probably
5 setting them up for failure, but if you're going to
6 start to do that, I would be very careful on what
7 type of crimes you're talking about, particularly if
8 you move outside the realm nonviolent crimes. I
9 think that is going to be a very hard sell for law
10 enforcement, particularly in an area like D.C. where
11 we, unfortunately, have a lot of violent crimes
12 still.

13 So that would be one example. The second
14 would be some legislation initiatives. Here in D.C.,
15 Council Member Marion Barry, who used to be the Mayor
16 is unfortunately famous or notorious for some of the
17 stuff he did, I'm actually friends with and I think
18 he does a lot of good or tries to do a lot of good.

19 He initiated a program or legislation --
20 excuse me -- two years ago that would create a
21 protected status for ex-offenders and that was met
22 with a lot of bad press, a lot of concerns from the

1 business community and concerns from us, and I
2 understood what Marion was doing and I spoke on
3 legislation. I may have been one of the only ones
4 that spoke against the legislation in front of them
5 that didn't get yelled at, but what we talked about
6 was it probably wasn't going to do exactly what he
7 wanted it to do. The reaction was so negative and so
8 bad that I think it undercut what he was actually
9 trying to do because, again, I think he was
10 overreaching.

11 So those are my thoughts. Again, I think
12 it's a good idea. I think in some ways, onset seemed
13 like a tough sell, but as you start moving down the
14 road, you're able to really show, you know, the
15 programs work and also we're talking about less
16 resources being needed to deal with certain issues
17 and that ball gets rolling.

18 I think that's something you can move into
19 different jurisdictions and once everybody sees that
20 it does work, I think you're going to be able to pick
21 up allies as you go.

22 So thank you.

1 MR. JONES: Thank you.

2 Mr. Cox.

3 MR. COX: Thank you.

4 Good afternoon, everyone. Thank you very
5 much for the opportunity to participate in today's
6 hearing. What I would like to do is maybe briefly
7 talk about the EEOC and what we do, our mission, how
8 we do it, and then move into a discussion of our
9 guidance in this area regarding the use of arrest and
10 conviction records of employment and then end with a
11 brief discussion of our role on the Attorney
12 General's Interagency Reentry Council, which I think
13 you heard about earlier today.

14 Through our headquarters office here in D.C.
15 as well as our 53 field offices serving every part of
16 the country, the EEOC enforces the federal laws
17 prohibiting discrimination in recruitment, hiring,
18 retention, promotion or termination of employees on
19 the basis of race, national origin, religion, sex,
20 pregnancy, age, disability, family medical history
21 and genetic information. That's a lot.

22 Specifically, we enforce Title 7 of the Civil

1 Rights Act of 1964 which prohibits employment
2 discrimination on the basis of race, color, religion,
3 sex, or national origin, and this statute forms the
4 basis or the underpinnings for our guidance in this
5 area that I'll discuss in more detail in a few
6 minutes.

7 We enforce the nation's employment
8 discrimination laws in both the private sector where
9 we take charges of discrimination or complaints of
10 discrimination. We investigate. We conciliate
11 and/or mediate, and when all else fails, we litigate.
12 We also do this work in the federal sector where our
13 role is slightly different. We consult with and
14 provide technical assistance to other federal
15 agencies regarding their equal opportunity policies
16 and processes. We also hear the initial
17 discrimination charges filed by federal employees and
18 the appeal of agency decisions in the area.

19 We also provide technical assistance, and
20 that's a lot of the work that we do in our various
21 field offices and out of our headquarters office,
22 technical assistance, outreach, and public education

1 to private sector employees and employers, and we are
2 placing a particular emphasis on this given our role
3 on the Reentry Council and also given the release of
4 our updated guidance in the area of arrest and
5 conviction records.

6 Over the last two fiscal years, we've reached
7 over 10,000 people through over 200 trainings and
8 other educational events concerning the use of
9 criminal records in employment, and we're trying to,
10 frankly, do a better job doing outreach to employers,
11 both larger employers, but also small business.

12 Now on to our guidance. Our guidance was
13 advanced or updated by a four-to-one vote of the
14 body. We approved and issued the updated guidance in
15 April of 2012, and it's entitled "Enforcement
16 Guidance on the Consideration of Arrest and
17 Conviction records and employment decisions under
18 Title 7 of the Civil Rights Act of 1964.

19 I don't know if this was distributed earlier,
20 but I have copies of a one-pager which lists the
21 guidance as well as a Q&A document, all available on
22 our website which in more plain language walks

1 through the guidance.

2 I'm going to discuss this later, but I'm also
3 going to distribute something called a myth buster,
4 which I know you probably heard about earlier today
5 through the Reentry Council which in even more plain
6 language explains our updated guidance and how it
7 actually applies in this context.

8 In formulating the guidance, the Commission
9 met publicly to discuss the subject starting in 2008
10 July of 2011. In those meetings, the testimony
11 received in those meetings, there were 300 written
12 comments that helped to inform the consideration of
13 the revisions. This guidance was originally
14 promulgated in 1987 and then in 1990, and the updated
15 guidance clarifies or updates our longstanding policy
16 concerning the use of arrest and conviction records
17 in employment.

18 I'd like to emphasize a few things right from
19 the start. Neither Title 7 of the Civil Rights Act
20 of 1964 nor our guidance prohibits employers from
21 considering criminal history when they make
22 employment decisions. The guidance describes how

1 employers considering a criminal history in a
2 targeted fact-based way can avoid Title 7 liability,
3 and it's consistent with how many employers already
4 do these kinds of assessments. It also reiterates
5 the fact that an arrest standing alone does not
6 establish that criminal conduct actually occurred and
7 that an employer should not rely on an arrest alone
8 to make an employment decision, and the reason why is
9 that an arrest is an accusation. It's not going to
10 carry the same weight as a criminal conviction.

11 Also, arrest records, as many of us know,
12 tend to be inaccurate or can be inaccurate and,
13 therefore, should not be the basis of an adverse
14 employment decision alone. What's important is that
15 people have an opportunity to apply and be considered
16 for a job which they are qualified for and for which
17 their criminal records are not relevant or predictive
18 and permanently excluding people from the workforce
19 because of contact with the criminal justice system
20 is inconsistent with Title 7, and we're going to talk
21 more about that in a few minutes.

22 Why is this a Title 7 issue? Why is this a

1 civil right issue?

2 Well, Title 7 prohibits discrimination in two
3 ways, first, what we call disparate treatment, which
4 is intentional discrimination. In other words, an
5 employer should not treat individuals with the same
6 criminal history and qualification differently
7 because of their race, national, origin, or other
8 protected bases.

9 For example, terminating the employment of a
10 qualified African American while retaining a white
11 employee with the same record of offense or
12 conviction could support an allegation of disparate
13 treatment or intentional discrimination based on race
14 under Title 7. Title 7 also prohibits disparate
15 impact, and what this means is that a record
16 exclusion should not operate in a way that
17 disproportionately excludes people of a particular
18 race or national origin.

19 If a plaintiff, for example, in a litigation
20 establishes disparate impact, in other words,
21 establishes that it's having that disparate impact --
22 that disproportionate impact, Title 7 then shifts the

1 burden of proof of production to the employer to
2 demonstrate that the exclusion is job related for the
3 position in question and consistent with the
4 necessity to avoid liability.

5 Now, it's a very technical description.

6 Basically, it shows that there's a nexus between the
7 exclusion and the actual job that the person is
8 applying for or the person has.

9 The guidance goes into a great deal of detail
10 walking through how Title 7 applies in this area.

11 It's the way Title 7 applies in all areas, but it
12 gets particular and gives some good examples on how
13 it applies in this area. In general, the EEOC
14 encourages employers who consider employees' and
15 applicants' criminal background information to
16 develop and use targeted and fact-based screens
17 before they actually exclude folks.

18 The screen should identify an individual
19 having a -- if they use a screen that identifies
20 someone as having a targeted criminal history, we
21 encourage employers to consider supplemental
22 information provided before rejecting the individual

1 in order to avoid Title 7 liability.

2 How would an employer prove, as I just
3 mentioned before, that a particular exclusion is job
4 related and consistent with business necessity, and
5 often we hear about the potential that this is
6 burdensome or that these steps are tough to follow,
7 and I think our position is that it's not
8 particularly burdensome, and basically the steps that
9 an employer would follow would be this. A targeted
10 screen considers at least three factors identified in
11 a case called *Green v. Missouri Pacific Railroad*,
12 which is the case that actually established the
13 standard basically that undergirds our guidance under
14 Title 7, and those three factors that the employer
15 should consider is the nature and gravity of the
16 crime, the time elapsed between the job at issue and
17 the offense that occurred, and the reason, obviously,
18 there is that research shows that recidivism
19 potential drops off over time. So if there is a
20 large gap of time between the job application or the
21 job a person holds or the offense, then there is a
22 very high likelihood that the person will not

1 recidivate.

2 Often, you're asked or required under Green
3 to consider the nature of the job, in other words,
4 consider whether there's a nexus between the job
5 that's being held by the person being considered for
6 and the actual offense.

7 Beyond that, our guidance recommends that the
8 employer conduct an individualized assessment, and
9 that generally means that an employer inform the
10 individual that he may be excluded because of past
11 criminal conduct based on the nature of the crime,
12 the time elapsed, and the nature of the job, and
13 provide that individual an opportunity to demonstrate
14 that the exclusion does not properly apply to him or
15 her, for example, that he was incorrectly identified
16 in the criminal record or the record is otherwise
17 inaccurate and then the employer is asked to consider
18 whether additional information shows that the
19 policies applied is not job related and consistent
20 with business necessity. In other words, it does not
21 merit excluding the person from this job at this
22 time.

1 I would like to emphasize at that point that
2 since the 1970s, employer have been required by the
3 courts and, frankly, by Title 7 strictures to go
4 through some sort of context of specific inquiry.
5 Our guidance is entirely consistent with that, and I
6 think the individualized assessment piece of it,
7 while not required absolutely by Title 7, provides
8 employers and employees or applicants an opportunity
9 to learn more and flesh out, quite frankly, a
10 potentially adverse criminal record that the person
11 has.

12 At the end of the guidance document, the
13 Commission lists several best practices for
14 employers. This is not an exhaustive list, but they
15 include, of course, eliminating across-the-board
16 policies that exclude people from employment based on
17 a criminal record, developing a narrowly tailor and
18 written policy and procedure for screening applicants
19 and employees for criminal conduct. We recommend
20 that train managers, hiring officials, and
21 decisionmakers on how to implement policies and
22 procedures consistent with Title 7, and also

1 recommendation that when asking questions about
2 records, they limit the inquiries to records for
3 which exclusion would be job related for the position
4 and consistent with business necessity.

5 I would like to now turn briefly as I come to
6 concluding my remarks on how we interact with the
7 Federal Reentry Council. The chair of our
8 Commission, while she's not a member of the
9 President's cabinet, sits on the Reentry Council, and
10 we also help lead our participants in the employment
11 subgroup which you have heard about today, and that
12 subgroup is examining how the Federal Government can
13 reduce barriers both within the Federal Government,
14 but also externally to employing those with criminal
15 records.

16 Our commitments on the Council are consistent
17 with our work in this area and include work on
18 outreach and communication as well as law
19 enforcement-related training, and we provide a
20 constant resource to our brother and sister agencies
21 on the applicability of Title in this area and in
22 both private and federal sectors, and we add, I

1 think, an economic justice and rights perspective to
2 an otherwise rather limited conversation.

3 As I mentioned before, one of the most
4 significant deliverables of the Reentry Council has
5 been the development of these myth busters which I
6 passed out which help clarify federal law in this
7 area and in particular, as I said before, updates our
8 guidance, the initial one that really talked about
9 our older guidance. This one brings it up to date
10 and also becomes one of the tools we use to educate
11 employers as well as employees and job applicants
12 about their rights and responsibilities under Title
13 7.

14 Our enforcement guidance as well as our
15 enforcement in general concerning arrest and
16 conviction records, I think are an important model
17 for our sister and brother agencies on the Reentry
18 Council. They've relied on our guidance to take
19 steps to ensure their own constituencies are educated
20 about the use of criminal records in the context of
21 various services provided by their agencies. I'm
22 happy to talk more about that later on.

1 In conclusion, you know, we emphasize in our
2 guidance and all of our training that qualified
3 individuals with criminal records should have an
4 opportunity to compete for employment when their
5 criminal records are not relevant or predictive, as I
6 said before. Criminal records should not prevent all
7 future, and employers who consider criminal
8 background information should do so in a targeted and
9 fact-based way in light of the nature and severity of
10 the crime, the time elapsed, and the nature of the
11 job, and we encourage employers to provide an
12 opportunity for that individualized assessment that I
13 talked about before making an adverse employment
14 decision.

15 I distributed the materials already. I'm
16 happy to answer any question. Thank you.

17 MR. JONES: Thank you very much.

18 MS. HEINRICHES: Mr. Cox, I'm going to start
19 with you. I have read a number of op ed pieces,
20 responses to the guidelines, and consistently those
21 who are opposed to the guidelines cite a 2006
22 University of Chicago study that concluded that

1 employers using criminal background checks are more
2 likely to hire specifically African Americans -- that
3 was the group that they focused on. This study has
4 been cited by -- how have you responded to it, and
5 I'm assuming you were aware of the study prior to the
6 implementation of the guidelines.

7 How does reconcile and what social science is
8 relied upon to dispute those findings?

9 MR. COX: Sure. Sure. Well, I think to sort
10 of start from the beginning, this argument that's
11 being put forward, I think by some of the employer
12 community, unfortunately, by another independent
13 government agency really is predicated upon the
14 research of another expert, Harry Holzer, who I think
15 actually refutes the conclusion itself.

16 His argument, and I'll sort of paraphrase it
17 to some degree, is that they studied and found that
18 employers -- actually, I'll do a better job quoting
19 it than actually paraphrasing it -- that, yes,
20 employers could be reluctant to fire men with
21 criminal records, but, you know, in some ways, and
22 I'll tell you how he responds to that charge, our

1 guidance is designed to actually produce just the
2 opposite result.

3 So given the social science in the area of
4 how African Americans and Latinos are
5 disproportionately impact by the criminal justice
6 system by how Title 7 applies in this area and how
7 the basic law applies in this area, how we need to
8 seriously look at the potential disparate impact.

9 Our guidance is designed to give employers an
10 opportunity to avoid liability.

11 In other words, employers acting in the
12 correct way and a way that is consistent with,
13 frankly, how the law has been laid down since the
14 seventies, it would actually come to the opposite
15 conclusions. In other words, if they operate
16 correctly, they're protected from liability in hiring
17 African Americans and Latinos with criminal records
18 if they go through the fact-based inquiry that I just
19 outlined.

20 What Harry Holzer said in some testimony sort
21 of responding to that is, and I'll quote it: Since
22 employer reluctance to hiring men with criminal

1 records appears to be a major reason for why
2 employment rates of ex-offenders are so low, attempts
3 to limit the disparate impacts associated with
4 criminal records for those who would otherwise be
5 employable should be welcome as long as they do not
6 impose undue burdens and risks on employers.

7 He says regarding our guidance in that area:
8 "In my opinion, the EEOC guidance does not seek to
9 discourage employers in any from doing background
10 checks on applicants. It simply tries to encourage a
11 more judicious use of the information gained through
12 these checks. Furthermore, it does not seek to
13 significantly raise the risks employers bear from
14 hiring offenders. It simply tries to encourage a
15 more accurate assessment of those risks.

16 So I think that, to me, is the best response
17 from the person for whom a lot of these arguments
18 based on. I think that our guidance, number one,
19 doesn't forbid folks or employers from using
20 background checks. It simply lays out the methods,
21 frankly, and the way that you can use background
22 checks in a way not that's not discriminatory.

1 MS. HEINRICHES: I also want to talk to your
2 about the use of arrest records. The guidance
3 indicates that arrest records can be used when the
4 conduct, but not the arrest, can be tied to the
5 employment, the responsibilities of the job. Then an
6 example is provided, and in that example, there is an
7 employed individual who is arrested. I think it was
8 a school administrator arrested following accusations
9 and criminal charges being brought for allegedly
10 inappropriate touching female students, and I'm not
11 sure if it was a termination or a change of
12 assignment, but the school conducted an investigation
13 and interviewed the girls, interviewed the
14 administrator, and decided that the conduct was
15 related to the employment.

16 So my problem in reading that was that I
17 don't know of any attorneys on this panel that would
18 that allow the client who's charged with those
19 particular charges to speak to the school board,
20 whoever it is that seeks to interview a client. I
21 don't know -- certainly not in my jurisdiction,
22 minors not going to be -- well, it's going to be

1 strongly discouraged to have a minor speak to school
2 administrators when there is an open investigation.

3 So I think in reality, you have an arrest
4 with the allegations contained in the affidavit of
5 probable cause or whatever the charging instrument
6 is, and that is what the school or an employer would
7 be forced to rely upon, and my concern is it would
8 seem impossible, certainly with the example that was
9 included in guidance, it seems impossible to allow
10 for a thorough independent review to confirm that
11 it's conduct. I think it --

12 I'm wondering how you would respond to the
13 assertion that it's still an arrest. It gets back to
14 the arrest when you don't have to opportunity to
15 fully put the accusation in context, and you
16 shouldn't have to because it's just an arrest.

17 MR. COX: I understand and I think that --
18 and what you're saying basically is that the conduct
19 is still reflective of the arrest. In other words,
20 the nexus is still there. I understand that concern
21 and I think we've heard it before. I think all I can
22 tell you is that our overarching emphasis in the

1 guidance, and that example is good a one to lift up,
2 is -- and I think this is what we try to emphasize
3 with employers. This is typically what they want to
4 focus on is really to disaggregate an arrest from a
5 conviction.

6 In other words, I think your concern is a
7 well-taken concern. What we hear mostly from
8 employers is sort of the opposite extreme where they
9 equate an arrest automatically with a conviction.
10 They elevate an arrest to the point where they
11 exclude someone based solely on that. So the primary
12 focus of the guidance was to re-emphasize that arrest
13 along apart from conduct was not indicia of a
14 conviction, did not carry the same weight and,
15 therefore, should not be predicated alone.

16 What the Commission did in the second step,
17 and this is what your concern is, is to say that,
18 however, conduct outside of the context of the
19 criminal -- I understand the criminal investigation
20 which may go parallel with this, and I can't speak to
21 in reality how that would actually play out. I was a
22 former public defender and, you know, I could very

1 easily see from your perspective that you would not
2 have your client in that situation anymore. So in
3 some ways, that example is probably is not a very
4 good one, but I think the idea was to be able to
5 ensure employers that, Look, if you put aside the
6 arrest, the official arrest, if you have a sense
7 based on your investigation that the conduct was
8 sufficient to create an environment where you want to
9 take adverse employment action, you still could.

10 That was what the guidance was intended to
11 say. I think you raise a very good point that number
12 one, in reality, if there's criminal aspect to this,
13 you may not get that far, but also that in some ways,
14 the conduct inquiry is still linked back to arrest,
15 and I think, you know, I've heard the critique and
16 I'll take it back and have that conversation. I'm
17 glad you raised it, but I just wanted to emphasize
18 and say that the intend of the guidance was really
19 focused much more on decoupling arrests from
20 conviction because that still, unfortunately, is what
21 employers still run to, that, as I said before,
22 arrests are just as bad as convictions and,

1 therefore, based on the arrest alone and the official
2 record, we're going to make an adverse employment
3 decision.

4 But I'd like to talk to you more about it in
5 detail and take back the actual critique to our
6 Office of Legal Counsel who are the primary drafters
7 and, you know, see how perhaps we can clarify that
8 during our trainings.

9 MS. HEINRICHES: Okay. Final question for
10 you: I know that the guideline provide that an
11 employer can't -- I believe, and correct me if I'm
12 wrong in this. It's my understanding that they can't
13 exclude an applicant for a longer period of time than
14 what the federal exclusion is that's 10 years. Am I
15 right that the State can't be more restrictive? A
16 private employer can't be more restrictive in
17 applying a disqualifier for an individual with an
18 arrest history or conviction history and the federal
19 standard is 10 years.

