

**New York State  
Commission on Sentencing  
Reform**

**Public Hearing in Buffalo  
November 19, 2007**

1 Commission on Sentencing Reform - 11-15-2007

2 COMMISSION MEMBERS:

3 Commissioner Denise E. O'Donnell, Co-chair

4 George B. Alexander

Anthony Annucci, Esq.

5 Assemblymember Joseph Lentol

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2 (The hearing commenced at 9:40

3 a.m.)

4 MS. O'DONNELL: Good morning.

5 I'm going to ask you please to be seated. We're

6 going to begin our hearing of the New York State

7 Commission on Sentencing Reform. The Commission

8 was created by Executive Order of Governor Spitzer

9 with a wide mission to look at all of our

10 sentencing laws in New York, alternatives to

11 incarceration, re-entry, victim issues. And we

12 have issued a preliminary report on October 15th,

13 2007, with our preliminary recommendations for

14 simplification of New York Sentencing laws for

15 expansion of the use of alternatives to

16 incarceration, victims -- focusing on victim's

17 rights and a number of other recommendations.

18 Today is our opportunity to hear from members of

19 the public, the Advocacy Community, formerly

20 incarcerated individuals, attorneys, the Judiciary

21 and the public about your views on New York

22 Sentencing Laws.

23 I'd like to begin by introducing

24 members of the commission. My name is Denise

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2 O'Donnell. I'm the Commissioner of the Division of  
3 Criminal Justice Services for the State of New York  
4 and I'll begin on my far right. And Michael  
5 Barrett is with the Sentencing Commission, and then  
6 Simone, would you introduce yourself?

7 MS. LEVINE: Sure. I'm Simone  
8 Levine. I'm with the New York State Assembly. I'm  
9 here on behalf of Assemblyman Joseph Lental. Thank  
10 you everyone for coming today.

11 MR. BERGOMO: Good morning.  
12 Anthony Bergomo. I'm an attorney for the Law  
13 Enforcement Foundation.

14 MR. ALEXANDER: Good morning.  
15 George Alexander, Chairman and CPO of the State  
16 Parole.

17 MR. GREEN: Good morning. Mike  
18 Green, Monroe County District Attorney.

19 MS. STANFORD: Good morning  
20 everyone. My name is Tina Stanford. I'm the  
21 Chairwoman of the New York State Crime Victims  
22 Board.

23 MS. O'DONNELL: Thank you. And  
24 we do have a timekeeper here that will be keeping

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2 time. We have a number of speakers. Speakers are  
3 asked to keep their remarks to ten minutes in  
4 duration. And our first speaker is Gerald Balone,  
5 who is speaking to us about transitioning into the  
6 community. Mr. Balone.

7 MR. BALONE: Right there.

8 MS. O'DONNELL: Oh, okay. Come  
9 right here. Okay. Thank you very much for joining  
10 us today.

11 MR. BALONE: Good morning.

12 MS. O'DONNELL: Good morning.

13 MR. BALONE: I was just released  
14 from prison on August 14th, after having served  
15 thirty-seven and a half years for my involvement in  
16 a crime in which three people were killed. While  
17 incarcerated I had the good fortune of being able  
18 to obtain five college degrees and take numerous  
19 programs that helped with my transition while I'm  
20 out here. I'm currently residing at Cephus House,  
21 which is a transitional service program for  
22 ex-offenders, for most of us who have been -- were  
23 in prison for over twenty years. While there, they  
24 are teaching me and showing me all the ways and

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2 things that I should do while I remain out here in

3 order to make it.

4 While I was in prison there were

5 a lot of things that I did wrong in my early

6 incarceration. But one thing that helped me out of

7 everything that I ever did is I had an opportunity

8 to go to college. Because of my college

9 credentials, I now have an opportunity to get a

10 job. In 1995 the -- the -- Governor Pataki

11 eliminated college programs for -- for prisoners

12 and that was probably one of the worst mistakes he

13 could have made. Because of an education, most of

14 the people that I know that got out of prisons with

15 educations are now successfully employed, doing the

16 right thing, paying taxes, and doing all the other

17 things.

18 Right now, most all the people

19 that I know that are getting out of prison with

20 GEDs, they're having a hard time making it. Nobody

21 wants to hire them. Nobody wants to do anything to

22 help in their transition. Because I do not have a

23 mental or physical disability, the only

24 organization that would help me in my transition is

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2 the Cephus program. If I had a mental or physical  
3 disability there would be all kinds of people  
4 trying to help me out. There is something terribly  
5 wrong with that. We -- we talk about reentry.  
6 There is a problem with reentry that there is no  
7 help being given to people once they get out of  
8 prison. Many people are being forced to go to  
9 shelters and places like that and they do not have  
10 a chance to make it.

11 I am fortunate in the fact that I  
12 will soon be seeking employment, going out on my  
13 own. But not that many people have what I have  
14 going for me. On behalf of those who are still  
15 inside I would ask that this commission would  
16 consider letting those people go home who have  
17 proved beyond a doubt that they are rehabilitated.  
18 If I had not proved that I was rehabilitated, I  
19 would not be standing before you right now. I had  
20 to go in front of seven parole boards and there are  
21 still many people who believe to this day that I  
22 should still be spending the rest of my life in  
23 prison. And there are others in prison who are  
24 just as gifted, who are just as wanting to come out

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2 here and do the right thing. And they should have  
3 the same opportunity. I have many restrictions on  
4 me with parole. And I know that I signed a  
5 contract in order to get out of prison. And if I  
6 should violate any of those conditions of parole,  
7 yes, I would have to go back and spend the rest of  
8 my life in prison, which would be rightly so. But  
9 those people who are in prison who have done  
10 everything that has been mandated of them, who have  
11 gotten college degrees, who've taken all the  
12 programs, who've started all these different  
13 programs. They should have an opportunity to come  
14 out here and be assets to society. They want to do  
15 the right thing.

16 And in regard to the sentencing  
17 laws, I believe that right now I'm -- I'm -- I  
18 don't believe that they should go to determinate  
19 censuses. I am totally opposed to that because  
20 then it becomes a game in prison. People will not  
21 do what I did. They will only do what's mandated  
22 of them. They will take their therapeutic programs  
23 and their educational programs and they will do  
24 nothing else. Those who want to come out and do



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2 the right thing, give them an incentive to do what  
3 I did. I had no incentive. I -- there was really  
4 no incentive for me to be in front of this hearing  
5 except that I made a promise to those that I left  
6 behind that I would come and speak at this  
7 commission and try to convince you that there are  
8 many good people behind the prison walls. They may  
9 have done bad things, but they're not bad people.  
10 Many of them are just as sorry for what they did.  
11 I am so sorry and I have dedicated the rest of my  
12 life to the victims of my crime. And I hope some  
13 day to meet with the families of the victims of my  
14 crime to tell them how sorry I am and maybe work  
15 together with them in establishing programs so we  
16 can come out here and do the right thing for people  
17 out here.

18 Please don't abandon those people  
19 in prison. They need our help. Give them the  
20 chance. Tell them what to do. The biggest problem  
21 I always had when I went to my parole board, I go  
22 and they would hit me with two years, but nobody --  
23 nobody would sit down and say Gerry, this is what  
24 we want you to do to prove that you'll be ready for

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2 your next parole board. Nobody gave me that  
3 opportunity. And I would write to people. I would  
4 write to the Governor. I would write to the  
5 Commissioner. I would write to everybody. Nobody  
6 would write me back. But I don't know, I'm hoping  
7 that somewhere along the line that I did write to  
8 the right person. And somebody says we're going to  
9 give Gerry Balone a chance. But there are some  
10 people who will continue to write articles about me  
11 saying that I shouldn't be free, that I should  
12 still be behind prison walls. And there are others  
13 that are going to come behind me who want to come  
14 out, who are just. They should be out here and I  
15 would ask that this Commission take this message  
16 back to the Governor and let the Governor know that  
17 he is doing the right thing. With the Graziano  
18 lawsuit, I'm sure everybody on this panel is aware  
19 of it. That was a bad decision that he backed up  
20 from.

21 We believe, those of us that are  
22 involved in this work, we believe that he should --  
23 those people should be given a fair hearing. How  
24 many times should a person be hit for the nature of

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2 his crime? If, when I was sentenced, that they  
3 would have said Gerry you have to do this or you  
4 have to do that amount of time, that would be all  
5 right. But to make me go to a parole board every  
6 two years with the expectation that I had a  
7 reasonable chance of going home, when it wasn't the  
8 case, is wrong. Graziano case is trying to resolve  
9 that problem. It is saying that if we do something  
10 wrong that we go to the parole board and you hit me  
11 with two years. Tell me what you want me to do in  
12 that two years and if it would -- whatever it is,  
13 and I decide that I don't want to do it, give me  
14 another two years and give me another two years.  
15 Keep doing what you're doing, but if I go and do  
16 what you ask of me and I go above and beyond, and  
17 that's what's happening with some of these guys.  
18 This is my portfolio. I spent years and years  
19 doing everything that I could, taking every  
20 program. And when I would go to some of my  
21 hearings they would say this is commendable, but we  
22 don't care about that. All we're going to do is  
23 consider the nature of your crime.

24 And that's what's happening with

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2 many of the people that are in prison now,  
3 especially the people that have been in there a  
4 long time. And for those of us that work on a  
5 Crime Victim's Board, there are many guys in prison  
6 who do want to do something for your Committee. We  
7 want to say, what can we do. We don't know what to  
8 do. We want to get out and we want to do the right  
9 thing. We want to work with people like you.  
10 Don't kick us to the curb. I -- some people are  
11 telling me, Gerry take a job in construction, do  
12 this, do that. Get under the radar. Don't get out  
13 there and speak. I can't do that. I want to do  
14 what I'm doing.

15 My ministry is to come and  
16 hopefully convince people such as yourselves that  
17 good people can come out of prison. Good things  
18 can happen to people who go to prison if it's  
19 mandated in the sense that it's for their benefit  
20 and not for the benefit of the Division of Parole  
21 or Department of Corrections. Are there any  
22 questions that anybody has? I know I'm short on  
23 time.

24 MS. O'DONNELL: Well we

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2 appreciate you coming. I -- I have one --

3 MR. BALONE: Sir.

4 MS. O'DONNELL: Do we have a  
5 question here.

6 UNIDENTIFIED SPEAKER: You have  
7 the time.

8 MS. O'DONNELL: Okay. One -- one  
9 quick question. I'm interested in the Cephus  
10 Program. How many people can they have?

11 MR. BALONE: Cephus.

12 MS. O'DONNELL: Cephus.

13 MR. BALONE: Not as many as we  
14 would like to right now because of funding and  
15 budgeting and things like that. We're hoping maybe  
16 with the re-entry money or something like that.  
17 There's not enough help for ex-offenders. Very few  
18 helps. Most -- a lot of people getting out of jail  
19 are being forced to go to shelters and places like  
20 that. There are more programs. We need more  
21 funding. We need people to know that we need help  
22 when we get out. If it had not been for Cephus, I  
23 don't really know. I probably would have had to go  
24 to a shelter. Or I might not have even been

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2 released because that was part of my release plans.

3 And everybody knows the value of Cephus.

4 Commissioner?

5 MR. ALEXANDER: I want to thank  
6 you very much -- thank you very much for coming  
7 here today.

8 MR. BALONE: Thank you also.

9 MR. ALEXANDER: It's hard to --  
10 lock down for thirty-seven and a half years.

11 MR. BALONE: Yes.

12 MR. ALEXANDER: Good for you.  
13 God bless you.

14 MR. BALONE: Thank you. Thank  
15 you very much.

16 MS. O'DONNELL: Thank you very  
17 much for coming. Okay. Our next speaker is Ann  
18 Graham from the Catholic Family Center, to speak to  
19 us about re-entry issues.

20 MS. GRAHAM: Good morning. I'm  
21 told there's a switch on this mic, but --

22 UNIDENTIFIED SPEAKER: Isn't it  
23 on the bottom? It's on the very bottom, in the  
24 back. It's --.

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2 MS. O'DONNELL: Ann I think you  
3 probably can do it without it.

4 MS. GRAHAM: I think so too.  
5 Good morning.

6 MS. O'DONNELL: No, but actually  
7 I still have to get it working. Ready.

8 MS. GRAHAM: Good morning to  
9 everyone. I am Ann Graham. I'm the Monroe County  
10 re-entry Coordinator and Co-president of the  
11 re-entry Association of New York. I'm also on the  
12 New York State HIPAA Conference's Criminal Justice  
13 Committee.

14 MS. O'DONNELL: Ann actually, I'm  
15 not sure, can you hear in the back of the room?  
16 Okay.

17 UNIDENTIFIED SPEAKER: No.

18 MS. O'DONNELL: No?

19 UNIDENTIFIED SPEAKER: No.

20 MS. GRAHAM: Well some nice young  
21 lady told me there's a switch, but I don't know  
22 what --

23 UNIDENTIFIED SPEAKER: Actually  
24 you're on this black microphone here. This is the

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2 one you want to speak into.

3 MS. GRAHAM: Okay.

4 UNIDENTIFIED SPEAKER: It doesn't  
5 go any higher though, that's the problem.

6 MS. GRAHAM: Can you hear me now?

7 UNIDENTIFIED SPEAKER: Oh yeah.

8 Yes.

9 MS. GRAHAM: Okay. Yeah. I'm a  
10 member of the New York State HIPAA Conference's  
11 Criminal Justice Committee and prior to me working  
12 re-entry I spent about seventeen years in Civil  
13 Legal Services. I was very excited to read the  
14 Commission's report, where like most people who are  
15 involved in the Criminal Justice System, I believe  
16 that a lot of the changes suggested in the report  
17 are long overdue. And they really represent the  
18 only hope for long term public safety in New York.

19 Are there people who belong in  
20 prison? Certainly there are. There are people who  
21 committed horrible offenses and they are true  
22 sociopaths. They have no remorse and for that, you  
23 know, we have to be grateful to the Department of  
24 Correctional Services, it's a wonderful job at what



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2 they do. But they represent a very small slice of  
3 the inmates that are incarcerated. Like many of  
4 you, every day I work with men who desperately want  
5 a chance to succeed after incarceration and who get  
6 to face the reality that the odds are stacked  
7 against them. They can't undo whatever harm they  
8 did. They can only try to get it right this time.  
9 And public sentiment often seems to say so what,  
10 that's the price they pay for -- for the crime they  
11 committed. But unfortunately it would be more  
12 correct to say that's the price we'll pay for the  
13 crime they committed. Because unless we confront  
14 and create the right tools and opportunities for  
15 former offenders to succeed, we have to expect that  
16 they're going to return to what they know as a  
17 means of survival.

18 We have to create a better  
19 toolbox. If the only tool you have is a hammer,  
20 every problem starts to look like a nail. And  
21 State Prison is a very big, very expensive, and  
22 it's an often ineffective nail -- hammer when it  
23 comes to really looking at long term public safety.  
24 And we can see that just by looking at our

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2 recidivism rates.

3 We have to acknowledge that about  
4 ninety-eight percent of people who go to prison get  
5 out, regardless of the crime. And the longer  
6 they're in prison, the greater the chances are that  
7 they'll never effectively integrate back into the  
8 community. The loss of family ties, little or no  
9 skills or work experience, mental health and  
10 substance abuse issues and this -- a general  
11 inability to navigate life on the outside makes for  
12 failure and subsequent return to criminal activity  
13 nearly inevitable. Because in spite of the many  
14 vocational programs and counseling, and treatments  
15 that the prisons provide, and they certainly have a  
16 wealth of programs, prison does one thing above  
17 everything else. It teaches men how to be  
18 prisoners. And that's not a marketable skill out  
19 here in the community. It -- it -- incarceration  
20 just robs them of the very stuff they have to  
21 develop, good decision making, responsibility,  
22 close social relationships, if they're ever going  
23 to be law-abiding, productive members of a  
24 community.

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2 The Commission's report ranges  
3 over so many critical topics and I just want to  
4 touch on a few that -- that jumped out at me.  
5 Re-entry must be an integral part of the Criminal  
6 Justice System and it must begin at conviction.  
7 Judges need to have the ability to consider what is  
8 ultimately invested in the public safety and that  
9 may not be a prison sentence. When it is a prison  
10 term the sentence should consider the inevitable  
11 day the offender will be released and how he or she  
12 can best be prepared to live a law-abiding life, or  
13 we're doomed to maintain a perpetual revolving door  
14 that's to no one's advantage. Evidence based  
15 re-entry services, such as the transition from  
16 prison and community models has also adopted task  
17 forces needs to be available to every person who  
18 needs it and they need to start as soon as possible  
19 after conviction right through release. We need to  
20 designate some prisons as re-entry facilities where  
21 Human Service Professionals can come in to provide  
22 services that form a bridge and help the person  
23 back into the community. Within these facilities  
24 we must incorporate better opportunities for family

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2 reunification, work release or community furloughs  
3 for every single offender that's going to be  
4 released, especially high risk and violent felony  
5 offenders. If they're going to get out, they need  
6 to have this opportunity.