20 MR. COX: Our guidance is silent on the exact
21 number of years.

22 MS. HEINRICHES: Simply that it can't be more

1 restrictive than the federal employment.

2 MR. COX: Oh, I see what you're saying.

3 You're saying -- I actually don't see what you're
4 saying. I'm sorry.

5 MS. HEINRICHES: My understanding was that
6 federal law excludes individuals with convictions
7 from a specific type of employment.

8 MR. COX: Some statutes. It depends on what
9 the statute is. Some statutes exclude folks from
10 employment in areas of banking and other areas, and
11 those specific laws will sometimes carve out an
12 exception for Title 7 -- in other words, carve out an
13 exception. It will say Title 7 can't apply here.
14 Federal law basically, this particular federal law,
15 will trump employment discrimination. So you can
16 have an absolute exclusion based on the criminal
17 record.

18 Is that --

19 MS. HEINRICHES: Kind of. I guess the
20 follow-up to that was I was under the impression that
21 private employers can't provide an exclusion that is
22 more excessive than the federal exclusion. Is that

1 wrong?

2 MR. COX: I don't think we have an absolute
3 on that. I mean, I think what we really encourage
4 employers to do is not to have any -- one way or the
5 other have any absolute bar or any absolute even way
6 of looking at that, really to encourage employers to
7 have the interactive engagement with employees with
8 the understanding -- applicants or employees with the
9 understanding that, again, the longer you have in
10 terms of the longer you have from the offense to the
11 job application, to -- first of all, the emphasis for
12 private employers is you should haven't an absolute
13 exclusion. You shouldn't have on your policy
14 something that blanketly excludes folks from applying
15 for employment.

16 So that's sort of the first inquiry. The
17 second one is if you are going to exclude folks, you
18 need to be targeted and go through the steps that are
19 sort of outlined.

20 So we don't have in our guidance the
21 absolute, I think, nexus you're talking about unless
22 I'm misunderstanding.

1 MS. HEINRICHES: I think I misunderstood. You
2 did a good job of answering it.

3 MR. COX: Well, we really -- I truly want to
4 emphatically encourage that kind of interactive --
5 which is not inconsistent with how Title 7 applies in
6 a number of areas or even ADA or anything else. If
7 you're going to exclude folks from employment or take
8 an adverse action, you can't just do it without
9 having an engagement about whether the exclusion is
10 related to the job, and so, you know, while there
11 might be federal statutes that say, you know, Look,
12 for whatever reason Congress says to have this job in
13 the Federal Government, you can't have a criminal
14 record and we're not going to let you have a Title 7
15 exception on that or sue under Title 7. That's one
16 thing. With private employers, you know, where those
17 kinds of exemptions from Title 7 don't exist, we want
18 you really to have that interactive relationship.

19 And one more thing I'll add, which you didn't
20 ask about, is State law, which is something that
21 folks still raise as a concern. You know, everyone
22 understands, you know, the fact that federal law

1 trumps state law. That's in general. Right? And I
2 think under Title 7, there's specific language that
3 says no state law exclusion can sort of stand against
4 a Title 7 challenge if it purports to take action
5 that would violate Title 7.

6 So it's important to understand particularly
7 in this context where we're talking about some State
8 laws that say you can't hire folks to be barbers, for
9 example, you can't hire folks to be -- to have
10 certain licenses, for example. You know, if in doing
11 so, that exclusion would violate Title 7. That
12 exclusion can't stand under State law.

13 So that's something else our guidance
14 emphasizes, which, you know, quite frankly, is
15 something that needs to be more -- I think needs to
16 be talked about more. I think with employers, they
17 fully understand, you know, how they have to interact
18 with the requirements under Title 7 and under State
19 law. If in complying with State law, you don't
20 violate Title 7, then there's not an issue.

21 MS. HEINRICHES: Thank you. Is it Professor
22 or should I direct you as Doctor? Do you have a

1 preference?

2 DR. TAXMAN: No. Faye is fine too.

3 MS. HEINRICHES: All right. Dr. Taxman,
4 earlier in your presentation, you were talking about
5 -- it was generally within the area of the problem,
6 and you listed a number of actors that you felt were
7 responsible and you mentioned public defenders. I
8 want to talk more broadly and related to the defense
9 bar as a whole.

10 What is it that defense attorneys are doing
11 now that you see as part of the problem and what
12 recommendations do you have for how we can implement
13 some of the strategies that you suggest and how would
14 strategies be incorporated into providing a defense?

15 DR. TAXMAN: Okay. So, you know, to a large
16 extent, this is an area that has been insufficiently
17 researched, which is the role of the defense attorney
18 in terms of helping people, you know, address some of
19 their offending behaviors. There is a Amy Miracle,
20 who is at Treatment Research Institute of
21 Philadelphia.

22 MS. HEINRICHES: I'm sorry. What is her name?

1 DR. TAXMAN: Amy Miracle, and I can give you
2 her reference, but Amy actually did a pilot study
3 around the Philadelphia area, so close to where you
4 are, where she worked with two public defender
5 organizations to really work on applying some of
6 those principles that I briefly outlined to you in
7 terms of how the defenders could actual deal with the
8 nonlegal aspects of a person's case or life in terms
9 trying to encourage people to participate in
10 treatment programs or to continue in employment
11 scenarios while their case is proceeding through the
12 justice system.

13 So she developed what's called DARTS, this
14 intervention which actually was to train public
15 defenders to use these motivational enhancement and
16 screening techniques to really work with people to
17 help them understand, you know, this is the reason
18 that you're involved in the justice system and these
19 are some of your options.

20 It's very similar, you know, when Malcolm
21 Young started the sentencing project, I think in the
22 late 1980s, early seventies. You know, he had this

1 idea about sentencing advocates that could work in
2 defender offices and they were -- basically, his
3 notion was that they could be like, you know, social
4 workers who were employed by the defenders offices
5 who could actually kind of help people begin to work
6 on the issues so when their case went to court, you
7 know, people could actually begin programming, you
8 know, because there's generally a period of time
9 between arrest and when actually a conviction occurs
10 or the case is dismissed that the defender could
11 actually work with the person, and the whole notion
12 is that, you know, the offender is the person's
13 advocate both in the legal sense, but that also means
14 that the defender could become that person's advocate
15 for trying to address the things that would help that
16 personal either stay out of prison or jail, to get on
17 a probation sentence, to actually engage in community
18 services that might be useful without the pressure of
19 the criminal justice system.

20 The thinking is that, you know, in some ways,
21 you know, the drug treatment court or problem-solving
22 court model where the defender is part of that

1 process sort of does that in acknowledging that it's
2 very important to have that person's advocate there,
3 but the notion is that the attention is focused in on
4 those aspects that will help that person, you know,
5 address if they have an addiction disorder, if they
6 have some mental health issues, if, you know, they
7 lack some schooling or employment options, you can
8 begin those processes ahead of time.

9 So Amy's pilot study was very successful in
10 terms of some good outcomes. First of all, it was
11 feasible and the public defender organization she
12 worked with actually, you know, were able to
13 implement it, but, you know, there's very little
14 research, actually, on changing roles of defenders
15 except for within the context of the problem-solving
16 courts.

17 MS. HEINRICHES: I think in a defender's
18 office when you have a larger staff and you can --
19 and maybe Greg speak to this, but you have the
20 holistic staff and you can provide social workers who
21 can actually spend some time with individuals that
22 need services. I know in private practice, sole

1 practitioners, that's not -- it's just not our
2 reality, but certainly there are many discussions
3 about the benefits of seeking therapy, seeking
4 whether it's inpatient drug and alcohol therapy that
5 will have a direct reduction, directly relate to the
6 reduction in your sentence, you know, 90 days of
7 treatment, bring that in before the DUI judge, but I
8 have always heard the District Attorneys and the
9 judges question the motivation of the individual who
10 brings that sort of mitigating evidence into court,
11 and I wonder from a practitioner's standpoint and
12 scientist's standpoint, is that enough?

13 You're talking about motivating the
14 individual. Is the reduction of the sentence, the
15 possibility of getting probation instead of a jail
16 sentence, is that sufficient to motivate them where
17 you'll see long-term effects, or is that just a
18 short-term fix?

19 DR. TAXMAN: Well, you know, so this whole
20 issue about people gaming the system or, you know,
21 taking advantage of opportunity, I would put it under
22 something that the Federal Task Force on Myths should

1 discuss, because, you know, people are incentivized
2 in every scenario. Most people wouldn't go to work
3 if they didn't get a paycheck. Right?

4 So if we can use -- and this is -- there's a
5 whole area of science called behavioral economics
6 that's all about incentivising people, and if you can
7 use whatever leverage you have to get people to
8 become incented for whatever reason, then why as a
9 society wouldn't we want to do that? Because that's,
10 you know, the goal, is to be able to really get
11 people to kind of do things that are better for
12 themselves, and most people don't do it on their own.
13 You know, kids don't go to school on their own unless
14 there is a requirement to go to school. Parents
15 wouldn't immunize kids often times, you know, unless
16 there was a reason for it.

17 So this is a myth area, and the whole area
18 about motivational science and the intervention
19 science really focuses our attention on the notion
20 that we should use whatever leverages we can. They
21 could be social. They could be financial. They
22 could be, you know, interpersonal to be able to do

1 that.

2 In terms of the second part of your question,
3 which has to do with, I think, the role of criminal
4 justice actors and how people relate, I'd sort of
5 take the idea that Governor Ehrlich indicated about
6 social marketing where, you know, more attention
7 needs to be on marketing the criminal justice actors
8 and I would include social service actors too in most
9 communities, that, you know, it's not that people are
10 gaming the system in terms of these initiatives.

11 It's really about using opportunities structures to
12 encourage the types of behaviors we want in society.

13 Again, you know, I'll use the issues about
14 going to school. I mean, you know, given a choice,
15 most 15-year-olds would not want to go to school, but
16 with the leverage over their heads and parents behind
17 them, you know, they do go to school and, you know,
18 it's in our better interest as a society to have
19 people go to school.

20 So I think this is a marketing issue and this
21 is one advantage, actually, of the, you know,
22 National Association of Drug Court Professionals, is

1 they've been able to get communities and all of the
2 criminal justice actors to begin to kind of think
3 through how is it that we can best use all of our
4 resources to really motivate people to address some
5 of the issues that continues them in the justice
6 system.

7 MS. HEINRICHES: Thank you.

8 Mr. -- it's Baumann?

9 MR. BAUMANN: Yes.

10 MS. HEINRICHES: I have a question for you.
11 In looking at the mechanisms that exist in various
12 jurisdictions to help to seal or expunge or forgive
13 criminal records and I'm wondering from a law
14 enforcement standpoint, what is your position, what
15 do you think the position throughout your field is,
16 regarding the actual destruction of, an actual
17 expungement, destroying the records that are in
18 police custody of prior criminal acts?

19 In Pennsylvania, jurisdiction by
20 jurisdiction, what's actually done with the records
21 when an expungement order is assigned varies.
22 Pennsylvania State Police are supposed to provide a

1 certification that it's been destroyed. What affect
2 does that have or is there any concern with the
3 affect that that has on law enforcement's ability to
4 track prior offenses if you come into contact with an
5 individual after the expungement takes place?

6 MR. BAUMANN: Well, I think there's a huge
7 concern, but it has to -- I think I spoke to this a
8 little bit ago. It has to be balanced with what the
9 offense is, and I don't know that I know exactly
10 where to draw that line, but I think as you start to
11 see a broader look at some of the recent backgrounds
12 of people involved in these shootings and did they
13 have prior contact with law enforcement, did they
14 have prior with mental health professionals. You may
15 see a push for keeping more records rather than
16 destroying records as time goes by because people are
17 going to want to know whether or not that would be
18 helpful or not. I don't know the answer to that.

19 So I think if you're going to make that
20 argument of if you're going to go down that road, and
21 I don't think it's a bad road to go down, I think you
22 really have to watch what type of offenses, what type

1 of behavior are we talking about as you go after
2 that, and if you're -- I mean, it's one of these
3 issues that if you are able to go out there and
4 absolutely destroy the records, then it's going to be
5 very hard for anybody to ever prove that it was
6 effective or ineffective because if the person gets
7 arrested later, there should be, in a perfect system,
8 no indication that there was earlier behavior.

9 So I don't know if you do it exactly right,
10 how you build a defense of that system and show that
11 it works, if you understand what I'm saying. You
12 can't turn and say, Look, nobody has ever re-offended
13 because they're going to say back that you don't know
14 because we've destroyed it, but, you know, I think so
15 where you counter that argument or where I would
16 counter that argument is what I said earlier, I
17 think, about real chances and half chances. I mean,
18 give this an opportunity to work. Don't have this
19 person out there worried about this all the time.
20 Let them move forward and then see what we're able to
21 do.

22 So if you're going to do a full expungement,

1 and I realize that all jurisdiction do -- probably
2 not all, but most do it differently than they do it,
3 is try it. I would advocate for if it was up to us
4 or my opinion would be for a lot of nonviolent
5 offenses where you'd see that, and we do now in
6 juvenile cases.

7 D.C., to give a specific jurisdiction, is
8 very hard core about juvenile records and them not
9 being able to use later unless they're moved into
10 adult court, but again, there's been real mixed
11 success of being able to show that that system works
12 here, but I think that's more of the fault the system
13 than what's really going on.

14 MS. HEINRICH: So you would draw -- am I
15 right in understanding that you would draw the
16 distinction between access, perhaps public access and
17 perhaps not even that specific, but access and
18 destruction? Would you advocate for having maybe a
19 limited body agency still having records or access to
20 records, but with an expungement, simply blocking the
21 general public from getting it, employers from
22 getting it?

1 MR. BAUMANN: I think that may be easier to
2 sell, but I will say that I would worry about
3 mischief if that still existed. You know, Look, I
4 think if it's done right and it's brought forward
5 properly, you could go with the destruction argument,
6 but I do think that it may be a tough sell.

7 MS. HEINRICHES: Thank you.

8 MR. JONES: Larry.

9 MR. GOLDMAN: Let me ask you, Mr. Baumann --
10 I don't know how to address you. Officer?

11 MR. BAUMANN: Chris is fine or you can do
12 officer, whatever. You're not going to offend me.

13 MR. GOLDMAN: First of all, does the
14 Washington, D.C. Police Department hire people with
15 criminal records?

16 MR. BAUMANN: Yeah. I think you can -- there
17 are some -- certainly, juvenile records, I don't
18 think are at issue. I think you have -- I think you
19 can get hired if you have some minor offenses. I
20 think some of -- you see that in some of our military
21 folks that were overseas and they were -- I don't
22 know the military terminology. If I get it wrong, I

1 apologize, but they were adjudicated for, say,
2 drinking in public.

3 MR. GOLDMAN: I guess you spend most of your
4 time representing 30-some hundred people as a union
5 official or president. What would you say if the
6 Washington City Council, as I believe is the rule in
7 New York, that people with misdemeanor convictions
8 are eligible to be police officers?

9 MR. BAUMANN: Well, I think that's the case
10 now. I think it's a case-by-case basis, and
11 certainly we have officers that -- you know, I have
12 some strong feelings about this, but we have officers
13 that are working with misdemeanor convictions. So
14 most of them DUIs.

15 MR. GOLDMAN: Have you found those officers
16 have any -- are able do their jobs and --

17 MR. BAUMANN: No, and it's a very tough call
18 for me because on just as a normative matter, I would
19 say we should not allow it. If you get a DUI, you're
20 gone. One of the best sergeants I know in our Police
21 Department, early on his career was stupid, got
22 arrested for a DUI, and he is an excellent police

1 officer and an excellent person. So it's very --
2 that's a very difficult subject for me personally.

3 MR. GOLDMAN: Let me ask you something else
4 with -- I'm criminal defense. So all of my clients
5 ask this: Does the FBI destroy the records when
6 they're expunged?

7 MR. BAUMANN: I have no idea. I have no
8 idea.

9 MR. GOLDMAN: I believe they do, but most of
10 my clients think I'm crazy.

11 All right. Mr. Cox, let me ask you a very
12 silly kind of layman's question, and I'm reading this
13 very well written reentry myth buster, which seems to
14 me is to say to employers, Hey, we're not all that
15 crazy, but No. 4, why should an arrest record be
16 treated differently than a conviction record, and you
17 say an arrest does not establish that a person
18 engaged in criminal conduct.

19 Arrest records may also be inaccurate, etc.,
20 and why -- well, let me ask you can and should the
21 EEOC, if they can pass a regulation that say arrest
22 records, that arrest records cannot be considered, as

1 I believe is the law in the State of New York, cannot
2 be considered because they're inaccurate, because
3 they don't establish anything, and because
4 particularly the mission of the EEOC is such a high
5 percentage of especially young African American men
6 have arrest records, whether depending on whatever
7 side you're on, they deserved to have been arrested
8 or not -- I have my own feelings as most of us do,
9 but why doesn't the EEOC, if they can say an arrest
10 record should not be committed because they tend to
11 lead to discriminatory hiring, can they do it?

12 MR. COX: Well, and we actually do emphasize
13 in our guidance that arrest records alone should not
14 be the basis for an adverse --

15 MR. GOLDMAN: My problem is I can see an
16 employer who doesn't want to hire someone, Boy, yes,
17 arrest record. You know, we criminal defense lawyers
18 deal with something called Batson. Batson is
19 supposed to mean when we do not make racially --
20 challenges based on racial reasons. Every
21 prosecutor, virtually every prosecutor, and virtually
22 every defense lawyer, and it's not irrational, will

1 in a certain case make a decision because we know so
2 little, especially in Federal Court, about the
3 jurors, based primarily on race and usually most of
4 us are good enough to disguise it. I suspect the
5 employers who don't want to hire an African American
6 or Asian are just as smart as we are.

7 Why is it that -- I mean, I understand, but
8 you're still leaving this loophole.

9 MR. COX: I know. I think that it wasn't --
10 it's not as if we did not receive that advice. It's
11 not as if we didn't receive advice to have, I think,
12 arrest records taken off the table altogether, but I
13 think the reading of the law and I think the
14 interpretation of the limits of our ability under --
15 all of this is still based from our perspective Title
16 7 and what Title 7 will allow to happen, and I think
17 that the interpretation of Title 7 was that you could
18 only go as far as, basically, we did, which was to
19 say that if you were to use arrest records alone as
20 an exculpatory tool --

21 MR. GOLDMAN: This may be a little beyond
22 your -- maybe you don't know the answer. If we in a

1 report said arrest records, pure arrest records not
2 leading to conviction of anything should not be
3 considered at all, could the EEOC, could the Congress
4 as far as you know pass such legislation?

5 MR. COX: Well, EEOC, this is just guidance.
6 It's not regulatory. It's not binding on employers.
7 It's not a requirement for employers. If you were to
8 make that recommendation and you were to, for
9 example, put it in a letter to the EEOC, I think it
10 would be something we might consider, obviously,
11 amongst all the other comments we received, the next
12 time we were to consider guidance in this area and in
13 the same way that we considered that recommendation
14 for this round of guidance.

15 In terms of Congress, you know, I don't know
16 what they would do. Right? I mean, their Second
17 Chance Act, that's basically a funding tool to fund
18 folks, fund reentry organizations. I don't really
19 know what Congress would be able to do in that
20 context, but certainly for us in terms of our
21 guidance, we would consider and take very seriously
22 any recommendation that you all produced regarding

1 not only the use of arrest records, but particularly
2 the question you raised, Elissa -- sorry I called you
3 by your first name.

4 MS. HEINRICHES: Elissa is fine.

5 MR. COX: With regard to that example and
6 also how we actually communicate to employers, they
7 make the connection between not using arrest records
8 to exclude folks and yet still use conduct as a basis
9 for an adverse employment action. We would take very
10 seriously all of those comments.