7 Inmates should all have New York  
8 State Department of Motor Vehicle Identification, a  
9 job or an open public assistance case and secure  
10 housing situation on the day of release. These  
11 represent the bare minimum requirements to survive  
12 in the community. I can't tell you how frustrating  
13 it is to have men get out and have to put them in a  
14 homeless shelter because there is no where else to  
15 put them. Persistently mentally ill men and women  
16 don't belong in prison. I have repeatedly worked  
17 with men and women who are released from prison  
18 only to be reincarcerated in a few weeks because we  
19 have no way to stabilize them in the community.  
20 There is literally nowhere to put them.

21 We have to create and fund a  
22 range of solutions for this population, from  
23 supportive living to secure residential mental  
24 health facilities. It's very frustrating to work

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2 with people, especially in a developmentally  
3 disabled community where there -- just there is no  
4 place to put them to stabilize them when they  
5 immediately get released. They have to go to a  
6 shelter or halfway house like everyone else and  
7 they're not equipped to deal with these problems.

8 Expand community correction  
9 alternatives to deal with technical parole  
10 violations. Incarceration for technical parole  
11 violations often does little more than undo any  
12 progress that's already been made. Graduated  
13 sanctions for violations make far more sense than  
14 putting someone back in State Prison because of a  
15 curfew violation or similar infraction. Not only  
16 do we incur the expense involved in the  
17 incarceration, but it also means that they're  
18 losing the job, Department of treatment slot, and  
19 the cost of those things. And then we're just  
20 going to start all over again from the beginning in  
21 a couple of months.

22 Bring back post high school  
23 education in correctional facilities. We could  
24 literally send an inmate to Harvard for what it

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2 costs to incarcerate him for a year. It's not a  
3 secret that it's cheaper to educate than  
4 incarcerate. And the recidivism rate for people  
5 with public high school drops to nearly nonexistent  
6 numbers. And finally, analysis after analysis  
7 tells us that most people eventually age out of  
8 criminal behavior. Continuing to incarcerate a  
9 steadily growing geriatric population is both  
10 expensive and unlikely to enhance public safety.  
11 Of course some people are going to commit new  
12 crimes, regardless of every attempt to help them.  
13 But we know there can be more positive outcomes for  
14 most offenders. We must have the courage to ask  
15 them what they what expert analysis tells us is  
16 true. Propose new solutions and find positive ways  
17 to re-educate the public about the reality of  
18 incarceration and the alternative that can better  
19 ensure long-term public safety. We can't -- we  
20 can't just hold to the idea that the public wants  
21 retribution. If retribution doesn't serve long  
22 term public safety, then we have to think past  
23 that.

24 Thank you very much for allowing

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2 me to testify.

3 MS. O'DONNELL: Thank you very  
4 much Ann. Ann is the Director of our local  
5 re-entry task force in Monroe County in New York  
6 and trying to create a network of local re-entry  
7 task forces in counties throughout the state. And  
8 Monroe is one of the first counties that got  
9 established in the re-entry category. And you're  
10 doing good work, so I want to thank you.

11 MR. GREEN: Ann, before you go --

12 MS. O'DONNELL: Thanks much.

13 MR. GREEN: If I could, before  
14 you go, what would you say are your biggest  
15 obstacles or challenges right now to providing  
16 effective re-entry to the people who need it in  
17 Monroe County?

18 MS. GRAHAM: One problem is  
19 certainly that the only source of income most  
20 people have when they are going to be released is  
21 Public Assistance and Medicaid. And even though  
22 RDHS in Monroe County has been very cooperative and  
23 we file applications forty-five days in advance,  
24 that still doesn't mean the case is open on

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2 release. So being able to move them into a solid  
3 housing situation is dicey. Sex offenders  
4 particularly spend an average of sixty-six days in  
5 emergency housing. That's an unfavorable situation  
6 and it's extremely expensive, about twelve hundred  
7 dollars a month. So that's certainly a problem  
8 along with the job situation in Monroe County,  
9 particularly and the same is true in Erie. It's  
10 not easy to get a job if you've got no criminal  
11 history and a degree in something. And I have guys  
12 who are skilled and -- and -- and could walk into a  
13 job tomorrow and it would go a long way in  
14 stabilizing them. But there is such public  
15 backlash against this population that it is -- it  
16 is a long, hard pull to get them into -- into jobs  
17 they can really earn a living in.

18 MR. ALEXANDER: And -- just  
19 quickly Ann. We've heard from New York all the way  
20 to Buffalo this situation with housing. How do we  
21 address the issue for housing, you know, we -- we  
22 don't provide housing ourselves.

23 MS. GRAHAM: Right.

24 MR. ALEXANDER: Many laws, public



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2 housing prevent felons from living there. And then  
3 you brought up the issue of sex offenders and them  
4 being not in my back yard, how do we deal with  
5 that. Certainly some of it is legislative. Some  
6 of the Federal and State Housing Laws and City  
7 Housing Laws have to -- have to make an  
8 accommodation to this population. For example, I  
9 have several clients right now that came out of  
10 incarceration wheel-chair bound. Now they're --  
11 they're going to be in Emergency Housing forever  
12 because the only handicap accessible housing is  
13 subsidized housing and no one will accept them  
14 because of their felony convictions. So -- so  
15 there does have to be some legislative action in  
16 part. I know that the RFP is coming out from  
17 parole and we're certainly pulling together in  
18 Monroe County to address applying for those dollars  
19 so we can bring in more housing. But that, you  
20 know it's money. We need money to make it  
21 affordable for -- for nonprofits to be able to  
22 provide this kind of housing for people.

23 MS. O'DONNELL: Thank you very  
24 much.

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2 MS. GRAHAM: Thank you.

3 MS. LEVINE: I actually --

4 MS. O'DONNELL: I have one more  
5 question.

6 MS. GRAHAM: Okay.

7 MS. LEVINE: You -- you had  
8 referred earlier on to increased -- increased  
9 communication with family members while --

10 MS. GRAHAM: Uh-huh.

11 MS. LEVINE: -- inmates are  
12 incarcerated and in order to enhance family  
13 ramification afterwards. Can you give us any  
14 concise suggestions, any concrete suggestions how  
15 that would actually --

16 MS. GRAHAM: Bring back trailers.

17 MS. LEVINE: -- bring back  
18 trailers.

19 MS. GRAHAM: Trailer visits at  
20 the facilities. It's very -- I don't know if  
21 you've ever visited an inmate in a state facility.  
22 It's sort of like the high school cafeteria, but  
23 louder. You're sitting four people to a table.  
24 There's nothing for anybody to eat all day except

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2 vending machine food. If you're a woman who's  
3 gotten on a bus in Brooklyn at two o'clock in the  
4 morning with three kids and traveled upstate and  
5 now you're going to try to spend the day visiting,  
6 it's almost impossible. But trailer visits allow  
7 people to have a normal family visit.

8 MS. LEVINE: Thank you.

9 MS. O'DONNELL: Okay. We're  
10 going to have to move on. I do want to recognize  
11 our State Senator, Antoine Thompson, who's here.  
12 We appreciate you being here Senator.

13 Our next speaker is Robert  
14 Seidel, from the Judicial Process Commission, also  
15 to speak on re-entry issues. Welcome Mr. Seidel.

16 MR. SEIDEL: Good morning.

17 UNIDENTIFIED SPEAKER: Good  
18 morning.

19 MR. SEIDEL: I should have  
20 printed this in fourteen point. It's just as well.  
21 Thank you for your generosity in listening to us  
22 from Monroe County. Oh, great, thank you.

23 MS. O'DONNELL: Maybe that'll  
24 help.

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2 MR. SEIDEL: I'm getting shorter,  
3 but not short enough. It's an honor to be here.  
4 I'm Bob Seidel, a mentor, a retiree who lived for  
5 over thirty -- three decades in the city of  
6 Rochester. Also, I'm a volunteer member of the  
7 Judicial Process Commissions Public Policy Group  
8 for Monroe County Re-entry task force, the Safer  
9 Monroe Area Re-entry Team, a voluntary self-help  
10 group of providers and professionals, and a  
11 Downtown Church.

12 As well I mentor re-entering men  
13 and women and I write research, advocate, and  
14 counsel on prison re-entry issues. Professionally,  
15 after leaving farming and a period of intense  
16 higher education I mentored adult students for  
17 twenty-five years at SUNY Empire State College.  
18 I'm intimately familiar with dynamics of Rochester  
19 and the politics of Monroe County.

20 Congratulations, by the way.

21 MS. O'DONNELL: Thanks.

22 MR. SEIDEL: You -- you earned  
23 that, I think. The commission deserves our severe  
24 and profound -- profound gratitude. If adopted and

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2 carried out, your preliminary recommendations will  
3 produce a veritable revolution. A veritable  
4 revolution that will undoubtedly benefit untold  
5 numbers of individuals, families, and  
6 neighborhoods, not to mention every taxpayer in the  
7 state. Parenthetically, re-entry harms some  
8 neighborhoods much more than every other one and I  
9 think that when we think about declining  
10 neighborhoods and re-entry we can understand the  
11 dynamics much better. It is not only low income,  
12 it is not only single parent families it is also  
13 the issue of crime, incarceration, and re-entry.  
14 So we talk about re-entry -- re-entry as benefiting  
15 individuals as well as neighborhood.

16 This will almost surely be true.  
17 The benefits will be most surely true, of course,  
18 if they occur in conjunction with positive things  
19 that are happening elsewhere among the many New  
20 York State and local agencies dealing with crime  
21 adjudication, incarceration and re-entry. I want  
22 to say just this for to the Commission about  
23 re-entry, move forward, stay the course, continue  
24 on the path along which the state has made a strong

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2 and correct commitment to cooperate with coalitions  
3 of local organizers, organizations public and  
4 private, large and small. Around the Monroe County  
5 Re-entry Task Force, whose able and articulate  
6 coordinator, Ann Graham, we heard today, we have  
7 built up a tremendous community-based head of steam  
8 and good will, good work, and good prospects. We  
9 are determined to move forward beyond these  
10 beginnings. I also want to highlight the work of a  
11 person who couldn't come today, Sue Porter,  
12 Coordinator of the Judicial Process Commission.  
13 The JPC has been doing important and excellent work  
14 in advising and then mentoring incarcerated and  
15 re-entering men and women for many years and will  
16 continue to do so, on a shoestring.

17 I hate to say it, but it may be  
18 one of the most important jobs in society that is  
19 being done by people who's jobs earn benefits that  
20 most high school graduates would sneer at. And I  
21 hate to tell you that. That's crazy. The  
22 Commission is exactly correct to indicate the  
23 importance of multiple handicapping conditions and  
24 constrain -- that constrain many persons who

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2 re-enter into society from incarceration. This is  
3 certainly borne out by the evidence-based  
4 conclusions that drive your recommendations. It is  
5 also the case with regard to a less tangible, but  
6 still decisive matter. The expectations that  
7 prisoners have as they prepare for re-entry. I'm  
8 happy to hear that there were excellent existed in  
9 the prior testimony.

10 Most of us who have fared quite  
11 well in this regard still have encountered  
12 occasions upon which we have had to forego or  
13 revise completely and even suddenly our  
14 expectations. The fact that we have posted  
15 testimony to our resilience, fortitude,  
16 steadfastness and relationships. How else could we  
17 have dealt with an entirely unforeseen personal  
18 tragedy, vocational debacle or business crisis. I  
19 hope that what occurs regarding the expectations of  
20 men and women nearing the completion of their terms  
21 of incarceration will enable them to handle their  
22 circumstance as well as possible in the field of  
23 dreams, growth and reality. My short experience  
24 tells me just how important it is for all of us to

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2 be aware of and to respond to this phenomenon --

3 the phenomenon of expectations in the lives of

4 people who have had a hard time with reasonable

5 growth and growth-directed expectations.

6 One story tells it all as far as

7 I am concerned. On a certain day, a man for whom I

8 was mentor experienced a severe crisis. This is

9 the day for which he had expectations for some

10 time. It was the precise end date of his parole.

11 However anticipation did not generate

12 accommodation. In this case, the man's emergency

13 was heightened and intensified, apparently but the

14 conjunction of depression, posttraumatic stress

15 disorder, normal anxieties and a very serious

16 chronicle medical condition. He claimed that his

17 over eight years of imprisonment had produced the

18 PTSD and had accentuated his anxieties. I don't

19 know this for sure. In any event this man felt

20 comfortable to call me and I was willing to sit

21 down with him to help him sort out what he was

22 thinking and feeling. And I think we averted what

23 could have been a catastrophe. I came to know the

24 man even better over time and learned my judgment a



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2 year and a half ago was correct. Mentors to  
3 formerly incarcerated men and women thus take on a  
4 grave responsibility. They are in a position to  
5 help folks who, due to habits, family circumstances  
6 and prison need a lot of help to overcome the  
7 deficits of not having learned how to live in the  
8 real world. This is especially true of youngsters  
9 who did not have good nurturing through their  
10 formative adolescent years. A mentor has to be  
11 aware of the bad habits that accumulate in prison,  
12 particularly dissembling and conning. A mentor can  
13 help teach and be a model for scheduling, making  
14 good notes, handling money, budgeting, dealing with  
15 paperwork, taking responsibility for oneself,  
16 self-advocacy and so forth. But in the end, we all  
17 know from the practices of treatment and recovery,  
18 the individual has in the final analysis to decide  
19 for her or himself. No one of any experience,  
20 myself included, can do it for another person. We  
21 can only walk with them. And mentors must know  
22 their limits and keep reasonable boundaries. This  
23 stuff is subjective and difficult to objectify and  
24 quantify, I know that. Yet I'm sure you know its

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2 values, bad attitudes and habits, ill health and  
3 related behaviors in youth and one's encounters  
4 with adjudication and incarceration need to be  
5 changed or addressed competently and  
6 professionally. The systems in place are designed  
7 at least in part to deal with them or perhaps to  
8 keep all involved as safe as possible in the face  
9 of bad attitudes and related behavior.

10 I am, today, encouraging  
11 attention to the positive side not to overrule the  
12 safety issue at all, but because it is necessary.  
13 And so I'll end with four things that I'd like you  
14 to keep in mind: Do move to encourage and try not  
15 to discourage; do more to engender hope, and try  
16 not to discourage; contribute more in reuniting  
17 families and loved ones and in mentoring to foster  
18 warm, human relationships.

19 Finally, and most important, go  
20 all out to build bridges and foster intra and  
21 interagency and organization coordination,  
22 connectedness, and information sharing. This is  
23 really necessary, it's absolutely necessary among  
24 corrections, DCJS, and parole, and the local task

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2 forces, about which I have a little bit of  
3 information. In order to make the system  
4 so-called, will you make it real system, better  
5 able to serve re-entering men and women  
6 comprehensively and to keep them on the right road.

7 Thank you very much for your time.

8 MS. O'DONNELL: Thank you very  
9 much Seidel. I appreciate it. Our next speaker is  
10 our District Attorney here in Erie County who I  
11 have had the pleasure to work with over many, many  
12 years and who is one of the most knowledgeable  
13 people in our state about the Criminal Justice  
14 System, Frank Clark.

15 Welcome DA Clark.

16 DA CLARK: Thank you Madam  
17 Chairman, members of the Board. First of all I --  
18 I commend you on this rather large undertaking. I  
19 don't envy you your task.

20 If you'll permit me, there's just  
21 a couple of observations I'd like to make. I'm  
22 sure you've heard many of them before, but I think  
23 they're important enough to bear repeating. And I  
24 do so, not lightly. I've been involved in the

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2 criminal justice system for over thirty-five years.  
3 And I've seen the sentences go one way and another.  
4 I've seen things come in and I've seen things go  
5 out. I've seen things work and I've seen things  
6 fail. The first thing I'd like to address is  
7 determinant census. I suppose it comes as no  
8 surprise that I favor them, as I'm sure most  
9 prosecutors will. In the past, indefinite  
10 sentences were -- you -- you never got oh, he got  
11 fifteen years. No he didn't get fifteen years. I  
12 think people who are victims of crimes, I think the  
13 public, I think defendants and prosecutors deserve  
14 a definite sentence. It allows us to resolve cases  
15 more easily and effectively. It allows defendants  
16 to know exactly what's facing them and it allows  
17 the public to understand what punishment is meted  
18 out for crimes that people are convicted of.