11 Now, I can't promise you that tomorrow, we
12 would revisit the guidance. You know, getting this
13 guidance, you can tell the first was promulgated in
14 1987, then 1990. Then we got a lot of critiques, you
15 know, subsequently. It took a while to get us where
16 we are right now. I can't promise you that we're
17 going to revisit this tomorrow, but I do think that,
18 you know, the comments we take, we take very
19 seriously and I think there's a four-to-one vote to
20 pass this guidance. There are lot of commissioners
21 who take this issue very seriously, and we would
22 welcome the input.

1 I think also, we also say that the EEOC would
2 benefit from the perspective of those who aren't just
3 in the employment ranks -- I'm sorry -- employer,
4 slash, employee rights ranks. We hear a lot from
5 that community. I think we don't, frankly, hear
6 enough from organizations that are purely reentry
7 organizations, those who are dealing with the
8 criminal justice system in a way that, frankly, we
9 are not completely familiar.

10 So I think having that kind of input would be
11 helpful. I repeat would we revisit the guidance
12 tomorrow? I can't promise that, but I do think that
13 having that level of inquiry from an organization
14 that protects folks' rights in a different way than
15 perhaps we are always familiar with would be helpful.

16 Could I also clarify my answer to you,
17 Elissa? I think you were referring to the part of
18 our guidance that's on page 20 where I said Title 7
19 preempts -- Title 7 does not preempt the federal
20 restrictions that exclude folks based on a number of
21 characteristics or based on a number of rationales
22 for federal employment.

1 What it does say is that if an employer goes
2 beyond those restrictions, then Title 7 would be
3 applied. So I think that may be what you were
4 referring to.

5 So we can't receive a complaint from a
6 private employer that is working within the
7 restrictions of the federal exclusion, but if their
8 exclusion goes beyond what the Federal Government
9 requires, then Title 7 would be able attach.

10 So that's hopefully helpful in answer to your
11 question. I'm sorry.

12 MR. JONES: Penny.

13 MS. STRONG: Thank you.

14 Mr. Cox, I have one question for you, and
15 that's what interface does EEOC have with the Federal
16 Trade Commission on the Fair Credit Reporting Act, as
17 I understand it, any other rule or regulation that
18 they have promulgated that controls employers and
19 background checks? If you would comment on that, I'd
20 appreciate that.

21 MR. COX: Sure. Sure. We interact with them
22 a lot, primarily in the areas of public education.

1 We're exploring -- let me start by saying we're all
2 on the Federal Reentry Council, and I think, you
3 know, it's easy, frankly, to dismiss any kind of
4 federal task force as not necessarily always being
5 impactful. This group actually is, and I think that
6 it's very helpful to have agencies that do this work
7 in a number of discrete areas around the table
8 talking both at the cabinet level, the leadership
9 level, but also at, frankly, my rank and file level
10 or, you know, lower level.

11 So we interact with the FTC a lot. So our
12 first iteration of the myth buster, which you don't
13 have, we included on that a discussion of FCRA so
14 that folks, employers as well as employees, who get
15 the sense, you know, that there's a federal EEOC
16 civil rights aspect of this, there's also a federal
17 credit aspect to this. They're not exactly the same,
18 but, you know, hey, employers need to pay attention
19 and there is sort of this idea that, I think an
20 important idea that, we sort of all enforce this law
21 together in lockstep and send a message that there's
22 this sort of federal concern about how you use arrest

1 records in employment on a number of level.

2 So we collaborate on that. We're also

3 looking into ways we can more collaborate and move

4 effectively in interacting with employers and doing

5 training with employers so that, quite frankly,

6 there's not any confusion about how we're approaching

7 information gathering. Sometimes employers will say,

8 Well, we have to conduct -- we have to, I guess,

9 comply with FCRA in this area and we provide this

10 information under FCRA; why do we also need to worry

11 about what you all are doing.

12 So we're looking at ways we can sort of work

13 together to better educate employers about the

14 requirements of both and sort of streamline our

15 interaction with them in that way. We're both

16 independent agencies. So we don't influence each

17 other's investigations or the statutes don't overlap

18 in that way, but we're exploring ways that we can

19 actually do a better job sort of if not jointly

20 enforcing law, because they obviously are separate,

21 doing a better job interacting so that we can be more

22 impactful and, frankly, communicate better how we're

1 doing this work.

2 MS. STRONG: One further question: Does FCRA
3 apply -- is there a numerical limit as there is with
4 the EEOC, 15 or more employees?

5 MR. COX: That's a good question. I don't
6 know. I'm not an expert in that. I can try to find
7 out and get back to you all, but I'm not sure. I
8 want to say that there must be restriction. Most
9 laws in that area have some sort of limit so that
10 small businesses aren't, it might be seen, overly
11 burdened or perhaps impact them in a way that might
12 be adverse, but I'm not exactly sure, and I don't
13 know if anyone else here is more of an expert than I
14 am, but I can definitely find out and get back to
15 you.

16 MS. STRONG: Thank you, and one last
17 question.

18 MR. COX: Sure.

19 MS. STRONG: I went on their website earlier
20 today. Do they have any current enforcement actions?
21 Are these things where private attorneys are taking
22 the cases? Do you have any idea what the state of

1 the litigation or enforcement of FCRA is, realizing
2 it's not your agency?

3 MR. COX: You know, my understanding is that
4 they actually do have -- they take individual
5 complaints. They don't always act on every one, but
6 I do believe they actually announced one enforcement
7 action, and I can send, perhaps, your contact here
8 that information. There was something that came
9 recently up through the Reentry Council where they
10 announced it. So there's at least one that they're
11 working on in this area. So I can pass that along to
12 you all.

13 MS. STRONG: Thank you.

14 MR. COX: Sure.

15 MR. JONES: Chris.

16 MR. WELLBORN: My question is directed to Mr.
17 Baumann, and this is sort of a practical, I guess,
18 question regarding your practical experience and the
19 practical experience of those that you work for and
20 represent.

21 We heard in other jurisdictions from police
22 chiefs and law enforcement, whether they were

1 probation officers or corrections officers or, again,
2 beat cops for lack of a better term, that one of the
3 major issues that puts a drain on officer resources
4 and ultimately becomes expensive in terms of the
5 amount of time and also money and that, therefore,
6 creates a public safety issue is the amount of time
7 that police officers were having to spend doing
8 effectively -- knocking on doors, checking on people
9 who are on probation, making sure that people who are
10 a sex offender registry have a permanent residence
11 even though they were effectively exiled out of the
12 community because of all the restrictions on where
13 they can live.

14 In your experience, do you see this as an
15 issue that if, for instance, officers did not have to
16 do a lot of these little things, and I'm using that
17 term in quotes because it obviously is important in
18 some respects, but would not have to spend as much
19 time tracking down people about are they sleeping in
20 a park versus can we verify where they're living so
21 that they could then devote their resource to other
22 things that perhaps are more effective for public

1 safety?

2 MR. BAUMANN: I think it is a drain. I've
3 had to go with -- in D.C., you have what we call
4 CSOSA, which is actually a federal agency. D.C. has
5 a few of these hybrids, but they're the essentially
6 parole and probation, what you'd call them in some
7 jurisdictions.

8 In our jurisdiction, they're not armed, and
9 so we will go out with them. I have gone out with
10 them. So you do see that, I think, resource-wise
11 that it does pull down on that.

12 Now, on the other side of it, we have, you
13 know, just in the last couple of weeks have had a
14 string of incidents that individuals that were on
15 high-level security release had been involved in
16 homicides or violent assaults, and I think that those
17 type of media stories, that type of coverage is not
18 going to allow for maybe the type of reductions that
19 you're coming from, and this goes back to what I was
20 talking about earlier.

21 If you can show with certain types of
22 offenders that are out that there is not -- they are

1 not an issue, maybe you can start chipping away at
2 that and saying, you know, Listen, this individual
3 because of either time or what the offense was or
4 what they've doing, we don't need to have CSOSA and a
5 D.C. police officer checking on them every week,
6 month, six months, or whatever it is; or I guess the
7 other way to do it would be if they are regularly
8 checking in with their parole and probation officer
9 that could alleviate the need to be out there.

10 But I don't know a jurisdiction where it
11 wouldn't be a resource drain, because if that
12 function is being performed, you can have those law
13 enforcement individuals doing something else.

14 MR. WELLBORN: And flipping it a little bit,
15 if, hypothetically, you had the possibility of stable
16 housing and stable employment and stable reentry
17 services available for people who were coming out,
18 would that not make it easier also for police
19 officers just in terms of liaising with them because
20 you wouldn't necessarily be needing them in a
21 confrontational manner?

22 MR. BAUMANN: Oh, I think so. I mean, that's

1 what I go to. That's why I think the police can be a
2 real ally here. The idea of, you know, education,
3 the idea of skills, you know, whichever way we decide
4 to go, and not that we can't go both ways, but that
5 you're preparing people to be out and actually be
6 able to be employed.

7 Look at D.C. The disparities in D.C. are
8 just dramatic. You look over at Ward 8 where I was a
9 police officer. The unemployment rate has hovered
10 around 30 percent. You look at Ward 3 where now I'm
11 fortunate enough to live. The unemployment rate is
12 probably -- I don't know -- two, three percent. For
13 a city this small, the differences are stark, and I
14 think that's one of the arguments. There are not
15 opportunities, and I think that's an -- at least in
16 D.C., that would be easy sell. If you came to me and
17 said, Look, we want legislation or we want money to
18 get a vocational school up that will not only service
19 folks that do not have records, but also specifically
20 is going to help coming out, I think you would get --
21 I can tell you while I'm in charge of the union, you
22 would have our support on something like that.

1 MR. JONES: Margi.

2 MS. LOVE: Yeah. Thank you all, three.

3 I wanted to pursue something that Dr. Taxman
4 was talking about. That's this notion of rewards,
5 the contingent management idea.

6 The possible fact of incentivizing, I
7 suppose, people to get their lives together, first of
8 all, can you describe some of these specific awards
9 other than -- rewards, I should say -- other than
10 money? I don't know how that would come in, but some
11 of the rewards that you've seen in operation? And
12 the second part of my question is why do you suppose
13 the federal system is so slow to get the message?

14 So that a two-part question.

15 DR. TAXMAN: Well, so there is a variety of
16 rewards. There's a grouping that we call social
17 rewards, and those have to do with issues like, you
18 know, probation officers or judges doing affirmations
19 to let people know they've done a good job or they're
20 meeting their target goals.

21 Certificates are another form of rewards.
22 You know, vouchers to -- you know, some jurisdictions

1 use vouchers to sporting events and museums. Some
2 use like children's books to give out.

3 So there's a variety of things that people
4 can use, and the whole focus of rewarding is that you
5 reward early and often and then you delay the reward.
6 So you're really trying to help people motivate
7 people. Right? Just like you would try to motivate
8 yourself to do something, it's like giving -- trying
9 to incentivize people.

10 In drug treatment programs, they often use
11 issues likes days of not using drugs and that becomes
12 a -- you know, if you're one week clean, you get
13 certain types of rewards, two weeks clean, a month;
14 and the goal is that you basically are really trying
15 to replace the pleasures that people get from the
16 deviant behaviors sort of that they're engaged in.

17 So there's a whole series of rewards that we
18 use, including in some jurisdictions, they -- you
19 know, if someone is on probation and they have, let's
20 say, an 18-month probation or parole, you can cut the
21 time by saying if you're 12 months without any
22 positive urines, you stay employed; you know, at the

1 end of 12 months, let's look at this to abate the
2 sentence.

3 MS. LOVE: Is that the kind of ceremonial end
4 that you were mentioning?

5 DR. TAXMAN: Right. So the issue about sort
6 of ceremonial process is that people need to know
7 when they're done and they sort of pass milestones.
8 That's what certificates do. That's what graduation
9 ceremonies do. That's where restoring people's
10 citizenship, you know, the first phase of being able
11 to apply for that can do.

12 You can build in these sort of different ways
13 of basically notifying people that you're on the
14 right track and, you know, this is how you can pursue
15 to kind of end this part of your sentence.

16 You know, so the criminal justice system will
17 sometimes do terminations of sentences early, but you
18 all know as defenders, you know, it's often times
19 hard to get the system to do that or probation
20 agencies or parole agencies to ask the court for
21 permission, and if you build those in on the front
22 end where you let people know up front these are the

1 types of things, you know, six months of no positive
2 urines will yield this, then you're incentivizing
3 people to get to those benchmarks and building in the
4 fact that if you have 12 months clean or, you know,
5 12 months without incident on probation, that would
6 result in a request to the judge to debate it as,
7 again, a way of incentivizing.

8 So the second part of your question, which is
9 why is the federal system, I'm not so sure that I
10 would say that the federal system as a total picture
11 is so slow in this. I think it's very
12 individualized.

13 There's 94 districts within the federal
14 system, and in my experience, they all have 94
15 different personalities; and so would be hard pressed
16 to really incentivize. We did work in a district in
17 North Carolina that was an extremely conservative
18 district, and yet there was a real commitment in that
19 jurisdiction to working on some of these heard issues
20 like what's the culture by which programming is done
21 within the federal probation agency; whereas, in a
22 northeastern city that shall remain nameless, they

1 had all sorts of other issues that really prevented
2 that, you know, and so I would not -- I think the
3 question is in our justice system, we're focused on
4 punishment as the way or negative reinforcers as a
5 way of trying to change behavior and everything we
6 know from psychology is that will not get you to a
7 positive end, that it's really more positive
8 reinforcers.

9 So the issue is can a punishment system like
10 the justice system engage some of these more
11 effective strategies.

12 MS. LOVE: Right. Okay. It's mostly federal
13 probation then in some districts that are being a
14 little bit more progressive?

15 DR. TAXMAN: I mean, you know, we worked with
16 five different federal agencies on this one
17 particular study. So I wouldn't extrapolate from
18 that. There is a movement right now within probation
19 as a field overall to adopt what's called
20 evidence-based probation, and a lot of that model is
21 based upon the tenet of, you know, the probation
22 officer trying to really facilitate change through

1 motivation and through using different types of
2 incentives, and it goes by a different name depending
3 upon who is doing the work. Some people call it core
4 correctional practices. Other people call it
5 behavior management supervision.

6 It's happening at the federal level. It's
7 happening at State and local county probation
8 agencies. I think one of the challenges is that the
9 justice community needs to embrace these concepts as
10 a way of doing probation so that probation doesn't
11 sort of roll back to the old enforcement monitoring,
12 you know, tail them-nail them sort of -- sorry --
13 approach that, you know, has pursued for 30 years.

14 MR. JONES: We are running up against the
15 clock. We're not out of time yet, but we're going to
16 take a 30-second pause just to change the tape in the
17 camera very quickly.

18 [Pause to change videotape.]

19 MS. YOUNG: We're off camera and it's not
20 related to this topic, but I don't get to ask
21 questions to police officers very often. So I
22 primarily practice in Federal Court, and in the past

1 few years, Congress changed the mandatory minimum on
2 five-year sentences for crack cocaine in terms of the
3 max, and I was just wondering since the change in the
4 law, has the law enforcement community noticed
5 anything different?

6 MR. BAUMANN: Well, from D.C.'s perspective,
7 because I can't tell you about other areas, we're so
8 inundated that I don't know that someone,
9 particularly when you're talking about possession --

10 MS. YOUNG: Possession for sale.

11 MR. BAUMANN: Right. Well, that may be a
12 little bit different topic, but on the possession, we
13 have so many other problems, violent crime problems.
14 So we don't see a lot of that. I don't think that
15 we've seen any impact on that yet. In fact, the
16 complaint our officers have had for last several
17 years that would span both sides of that frame is
18 that the -- in D.C., the U.S. Attorney's Office
19 handles what a normal prosecution office or D.A.'s
20 office would handle for most offenses. They won't
21 move forward on possession or in many cases
22 distribution or sale cases unless it's a very large

1 amount.

2 MS. YOUNG: So that's changed?

3 MR. BAUMANN: Yeah, and it's one of those
4 things. So I don't know that we would be able to
5 feel that impact here because of the volume.

6 MR. JONES: We are back on the clock and the
7 camera is rolling. I want to give Jenny Roberts, our
8 reporter, a chance to ask the last couple of
9 questions to sort of wrap this up.

10 MS. ROBERTS: Okay. Well, I'm going to start
11 with Officer Baumann then.

12 On the issue of -- well, one of the reasons
13 we're doing this task force is because of the sheer
14 numbers of convictions and thus the sheer a numbers
15 of affected people with convictions, and so I wanted
16 to ask you about police discretion in minor arrests
17 and whether there is a discussion within the police
18 community about the negative effects of convictions
19 in minor cases and how that might affect use of
20 police discretion.

21 MR. BAUMANN: I think there is -- and I do --
22 I hope my folks are aware of that and I do think that

1 they look at that on a lot of cases. The problem is,
2 and I think what your question is is that, you know,
3 are we going to ruin somebody's life for arresting
4 them for something minor that's going to follow them,
5 and I know we've had those discussions.
6 Unfortunately, where I worked, I would say the large
7 majority, almost the complete majority, of
8 individuals that we dealt with on a regular basis
9 already had significant records. Just manpower-wise
10 and the volume of calls where I work was pretty much
11 -- you know, there wasn't a lot of proactive
12 policing, but I have been in a couple of situations
13 and I know of others anecdotally where that question
14 is asked and, you know, it's a good question on where
15 you're looking down the road, which I think is fair,
16 but also on the forefront, is that where we want our
17 resources, do we need to be arresting -- in D.C.,
18 it's called possession of an open container of
19 alcohol, POCA, do we need to be making this POCA
20 arrests, do these people need a record, do we need to
21 be bringing them in, and in areas, the answer is yes
22 because the public demands it and that's what we work

1 for. In other areas, it's up to the officer's
2 discretion, and I do think there's quite a bit of
3 discretion exercised.

4 MS. ROBERTS: Thank you. And for Professor
5 Taxman, just very briefly on certificates of relief
6 as a ceremonial mechanism, going back to that
7 discussion, are you aware of any studies that show
8 affects of a certificate of relief or any other legal
9 mechanism for relief from conviction to lower
10 recidivism rates?

11 DR. TAXMAN: So there are some studies in the
12 U.K. that have basically looked at, you know, more
13 diversion-type efforts, and that has been an
14 influence on reducing recidivism, so not having the
15 conviction. There's also in emerging literature on
16 how length of time incarcerated, you know, that
17 actually there's a criminalgenic affect by the longer
18 time people serve sentences, and, you know, because
19 you can't really do good quality studies where you
20 would experiment putting someone in prison and not --
21 there are kind of some ethical issues there -- you
22 know, but there is, you know, some really good work

1 that's recently been done on sort of what happens if
2 you would reduce the timeframe and, basically, you
3 don't see that time actually influences, that having
4 more time influences recidivism except for having a
5 more negative effect.

6 MS. ROBERTS: Thank you.

7 Last question for Mr. Cox, going back to the
8 barber law that you raised. Is the EEOC acting on
9 any State laws such as a law that would bar people
10 from having barbers licenses who have convictions?
11 Are you taking any enforcement action against laws
12 like that if they are laws that conflict with Title
13 7?

14 MR. COX: The EEOC, we investigate State and
15 local laws. We don't enforce. Once we investigate,
16 we go through our, as I described before,
17 conciliation process and what have you. If it's
18 going to go beyond that to litigation, we refer it to
19 the Department of Justice, this area.

20 I can't acknowledge or comment on any
21 existing -- Title 7 restricts my ability to talk
22 about any pending or existing charges, but if there

1 is any litigation that comes from any of that, it
2 would come through the Department of Justice. So I'm
3 sorry I can't be more illuminating; however, what I
4 can tell you is that through the Reentry Council as
5 well as in other areas, we're doing a lot of public
6 education of local officials at really the State
7 level, but also the local officials about how Title 7
8 applies, and since we're on the Reentry Council,
9 we're doing a lot of that work in conjunction with
10 the Department of Justice.