19 Second; we all fear further  
20 reduction in the drug sentences. We all  
21 recognize -- most of us do, I can't say all, that  
22 the old Rockefeller Drug Laws need reformation,  
23 there's no question about that. And it was a long,  
24 arduous, and difficult process that resulted in the

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2 sentencing scheme we now see. I think I fear,  
3 along with many of my fellow prosecutors that  
4 further reduction will be counterproductive. We're  
5 placed in a rather unique position where we have  
6 the courts on one side and our communities on the  
7 other. We see the violence that occurs in our  
8 communities every day. Last year in this  
9 community, the City of Buffalo, we had over seventy  
10 homicides. I think it's no exaggeration to say  
11 that two thirds of those were drug related. It is  
12 a horrible problem that we have to face. And  
13 addressing it is a difficult problem. Violence on  
14 one side, and -- and I think treating drug  
15 offenders fairly is something equally supportive.  
16 It's a very difficult process in determining who is  
17 the addict and who is the dealer. But there is a  
18 difference. You -- you've heard all the problems  
19 that drug dealing creates. And I just -- I  
20 underline that. It's vitally important to us to  
21 reduce sentencing, mandatory minimums, repeat  
22 felonies, to ignore second felony offenders, to  
23 take away the incentive they have to get into drug  
24 treatment programs. I mean sometimes the treatment

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2 programs end run. Eighteen, twenty-four months as  
3 opposed to what would be a far lesser  
4 incarceration. Absolutely no incentive to wanting  
5 to do.

6 I think also some way to avoid  
7 the mandatory restrictions, some exception that a  
8 prosecutor defends counsel and the court can enter  
9 into, which enhances the justice with bypassed  
10 mandatory minimums and allow a different sentence  
11 to be imposed has been suggested and I think it's a  
12 good idea. I also think that perhaps expanding the  
13 age for youthful offenders is a good idea. Very  
14 often we get caught in a situation where a group  
15 are charged with similar crimes, they're equal in  
16 culpability, two are seventeen and one is nineteen.

17 The sentences that are interposed  
18 are grossly different and that's unfair. I think  
19 the idea of trying to rectify that problem is a  
20 good one.

21 The last thing that I'd like to  
22 mention is, where we have plea restrictions, I  
23 think it's a good idea. And eliminating plea  
24 restrictions, I think might be counter productive.

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2 In many situations, perhaps in sixty percent of  
3 odds, we resolve cases by superior court  
4 information rather than by grand jury indictment.  
5 It allows a quick and expeditious resolution of  
6 those cases and obviously in a manner, which is  
7 satisfactory to both defendant and prosecutor.  
8 Often times the restrictions post indictment  
9 encourage the defendants to take the plea before  
10 the matter goes before -- before the Grand Jury.  
11 In our situation, after indictment we don't allow  
12 pleas. So if in eliminating the incentive to plea,  
13 somebody that might decide not to plea goes to the  
14 Grand Jury, we don't offer him a plea, they get  
15 convicted and ultimately face a much larger  
16 mandatory sentence than they would have with a plea  
17 restriction where we permitted them to plea to a  
18 lesser offense. I don't think that they're unusual  
19 in that respect. I think that it results, quite  
20 frankly, in a more fair, equitable resolution cases  
21 and it certainly does expedite the -- the handling  
22 of cases. I'm looking to see if I have any --  
23 I -- I think those are the things that bother me  
24 the most. I think these are the things that we

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2 face most often. I think from our perspective,  
3 these are the things that are very critical for you  
4 to consider, among others. And I appreciate the  
5 opportunity to bring them to your attention.

6 MS. O'DONNELL: We appreciate  
7 your being here. Any questions? Thank you very  
8 much.

9 UNIDENTIFIED SPEAKER: Thank you  
10 sir.

11 MS. O'DONNELL: Our next speaker  
12 is Jason -- Jason Hoge and -- two speakers, Susan  
13 Porter, also from the Judicial Process Commission.  
14 Are they here? I know I thought they were coming  
15 down. I guess they're not here. Can we do  
16 anything -- we can't do anything about it.

17 Maybe it's here at the end or  
18 something. Okay. And Cheryl Kates, an attorney in  
19 private practice in here to speak to us.

20 MS. KATES: Good morning.

21 MS. O'DONNELL: Good morning Ms.  
22 Kates.

23 MS. KATES: As you said, I'm an  
24 attorney in private practice. My practice focuses



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2 on parole and that's everyone knows about me.

3           However, that's not who I am as a  
4 person. I started out in a broken family. My  
5 father divorced my mother at seven. I ended up in  
6 juvenile detention centers when I was fifteen years  
7 old. So I'm here speaking to you not just as an  
8 attorney, but as someone who has experienced the  
9 system. I've also been a victim of brutal crimes,  
10 so I've also been a victim. So please take what  
11 I'm saying not just from the point that I'm an  
12 attorney. I've submitted to you my written  
13 submission, which is over -- I think it's around  
14 forty pages long, giving you my legal opinion of  
15 what I'm going to speak about including  
16 constitutional and statutory analysis.

17           I'm here to talk to you about the  
18 discretion of the Parole Board. I do commend Mr.  
19 Alexander, since he's taken over in January to  
20 attempt to obtain tame the beast that Pataki has  
21 left behind for him. However, my thoughts about  
22 whether that can be done, I think, is a little bit  
23 contradictory to his position in your preliminary  
24 report.

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2 What I'm here to talk to you  
3 about is the effect of a plea bargain for a  
4 criminal defendant. As you know, in this country  
5 constitutional rights are afforded to criminal  
6 defendants and they waive those rights in order to  
7 enter a plea bargain. My experience -- I've been  
8 fighting this issue for the past two years, a year  
9 under the Pataki administration and eleven months  
10 now under Mr. Alexander. The position of the  
11 Parole Board, as evidenced to me by Head Counsel  
12 Terrance Tracy is that they do not consider plea  
13 minutes as part of their decision making process in  
14 reviewing someone for parole. To me that is  
15 totally unconstitutional and against what the law  
16 currently says. If you think about it, someone has  
17 waived their constitutional rights and taken a  
18 plea, which half of it almost -- I think the stats  
19 are close to ninety percent of all criminal cases,  
20 in order to expedite the system, and allow our  
21 courts to function efficiently. The problem is,  
22 defense attorneys and many other people are not  
23 aware of the effect of this plea bargain on a  
24 criminal defendant once they serve their time and

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2 become eligible for parole. The majority of my  
3 clients are A1 felons. Most of them are involved  
4 in the Graziano Lawsuit, which I -- I'll save my  
5 personal opinion on that and what it's going to do  
6 to myself.

7           However, what's happening is  
8 there's a new body of case laws mandating parole to  
9 look at sentencing minute and they refuse to look  
10 at parole decisions when they are evaluating them  
11 and consider the plea allocation along with those  
12 sentencing minutes. Their position has  
13 unequivocally been, since I've been fighting this,  
14 we don't have to look at those plea minutes. In my  
15 submission it goes to this in much more detail, but  
16 how can you do that when someone entered a plea and  
17 that becomes the source of their conviction. How  
18 can you ignore what was said in the plea allocation  
19 as that's where, generally, the District Attorney,  
20 the sentencing Judge, and the Defense Attorney give  
21 their recommendation for that person. That's where  
22 a lot of the language indicating why they were  
23 allowed to take a plea, which is opted, a minimum  
24 sentence. How can you ignore that and say that's

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2 constitutional. You can't do that.

3 What I'm going to do is, it's in  
4 my written submission, but I want it to be on the  
5 record. I've used three real cases in my written  
6 submission to talk about what the discretion of the  
7 Parole Board has done to real people and that's  
8 what you need to realize. You're dealing with  
9 human beings, not just a number, or someone locked  
10 up in prison. These people are real people. They  
11 have feelings. They have families, and they are  
12 striving to try to reach rehabilitation, but they  
13 are constantly denied parole over and over again  
14 every two years for no reason. There's three cases  
15 in my submission.

16 One is Donald Farin (phonetic  
17 spelling). This man is elderly. He is currently  
18 in Westchester County Hospital dying or being  
19 treated, they don't -- they can't tell, for cancer.  
20 He can't even speak. The man has a tracheostomy  
21 and George has been trying to help us with this  
22 person. This man had a sentence of twenty to life.  
23 It was by trial he was given a plea bargain. But,  
24 he has been denied parole nine times for the

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2 serious nature of the crime. We -- and I have been  
3 his attorney since I became an Attorney. I worked  
4 with this man when I was in Law School and so I've  
5 known them for over seven years now. This man does  
6 not deserve to be continually denied parole because  
7 the parole board has discretion. He can't even  
8 speak. He is not a threat to society. I had a  
9 psychological evaluation done and we submitted that  
10 to the board as well he was tested, they said he's  
11 not a danger, he shows his remorse. Two letters  
12 have been submitted by a sentencing judge, but the  
13 Parole Board continues to ignore this. He's going  
14 to the board for his tenth time in January and  
15 they've assured me that if he is not out of the  
16 hospital, they will go to his bedside to review him  
17 for parole. But if the discretion is still there,  
18 I don't have much faith that this man is going to  
19 be allowed to come home. Yes, George issued a  
20 memorandum saying you must follow New York State  
21 Executive Law, however, I've been practicing. I  
22 have case after case where they have continued to  
23 ignore New York Executive Law and issued arbitrary  
24 decision while fighting for de nova hearings for my

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2 clients on a daily basis.

3 The second case is Joel

4 Montequence (phonetic spelling) and this case, I

5 think is a good example for you because, as you

6 know, they just scrapped the settlement Graziano,

7 which I contribute to the large public pressure of

8 the Police Benevolent Association, which there's no

9 mention of them in the statute of the law that they

10 can push you to make a different decision. My

11 client, Joel Montequence was convicted in 1971 on

12 allegations that he murdered two police officers in

13 New York City. He's been denied parole three

14 times. I've also argued this case in court over

15 and over again, most recently in the third

16 department appellate division in 2004. At that

17 point we had a victim impasse statement from one of

18 the officers sons. He came from down south, he did

19 a big, huge press thing in Brooklyn. The whole

20 family was there and they ignored the statement

21 totally. They escaped it being reviewed in courts

22 because it was not available because it's

23 confidential. I had to get him to obtain a copy of

24 that impact statement so I had it for litigation.

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2 I didn't receive it until the case was already in  
3 the third department and I attached it as part of  
4 the side brief. The court found that had this been  
5 available it would afford intelligent Appellate  
6 Review. However, now we go again to the board, my  
7 client is hit again for the serious nature of the  
8 crime in 2006. Shortly after that he was  
9 extradited to San Francisco to face charges for a  
10 1971 alleged murder of another officer when he was  
11 already incarcerated. So now the Parole Board says  
12 well, we don't do parole hearings because your  
13 client is in California. So despite the statute  
14 saying my client can have a hearing in twenty-four  
15 months, he doesn't get one. And they don't know  
16 when he will get one because they told me in an  
17 affidavit to the court that until he's returned to  
18 New York, he won't see the parole board. So I then  
19 responded, I filled a clemency application because  
20 it said you can't be eligible for parole. Parole  
21 answered to that, well I'm sorry, your client is  
22 eligible for parole so we won't consider his  
23 clemency application. So we're currently  
24 litigating that issue. But this again is another

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2 abuse of the discretion that they have.

3 How can you change this man's  
4 sentence to life in prison without parole because  
5 that's what you're doing by not giving him his  
6 hearing.

7 Now the way I want to close, I  
8 know I only have three minutes, is I'm going to  
9 read to you an actual plea allocation to show and  
10 remind you what a plea bargain means. Parole does  
11 not have the right to ignore a plea bargain that  
12 someone enters. They have to consider what their  
13 deal was because that's how they were convicted and  
14 sent to prison:

15 The court; you understand that  
16 you have an absolute right to remain silent in the  
17 face of the charges pending against you in this  
18 indictment, but that if you do plead guilty here  
19 today in accordance with this plea bargain that you  
20 are waiving and giving up your right to remain  
21 silent and in fact you would be admitting that you  
22 committed a crime?

23 Defendant -- yes.

24 You have discussed this matter to



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2 your satisfaction with your attorney? Defendant --

3 yes. Have you had enough time to speak with your

4 attorney, family, friends, advisors, whomever you

5 wish to speak with so you know you will proceed

6 here today in reference to this plea bargain? Yes.

7 Have you discussed with your attorney the strengths

8 and weaknesses of the people's evidence against you

9 in this case as he views the evidence?

10 Defendant -- yes. In addition, have

11 you discussed with your attorney any possible legal

12 or constitutional defenses that you might have for

13 the crimes charged against you on the indictment?

14 Yes. Are you satisfied with the legal

15 representation given to you in this matter by your

16 Attorney? Yes I am.

17 In addition to your Attorney, is

18 there anyone else that you feel that you absolutely

19 have to speak with or have present here today

20 before you can proceed with this matter?

21 Defendant -- no.

22 Do you understand that you have a

23 right to a trial by jury or by the court sitting

24 alone without the jury with regard to the charges

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2 pending against you in this indictment?

3 Defendant -- yes.

4 Do you understand that as such, a  
5 trial, the people of the State of New York, in this  
6 case represented by the DA's Office would have to  
7 prove every necessary element of a crime by proof  
8 beyond a reasonable doubt in order to obtain a  
9 conviction against you of that crime?

10 Defendant -- Yes.

11 Do you understand at such trial  
12 you would have the right to confront witnesses and  
13 to cross-examine them through your attorney?

14 Defendant -- yes.

15 Do you understand that at such  
16 trial you have -- you as the defendant have no  
17 burden of proof? The burden of proof is on the  
18 people, it never shifts to the defendant. You have  
19 to prove absolutely nothing. You can stand mute if  
20 you wish to and the people would have to prove  
21 every necessary element of a crime by proof beyond  
22 a reasonable doubt. Do you understand that?

23 And in my written submission,  
24 this continues on for another additional page.

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2 These people are giving up their constitutional  
3 rights to a trial by jury to allow the judicial  
4 system to run efficiently. They deserve to have  
5 their plea respected and they do not deserve to  
6 have the Parole Board ignore it and give them  
7 continually two years, every two years at the  
8 board. I'll close with one last stat. I believe  
9 John Cayer (phonetic spelling) said in his article  
10 he was giving out the statistics of the board in  
11 2005. The violent felony release rate was three  
12 percent. If you looked at the next category of  
13 crimes, which was manslaughter and some of the  
14 other typically plea-bargained out crimes, that  
15 release rate was two percent. So these people that  
16 are taking these plea bargains are not being given  
17 the bargain they entered and Parole is destroying  
18 their criminal rights and ignoring them. And I  
19 think that that is horrible and you need to take  
20 away their discretion.

21 Thank you very much.

22 MR. ALEXANDER: Ms. Kates, before  
23 you go away, for -- a couple of points. One is the  
24 Decker Laws is very clear in terms of what the

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2 Parole Board is to consider in making decisions  
3 with regards to a person's release. We do take  
4 into consideration the sentencing minutes. In the  
5 absence in the sentencing minutes we have granted  
6 De Nova hearings so that those sentencing minutes  
7 are made present to the parole board when they're  
8 making those decisions.

9 Secondly; on the other case that  
10 you mentioned about the person being -- we cannot  
11 conduct a positive interview toward release with  
12 something when we can't do a face to face  
13 interview. That person has to be present. And --  
14 and because that person is somewhere else, the  
15 Parole Board is not responsible for that. We can  
16 only take responsibility for those cases that are  
17 before us that we make active decisions on. Once  
18 that person is brought back, yes he may be eligible  
19 for a parole hearing now, but he's not in our  
20 physical custody. So we can't make a parole  
21 hearing on that person.

22 MS. KATES: Can I respond to that  
23 please? In the first statement, yes you're  
24 supposed to follow sentencing minutes, but your

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2 head counsel says the sentencing minutes involve  
3 just the sentencing. I have a letter written to me  
4 and it's in my written submission where he said  
5 there's no statutory or constitution or anything  
6 else that tells him he has to look at the plea  
7 minutes. So if that's not where your position is,  
8 I would suggest you speak to your Head Counsel  
9 because that's what he's telling us and then he  
10 keeps refusing to get plea minutes. Yea he gave me  
11 DE Nova's on all my client's re-sentencing minutes.  
12 But if they were plea bargain defendants and they  
13 went ahead with just the sentencing minutes, he  
14 won't listen to me about getting the plea minutes  
15 and he refuses to do so. Secondly, on Mr. Bob case  
16 yeah, you do face to face interviews, but you also  
17 do telecommunications with, you know, not being  
18 face to face. And you do it at Albany Correctional  
19 or other places. So I think that that -- because  
20 it's in California, that makes no difference, that  
21 you should still afford him his parole board  
22 hearing. He could be there for years and he is  
23 eligible to apply for bail. The rest of the  
24 defends on that case have been bailed out and

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2 there's six of them. The only two incarcerated in  
3 California are Herman Bell, who's under your  
4 jurisdiction and also Anthony Bottom. They both  
5 will be there for several years while this goes on.