11 MS. ROBERT: Thank you.

12 MR. JONES: We are out time. Thank you.
13 This has been very helpful. You have lived up to
14 your advanced billing. It was a very helpful session
15 for us. We appreciate it very much. Thank you.

16 We're going to be in recess until 2:45, so 15
17 minutes or so. We'll reconvene at 2:45.

18 [Recess.]

19 PANEL 4

20 MR. JONES: Welcome. Thank you for coming.
21 We're excited to both hear from you and engage with
22 you.

1 The way that we operate is that we'd like to
2 give each of you five or ten minutes or so to sort of
3 tell us a little bit about yourselves, about the work
4 that you're doing, and then the benefit of your
5 thoughts on the subject, and then we've got a lot of
6 questions.

7 And the way that we do the questioning is
8 that one of us leads the discussion, and to the
9 extent that there's time, the rest of us will have an
10 opportunity as well to ask you what questions we
11 might have. So for the purposes of this particular
12 discussion, Penny Strong is going to lead --

13 [Mr. Hendricks enters the proceeding.]

14 MR. JONES: There we go. All right. Good
15 afternoon. Welcome.

16 What I was just saying is that we're going to
17 give each of you five or ten minutes to tell us a
18 little bit about yourselves, the work that you're
19 doing, and any other contributions that you can make
20 and then we've got lots of question.

21 Penny Strong is going to lead the questioning
22 for this session, and I guess without further ado, I

1 will stop talking and turn it to you all and you can
2 decide amongst yourselves or, Mr. Vassar, you can
3 start.

4 MR. VASSAR: Okay. Good. My name is Bobby
5 Vassar, and I am the chief counsel for the Democrats
6 on the House Judiciary's Crime Subcommittee. It has
7 a long name, but it's just crime. We just added all
8 the other titles so that nobody would be confused
9 about our jurisdiction. When they added the Homeland
10 Security Committee, we wanted to make sure that
11 everyone knew that any act of terror is a crime, and
12 when you talk about homeland security, it becomes a
13 question of ghost busters, who you going to call?
14 You're going to call the police if some incident
15 occurs.

16 Any incident that occurs, it's going to be
17 local and law enforcement is going to be involved,
18 and so we're involved in homeland security. So we
19 became crime, terrorism, homeland security, and this
20 Congress for some reason -- I don't know. Nobody has
21 told me why -- we've added "investigations". So our
22 title wasn't long enough. So now it's gotten longer.

1 So now we're Crime, Terrorism, Homeland Security
2 Investigations. I'll learn when you do what the
3 investigations mean.

4 I guess the most important thing I can say
5 about myself is that I work for Bobby Scott, who is
6 the ranking Democrat on the Crime Subcommittee and
7 I'm here substituting for him, and since you're the
8 task force on restoration of rights and removal of
9 disabilities or the status of offenders after
10 conviction, and so I want to say that he strongly
11 supports restoration of rights and removal of
12 disabilities resulting from criminal convictions. In
13 fact, he questions why we have to have automatic
14 removal of rights and the addition of disabilities.
15 There may be some things that could be done on a
16 case-by-case basis because of the nature of the
17 criminal history or for some period of time or
18 whatever; but, automatically, it just seems that it's
19 an addition that is unjustified. There are plenty of
20 punishments already in terms of incarceration, fines,
21 restitution, community service, everything else. So
22 to have these automatic rights removed and

1 disabilities added that others, I'm sure, have
2 detailed for you is just not justified in his view.

3 So he supports efforts to restore rights and
4 remove disabilities and we work every day to prevent
5 others from being added. We see efforts from time to
6 time such as during the debate over the Dodd-Frank
7 bill to address securities and mortgage fraud. They
8 have a provision in there to deprive sex offenders of
9 the right to obtain a mortgage. You know, any shot
10 they can take, there are some folks who want to take
11 it.

12 In the 111th Congress when the Democrats were
13 in the majority, we conducted a hearing on the
14 collateral consequences of convictions and got some
15 detail about just how extensive the problem is and
16 what efforts were underway to try address it, and we
17 are impressed with some of the efforts States are
18 beginning to undertake and, of course, the efficacy
19 of NACDL, ABA, and a number of the other
20 organizations that are out working on this issue and
21 the type of prospects that seems to have.

22 We were happy to see the EEOC issues its

1 updated guidelines on the issue and have worked to
2 promote and protect, really, that effort because
3 there have been efforts in Congress to try to
4 overturn the issuance. There was a provision in a
5 bill that would deprive the EEOC of any funds to
6 promote those guidelines. That did not pass, but
7 those kind of things might come again.

8 With respect to legislative activities on
9 these areas, we, of course, support the effort that
10 Congressman Conyers files each Congress to restore
11 voting rights to felons.

12 We had a bill during the Katrina incident to
13 try to ensure that victims of Katrina weren't hit
14 with the disabilities that occur because you have a
15 criminal conviction. We didn't get legislation
16 passed, but certainly there was some discussion about
17 the effort and it pointed out how dysfunctional or
18 defeating some of those provisions can be that are
19 not well thought out that are automatic.

20 Of course, we were very involved and engaged
21 in the development and passage of the Second Chance
22 Act, which is designed to address some of the impact

1 of disabilities by helping people to leave prison
2 better able to remain law abiding and become
3 productive citizens. There was an effort in the
4 development of the bill to have a study of some of
5 the consequences of collateral conviction, but it got
6 caught up into the restoration of rights and some
7 members just wouldn't let a bill move or pass that
8 there was any feeling could deal with that
9 politically hot issue.

10 As you know, the Second Chance Act is pending
11 reauthorization and one of the problems is we don't
12 have a strong champion in the House who was like who
13 we had in the past when the now Senator, former
14 Congressman whose name I can't remember at the
15 moment.

16 MR. HENDRICKS: Portland

17 MR. VASSAR: Portland. Thank you.

18 Led the effort and so I'm hoping the Senate
19 will take action and will then give us a foundation
20 for moving in the House. I think we'll file a bill.
21 Certainly, there are some efforts underway to do
22 that, but I've seen no indication from the current

1 judiciary leadership that there's an interest in
2 developing and moving a bill in the House.

3 Scott has been the chief Democrat on the
4 Mentally Ill Offender Treatment and Crime Reduction
5 Act which helps people who are brought into the
6 criminal justice system based on their disability to
7 stay out of the criminal justice system by having
8 alternatives that will allow their issues to be
9 addressed in a way other than putting them in jail,
10 and that bill is very strongly supported by local law
11 enforcement because it helps them deal with it.

12 We have a bill to try to clean up the FBI
13 criminal records and to give people, who for purposes
14 of an employment check, in particular, find that
15 there is a problem in their records, to give them a
16 way to help clean up errors and difficulties. We'll
17 be filing that bill again.

18 Quite frankly, most of effort is on trying to
19 help people avoid getting a criminal record in the
20 first place. So Congressman Scott's number one
21 priority is crime prevention and to do so by focusing
22 on children, starting with teen pregnancy prevention

1 so that fewer children are born into dysfunctional
2 family situations, then ensuring prenatal care for
3 pregnant teens and women who are poor or otherwise in
4 a risk context to ensure that fewer children are born
5 with developmental and other disabilities. Parental
6 treatment, preschool, all of the things that I'm sure
7 most of you have heard have shown by evidence and
8 research to prevent problems later on in not only
9 criminal justice, but in social welfare spending and
10 other problems.

11 His goal is to convert what Children's
12 Defense Fund has described as the cradle-to-prison
13 pipeline to a cradle-to-college and career pipeline
14 so that you start with children early, get them on
15 the right track and keep on the right track to
16 college or career. We do so through the Youth
17 Promise Act which we have filed the last several
18 Congresses and will be filing again. We have a large
19 support base, over 250 organizations in support,
20 including in NACDL, I believe. Well, maybe you don't
21 support legislation, but I don't know. I can't
22 remember for sure, but certainly we've got a lot of

1 support for the work that we're trying to do there,
2 and that is our prime way of trying to address the
3 problem into the future.

4 In the meantime, we'll continue to work on
5 legislative efforts to try to promote efforts to keep
6 the problem from getting worse and to remove some of
7 existing disabilities. One of the areas that I hope
8 we can have some impact on, as Margi Love well knows,
9 is on federal clemency. We think it's really bad
10 that the current Administration hasn't used that
11 vehicle more to do a number of the things.
12 Congressman Conyers, Scott wrote the President a
13 while back to specifically call his attention to the
14 Clarence Aarons case that some of you may be familiar
15 with because it looked like that had resulted in a
16 negative decision because of some inappropriate
17 conduct, to put it mildly, by the pardon attorney,
18 and the Inspector General did an investigation report
19 that revealed that that was the case, and so we're
20 still hoping that some reconsideration will occur
21 there.

22 We also wrote the President along with

1 several other members -- I think we have 16 members
2 total -- to request that the President consider
3 developing a process for use of the clemency powers
4 to address the problem of the people convicted of
5 crack cocaine violations who could not benefit from
6 the passage of the Fair Sentencing Act which reduced
7 the 100-to-1 penalty disparity between powder and
8 crack cocaine to 18-to-1, and we think it's just
9 ridiculous and worse that the people whose
10 circumstances and cases we use to support the reason
11 for the legislation can't even benefit from it
12 because it was not allowed to be applied
13 retroactively, and one way to do that would be
14 through the clemency process.

15 So we'll continue the effort at the federal
16 level, including these areas I've mentioned, but
17 quite frankly, we think the best prospects for real
18 impact in these areas is at the State level, and I
19 guess that's not all bad since most of the criminal
20 activity occurs there. We need to do what we can
21 about the federal, but certainly we hope that
22 progress continues in the States.

1 And there are some interesting developments.
2 Virginia, for example, Governors are bragging about
3 how many restorations they've done from one Governor
4 to the next, and right now, the current Governor
5 McDonnell, a Republican Governor, I think is winning
6 on the number, but more needs to be done. They need
7 to consider a process for automatic restoration and
8 other things need to be done, but again, I think the
9 States is where -- among the States is where the best
10 prospects for developments will occur. Save the
11 areas that I have mentioned, we will continue to work
12 on at the federal level.

13 I'll stop there and be happy to answer your
14 questions at the proper time.

15 MR. JONES: Thank you so much.

16 Mr. Morison.

17 MR. MORISON: Good afternoon. Thanks for
18 having me. My name is Sam Morison. I'm currently an
19 appellate defense counsel in the Department of
20 Defense and where I represent persons charged in the
21 military commissions at Guantanamo. So we won't get
22 into that. That's a topic for another day.

1 Prior to that and the main reason that I'm
2 here, I spent 13 years as a staff attorney in the
3 Office of the Pardon Attorney in the Justice
4 Department. So that's really my expertise and what I
5 can talk to, is the federal clemency process and its
6 history, the theory behind it, and where perhaps it's
7 gone wrong in recent years.

8 I guess in DOD, they love acronyms and one of
9 them is BLUF. It stands for Bottom Line Up Front.
10 So if I'm going to give my BLUF line is that there
11 has to be some practical mechanism somewhere for
12 people to get relief. We simply have, as all of you
13 know, this growing body of people, hundreds of
14 thousands, maybe millions by now who are suffering
15 under potentially lifetime disabilities without any
16 real practical mechanism in many cases for getting
17 relief from those disabilities. That's not a
18 sustainable situation.

19 As criminal defense lawyers, we're often
20 lectured by courts about the virtues of finality, and
21 that's true, but there's another sense of finality.
22 That's one thing I learned working at the Pardon

1 Office, and that is individuals have to have a sense
2 of finality with respect to the offense that they
3 committed. They have to be able to put it behind
4 them if they're ever going to move on with their
5 lives.

6 I can't prove that to you statistically, I
7 certainly can prove it anecdotally. Over 13 years,
8 I've spoken to dozens of people who've received
9 pardons, and I can tell you that the psychological
10 impact when they are informed, Mr. or Ms. So and So,
11 I'm calling to tell you that, congratulations, today,
12 the President granted you a pardon, it's amazing the
13 reaction you get, everything from stunned silence to
14 tears to joy.

15 It is, I'm convinced, a powerful way for
16 people to put their past behind them, and in many
17 cases, they really can't let it go until they resolve
18 it. I'm not talking about people who are necessarily
19 pining for vindication. These are people who are
20 perfectly willing to admit that they made a mistake
21 and that they were wrong and they're asking for
22 forgiveness. They still -- and I'm talking

1 psychologically, not necessarily legally. They find
2 it hard to move on until there is that period put on
3 it. Then it's finally over.

4 I've even had people call me, you know, weeks
5 and months, even years later to say how important it
6 was for them to be able to get on with their lives,
7 and I think it's sad that we've sort of lost sight of
8 that aspect of the criminal justice system. It's
9 obviously a very complex problem. I'm not here to
10 say that the pardon power is the panacea and that
11 it's going to fix everything, because it won't. The
12 first thing that we have to do, arguably, is catalog
13 civil disabilities.

14 So I think, NACDL and Margi, you get
15 tremendous credit for the work that you're doing to
16 pull that together. If criminal defense attorneys
17 are supposed to inform their clients about
18 disabilities, there has to be a practical way for
19 them to know what. That turns out to be a really
20 complicated thing to do. So that's step one.

21 Legislative fixes are another step that's
22 going to be part of the solution, but I guess from my

1 perspective, we're never going to be able to catalog
2 or legislate or regulate our way completely out of
3 this problem because we can't ever eliminate entirely
4 the need for discretion. In fact, if you go back and
5 look at the founding when the pardon power was
6 debated, they actually talked about that very issue.
7 There was a tremendous debate going on at the time
8 about whether clemency was even consistent with the
9 rule of law, whether we should even have a clemency
10 power at all, and I think the founder wisely rejected
11 idea that we were ever going to arrive at a state of
12 administrative perfection, because we won't. Even if
13 we had a perfect code, we wouldn't administer it
14 perfectly because it's just too complicated and we're
15 not smart enough.

16 So even if we assume that legislators and
17 judges and prosecutors are all acting in good faith,
18 and I'm willing to assume that for the most part,
19 they do, we still are going to have to have a need
20 for the pardon power because there are still going to
21 be mistakes that are made. There are still going to
22 be circumstances where we look back in hindsight and

1 say, Well, maybe that made sense when it was done,
2 but with the passage of time, with the change of
3 circumstances, that's something we ought revisit.

4 And the real problem is not a political
5 problem. It's not that this is too risky, it can't
6 be done. Most of the people who get pardoned, you've
7 never heard of. They're not a political risk at all.
8 It's really a cultural problem. If we tell ourselves
9 we can't do it, it becomes a self-fulfilling
10 prophesy.

11 The other issue which I won't go into
12 tremendous detail, but I assume we'll get into it in
13 the question period is how the President is advised.
14 The textbook picture of the pardon power is this is a
15 largely discretionary unfettered power of the
16 President provided the offense is an against the
17 United States. The President can do whatever he
18 wants if the offense has been committed.

19 In reality, that's not the way it works.
20 It's actually a bit misleading. The truth of the
21 matter is and if you think about it for a few
22 minutes, it makes sense, the President doesn't know

1 anything about these cases except what he's told, and
2 everything he's told, all the information gets
3 funneled through one little tiny in the Justice
4 Department called the Office of the Pardon Attorney,
5 and that's all he knows, is what they tell him.

6 So he's entirely dependant on that flow of
7 information, and what recent Administrations have
8 learned, I think to their chagrin and usually too
9 late in the game to make any difference, is that the
10 Pardon Office and the Justice Department in general
11 has an agenda, and it's surprising to me, but
12 apparently the White House Counsel's Office said it
13 never occurred to them.

14 I think the cat is sort out of the bag at the
15 this point, which makes it all the more surprising
16 that we haven't seen the current Administration do
17 anything. So I hesitate to make predictions, but
18 what suspect is going to happen is what's happened
19 the last two Administrations, and that is in about a
20 year or so from now, maybe a year and a half, the
21 penny will drop. The President will begin to start
22 thinking about his legacy and he'll realize, Gosh, I

1 haven't done really done anything, but, Hey, I'm the
2 President; so I'll just turn on the tap. Right? And
3 the Pardon Office is not going to do that. They
4 won't turn on the tap because they know we'll be here
5 when the President leaves and there's a deadline and
6 we can run out the clock.

7 That's what happens. I was there when it
8 happened in the Clinton Administration. I was there
9 when it happened in the Bush Administration, and if I
10 was a betting man, that's what I'm going to bet is
11 going to happen in this Administration. So what the
12 President needs to understand is that if he's going
13 to do something about this, he's got to start now.

14 With that, I'll turn it over to you.

15 MR. JONES: Thank you.

16 MR. HENDRICKS: Good afternoon. My name is
17 Cedric Hendricks, and I am the associate director at
18 the Court Services and Offender Supervision Agency,
19 and I want to pass these out and I'll talk about them
20 in the next couple of minutes.

21 My agency is a federal agency that was
22 created in 1997 by the Congress to do parole,

1 probation, supervised release, or essentially
2 community supervision here in the District of
3 Columbia. We've got about 15,500 people under
4 community supervision on any given day.

5 I'm here because I've done a lot of work on
6 behalf of the agency in the area of reentry for the
7 past several years and have had in doing that a
8 tremendous amount of contact with men and women under
9 supervision who are challenged by their status as
10 people with criminal histories to get employed, find
11 housing, and meet many of other social needs that
12 they have, and that is the case in a town where
13 you've got a Mayor who is very supportive of reentry
14 and reentrance, a City Council that is pretty fairly
15 well disposed for that as well.

16 An agency like mine that while on one hand is
17 responsible for supervising and holding people
18 accountable who are under community supervision is
19 heavily invested in trying to help people succeed
20 under community supervision and get us out of their
21 lives.

22 We have seen the Mayor in this town, for

1 example, in the last few weeks launch a reentry
2 initiative and inaugurate the new Reentry Resource
3 Center. Last year, he established a 15-member
4 commission on reentry. We have a Criminal Justice
5 Coordinator Council here in this town which has a
6 reentry steering committee that I cochair along with
7 the Mayor's director of the Office of Returning
8 Citizen Affairs, and I guess I also serve on the
9 Federal Interagency Reentry Council which the
10 Attorney General established, and there, I cochair
11 the subgroup that deals with employment barriers.

12 So I'm steeped in this and find myself
13 working at this level and at the ground level where,
14 for example, just the other night, I was at a reentry
15 event at Allen Chapel AME church on Alabama Avenue in
16 Southeast, Washington, D.C., just up the hill from
17 Hope Village halfway house, the largest halfway house
18 in America where a gentleman walked up to me and said
19 as I leaving the event, Mr. Hendricks, I'm at Phoenix
20 House right now and I'm about to get out and I need a
21 job; can you help?

22 So I've worked it at that level too, and for

1 me, it's been an encouraging experience in some
2 respects and a disappointing one in others, because,
3 you know, at the end of the day, you're sitting in
4 meetings with the Attorney General, sitting in
5 meetings with you good people, no doubt by the end of
6 day today, because we've got a big event as you'll
7 see on that schedule of events tonight at St. Luke's
8 Catholic Church, our annual citywide reentry assembly
9 where there will be clients of our agencies, you
10 know, and people involved in the system that will
11 come out and, no doubt, someone will say to me before
12 I leave that church tonight, Mr. Hendricks, can you
13 help me get a job.

14 So, you know, I'm here to say that that's
15 where the disappointment for me lies because I can't
16 always do that. I've had some success, and even
17 where I've had some success in getting people jobs,
18 I've had some disappointment in ultimately what
19 happened as they matriculated through their
20 employment experience.

21 The thing, though, that is that frustrating
22 and was made evident by a questioner at the event the

1 other night at Allen Chapel was he says, Okay, I see
2 all you folk up here and that's good, but who's not
3 at the table tonight are members of employer
4 community. They don't come out, though there have
5 been occasions when they've been spotted in the
6 community and confronted with this challenge and have
7 blinked and stuttered and escaped.