6 MS. O'DONNELL: Okay. Thank you  
7 very much.

8 MS. KATES: Thank you.

9  
10 MS. O'DONNELL: Okay. Alan  
11 Rosenthal from the Center of Community  
12 Alternatives. Welcome Mr. Rosenthal.

13 MR. ROSENTHAL: Thank you. I  
14 want to thank -- thank the Commission for the  
15 opportunity to speak at these public hearings. I  
16 know this is the third in a series. I'd also like  
17 to thank you for your -- your time and commitment.  
18 I know that since this Commission was first put  
19 together it's been on -- it seems like -- seems  
20 like it's been on a fast track and I thank you for  
21 your hard work.

22 The Center for Community  
23 Alternatives with offices in Syracuse, Manhattan  
24 and Brooklyn has as its mission the promotion of

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2 reintegrative justice and the reduced reliance on  
3 incarceration through efficacy, services, and  
4 public policy development and pursuit of civil and  
5 human rights. We are uniquely situated to comment  
6 on the report because we're involved in direct  
7 service for people coming out of prison. At the  
8 same time we're involved in sentencing advocacy.  
9 At the front-end research and policy development.

10 I'd like to spend most of the  
11 time talking about determinate sentencing and --  
12 and the proposal and -- and -- and then finish up  
13 with a couple of comments about issues raised in  
14 the report.

15 The -- the focus on re-entry over  
16 the last few years, from the beginning of this  
17 decade culminating in President Bush's remarks at  
18 his State of the Union Message was viewed as many  
19 as an opportunity to take a new look at our  
20 sentencing goals. In the summer of 2006, the New  
21 York State Legislature did exactly that by amending  
22 a longstanding session of one point oh five,  
23 subdivision six to add in a new sentencing goal to  
24 the four traditional goals, that of the promotion

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2 of the successful and productive re-entry and  
3 reintegration back into society. And for that they  
4 certainly were to be commended.

5 Equipped with the knowledge  
6 that -- and the consciousness that both re-entry  
7 and reintegration are inextricably linked to public  
8 safety. There were those of us who had hoped that  
9 the Commission would fashion a sentencing model  
10 that would reflect the new course that the  
11 Legislature had charted. Many had hoped that the  
12 Commission would search out the sentencing model  
13 that would be compatible with our new current  
14 sentencing goals, concerns over racial disparities,  
15 mass incarceration, the recognized disintegrative  
16 effects of incarceration, and our new understanding  
17 of re-entry and reintegration. Instead, what is  
18 suggested is the determinate sentencing model.  
19 And -- and I'd like to talk about why I think that  
20 that model is the wrong model at the wrong time.

21 The report does a wonderful job  
22 of laying out the history of sentencing models in  
23 New York tracing all of the way back to 1796, when  
24 we started with a determinate sentencing model with



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2 the goal of punishment and deterrents. That's the  
3 goal of determinate sentencing. In the period 1877  
4 to -- to 1970 we see the sentencing of  
5 rehabilitation as a goal. New York, along with  
6 many sister states fashioned the indeterminate  
7 sentencing model as compatible with the  
8 rehabilitation goal. Between '70 and present we  
9 saw rehabilitation fall into disfavor and the  
10 embracing, once again, of the -- the goal of  
11 retribution as the primary goal. It took time for  
12 New York to catch up. It had a system out of sync.  
13 It had an indeterminate sentencing model at the  
14 same time that it had, for all intents and  
15 purposes, abandoned rehabilitation. But the goals  
16 and the model need to be in sync and -- and I  
17 suggest that since 1995 when we started down the  
18 path of -- of determinate sentencing first for  
19 violent offenses that we would try to find that  
20 synchronization. To determine what platform  
21 certainly one designed to address the goal of  
22 punishment and that is the force indicated. It was  
23 driven by federal funds, being held out for all  
24 states to increase their Criminal Justice Systems,

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2 particularly corrections, but with very little  
3 analysis of the goals beyond that. In the  
4 preliminary report there are six justifications  
5 given -- six arguments given to -- to justify  
6 determinate sentencing. Simplification, certainty,  
7 following the trend, uniformity, fairness, and  
8 truth in sentencing as a group, criticism of the  
9 parole decision making, and facilitation of more  
10 informed plea bargaining.

11 What I'd like to do is go through  
12 four of the more -- more significant ones. First,  
13 as to simplification, there's no doubt that New  
14 York is a system in need of simplification. And --  
15 and what that might be is a different question than  
16 simply simplifying for simplification sake. But  
17 inconsistency between the model of permanent  
18 sentencing and our new goals is certainly not  
19 desirable. Certainty, the centerpiece, as  
20 indicated by District Attorney Clark, the  
21 centerpiece of determinate sentencing is certainty.  
22 Opponents of determinate sentencing point out, look  
23 at all of the uncertainty in indeterminate  
24 sentencing. They point out five potential release

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2 dates. Supplemental merit time, which gets you to  
3 a release date for drug dependence anyway.

4 Merit release date, parole

5 release date, conditional release date, and maximal

6 release date. That's five. But when we look at

7 determinate sentencing we find no greater

8 certainty. We see a merit release date, a

9 conditional release date, a maximum release date, a

10 maximum determinate release date plus post -- post

11 release supervision which may differentiate that

12 for any one of a -- a number of years. A six-month

13 kicker, provided by penal law 70.45, which adds

14 additional uncertainty and for sex offenders, just

15 as of April 13th of this year of the determinate

16 system, which is compounded by an indeterminate

17 system in which anyone whose parole is violated --

18 post release supervision is violated and sent back

19 for more than three year time assessment, faces the

20 prospect of going to the Parole Board in

21 uncertainty.

22 Comparing the two, we now have

23 six possible release dates for determinate

24 sentencing as compared to five for indeterminate.

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2 But release dates for determinate sentencing don't  
3 stop there. There are five more. There's a work  
4 release date, a case set release date, a Willard  
5 release date, a shop release date, and for most  
6 cases, still no commitment. A release date that  
7 may never come.

8 Certainty, if that's the  
9 centerpiece of the argument for determinate  
10 sentencing. It's not there.

11 Uniformity and truth in  
12 sentencing, a seven-year determinate sentence  
13 doesn't mean a seven-year time to serve. It  
14 surprises many when I talk about determinate  
15 sentencing. A seven year determinate sentence,  
16 five years post release supervision. It means  
17 the -- in the work in the -- well let's take in the  
18 best case scenario it means you'll serve five  
19 years. In the worse case scenario it could be  
20 twelve and a half years of incarceration. Pretty  
21 wide range and certainly not the truth in  
22 sentencing that we had in mind.

23 The criticism of the Parole Board  
24 discharged some of that about decision making. And

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2 the criticism in this report, is that too much  
3 emphasis is -- is placed by the board on the nature  
4 of the crime or the instant offense. Certainly a  
5 legitimate credulous -- from advocates of prisoners  
6 and -- prisoners and family. Whether it's enough  
7 to scrap the entire indeterminate system or rather  
8 should we look at rewarding how we make parole  
9 decisions. My notes in the report that -- that  
10 time -- it -- that -- that what is pointed to is --  
11 is the need to consider the reform on -- on parole  
12 decision making. But it's a valid reason to scrap  
13 the entire system based on indeterminacy then why  
14 wouldn't be the very same reason to change the  
15 nature of decision making.

16 I'd like to again thank you for  
17 your time and ask that this commission reconsider  
18 whether the determinate sentencing model that's  
19 proposed is the right model for the new direction  
20 that the Legislature has charted in terms of  
21 re-entry and reintegration.

22 MR. GREEN: If I could just ask  
23 one question? Given your feeling on determinate  
24 sentences, what are your thoughts on, for example

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2 the so-called Rockefeller Drug Law Reform that was  
3 passed, the new drug sentences, indeterminate,  
4 determinate, and for that matter the determinate  
5 sentences for sex offenders and violent felons. Is  
6 it your recommendation that we get rid of those and  
7 go back to determinate sentences -- indeterminate  
8 sentences for all of those as well.