8 For example, I guess sometime in the middle
9 of last year, I was on a panel at Matthews Memorial
10 Baptist Church on Martin Luther King Avenue and it
11 was a forum on employment and reentry that was
12 convened by Reverend Anthony Motley. Some may know
13 Reverent Motley. He's been fairly active in this
14 community for some years around the employment issue,
15 was one of the leaders forming a group called the Jobs
16 Coalition, which was an interesting collaboration
17 between the faith community and Miller & Long
18 Construction Company to try and draw businesses the
19 construction industry into helping employ hard to
20 employ people, including people with criminal
21 histories.

22 At this event at Matthews Memorial, somehow

1 Reverend Motley got the head of the Greater
2 Washington Board of Trade to come and be the keynote
3 speaker at the event. So this guy gave a fascinating
4 talk about all the development that's going on in
5 this town now and planned in the future and talked
6 about how many jobs were possibly tied this one and
7 that one and the other one, you know, and so at the
8 end of it, I said, Well, Mr. So and So, how many
9 members do you have in the Greater Washington Board
10 of Trade. He says, Oh, three to four thousand. I
11 said, Well, do you assemble them at any point during
12 the calendar year, you know, try to get them all in
13 one place? He says, Oh, yeah, yeah. You know, they
14 have a dinner, you know. I said, Well, would you
15 consider inviting all of us on this panel to just,
16 you know, talk about this stuff, to come and speak at
17 that gathering to those members about the need for
18 folk to get employed, and he grunted and stuttered
19 and gave me absolutely no response and got out of the
20 room as fast as he could.

21 Now, that's something that I hope you can
22 help change. That's, you know, where it lays on the

1 ground here in the District of Columbia where we've
2 got all of these commissions and bodies and meetings
3 and events and I'm, you know, inviting all of you to
4 come on that schedule, but at the end of day, somehow
5 we've got to change the dynamic so that when whoever
6 hits me tonight with, Mr. Hendricks, can you get me a
7 job, I've got some greater capacity to respond in a
8 positive way and say, Well, what are your skill sets,
9 what are your interest and, you know, let me see if I
10 can get in touch with of so and so who might be able
11 to.

12 You know, I guess I don't want to say things
13 are hopeless, because I can give you some examples of
14 some positive things that have happened as well, but
15 still don't meet the level of need that I'm
16 confronted with with the thousands of people on our
17 agency's roles that are employable and unemployed or,
18 you know, I haven't talked about housing yet. I'll
19 say a bit about that in a second, but who are
20 desperately seeking employment.

21 Now, I got an E-mail today from the director
22 of the D.C. Office of Returning Citizen Affairs. He

1 is working very hard to try and connect people with
2 criminal histories to employment opportunities at
3 projects that the District Government is funding that
4 are construction related and have the potential to
5 create employment opportunities. This one in
6 particular involves the Ballou High School
7 construction project. You know, they rebuilt a bunch
8 of rec centers around and they built a bunch of
9 libraries around town. Now they're rebuilding a
10 bunch of schools around town, and so there is a
11 construction company there that he engaged and who
12 has affirmatively stated that it will consider people
13 with criminal histories for jobs.

14 Now, the E-mail I got this morning said that
15 two guys that we referred over to this company
16 through the Office of Returning Citizen Affairs
17 showed up on time this morning, were about to go be
18 drug tested, go to their orientation and then go to
19 work. Now, that's encouraging because last week, I
20 got an E-mail from the director of Office of
21 Returning Citizen Affairs and they said, Well, you
22 know you sent these guys over; we sent them over; one

1 of them tested positive and, you know, we can't have
2 that kind of in experience and maintain constructive
3 engagement with these employers who we've convinced
4 so far to open the door to opportunity and consider
5 people notwithstanding their criminal history.

6 So, you know, opportunity, small, manifesting
7 itself, still presenting challenges. We're, you
8 know, kind of pushing people through those doors with
9 our fingers crossed in the hope that others can
10 follow them slowly by surely, but as you see from --
11 I didn't bring a lot of these, but I'm going to give
12 them to you because you look like you're the chair.
13 Maybe not.

14 MR. JONES: Looks can be deceiving.

15 MR. HENDRICKS: These are two research
16 briefs. One is on employment and one is on housing,
17 and we have an Office of Research and Evaluation.
18 It's headed up by Dr. Calvin Johnson, who is a
19 wonderful guy who we stole from the Urban Institute,
20 but what it says here on this employment one is that
21 in looking at the cohort of folk that came to us for
22 supervision in FY 2011, you know, you kind of go

1 through that and you identify the employable ones,
2 but basically what it says is of the employable --

3 [Telephone interruption.]

4 MR. HENDRICKS: Let me shut this off.

5 Sixty-one percent of the males and
6 seventy-one percent of the females remain unemployed
7 through that year. You know, the flip side of that,
8 of course, is I guess, forty-two percent of the males
9 and thirty-some percent of women were employed, but
10 that's not good from my vantage point. Obviously,
11 the vast majority of who are employable aren't
12 getting work and that's notwithstanding whatever
13 knowledge, skills, or work experience they bring to
14 the table, and I'll kind of wrap up the employment
15 part of this with this, and that's because what we've
16 run into were things like this. Margi and I kind of
17 talked about some of this stuff.

18 Everybody is familiar with the Howard
19 Theatre. Right? The new renovated, majestic, made
20 right with public dollars, Howard Theatre. Well, we
21 saw a job announcement for them last year when they
22 were beginning to staff up prior to the opening of

1 that facility, and among the positions they were
2 seeking to fill through that little job fair they
3 were having were dishwashers and bartenders, but
4 above that in bold, the only bold is it said no
5 felons, no felons. A hundred years ago, twenty years
6 ago, homicide, burglary, whatever, didn't matter, no
7 felons.

8 Howard Theatre, you all know what the legacy,
9 history of that place, rebuilt with public and
10 private dollars, no felonies. Now, there was an
11 intervention undertaken after the announcement
12 surfaced and they got their minds right and the door
13 to opportunity opened up, but that's, you know, the
14 mind set that you're confronted when you have people
15 who are able and available for work, as you have to
16 say when you go the employment office, you know, and
17 that's something to office, just I don't care who you
18 are, where you've been, what you've done.

19 Last year, Metro, one of the largest
20 employers -- in fact, when that guy from the Board of
21 Trade was talking about, you know, the development
22 projects, he was saying, Hey, you know, Metro they're

1 going to build the line out to Dulles; that's more
2 trains, more stations, more jobs. They're talking
3 about the Silver Line out there in Maryland, more
4 trains, more stations, more buses to get you to the
5 station, more jobs.

6 So they were hiring bus operators. They sent
7 a thing around. They sent it to the Department of --
8 D.C. Department of Employment Services who they
9 pushed it out into the community, and it say said no
10 felonies within the last 10 years, no two
11 misdemeanors with the last two years, no violent
12 felonies ever and no sex offenses ever. You know, if
13 you had any of those, you were not qualified to apply
14 for a job as a bus operator.

15 Now, that's notwithstanding the fact that I
16 know people who killed people who drive buses. That
17 was the past. This is the new -- this is today.

18 MR. JONES: Let me tell you what the real
19 duty of the chair is, is to keep us on time and we
20 have a bunch of questions for you. So I'm going to
21 have to --

22 MR. HENDRICKS: Shut me up. Okay.

1 MR. JONES: Just a little bit.

2 MR. HENDRICKS: Let me just give you --

3 MR. JONES: Thirty seconds. Thirty seconds.

4 MR. HENDRICKS: I've got another fact sheet
5 on housing, and that basically says that 30 percent
6 of the people that come back to us for supervision
7 from prison are in unstable housing situations and 15
8 percent of those are in the shelters. So on any
9 given day, we've got hundreds of people in the
10 shelter, and I can tell that that ain't a good place
11 for them to be. That's not where opportunity starts.

12 MR. JONES: Very good. Thank you.

13 Penny.

14 MS. STRONG: Thank you. Mr. Vassar, I'd like
15 to first ask you in terms of Congressman Scott's
16 efforts, when you use the term "automatic
17 restoration", can you be more specific about what he
18 intends, if you will, or what in a dream world we
19 could see for that type of process, and then if you
20 would address what type of legislation or further
21 governmental action would be necessary to possibly
22 bring that to fruition.

1 MR. VASSAR: Well, what I intended to say
2 about automatic is we don't like the fact that
3 automatic disabilities are applied just by virtue of
4 your being convicted. There are certain things that
5 automatically come into play as a result of a felon
6 record, can't vote, can't get licenses, can't get
7 certain benefits, and so we don't have legislation to
8 address it. I just made the point that if he had his
9 druthers, those things wouldn't exist such that they
10 would automatically apply, but we don't have
11 legislation that would prevent that.

12 MS. STRONG: Turning to the issue of
13 legislation, and what will happen if the Last Chance
14 Act is not reauthorized?

15 MR. HENDRICKS: Second Chance Act.

16 MS. STRONG: Second Chance Act.

17 MR. VASSAR: What we hope will happen
18 notwithstanding is that funding will continue. We
19 have this strange situation in the Congress where the
20 appropriators appropriate money. Even if legislation
21 isn't currently authorized, the funding still can be
22 spent.

1 There is currently in the funding mechanism
2 we are now operating under and have been for some
3 time, the continuing resolution has money it for
4 continued funding for Second Chance Act activities,
5 and so whatever else they come up with in the next
6 funding crisis that's supposed to hit sometime
7 towards the end of March, we're, of course, hopeful
8 they're continue some funding for Second Chance Act
9 activities within that context whether or not we have
10 an authorized -- a current authorization.

11 Quite frankly, there is very little that's
12 currently authorized. The entire Department of
13 Justice is not authorized. There are a few programs
14 in it.

15 So I won't get into how ridiculous some of
16 the funding and budget mechanisms, such as you can't
17 provide funding for any new programs unless you take
18 it from a currently authorized program, and since
19 nothing is currently authorized, you can't fund new
20 programs.

21 So it won't necessarily prevent funding, but
22 it's better -- there are things that you can't do as

1 a result of the Second Chance Act being authorized --
2 not authorized even if you wanted to because of
3 budget rules that apply that make what you're trying
4 to do subject to a point of order.

5 MS. STRONG: In that regard, has there been
6 any reach-out or any, if you will, anything from
7 Obama's Administration or the White House that
8 indicates continuing support for the Second Chance
9 Act. We have heard earlier today, I think, in fact,
10 in testimony about the Federal Reentry Resource
11 Council and the activity of the Department of
12 Justice. So are we hearing from the --

13 MR. VASSAR: We assume that the
14 Administration continues to support the Second Chance
15 Act. They have. The Administration put significant
16 funding into the -- what's that? The ARRA. What was
17 that? That mechanism that put up the 800 billion to
18 try to restimulate the economy. Significant funding
19 was in that for the Second Chance Act, and so the
20 Administration reflected a commitment to the need to
21 fund reentry and it has worked to continue funding
22 since.

1 So my expectation and certainly my hope is
2 that that commitment will continue despite the rough
3 situation we're in. I have no idea what this current
4 sequestration impact is going to be, but it can't be
5 any good for Second Chance funding.

6 MS. STRONG: Thank you.

7 Mr. Morison, good afternoon. I reviewed your
8 website with some interest and some related sites
9 that actually talked about some of the issues, and I
10 read your op ed for the "L.A. Times", and there are
11 certainly some fascinating issues.

12 In terms of -- and we had some testimony from
13 former Governor Ehrlich who just frankly said that
14 the federal pardon system is broken. What
15 recommendations do you have, and two specific points
16 in that regard: Does the Pardon Office need to come
17 out of DOJ and be restructured, and talking about the
18 issue, and I forget the gentleman's name, where there
19 was the OIG report, the conduct of Pardon Counsel
20 Rogers.

21 Do you think that's something particular to
22 the individual in that case or do you think that what

1 happened there can be corrected by other fixes other
2 than having a different pardon counsel?

3 MR. MORISON: Well, I guess it is true that
4 the Pardon Office has been around for a very long
5 time. It's been there in its antecedent form since
6 the mid-nineteenth century. The Office of the Pardon
7 Attorney itself has been around since 1893.

8 For a long time, that seemed to function
9 reasonable well partly because there wasn't the same
10 cultural atmosphere, the same sort retributive
11 attitude. There was a greater willingness in early
12 decades that the system wasn't perfect, perhaps
13 mistakes were made. It wasn't considered an
14 embarrassment to try to fix those.

15 That, I think has -- largely, the wheels have
16 essentially fallen off the cart. So I can't disagree
17 with Governor Ehrlich on that. The reasons for that
18 various. The bottom line, it seems to me, is the
19 Pardon Office is now staffed almost entirely by
20 former prosecutors. It's supervised by the Deputy
21 Attorney General instead of the Attorney General as
22 it used to be 30 years ago. The Deputy Attorney

1 General is the supervising prosecutor, if you will,
2 for the Justice Department, and they have simply
3 entirely adopted that mindset, that mindset, and
4 that's how they approach all case that come to the
5 office.

6 You would think that they would look at --
7 you know, they get all these cases. Hundreds are
8 filed every year, but they would say, Well, let's try
9 to look for some good ones. There's got to be some
10 good ones in there and that could be a considered a
11 success story. Right? The system worked and we want
12 to actually advertise that.

13 Here is somebody who committed a crime, paid
14 their penalty, but they got the message and now
15 they've turned their life around, let's celebrate
16 that; but that's not how they view their job. They
17 view their job as let's look for a reason to say no.

18 So I think the -- and they know perfectly
19 well. I talked before about controlling the flow of
20 information. That's very conscious. They know
21 exactly what they're doing. So by providing the
22 President with nothing by this steady stream of

1 almost entirely saying no, no, no, no, no, they know
2 perfectly well that they're essentially tying the
3 President's hands. It just makes it much more
4 difficult for the President to maneuver to do
5 anything when his own Justice Department is saying
6 this is a bad case; you should deny it.

7 So I have to say that I'm skeptical that just
8 picking a new Pardon -- at a minimum, the President
9 could pick a new Pardon Attorney. The only reason --
10 I guess I should back up also and say that it's only
11 in the Justice Department for administrative
12 convenience. It's entirely up to the President. It
13 was only there because of an executive order. It
14 could be changed at any time. The Supreme Court has
15 actually -- there's a case that says so, that
16 Congress cannot constrain the manner in which the
17 President gets advice in a pardon matter.

18 So it's absolutely within the President's
19 authority to change this if he doesn't think it's
20 working and if he doesn't think he's getting properly
21 served, and I think that they simply have a conflict
22 of interest that's overwhelmed their ability to be

1 fair and evenhanded. Nobody thinks that the
2 prosecutors shouldn't have a role in the process and
3 that their perspective doesn't matter. I think it
4 should too.

5 I just don't think it should be the only one,
6 and right now, that's the only perspective that he's
7 getting and it is a -- it's hard for me to believe
8 that it's not a deliberate policy choice that the
9 Justice Department has made that we are going to use
10 this -- well, they want to shut it down to the extent
11 they can. They want to control it.

12 It's really a matter of control. Nobody is
13 going to get out unless we say so. Nobody is going
14 to get relieved of civil disabilities unless we say
15 so, and certainly nobody is going to say that we made
16 a mistake unless we're willing to concede which we're
17 almost never willing to do.

18 So all of that is to say I have come to the
19 conclusion after having worked there for a long time
20 that I don't see how it can stay in the Justice
21 Department and really realistically be expected to
22 work. I think it could quite easily be reconstituted

1 within the Executive Office of the President. As I
2 say, it could simply be by way of an executive order,
3 and the process could function more or less the way
4 it does now.

5 The FBI would still do background
6 investigations. You would still get input from the
7 judges and from the U.S. Attorneys. You could still
8 get input from the Deputy Attorney General if the
9 President wants that input, but the Pardon Attorney
10 would then have at least a semblance of independence
11 and would report directly to the White House Counsel.

12 The argument against that is the concern that
13 that's going to bring it too close to the President.
14 Really, isn't he politically better off to have it at
15 arms length. The fallacy of that is he's going to be
16 responsible for the result anyway, and right now, the
17 system doesn't work. He's not getting good advice.

18 I think to go to your -- so that's my answer
19 on the first question. The second question is the
20 problems that have plagued the Pardon Office that are
21 reflected in that most recent OIG report are actually
22 worse than that. That's not the first OIG report.

1 There was one in 2008 on largely the same grounds.
2 The predecessor to the current Pardon Attorney was
3 investigated for making racially insensitive remarks
4 about a pardon applicant, and what's really
5 remarkable about that story is that when he was
6 confronted about it by the IG's office, he didn't
7 deny it. He admitted it, and then he actually down
8 and said as a matter of fact, I think an applicant's
9 race is something that should be considered in the
10 pardon application and it's part of my job to
11 consider that.

12 He was quietly removed. The next guy came
13 in. Nothing much has changed. The other piece that
14 I will mention is Gaftron Lindsor should get some
15 credit for having done a tremendous amount of work in
16 the last year and reporter for "ProPublica", which is
17 an independent investigative journalism organization.
18 She's a former foreign policy correspondent for "The
19 Washington Post", and she really more than any other
20 journalist that I know has really taken on the Pardon
21 Office in depth and tried to understand exactly
22 what's going on.

1 "ProPublica" spent two years doing a very
2 rigorous statistical study of pardon applications,
3 and they came to the conclusion that black pardon
4 applicants were four times less likely to get a
5 pardon than white pardon applicants even taking into
6 account all sorts of relevant variables, the nature
7 of the offense, the length of the sentence, the
8 person's criminal history and so on.

9 So that has been a persistent problem that's
10 plagued that office, and to me, that is yet another
11 reason why we need a fresh start.

12 MS. STRONG: I went on line and looked at the
13 number of pardons that were granted federally in 2010
14 and 2011. My rough calculation is 22 pardon and one
15 commutation, and then we compare the evidence that we
16 heard in Chicago where I think the Governor there
17 granted several thousand during his term and, of
18 course Governor Ehrlich, I think there was mention of
19 five to six hundred.

20 So, I mean, there's a striking contrast in
21 the numbers.

22 MR. MORISON: Right.

1 MS. STRONG: And I don't know overall how
2 many came into the federal system during that time
3 period, but certainly that's something to take note
4 of.

5 Mr. Hendricks, you have a very impressive
6 office and impressive set of materials. I went on
7 line and I particularly appreciated seeing the manual
8 that you developed for your offenders, "Starting Over
9 and Staying Out".

10 MR. HENDRICKS: Well, that manual was
11 developed by a local organization Cure. D.C. Cure is
12 an outfit that was started by Charles and Pauline
13 Sullivan in Texas and came up this way. In fact, I
14 remember -- you know, I used to work on Hill too. In
15 fact, back when I worked on the Subcommittee on
16 Criminal Justice, we didn't have all that baggage in
17 the name.

18 It was Charlie who kind of came and started
19 this whole work about voting rights for formerly
20 incarcerated people, but they developed that book,
21 and interestingly, as a community organization, they
22 got the Federal Bureau of Prisons to print the thing,

1 and they had not only the hard copy of the book, but
2 they had CD copies of it that we helped them to kind
3 of get out into the hands of case managers of some of
4 these facilities where D.C. folks are at.

5 So on the website, there's that book. There
6 is, for example, the D.C. Public Defender Service's
7 "Adult Resource Guide". We are trying to use our
8 website to get helpful information into the public's
9 hands as best we can. Yes.

10 MS. STRONG: If Second Chance is not
11 reauthorized, how will it impact, I think the
12 wonderful resources that your agency has developed or
13 are they separate and apart for the most part?

14 MR. HENDRICKS: Well, they're separate and
15 apart. We've seen some Second Chance Act grants
16 awarded to organizations here in the District of
17 Columbia, not a lot, but a few that have been
18 helpful.

19 For example, at the D.C. Superior Court,
20 there's the Father in Court program which was started
21 a few years ago for noncustodial fathers coming out
22 of the prison system to try and them reconnect with

1 their children and also provide them some assistance
2 in securing employment so that they not only got back
3 involved in the lives of their kids, but they could
4 start paying child support because they were
5 employed.

6 They got a Second Chance Act grant that was
7 very helpful. That program, I was at the graduation
8 for that program about a month ago and they graduated
9 10 more guys who had great stories to tell about the
10 positive impact of the program and in testimony to
11 give about the benefit of having gotten back involved
12 in the lives of their kids. The D.C. Department of
13 Youth Rehabilitation Services and a local nonprofit
14 organization got a Second Chance Act grant, and they
15 used it to do mentoring for young people that are in
16 the youth criminal justice system.

17 So those things have been helpful, but let me
18 say what Second Chance hasn't brought to us yet is
19 funding in the housing arena. I mean, we've seen
20 more recently -- there's a technology workforce
21 development-related grant out. I mean, there are,
22 you know, adult mentoring grants out, but housing is

1 still an area of need.

2 At this meeting I was at the other night at
3 Allen Chapel, there was a lady who stood up and said,
4 I'm a landlord; I understand that folks coming out
5 from prison are in need of places to stay; I've got
6 units that I can make available for that purpose; how
7 can I get in the game.

8 The reality, sadly, is there's no money out
9 there for that. So unless she's willing to approach
10 it from a charitable basis -- so I contacted a friend
11 that does reentry stuff at HUD and said, Well, are
12 you guys going to come out -- you know, the Second
13 Chance Act has been around for a few years; are you
14 guys going to come out with some housing proposals?
15 No, not this year.

16 What they're putting their emphasis on is
17 trying to encourage public housing authorities to be
18 a little more accepting of people coming of prison
19 seeking to reintegrate with family members already in
20 public or assisted housing. You know, that's
21 helpful, but there's still, you know, an abundant
22 need for transitional housing, you know, kind of one

1 that was the Coalition for Support of Housing Model.
2 So it's not just a bed, but some wraparound services.

3 So there's still more room for Second Chance
4 Act money to go and grow to meet some of the unmet
5 needs, and then, you know, the downside is it's
6 competitive. I mean, there have been a lot of folks
7 around here who compete. We've gotten -- turned down
8 that we've been successful, and so the money, the
9 resources, are helpful at the community level where
10 there are so many good souls out here trying to do
11 helpful work and where the government, the District
12 Government, doesn't have the money to kind of fund
13 transitional housing.

14 So, you know, the grant dollars are
15 important. I should say too, Bobby, you mentioned
16 that when the stimulus bill went down, there was
17 money put in there to bump up Second Chance Act.
18 There was money put in to bump up the Burn Grant too.
19 So there was a lot of that money that kind of came
20 and hit the street here and was used in some
21 meaningful way to kind meet some of these resource
22 gaps or address some of these resource gaps that we

1 have in the housing, healthcare, education,
2 employment area.

3 So, you know, we need that money to make a
4 difference because, you know, look, agencies like
5 mine -- a lady called me up and says, Well, you know,
6 what can you -- I was like, Look we provide
7 transitional housing as part of a treatment
8 continuum. We've got some money in our agency
9 appropriation for treatment, and we so define a
10 treatment continuum which includes as part of an
11 aftercare experience transitional housing so a person
12 doesn't go back into the unsavory housing environment
13 that forced them off of sobriety in the place.

14 We had to cut back \$2 million dollar on
15 treatment because of the budget pressures we're
16 already experiencing. Sequestration happens at the
17 end of the month. We've got to cut \$7 million out of
18 what remains of the current fiscal year in our
19 spending.

20 So we're going to be cutting treatment more.
21 Less treatment, more people we're sending over to the
22 District Government with our fingers crossed hoping

1 they get into treatment and, you know, housing as
2 part of an aftercare experience will be thing in the
3 past.

4 So we need more and one can only hope that
5 if, you know, the authorization passes and the
6 appropriation follow and, you know, we can continue
7 to compete and maybe win, that there will be a few
8 more dollars out here to meet the unmet needs, but
9 there's, you know, a lot of that out that's
10 frustrating.

11 MS. STRONG: Mr. Hendricks and Mr. Vassar, an
12 idea just popped into my head. Out of LBJ's Great
13 Society, one of the programs that's survived is Head
14 Start. Any hope that Second Chance would have a
15 similar legacy to survive decades because of the
16 importance in our society of serving this segment of
17 the population at this critical time?

18 MR. HENDRICKS: Well, Head Start, Job Corps.
19 I just read the Job Corps is tanking behind this
20 whole budget drama. Now, you know, I don't know if
21 anyone has been out to Potomac Job Corps, but that's
22 a fascinating place, you know, where they've got kids

1 living in a residential setting and you go to this
2 building and you learn electrical work. You go over
3 to that building and you get your GED. You go over
4 to that building and you learn drywall and masonry.

5 You know, people come out of there at the end
6 of that with some certified skills and some promise
7 of a future. You're we're losing that. So, you
8 know, we're going to suffer with the erosion of all
9 of these kinds of programs that help people get on a
10 solid footing and avoid involvement in criminality
11 and, you know, kind of keep out of the system in the
12 first place.

13 I mean, we're already in a bad way and the
14 loss of resources is going to make a bad situation a
15 worse one.

16 MR. VASSAR: I think the legacy is definitely
17 there, the potential is there for Second Chance to
18 have the same kind of legacy as Head Start, Job
19 Corps, because they've all been proven to save more
20 money than they cost in terms of avoided criminal
21 justice and social welfare costs for people who
22 benefit from the services as compared to those who

1 don't.

2 MS. STRONG: Thank you.

3 MR. HENDRICKS: Thank you.

4 MR. JONES: Chris.

5 MR. WELLBORN: Just a brief question, Mr.

6 Vassar.

7 Have you experienced or the congressmen you
8 work with experienced any feedback from
9 municipalities in your district or counties or state
10 for that matter regarding the financial cost of not
11 doing reentry right? I guess to be more specific,
12 the fact that we, to use a very hot button term, we
13 basically ghettoize or lepperize these folks that are
14 coming out of the prison system and we create so many
15 bars for employment, for housing, create the bars
16 that affect the families as far we as where they go
17 to school, and just, you know, a whole host of
18 problems flow from that.

19 Are you guys starting to get people on the
20 local level who are experiencing the problems and
21 having to figure out how the heck do we deal with
22 this in our city or our county or wherever we are?

1 Have they be contacting congressmen and saying, Look,
2 something needs to be done here so that there is at
3 least the beginning of a conversation that could
4 start about how to do this in a smarter way?

5 MR. VASSAR: Well, that has always been the
6 situation in the context that we've had a very active
7 reentry program effort in Virginia. We are fortunate
8 to have a Governor who is very active in the reentry
9 arena, has put together a statewide effort with a
10 state coordinator for reentry services that has
11 devoted significant State resources to assisting
12 localities as well as working with the State prison
13 system. As a result of the level of success Virginia
14 has shown, they were able to receive a total of seven
15 Second Chance grants for programs at the State and
16 local level.

17 So I guess in direct response to your
18 question, it's a context that we have been getting a
19 lot of that kind of indication that communities were
20 in trouble because they had nothing effective to do
21 with people coming back from prison and the numbers
22 are growing and Virginia experienced the same problem

1 as the nation was with growing prison population
2 meant growing reentry numbers to the tune now that
3 it's in excess 700,000 a year from prisons in every
4 State, and Virginia has seen that same growth in
5 prisons and there are about 10 million people who
6 circulate through local jails during the year, and
7 many of them are in for a year or more even though
8 it's not prison.

9 So those kinds of issues have been there all
10 along. We have only recently had responses to it,
11 never anywhere near enough, the same issues as Cedric
12 points to that the need is greater, and it's really
13 unfortunate because the success is there. There are
14 all kinds of reports coming in now showing how much
15 better situations have gotten since we've had Second
16 Chance Act and more State and local emphasis on
17 reentry services.

18 I haven't seen DOJ's latest figures, but when
19 we started developing the Second Chance Act, the
20 department was reporting that about two-thirds, 67
21 percent, of offenders who leave prisons were back
22 within three years. That number is now down in the

1 50 percent area nationwide, and we don't think it's
2 accidental.

3 We don't think that it isn't because of some
4 impact, but nothing has really proven it on a
5 nationwide basis. There are studies that have shown
6 that specific reentry programs have reduced
7 recidivism among returning offenders.

8 MR. WELLBORN: I guess to be more blunt about
9 my question, is have the proverbial squeaky if not
10 screaming wheels of local governments gotten loud
11 enough that the driver of the cart, i.e., Congress is
12 starting to take a little bit of note of what's going
13 on and the impact that this is having in their home
14 districts?

15 MR. VASSAR: Only to the extent, and this is
16 my view, that the Congress realizes that the Second
17 Chance Act is important, but to the extent that
18 Congress will devote more resources to it, no.

19 MR. WELLBORN: What about the concept of
20 alleviating or in some cases just all out eradicating
21 some of these stupid bars that have been created on a
22 federal level?

1 MR. VASSAR: Yeah. At the federal level, no.
2 There's been no resonance that has come through
3 enough to have members of Congress concerned about
4 it. Unfortunately, there are still efforts to add
5 more that come up from time to time in the Congress,
6 and that's the nature of it.

7 I mean, you know, it's a geography issue. If
8 you're there and you're on the ground at the local
9 and the State level, you're going to feel it, hear
10 it, see it, and hopefully react to it more at federal
11 level. You're not going to get as much. You're
12 going to hear from people that we need help, but it's
13 a tough setting.

14 The belief of a large number of people in
15 Congress right now, and it's what we're seeing in the
16 entire budget debate is that their constituents are
17 demanding that they cut expenditures, and that I
18 think is what's contributing to the debate. They
19 don't want to raise taxes. They don't want to do
20 anything other than show that they're cutting
21 expenditures. Others believe that it's more
22 important to invest in the economy and to keep it

1 strong and to keep the situation from deteriorating
2 such as people returning, but that debate is not
3 causing the tide to turn in our favor at this point.

4 MR. WELLBORN: What do you think it would
5 take to appeal -- because you've identified cost
6 cutting things as going to be a major selling point
7 on a congressional level. What do you think it would
8 take for those interested in effective reentry and
9 reducing some of stupid bars which from what we
10 understand do nothing but cause problems and send
11 people back to jail who otherwise might be taxpaying
12 and etc., what is going to be required to get that
13 message so out that Congressman X from some place in
14 North Dakota where they don't have these issues says,
15 Gee, I can save money for my constituents by having a
16 smarter way of approaching this?

17 MR. VASSAR: Well, it's best if there -- and
18 every community has it to some extent. When you say
19 North Dakota, it's not as large, but any community
20 has people returning, and members of Congress are
21 going to respond more to people that they are
22 accountable to, and so even in North Dakota, you can

1 make the case that evidence is in, because the Second
2 Chance Act requires evidence-based strategies be put
3 in place and those strategies have shown now that
4 they impact positively the recidivism factor.

5 So any member of Congress who's interested in
6 contributing to continued reduction of recidivism can
7 be affected, but it's best if it comes -- if it's a
8 North Dakota member of Congress, it's going to be
9 best if it comes from people in that member's
10 district who are saying that, and that's where the
11 impact of these items are best felt.

12 MR. JONES: We are, once again, out of time.
13 I would encourage you all to continue these
14 conversations during the break.

15 Thank you, gentlemen, very much for your
16 time. We much appreciate it.

17 We're going to reconvene at 4:30.

18 [Recess.]

19 [Mr. Garrison is not present.]

20 PANEL 5

21 MR. JONES: All right. Welcome. This is the
22 last, but certainly not least, panel of the day, Day

1 2 of our three days of hearings in Washington. We,
2 apparently, have lost one of your number, but that
3 just gives us that much more time to spend with you,
4 and I don't know how much you've heard of what's
5 happened earlier today, but I will just let you know
6 that we have been going around the country on a
7 listening tour and hearing folks from all different
8 parts of the country talk about these issues from
9 their various perspectives and the stakeholders, and
10 so we are particularly excited about having this
11 conversation with you.

12 The way that we sort of conduct business is
13 that we want to give each of you no more, I think,
14 than probably 10 minutes to tell us a little bit
15 about yourselves, a little bit about what brings you
16 here, and what other thoughts you have that you think
17 might be of interest and of benefit to us, and then
18 we've got lots of questions.

19 And the way that we do the questioning is
20 that one us on the task force leads the questioning,
21 and for the purposes of this discussion, that will be
22 Larry Goldman, and to the extent that there is time

1 after he's finished, then the rest of us, I'm sure,
2 will also ask you questions that we have as well.

3 So having said all of that, I will stop
4 talking and turn it over to you and maybe, Ms. Haven,
5 you could start.

6 MS. HAVEN: First of all, I want to thank you
7 all for inviting me here to be a part of this panel
8 today. My perspective and my opinions are going to
9 be vastly different than I think anything that you
10 have you have heard today. In fact, I can pretty
11 well guarantee that my perspective will be vastly
12 different.

13 I wanted to touch base, just really quickly,
14 on kind of like who I am and kind of what brings me
15 to the forefront of this. I am currently the founder
16 and director of public policy and advocacy for a
17 movement in Maryland called the Maryland Justice
18 Reinvestment Project. I am also the director of
19 public policy for an ex-offender led organization
20 called Out for Justice which is based in Baltimore.
21 Prior to that, I was executive director of Justice
22 Maryland, which was at the time Maryland's only

1 statewide criminal justice advocacy and reform
2 organization.

3 During my tenure with Justice Maryland in
4 2004 when I was initially hired away from, actually,
5 D.C. and working with Cedric, I came on board as a
6 campaign director for a bill called the Campaign
7 Treatment Not Incarceration. It was our first year
8 introducing the bill, and Governor Ehrlich, then
9 Governor Ehrlich, initially opposed that bill and so
10 that's where I kind of got my legislative teeth, was
11 kind of going after him. We were civil to each other
12 today, by the way, just so you know.

13 But we did in that first year of legislation
14 in 2004, we did pass significant landmark bipartisan
15 supported legislation to divert nonviolent drug
16 offenders into treatment as opposed to prison. That
17 was huge, and we gained a lot of national press, a
18 lot of national recognition. Other States replicated
19 that, and an advocate was born.

20 So then when I found out that I could not
21 vote because I had a felony conviction and I wasn't
22 going to be able to vote for another nine years, I

1 was pissed, and so I took it upon myself to kind of
2 figure out why that was. The laws that said that,
3 you know, if you were on -- if you had committed any
4 crime, if you had committed -- if you were still on
5 parole or probation, you couldn't vote. Even if you
6 were off, you still had to wait five years. You had
7 to ask for permission. Oh, hell no. That was just
8 not going to work for me.

9 So we created a bill with then Delegate
10 Marriott who was a big champion who always carried
11 this bill since 2000 about restoring the right to
12 vote to people -- former felons was what the language
13 was at that point, and this will be the only time,
14 and he knows this that I will ever defender Governor
15 Ehrlich.

16 A reporter from the "Washington Times" called
17 him and said do you mean to tell me that you're going
18 to restore the right to vote to murderers, robbers,
19 rapists, and sex offenders. He had no other option
20 but to say no. He was caught in a corner. The only
21 response he could have -- we hadn't had a chance to
22 reach out to him about our bill, hadn't had a chance

1 to do our leg work. He had no recourse other than to
2 say no, and the minute he said no, our bill went in
3 the drawer.

4 So we were dead in the water. So we
5 recrafted in 2006 and came back with the idea that we
6 were going to pursue this again and what did this
7 bill look like for us. It was an August night. It
8 was two in the morning. It was hot as hell and I
9 could not sleep and I went downstairs, turned on the
10 TV. At that point, it was Nick at Night and, you
11 know, at two in the morning, there's not a whole lot
12 on TV, but it was the Cosby episode where they were
13 listening to Dr. King's "I have a dream" speech, and
14 you watched the members of the family kind of filter
15 in one by one and they're all sitting on the couch,
16 and I personally, Kim Haven, believe that if you can
17 hear that speech and not be moved to some sort of
18 action, you haven't heard what was said.

19 I'm watching this and I'm thinking, Okay, all
20 right, what am I going to do? And then the next
21 commercial was "Got Milk?" So me being the creative
22 person that I am came up with the Maryland, Got

1 Democracy? And as long as there were people that
2 were disengaged, that were disenfranchised, and that
3 were denied the right to vote because they had felony
4 records, then Maryland could not say that we had
5 democracy, and that was the basis by which we built
6 the Maryland Got Democracy Campaign.

7 I went into my then executive director and
8 said, Oh, you're not going to believe this great
9 idea that I have and this is how it's going to work
10 and this is the whole nine yards, and she said, Oh,
11 my god, go for it.

12 I went to another coworker of mine who had a
13 felony record and he and I wrote the bill. We
14 drafted the language of the bill. We built the
15 coalition. It comprised national and State and city
16 and local organizations. We had the ACLU, the
17 Sentencing Project, you know, the usual host of
18 suspects, and you've been hearing about unlikely
19 allies.

20 LEAP was with us. You know, the A.G. was
21 with us. That surprised the hell out of me, to be
22 honest. OPD was one of our biggest supporters

1 invoter restoration.

2 So we were very clear about what the language
3 was. It was all or nothing, and it said very simply
4 this: If you are no longer incarcerated, if you are
5 not on parole and you are not on probation, then you
6 can register to vote. It doesn't matter what you
7 did, when you did, how many times you did, where you
8 did it, nothing; and we were very clear that our
9 issues are not political footballs and it was time to
10 stop making this a political football issue.

11 Everybody kept saying, Well, what if we went
12 back and we said -- no. Well, we could move the
13 football. Then we're going to take the football off
14 the field. It's all or nothing, and that was what
15 our constituency wanted. That was the voice of the
16 people that we represented with this bill, and I will
17 tell you that that Senate floor fight with Jamie
18 Raskin going up with my Hartford County White
19 Republican, oh, my god. It was magical.

20 At the end of the day, we got our language.
21 We got our bill, and we, according to a former
22 Secretary of State, John Willis, successfully

1 restored the right to vote to over 52,000 Maryland
2 citizens. He says it's actually 110, but, you know,
3 the State will only claim 52.

4 What we did was we created a new constituency
5 and that was huge, and we were all on a high, and
6 then the barriers really kicked in, and what those
7 barriers are is when somebody on the State level does
8 something significant like that -- we were funded.

9 We had money thrown at us, go fight, go
10 fight, go beat up the legislators and go do this, go
11 pull your coalition together, do everything you want.
12 Then we got the bill passed, and nobody wants -- and
13 you heard Cedric talk about this when we were talking
14 about the job piece. No one wants to fund the piece
15 with, well, how do you tell the people they got the
16 right to vote back. No one wants to fund that piece.

17 The EEOC piece, no one wants to fund how do
18 you tell an employer. There is a bill -- I believe
19 it's being heard today. That's why I have my phone
20 here, because I have like, you know, 10 bills that
21 are being heard today -- that they wanted to do the
22 certificate of rehabilitation in Maryland. No. Who

1 is going to tell the employer what that means?
2 Nobody. It becomes another senseless piece of paper
3 that we give somebody.

4 So why I'm here today is the barriers that I
5 faced are the barriers that are faced by every other
6 person that has a felony convictions, has a
7 conviction record, has a criminal conviction. That's
8 who I'm here representing today. It's all the people
9 that are inside. It's all the people that have come
10 home. It's all the people that are coming home.

11 And I like to say and I just said to this my
12 co-panelist, I said no one likes this constituency.
13 We are not, you know, cute little puppy dogs. We're
14 not kids with cancer. We're not warm and fuzzy.

15 We're the constituency that you don't want to
16 care about, but if you look at our sheer numbers,
17 we're huge, and when we come to the table, we don't
18 just bring -- I don't just come as Kim Haven. I come
19 with the five to ten people that are in my life and
20 in my work place that love and support me and also
21 come with me.

22 [Mr. Garrison enters the proceeding.]

1 MS. HAVEN: So when I walk into a voting
2 booth, and I am also proud to say that when the Voter
3 Registration Protection Act was signed into law by
4 Governor O'Malley and he turned around to me at the
5 bill signing and handed me the pen and said,
6 Congratulations, Kim, you deserve this, when that
7 bill went into effect July 1, 2007, it was the
8 weekend of the July 4th holiday. July 5th, I was at
9 the Board of Elections. I was the first former felon
10 under the new Maryland law to register to vote. That
11 felt really good.

12 I am in this struggle because of all of the
13 crap that people have to go through to reclaim their
14 lives. People's pasts should not overshadow their
15 futures. We have a lot to offer.

16 There are probably some of most aggravating
17 comments I heard in this room today. When I heard
18 that we have to train people how to be citizens
19 again, I almost came unglued. When I hear about all
20 of the reentry experts in Holder's office and DOL and
21 DOJ and M-O-U-S-E -- let's be real -- at the end of
22 the day, I'm not hired by them. I'm not sitting at

1 their policy tables. These gentlemen aren't sitting
2 at their policy tables.

3 We're the reentry experts, and that's what
4 gets lost every single time. When you want to talk
5 about policy and you want to talk about reentry, you
6 can talk about it from an academic, from anecdotal,
7 statistical. You can talk about it from all those
8 perspectives, but until you have a criminal
9 conviction, you have no idea what reentry is, none.

10 We need to stop using the term "ex-offender".
11 I was so impressed when Amy Sullivan sat up here
12 today and never once mentioned the word
13 "ex-offender". When she said, and all their
14 literature says, individual because that's what I am.
15 It doesn't say ex-felon on my business card and I can
16 show you're. They're in my pocket. It says Kimberly
17 Haven. It does not say returning citizen. It says
18 Kimberly Haven, and that's what I am. I'm an
19 individual with a conviction, with a criminal
20 conviction, a criminal record. We need to stop using
21 old outdated terms like "reentry", because when you
22 say reentry to a legislator, to a service provider,

1 to a funder, their eyes glaze over. They hear
2 Charlie Brown, wa, wa, wa, wa, wa. They don't hear
3 what we have to say anymore.

4 We need to redefine what we're talking about,
5 but that redefinition needs to be driven by us, not
6 service providers, not lawmakers, not legislators,
7 not good-hearted funders of which that pool is drying
8 up. When they talk about Second Chance funding,
9 we're not getting Second Chance funding to do the
10 work that we do, not at all. We're not even
11 subgrantees to get that kind of -- we're not the big
12 boys.

13 We're not the Sentencing Project, and I love
14 the Sentencing Project. Don't get me wrong. Please
15 don't tell Mark I'm saying this, you know, or JPIs or
16 Vera. She's gone.

17 We're not the big boys, but we're the ones
18 that are on the front lines. We're the ones that are
19 dealing with the people that, you know, call the
20 Cedrics. I said to Mr. Hendricks, can you help me
21 find a job, and he said, no, he couldn't me; we're
22 the ones that get the phone calls because they know

1 that we can help them, that we know what they're
2 going through.

3 So if there's one thing that I could leave
4 you with, just, you know, one little piece, if we
5 don't change our perception of this constituency, if
6 we don't as the constituency itself, if we don't
7 change our own perception, then nothing is going to
8 change, but in the interim while we're working on
9 what our message is -- and, you know, we failed in
10 our efforts to organize this constituency, but we're
11 the experts. We are the one that should be on the
12 front of these panels. We are the ones that should
13 be leading them, and until that time, I really
14 appreciate the fact that you brought us here today to
15 hear what we've done, what we're doing, and what
16 impact working together might be able to help for
17 this constituency.

18 And with that, I will finally shut up.

19 MR. JONES: Thank you very much.

20 Mr. Carey.

21 MR. CAREY: First, I want to thank you for
22 having me. Actually, you said a lot of the things

1 that I would have said. So I will just say again my
2 name is Lamont Carey. I was born in D.C., but I was
3 raised in prison.

4 So what I mean is that I went to prison as a
5 juvenile and when usually attend meetings that's
6 dealing with reentry, a lot of the programs that they
7 want to create or want to expand doesn't apply to me.
8 A lot of it had to do with like construction or
9 something to do with lifting, and in prison -- before
10 I went to prison, I wasn't a laborer and I knew I
11 wasn't going to be one when I came home. So the
12 programs that a lot of -- a lot of the programs that
13 exist in D.C. wouldn't have helped me to successfully
14 transition because my chosen field ended up being the
15 arts and entertainment, and so every time I speak, I
16 represent, I hope, the best interests of men and
17 women and children who are coming from the penal
18 system and I try to be the face of them.

19 I don't break the law. I've been home 11
20 years. I speak in prisons, schools, you name it,
21 Department of Labor. I recently got a phone call
22 from the White House.

1 So I am what successful transitioning is, I
2 believe, because every day that I wake up and I'm not
3 behind a prison bar or I don't have a court case that
4 I have to go for a hearing on in prison, then I have
5 successfully transitioned.

6 So with that, I'm going to shut up and look
7 forward to your questions.

8 MR. JONES: Thank you very much.

9 Welcome, Mr. Garrison. We're happy to have
10 you. If you could just give us five or ten minutes
11 of your background, why you're here today, and
12 whatever thoughts and wisdom you have to share with
13 us.

14 MR. GARRISON: I would like to say good
15 evening or good afternoon to the panel. I was
16 released in October of 2011 from what was a 235-month
17 sentence that turned out to be 13 years and eight
18 months due to, you know, just the sentencing
19 guidelines. I didn't see or didn't get any benefit
20 of the Fair Sentencing Act.

21 I'm here to give my testimony to really, you
22 know, give you an idea of what transitioning is or

1 what that means after doing that length of time. I
2 was gifted, I would say, and blessed to have a
3 support system. I had a brother that came out, who
4 was my co-defendant. He came out before me.

5 So I knew what it was like, every inch of
6 that, but having to take those first steps were
7 difficult even though I had a support system, even
8 though I had a brother there who had gone through the
9 system and gone through what we like to call a
10 halfway house. I did incur some resistance at the
11 halfway house because I was placed into a residential
12 treatment program when I had no drug history, no
13 usage.

14 So here taxpayer dollars were being wasted on
15 me going to a drug program when it was proven
16 institutionally, judicially that I did not have a
17 drug problem. I had a drug charge, distribution,
18 possession or whatever, a conspiracy charge, but I
19 had no drug history.

20 So I was forced to go, say, two weeks or more
21 to a drug program and, you know, threatened that if I
22 didn't make it to this program, I would be sent back

1 to prison. I filed administrative remedies. To my
2 avail, they found or they researched that I didn't
3 have any drug history and I was not to go.

4 The other part of that was my interviewing
5 with different entities, different justice policy
6 organizations that I interviewed, but what -- and
7 Angelyn can attest to this personally. The young
8 lady that they had checking to see that I gone to
9 these or attended these interviews was very
10 unprofessional. Okay. And these hirees, a Mr.
11 Verone over at Hope Village in Southeast, Langston
12 Lane, Southeast, which she encountered and I
13 encountered after I filed remedies on, these people
14 took it personal. They were very unprofessional and
15 threatening him that I would go back if I filed any
16 more administrative remedies because of their
17 unprofessionalism.

18 Here it is I'm the man after doing this
19 length of time, I'm trying to interview. I'm trying
20 to reestablish myself, put myself as a marketable
21 human being, because I had several jobs before my
22 incarceration. I interned at the U.S. Department of

1 Justice. I worked in the Maryland Juvenile Justice
2 system. So I was skilled with typing. My bachelor's
3 is in political science. I'm a great writer, but I
4 had a backlash from a number of employers because of
5 this young lady calling them, making them feel very
6 uncomfortable, that this would be a mistake hiring an
7 individual like myself.

8 Okay. So that was a huge hurdle that was
9 shocking, you know, that, you know, you would think
10 these places, you know, in helping me -- she used the
11 term "reentry", you know, would be conducive to an
12 individual, but they were the opposite. Okay? A lot
13 of young men were sent back because it was the
14 opposite.

15 So, you know, in confronting these men that
16 run this institution called Hope Village, I saw an
17 ugly side, that it wasn't about whether I wanted to
18 do the right thing or get a job. It was about doing
19 what they wanted you to do whether it was conducive
20 to you getting employment or not.

21 Okay. So after that, moving out into
22 society, just being an everyday person, getting used

1 to technology, okay, using phones and what cars could
2 do, what TV's could do, what telephones can do, they
3 weren't difficult because I kept myself abreast while
4 I was incarcerated, but I saw a difference in people
5 which was shocking. The youth are shocking to me.

6 I was on a panel last light and I told a
7 young man, after the movie "The Snitch" that the
8 individuals, young brothers and sisters are doing 10
9 times of we were doing, and we thought we were
10 errant, but we weren't errant compared to these young
11 men and women. So I found that shocking.

12 But for the most part, people in general once
13 they found out where you were coming from, they were
14 very supportive, but I was in the situation and my
15 probation officer told me, he said, Hey -- I got a
16 job. I got my personal training certification while
17 I was incarcerated. I was a good trainer.

18 So when I got a job at LA Fitness, I told my
19 probation officer where I'm working because I got
20 this at the tail end of the halfway house. He told
21 me don't tell them that you're on probation because
22 we want you to keep the job, and the job for most

1 part was very good. I quit the job last week because
2 of transportation issues, but it was conducive to me
3 re-establishing myself with people, because I met all
4 types of people from all walks of life. It was
5 almost like being incarcerated again as far as
6 meeting so many different people, because throughout
7 my incarceration, I was in immigration holdover. So
8 I met people from Switzerland, from Ghana, from
9 Guinea, from Japan. I met so many people, and then
10 in the fitness industry, you meet the same plethora
11 of people. Okay. So that helped me transition.

12 So I was gifted in that manner to meet people
13 and personally transition back into society, being
14 around people, making myself comfortable. So I was
15 blessed because of my background, but the young man
16 that hired me, and I started at Rockville Signature
17 Club, I was upfront and told him. I said, Look, I'm
18 in a halfway house. My counselor from the halfway
19 house will be contacting you. So if the person seems
20 a little rough edged or they're on me, asking you
21 what I'm doing, am I on time, get used it, and I'm
22 going to be there. I want to be on time. I want to

1 be professional. I want to be here when you need me
2 to be here.

3 That worked out beautifully, and that was due
4 to prior work experience. Now, everybody -- we know
5 everybody coming out of prison doesn't have those
6 prior work experiences where they know what it means
7 to be on time, to clock in, to be professional, to
8 follow different orders or be able to complete tasks.

9 A lot of young men and women coming out today have
10 never experienced that. So they are very rebellious,
11 or when they get into a situation where a boss says
12 something they don't like or they don't agree with,
13 they quit. They walk away. Well, I've been in on
14 several situations and I have learned how to separate
15 passion from reason.

16 Okay. So me being in those situations with
17 my prior work history prior to incarceration helped
18 me. So the individual that didn't have that prior
19 history, didn't have that prior experience, you know,
20 we have to consider what is going through that young
21 man's or young's lady mind.

22 So I had not too much of a rocky road, but I

1 think about the brothers and sisters coming behind me
2 and what kind of road they're going to have
3 transitioning from a program in Hope Village, okay,
4 then going and dealing with the work world, because I
5 don't know how many of my clients or people that I
6 serviced in the fitness industry would have treated
7 me if they known I was convicted felon.

8 Now that I've gone -- and I left last week
9 and I left at the top of my position. I was a
10 general manager in personal training. I see how many
11 people that called and said you're a wonderful
12 person, I'm sorry to hear that, but I wish you the
13 best, please call me again. So they don't-- and they
14 still don't what I've gone through and where I've
15 been, because I was so professional.

16 But I'm just reflecting or reflective of the
17 individuals that are not as polished, that have not
18 had the experience that I had. So like we're saying,
19 we're the face of what -- she wants to stray away
20 from the term "reentry", but those transitioning or
21 attempt to transition back into society. We have to
22 be reflective of them. I think that's very

1 important, and that's why I'm here today.

2 MR. JONES: Great. Thank you.

3 Larry.

4 MR. GOLDMAN: Let me just say all of you, you
5 know, deserve so much credit and you're kind of
6 heroes, and I'm looking at the three of you and I'm
7 thinking of all the people who did not have the
8 strength, perhaps, even in some instances the luck to
9 overcome everything. I'm particularly impressed with
10 anyone who had anything to do with "The Wire", which
11 is the best television show of all time. I'm
12 serious. I would have hold onto the -- you know,
13 bring your lunches. I would have been thrilled.

14 Let me talk first about vocabulary and that's
15 very interesting because, honestly, this is something
16 that we have discussed, and at some time during one
17 of these hearings, frankly, I used a term like
18 "ex-offender", and one of my colleagues criticized me
19 quite rightly and I'm trying to do better.

20 We're going to do a report and, you know, in
21 fact, I was discussing this with one of the members
22 recently and someone far more experienced and

1 sophisticated in this area than I, and while we're --
2 so the reference "individuals with a prior
3 conviction" --

4 MS. HAVEN: With a criminal record.

5 MR. GOLDMAN: What other words are there? I
6 guess any of you can speak, and I think, frankly, Mr.
7 Garrison, you used the term -- I'm not sure if it was
8 referring to someone else talking to you or something
9 like ex-offender or prior ex-felon or prior felony.
10 What words if you felt -- what words should we keep
11 out of our report?

12 MS. HAVEN: Ex-offender, ex-felon, ex-con,
13 offender, previously incarcerated person, returning
14 citizen, all of them. We are individuals with
15 criminal records. That's what we are.

16 MR. GOLDMAN: Okay.

17 MS. HAVEN: But that's an important
18 distinction, because if we're ever going to see any
19 kind of real change, this constituency, my
20 constituency, we have to change the way we believe
21 about ourselves, the way we feel about ourselves.
22 When I can change the way I feel about myself, then

1 it's going to change the way you feel about me and
2 that's what's going to be about bringing about
3 change, and that's only going to come if I feel
4 better about myself.

5 There are very few words in the English
6 language or probably in any language when someone
7 says the word, instinctually, gutturally, you know,
8 and just without even thinking about it, you go
9 somewhere, and when someone goes somewhere, you can't
10 get them back.

11 If I say the word "ex-felon" or
12 "ex-offender", I've lost people. Immediately, they
13 go murderer, robber, rapist, ex-offender, and I can't
14 get them back, but if I say individual with a
15 criminal record, that could be you. That could be
16 your son. That could be her. That's me. It could
17 be anybody.

18 So it does kind of, I guess, level the
19 playing field a little bit, but you don't go
20 somewhere quite so easily or quite so quickly. So
21 that's the language that we're trying to get people
22 to use now.

1 MR. GOLDMAN: Would either of you like to
2 comment on that?

3 MR. CAREY: Yeah. I think me, whatever the
4 label, the labels never bother me because I'm going
5 to be labeled as something by somebody regardless.
6 It's how I see myself, but I have been promoting
7 "returning citizens" strictly because "ex-offenders"
8 or what have you, you have decided that this is the
9 term in my circle that they wanted to be identified
10 as, and so I support using returning citizen, one,
11 because it's spreading that this represents this
12 group, this population, and so when I'm trying to
13 bring this population together, I'm using -- we're
14 using terms that they will quickly identify where
15 they don't see it as demeaning and being put on them
16 by somebody else because returning citizen came up
17 with the term.

18 So I'm in support of returning citizens for
19 that reason.

20 MR. GARRISON: I agree with both of them.
21 They're valid points. You know, words are powerful,
22 no question about that, but if you want to convey,

1 you know, a right message, you've got to use the
2 proper language. I think both them are right, but
3 I'm more leaning towards him because I've never let
4 titles bother me. It's your actions, and I saw that
5 in my situation, that I worked around so many
6 different people, and based on they treat -- I
7 treated them, that's how they treated me.

8 So if you're giving me that opportunity, you
9 know, before someone can put you in that pigeonhole
10 or compartmentalize you as ex-offender or returning
11 citizen, you should be -- and that's what I did. I
12 gave myself the opportunity.

13 Now, a person can go back and say, Hey, I
14 didn't know you was a returning citizen or an
15 ex-offender or previously incarcerated individual, I
16 didn't know that and I would have never known that
17 the way he treated me.

18 So it's about actions and deeds, but the
19 words are powerful, no question about that, but with
20 us, it's different because we've been there, done
21 that. So the words don't bother us, like he said,
22 but a layman walking into the room -- say all three

1 of us go on an interview and we all differently tell
2 them, Oh, yeah, I'm a returning citizen or I was
3 previously incarcerated, it's been 11 years and 11
4 months, 16 months, they're going to look at us
5 differently, you know.

6 MS. HAVEN: And one other distinction too,
7 it's when we use it too, because we're all doing
8 things at different levels. If I'm talking to a
9 legislator in Annapolis, I'm going to use the term
10 "person with a criminal record". If I'm organizing
11 with Out for Justice and I'm in, you know, Park
12 Heights, you know, I know it's returning citizens
13 because I was sitting in those conversations for the
14 last 20 darn years and helped define that returning
15 citizen.

16 So it depends on where it's really being
17 used. We do use both of them. Legislatively, I know
18 what sells. To an employer, I know what sells. To a
19 Chamber of Commerce, I know what sells, but I also
20 know what sells to Sally Lou Who who's, you know,
21 coming home from prison, you know. I know what's
22 going to -- so it depends on the audience, but he's

1 right. Words have power.

2 MR. GOLDMAN: Let me go on to voting and,
3 again, I a minor confession.

4 MR. JONES: Larry, keep your voice up.

5 MR. GOLDMAN: I'm sorry. A lot of people,
6 and I say this half-seriously, would view the voting
7 as a pain. I know the voting rate is somewhere
8 pending nationally of 50 percent. Let me ask Mr.
9 Carey and Mr. Garrison, or are you both -- do you
10 both vote now?

11 MR. CAREY: Yes.

12 MR. GARRISON: Yes.

13 MR. CAREY: In D.C., walking out of prison.

14 MR. GOLDMAN: Does it make you -- and I think
15 someone said this and I think you commented on my
16 thought that the right to vote is really more than
17 just the right to vote. It makes you feel more as a
18 member of society, give you more self-respect or
19 self-esteem.

20 I suspect that, again, as you pointed out
21 graphically, Ms. Haven, seriously, none of us here,
22 to my knowledge, have been in prison or, you know,

1 have a criminal record. I assume that's probably
2 true, but we really don't understand, but in terms of
3 can you tell us how the right to vote -- I think you
4 have to a certain extent expressed it, but maybe all
5 of you could, whether it affects how you feel about
6 yourself, how you feel about going out and talking to
7 strangers and perspective employers or people of that
8 sort.

9 MS. HAVEN: I'll let you two go first.

10 MR. GOLDMAN: Does it make a difference?

11 MR. CAREY: Yes. One, before I went to
12 prison, I didn't even pay attention to politics
13 because I thought that I had no power. So going to
14 prison, I became more politically aware of the
15 newspapers and news, and so when I got released, I
16 didn't even know that I could vote as soon as I left
17 the prison because that information wasn't passed on
18 to me.

19 Once I realized and found that I could vote,
20 I've been participating ever since and I want that
21 same right for every individual around the country
22 that comes, home because what it does -- what it did

1 for me, once I started participating and voting, my
2 family members that have never been incarcerated, but
3 never participated in the voting process, they
4 started voting, and I understand that returning
5 citizens having the power to vote could help us put
6 people in office that's going to address our needs on
7 education, housing, employment.

8 So the Ban the Boxes and all of those things
9 that we want to get past to better -- to make us more
10 equal and along with the rest of society is going to
11 really depend on our ability to vote, our ability to
12 get our family members to get out and vote so that we
13 will have people in office that represents our best
14 interests.

15 So for me, once I realized that I had the
16 power to vote, that immediately made me feel more
17 powerful. I began to express myself verbally and
18 when I go into that booth.

19 MR. GARRISON: Here is the oddity of my
20 situation: My bachelor's is in political science.
21 So I never left that mentally before prison. While
22 in prison, because the publicity we receive, I was

1 always asked different political questions and
2 studied so different ideologies throughout the world
3 and I always pointed out how unique our system was of
4 so-called democracy.

5 It's invaluable. You know, even if -- you
6 know, some people might look at it as minute,
7 especially the person that has not been incarcerated,
8 but to lead by example, to talk to those that are
9 still incarcerated and say, Hey, man, I went to vote
10 the other day, Wow, you can do that? Yes. I'm a
11 Washington, D.C. returning citizen. I can do that.

12 Then I told them what my political views
13 were, why I voted for this candidate. You know, one
14 thing about living in Washington, D.C., you are
15 always politically involved even if the politics
16 involve ward to ward. You're always involved because
17 it's small, but due to having such proactive Mayors,
18 you know, whether it was Marion Barry, Fenti, or
19 their predecessors, we are always involved.

20 So I think in the least, the person that can
21 vote when they leave a penal institution should, it's
22 a beautiful example of being involved, because

1 someone, and I've had this argument a million times
2 while incarcerated, think that there is no value in
3 voting. I'm one person. What am I going to do? But
4 because you vote, it opens the door for dialect,
5 conversation about why you're voting.

6 So it's showing that you're politically
7 involved. I just didn't just throw a ballot in, you
8 know, check off and that's it, but you can explain
9 why I voted for this particular candidate and what my
10 values and my belief, my ideology is.

11 So I think it's very important. It's
12 invaluable to vote, you know, regardless of what some
13 may think, especially ones returning to society,
14 because a lot of them have, you know, lost hope as
15 social beings, that they don't contribute to society,
16 so it means nothing to vote. A lot of them have lost
17 that hope.

18 So when I can call or they call me and say,
19 Hey, what did you do today, I voted, I voted in the
20 last election, Wow, man, you can vote; when I go back
21 to where I'm from, Missouri, Virginia, wherever I'm
22 from, I've lost the ability to vote. And that's

1 something, if I can -- and we're not even a State
2 here. You know, this is the District of Columbia.
3 If I can vote, why is it that someone from Virginia,
4 New York, Missouri, California, they can't vote? Why
5 is that? And we're not even a State.

6 So I think they all should enjoy the ability
7 to vote. So I think it's invaluable and I'm going to
8 continue to do it.

9 MS. HAVEN: Can I just pick it up for one
10 quick second? I think, obviously, you know that the
11 right to vote is important to me, and what we found
12 when we were doing our voter registration and
13 restoration was that the disenfranchisement is
14 multigenerational. We know that voting is a learned
15 behavior.

16 So when he's going into the voting booth and
17 his young son is seeing him, now, you know, we're
18 changing a whole new generation of voting. One of
19 best things that I ever experienced was going into a
20 community and telling people, you know, it's not just
21 me educating this person that they now have the right
22 to vote back, but it's their mother. It's their

1 father. It's this whole family that goes with them,
2 and when -- well, you know, they don't believe me. I
3 have no power. My vote doesn't mean anything.

4 You know, there were two things that came up
5 during our campaign. One was I have no power, I have
6 no voice. Really? Well, you know, here, call Sheila
7 Dixon and tell her you want that road paved and tell
8 her you voted for her, and that aha moment when
9 someone actually got through and said, you know, I
10 voted for you, I need the road fixed was huge.

11 But the other part that -- you know, I think
12 it goes to the thing that you were just saying about
13 how there is a such wide variety of the voter laws
14 across the country, is one of the things that we hit
15 was like somehow we were all going to vote
16 Democratic, which is crap. We have no party
17 allegiance whatsoever, you know, because neither
18 party speaks to us or for us.

19 That's one thing, and the second thing is
20 like we were all going to get together and make Tony
21 Soprano Governor or something. It's a fear-based
22 kind of thing.

1 So voting is a critical behavior to creating
2 a stakeholder in a community.

3 MR. GOLDMAN: Let me ask a question that no
4 one is going to ask publicly, but I suspect, being
5 cynical, that some members of one political party,
6 which I won't mention, would fear that most people
7 with prior convictions who would vote would vote for
8 the other political party as the proportion of
9 minorities and generally how the voting patterns go.
10 How did you overcome that in Maryland?

11 MS. HAVEN: One thing of the things that we
12 did --

13 MR. GOLDMAN: Did you get the votes from that
14 party?

15 MS. HAVEN: We actually did, which surprised
16 me, because once we made people laugh about just the
17 stupidity of, you know, we were going to elect Tony
18 Soprano Governor or something, but the idea was that
19 this was everybody's -- every party should be
20 courting this vote. If we really got our act
21 together and we organized and we became a voting
22 block, we could do it. Then you'd have to listen to

1 us, but nobody -- I know people with criminal
2 records, returning citizens, whatever we're going to
3 call ourselves for the purpose of this, that are on
4 both sides of the aisle, but neither party speaks to
5 us, and so what we've seen and what we know to be
6 true is that people will vote for the candidate that
7 most closely represents at least some semblance. If
8 they're willing to come to a candidate's forum that
9 your church put on, you know, and they shake your
10 hand they might get your vote.

11 MR. GOLDMAN: Okay.

12 MR. JONES: Penny.

13 MS. STRONG: No questions.

14 MR. JONES: Chris.

15 MR. WELLBORN: Actually, just very briefly,
16 in terms of lining up allies for things that make
17 sense and, again, one of the big things that I
18 repeatedly hear and have repeatedly heard are not
19 just voting, but other things. Voting is obviously
20 huge, but there are lots of bars. There are housing
21 bars, employment bars. There are lots of things that
22 affect people who are coming back into the

1 communities, and lining up allies, political allies
2 or institutional allies to support us and support
3 everybody who's interested in ameliorating this
4 problem, what are your recommendations there?

5 And I would like start with Lamont and maybe
6 just go down the line.

7 MR. CAREY: Because reentry is the big thing
8 right now in D.C. and it just so happened, in the
9 last election, politicians, that was part of their
10 platform, what they're going to do for the returning
11 citizen population. So I would say that a good ally
12 in D.C. right now, one, would be CSOSA. They have
13 their good points and they have their bad, the Office
14 of Returning Citizens Affairs. Those will probably
15 be the main two organizations that I would say that
16 are really making an attempt to support this
17 population, because they even bring me in to speak on
18 panels. They introduced me and got me the Department
19 of Labor reentry through employment and so forth. So
20 they are accepting that we know reentry maybe a lot
21 better than they do, and so they partner with us to
22 help other individuals coming home successfully

1 transition.

2 MR. WELLBORN: Okay. I think more
3 specifically, if we're lining up political allies or
4 institutional allies, to use the colloquial term, not
5 speaking to the choir, but speaking to a congregation
6 who really need to get the message, what do you think
7 tactically is going to work the best?

8 MS. HAVEN: Redefine your message, in some
9 cases, redefine who your messenger is, and take one
10 of us with you. If you're trying to talk to a
11 legislator about -- a perfect example, criminal
12 record shielding. For some reason in Maryland,
13 everybody is so afraid that that means they can never
14 look at someone's criminal records, and we're being
15 opposed by the judiciary. We're being opposed by the
16 retail merchants, and we're being opposed by the
17 Chambers of Commerce.

18 Well, first of all, you have to do your
19 homework and find out where your opposition is and
20 why they're opposing, and then it may be somebody who
21 looks like me. It could be somebody who looks like
22 him, but that's got to be who your messenger is and

1 make sure that everybody is on that same message so
2 when you build that campaign, whether it's democracy
3 fairness or fairness, access, and opportunity, which
4 is the new thing for Maryland for 2013, everybody is
5 on that same page; but when you're looking at bill
6 sponsors, sometimes you've got to look at people that
7 are not the traditional water carriers.

8 You know, the people that never carried a
9 criminal justice or criminal reform piece of
10 legislation before, that's who you want to get to and
11 you have that quiet conversation. Who do they listen
12 to in their hometown? You know, I was telling him
13 the story a little while ago that we were trying to
14 get a piece of legislation on Ban the Box passed in
15 Maryland and we were in a hearing, and the guy said,
16 Well, why should we give you this level playing field
17 so that you can apply for a job when there's
18 college-educated people that can't get a job? And
19 the guy looked at me and I kind of nodded my head
20 because I knew what I wanted him to say, and he said
21 because if you don't hire me, I'm going to be the one
22 that's going to break into your house. We got the

1 guy's vote.

2 Again, it's the message, messenger, right
3 time, right place, you know, that sort of thing.

4 That's what I would suggest.

5 MR. JONES: Vicki.

6 MS. YOUNG: It's sort of the through these
7 hearings of what are these mechanisms and what is
8 that we are advocating for, and the phrase that's
9 been used is do you want forgiveness or -- what was
10 it?

11 MR. JONES: Forgetting.

12 MS. YOUNG: Forgetting or forgiving, and all
13 of three of you have clearly done very well and have
14 very good senses of where you are, but what are your
15 thoughts on what's important to the constituency,
16 what will make a difference, what will be
17 aspirational, or is it more important to get a job or
18 to vote?

19 MS. HAVEN: From the work that I do, it's
20 about opportunity. It's about access to opportunity
21 it's about fairness. I don't care whether you
22 forgive me. I don't care whether you forget what I

1 did. If I can forgive myself, if can I make peace
2 with what I've done, and if I make reparations to my
3 victims or victims or whatever the situation is, you
4 know, that's between me and my god and whatever I
5 believe in or whatever, but my past should not over
6 shadow my future.

7 I'm asking for an opportunity. That's what
8 important and that's what resonates in my community.

9 MR. CAREY: Yeah. Seconded, opportunity.
10 When I was released from prison, I was released from
11 parole, and so by their standards, I had been
12 rehabilitated, and so if I'm rehabilitated and I'm
13 released back into society, then that's how I believe
14 society should view me as being rehabilitated.

15 So don't give my nothing but an opportunity
16 to compete on the same level as everyone else. I'm
17 not totally in disagreement with what you were about
18 not having employment before prison. Every
19 individual in prison that I was in except for when I
20 was in Lorton had a job and they knew what the
21 consequences were if you wasn't on time, a write-up,
22 and then in the hole, privileges lost for months or

1 what have you.

2 So we have -- I mean, I learned how to get up
3 to go to work for myself because I had to get up in
4 prison to go work for chump, for pennies. So just
5 give me an opportunity to compete. If I'm good
6 enough to hire from these corporations that's putting
7 jobs in prison, if I'm good enough to hire in prison
8 to work for these companies, then I'm qualified to
9 work for them outside of those walls.

10 And so I just want an opportunity. You ain't
11 got to forgive me. You ain't got to forget me. You
12 ain't got to remove the thing of the box. Just say
13 if your resume says that you qualify, I'm going to at
14 least give you the first meeting.

15 MR. JONES: Elissa.

16 MS. HEINRICHES: I recently heard the tail end
17 of an NPR piece on grit. It was an educational
18 piece. It has nothing to do corrections, but it was
19 whether or not you can teach grit, and I'm looking at
20 the three of you and I don't know how you got it, but
21 you all have grit. You're fierce, and it's a
22 pleasure to hear your stories.

1 I don't have a question. I just wanted to
2 say that let you know that we hear your voices and
3 we're here to try to make that voice louder.

4 So thank you.

5 MR. JONES: Penny.

6 MS. STRONG: I have something that's really
7 more commentary too. A number of years ago, I
8 traveled to Australia, and to me, it's always a
9 fascinating comparative study, and I wish I knew the
10 answer, but I did learn when I was there that if you
11 do not vote, you can be convicted of a misdemeanor
12 crime.

13 So by comparison, this country, I'm wondering
14 -- I understand that, historically, we lose this
15 panoply of rights when people are convicted of
16 felonies, but in our modern political times, does
17 that really make any sense? If you become convicted
18 of a felony, you have the same education, same access
19 to public, you know, publications and knowledge and
20 information about who you're going to vote for, so is
21 then a punitive thing, strictly a punitive thing?
22 You're going to remove that to teach the person a

1 lesson?

2 Really, does it make any sense whatsoever to
3 disenfranchise all felons? What does it have to do
4 with being incarcerated versus being out in the
5 street and still being on parole or on probation? To
6 me, I think it should just be eliminated altogether,
7 really. I know that's maybe a pipe dream, but it
8 shouldn't be.

9 I'd be curious to know what happens -- and we
10 talked about this earlier and I wish I had the
11 answer, but what happens, for example, in the United
12 Kingdom, England, I don't know if any of you, if Kim
13 knows the answer to that, in Europe, because one of
14 the things that I think is paramount are just human
15 rights in our country, and the U.S. has been exposed
16 on this and it ties to the extraordinary high rate of
17 incarceration. That's one of the reasons why we have
18 this task force, but international standards, where
19 are we standing in terms of the right to vote?

20 And I apologize for the stream of
21 consciousness, but I think those comparative
22 standards are really important, especially when we're

1 looking at States like Florida that are totally
2 disenfranchising felons.

3 MS. HAVEN: Well, the Brennan Center has done
4 a lot of work on that and looked at other countries,
5 and, you know, we are horrible. We're absolutely
6 horrible when it comes to voting rights and
7 restoration and just civic participation, but we've
8 gotten to this point where we have no faith, and it's
9 not just people with criminal records. We just have
10 no faith in our elected leaders and nothing -- you
11 know, there's this group that believes that they can
12 control and they go to Washington. They go to the
13 State Houses and they pretty much just kind of like
14 die there, and yes.

15 So maybe I'm pushing for term limits, but
16 they're going to do that. I'll give somebody eight
17 years to move your agenda. If you haven't moved your
18 agenda in eight years, you better be grooming your
19 successor, but that's what's not happening, and so we
20 get caught up in this whirlwind of just nothing and
21 nothing every changes, and it's the same people that
22 are voting to deny people the right to vote in

1 Florida that no matter how great the coalition is
2 down in Florida, and those people down there are
3 busting their butts -- they're doing it in Virginia,
4 but you still have the same people in the State
5 Houses who are just saying nope, and until that
6 changes, we're still going to be, you know, close to
7 the bottom of the barrel in civic participation.

8 MR. CAREY: If I could add my two cents, if
9 you all want to help this population, it starts
10 before being released from prison, because if I had
11 never went to prison, I wouldn't have voted, because
12 in the community, we feel so powerless. To be
13 honest, what I heard growing up is you go to school.
14 You get an education. Your parents can't afford
15 college. The white man ain't going to let you be
16 nothing.

17 I chose the streets because of that. The
18 school system ain't preparing our kids to go on to
19 careers. This is what I heard from broken people in
20 my community who had given up who said why would I go
21 out and vote; they're not going to listen to me;
22 they're not going to do nothing for us; we're going

1 to continue being treated the way that we've been
2 treated, profiled, shot, locked up, what have you, we
3 can't get jobs.

4 So these are my mothers and my fathers, my
5 next-door neighbor. So as a child, I'm like why
6 would I go down this path when this path leads to a
7 dead end. So I see how other people are moving out
8 of my community through drug dealing.

9 I mean, there was a guy in my community that
10 wore a suit. Because I sold drugs and doing the
11 graveyard shift, I mean, all night long, i seen him
12 go to work in the morning, and every time he looked
13 at me, he looked at me as he wished I would die.

14 So if the people who are successful that come
15 from my community come back to my community and tell
16 children like I was that you can, if you do this and
17 you do this, you can make it out of here, then that
18 could have changed the path that I went down, but
19 since we're not getting that -- we're hearing it on
20 the new now about how bad the public school system
21 is, how they're just passing our kids.

22 So for a kid that wants something, what is

1 the encouragement to participate in this process when
2 now the media is telling you things along with the
3 broken people in your community. So now our kids go
4 into prison as a teenager, like I was. Then we get
5 in prison.

6 As soon as I enrolled in -- I got the GED,
7 that was like it lifted the world off my shoulder
8 because I'm like, Wow, maybe school wasn't all that
9 bad. So then I enrolled in college. They take the
10 college program out, and in a way, I kind of
11 understand the complaints that -- there were
12 complaints that people who haven't broken the law
13 have to bust their tail to send their children to
14 college; why should I be given a free pass.

15 But there are statistics that say a person
16 that receives a college education in prison is less
17 likely to re-offend, and so now I get out where a lot
18 of individual that I know -- most individuals that I
19 know in prison want to come home, want to do the
20 right thing, but they come home and they run into all
21 of these walls. They get these certificates, these
22 certifications that don't lead to nothing.

1 And so if you want to help, please put in
2 your agenda -- if you can't get college programs back
3 in prisons, at least get the GED where individuals
4 have to at least get a GED, because that's what
5 opened my eyes, and then when I got into the college
6 program and I'm in business management, and they're
7 like supply and demand. I'm like I know that through
8 distribution. I know that.

9 So I learned that I already was doing
10 business. I just was doing it illegally, and so when
11 I'm getting ready to come home, I'm hearing that the
12 parole officer, all they're going to do is set me up
13 to send me back to prison. I'm not going to be able
14 to get a job because I'm black and now I'm a felon, I
15 have a felony conviction, but I still have these high
16 hopes that when I walk out this door -- right now, if
17 one of you got released from prison, there is not one
18 central place you can go today in D.C. to get your
19 birth certificate, get your driver's license, find
20 out where the jobs are. Even thought they are
21 working on that, but there isn't one place. So
22 you're talking about an individual with little

1 resources and little income. It's going to cost me
2 \$10 to go -- to get over here to -- I mean just
3 transportation to get to the birth certificate place
4 and then to get to the Social Security place, not
5 putting on top of that the fees that it costs to get
6 that.

7 So if you want to help this population, you
8 help this population by making sure individuals come
9 home like we are and that they're able to see
10 individuals like he was saying, that he had a job,
11 but nobody knew that you had been prison. It's not
12 my secret. Everybody that comes in contact with me,
13 if you talk to me long enough, you know I've been to
14 prison because I want to change the image of how
15 people see individuals like us, because all of us
16 don't come home with a goal to break in your house,
17 to sell your children drugs.

18 I came home with the sole purpose to prove to
19 all the people that abandoned me, the people that
20 said I'm not going to be nothing and to prove to
21 myself that that was a choice that I made to break
22 the law. That didn't define who Lamont Carey is.

1 So if you want to help us, one, get in our
2 communities, get the message in our communities to
3 those who have never even been arrested that they can
4 vote. In prisons, help us stress education, and jobs
5 and housing is great for us if -- if you can pull
6 this off, you can probably get us limited help, but
7 if you give us the right to vote, then we can join
8 that fight with you, that we start electing officials
9 who want us to have housing, who want us to have
10 employment, and that is the greater good that you can
11 possibly do for us by helping us help ourselves,
12 because we are -- I know I'm not looking for no
13 handout.

14 If you open the door and give an opportunity,
15 I will compete against every last one of you. We can
16 go in the courtroom. Give me the case. I will do
17 the research and I will prepare and I will go to
18 trial just like you go to trial. Just give me that
19 option to compete on the same level that you're on.

20 MR. JONES: Well, I had a whole bunch of
21 questions, but we are out of time, and I don't think
22 that we could probably end any better than we just

1 did. So thank you very much for your time and for
2 coming here and sharing your stories with us and your
3 passion. We appreciate it very much.

4 That ends Day 2. We'll see everybody
5 tomorrow at nine o'clock in the morning.

6 [Whereupon, at 5:32 p.m., the hearing was
7 adjourned.]

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1 CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC

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3 I, CATHERINE B. CRUMP, a court reporter
4 and Notary Public, hereby certify that the foregoing
5 proceedings were recorded by me stenographically and
6 thereafter reduced to typewriting under my direction;
7 that the foregoing transcript is a true and accurate
8 record of the proceedings to the best of my
9 knowledge, ability, and belief; that I am neither
10 counsel for, related to, nor employed by any of the
11 parties to the action in the proceeding; and further,
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13 or counsel employed by the parties hereto nor
14 financially or otherwise interested in the outcome of
15 the action.

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17 CATHERINE B. CRUMP

18 Notary Public in and for the

19 District of Columbia

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21 My Commission Expires: October 31, 2017

22