9 MR. ROSENTHAL: Not -- not  
10 necessarily.

11 MR. GREEN: Would -- would this  
12 thing.

13 MR. ROSENTHAL: I -- I -- I'm  
14 not -- I'm not sure that in our desire to create a  
15 simplified system that it needs to be as simple as  
16 that and that we can't have coexisting models. But  
17 with regard to -- to Rockefeller Drug Reform, I  
18 think that the -- the course that was charted was  
19 the correct one. I'm -- I'm not quite sure why we  
20 don't finish up the work that -- that should have  
21 been done for A2s. Some A2s were eligible for  
22 resentencing. Others were serving much longer  
23 sentences.

24 MR. GREEN: My question goes to

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2 determinate versus indeterminate. What's the  
3 distinction then between the nonviolent and what we  
4 classified as a nonviolent drug felony and the  
5 nonviolent felonies that we're dealing with in the  
6 report. Why does one of those get a determinate in  
7 your mind, and one get an indeterminate?

8 MR. ROSENTHAL: To me the  
9 overriding goal is when a person is ready to return  
10 to the community -- when they are either ready to  
11 reintegrate or rehabilitate that we not keep them  
12 in prison unnecessarily.

13 MR. GREEN: Uh-huh.

14 MR. ROSENTHAL: Under either  
15 system.

16 MR. GREEN: What I'm wrestling  
17 with is is there -- is there a reason that you  
18 would point to that would say that it would make  
19 logical sense to treat this group of cases with  
20 indeterminate and treat this group of cases with  
21 determinate. Is -- is there something that we  
22 could look to that would say this is justification  
23 as to why we treat this group one way and this  
24 group another way.

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2 MR. ROSENTHAL: Honestly I -- I  
3 don't see a justification for -- for that disparate  
4 treatment. I -- I see -- I -- I see the reason for  
5 indeterminacy. Because it -- it -- it puts us in a  
6 better position not to over punish, to allow  
7 somebody to go home when they're ready to go home,  
8 to go home to their families and so on. The -- the  
9 simplicity of determinacy means that no matter how  
10 soon you are ready to go home, nobody's there to  
11 open the gate. That's a function of the parole  
12 board. As much as we criticize them, it a function  
13 of the parole board that is consistent with our new  
14 notions of re-entry and reintegration. Thank you.

15 MS. LEVINE: Alan I actually have  
16 a question. First of all I want to say thank you  
17 for coming in.

18 You -- you had mentioned that you  
19 have felt that there is a certain degree of racial  
20 disparity that hasn't really been taken into  
21 consideration when it comes to sentencing. My  
22 question for you, especially since you've been  
23 involved in -- with the sentencing commission and  
24 involved in one of the subcommittees and it's



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2 processes, what concrete suggestions might you have  
3 so that we can actually take racial disparity into  
4 consideration in looking at various sentencing  
5 models.

6 MR. ROSENTHAL: Short question  
7 would be a long -- let me try to be very precise.  
8 We -- we've done a good amount of research on this.  
9 There are actually twelve junctures in -- in the  
10 processing of a criminal case. Your race can be a  
11 factor beginning with the very deployment of police  
12 and -- and where put that. Moving on to  
13 arraignment and who gets bail and who doesn't.  
14 Each one of those needs to be analyzed and -- and  
15 thought through more carefully about where race  
16 affects the process and what we can do on an  
17 institutional basis to try and buffer that and so  
18 the -- the short answer is I would -- I would pick  
19 apart each of those twelve places where race can  
20 enter and to it and try and create a prophylactic  
21 system to prevent it.

22 MS. O'DONNELL: Alan I want to  
23 thank you for your work on our subcommittee. We  
24 appreciate it and hope that you'll continue to

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2 voice your views on these sentencing issues as we  
3 move forward.

4 MR. ROSENTHAL: Thank you.

5

6 MS. O'DONNELL: Thank you very  
7 much. Our next speaker is Ann Usborne at the  
8 Center for Community Alternatives. Good morning.

9 MS. USBORNE: Hello.

10 MS. O'DONNELL: Welcome.

11 UNIDENTIFIED SPEAKER: Good  
12 morning.

13 MS. USBORNE: I'd like to express  
14 my gratitude for the opportunity to speak to you  
15 today. And my name is Ann Usborne. And I'm  
16 currently employed with the Center for Community  
17 Alternatives, which you've heard a little bit about  
18 from Alan. And I'm the Project Director and  
19 Mitigation Specialist for the Defender Based  
20 Advocacy Program referred to as Client Specific  
21 Planning.

22 MR. BERGONO: Ms. Usborne?

23 MS. USBORNE: Yes.

24 MR. BERGONO: I apologize.

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2 Please speak a little bit higher, little bit

3 louder.

4 MS. USBORNE: Okay.

5 MS. O'DONNELL: We have some

6 noise up here that we can't get rid of that is --

7 MR. BERGONO: Fan behind us.

8 MS. O'DONNELL: -- interfering,

9 so.

10 MS. USBORNE: Upon referral from  
11 the Defense Attorney and more recently the District  
12 Attorney's Office and the Judges themselves our  
13 staff in client specific planning, excuse me,  
14 conducts thorough background investigations and  
15 assessments of the defendants that are referred. A  
16 comprehensive written report is prepared detailing  
17 the individual's personal history and  
18 circumstances, their strength and needs, and  
19 suggestions regarding sentencing alternatives. And  
20 those include supervision and programming such as  
21 substance abuse, mental health treatment,  
22 educational, employment services, family-related  
23 services, and community support. In completing  
24 their alternative sentences many of our CSP clients

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2 have donated countless hours of community service  
3 at varied Human Service Organizations and Community  
4 Agencies. More importantly, approximately eighty  
5 percent of our clients successfully complete their  
6 sentences and move on to healthy and productive  
7 lives. In addition, in those cases --

8 MS. O'DONNELL: Could you move  
9 that microphone closer.

10 MS. USBORNE: I'm sorry.

11 MS. O'DONNELL: There's people  
12 waving out there, maybe you could put it really  
13 close to you.

14 MS. USBORNE: In addition to --

15 MS. O'DONNELL: That's better.

16 MS. USBORNE: -- the community  
17 based sentences that are imposed, those people who  
18 do receive a sentence of incarceration often times  
19 our reports assist in mitigating the length of time  
20 that they serve. It follows a person to the  
21 Department of Correction and it fits the  
22 classification, facility, assignment, and  
23 programming.

24 In addition to my current

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2 position of employment I would also like to mention  
3 that I worked as a Probation Officer for fifteen  
4 years in both New York and Massachusetts. And  
5 during that time I was also very involved in the  
6 youth assistance program at Sullivan Correction  
7 Facility and I served as a Volunteer Coordinator  
8 and Facilitator for the Alternatives to Violence  
9 Program at Eastern Correctional Facility. So I do  
10 have some experience within the facility as well as  
11 in the community based program.

12 I feel that based on my  
13 experience as a probation officer and now as an  
14 advocate for the defender based criminal justice  
15 agency, I'm able to offer a unique perspective  
16 regarding our present sentencing model and more  
17 specifically the use of Alternatives to  
18 Incarceration, which is -- I'd like to talk today  
19 about one specific alternative that we've become  
20 pretty familiar with in our area. So I would like  
21 to highlight the use or lack of interim probation  
22 supervision as an alternative to incarceration.

23 MS. O'DONNELL: Ann. Maybe you  
24 can move the microphone even closer to you.

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2 MS. USBORNE: I'm sorry.

3 MS. O'DONNELL: No, that's okay.

4 But it's a big auditorium.

5 MS. USBORNE: Okay then. As an  
6 alternative to incarceration and a tool to reduce  
7 recidivism and restore individuals to law abiding  
8 and productive lives. In 1998 section 390.30 of  
9 the Criminal Procedure Law was amended to include  
10 subdivision six permitting local probation  
11 departments to supervise eligible defendants for up  
12 to one year prior to formal sentencing under  
13 interim probation supervision. Interim probation  
14 allows certain individuals charged with criminal  
15 offenses to participate in the appropriately  
16 identified services while being held accountable  
17 for their actions. As you all know, multiple  
18 research studies have determined a remarkable  
19 percentage of those individuals caught up in the  
20 criminal justice system suffer from addiction,  
21 either from a significant mental illness. One such  
22 study released by the Department of Justice in  
23 September of 2006, indicated that fifty-six percent  
24 of State Prison Inmates in the United States were

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2 found to suffer with mental health issues.

3 Seventy-four percent were found to be inflicted

4 with alcohol and drug addiction. Additionally

5 approximately sixty-eight percent state prison

6 inmates do not have a high school education.

7 Other research consistently tells

8 us that correctional facilities and staff are not

9 equipped to deal with these individuals, nor are

10 there sufficient program services or adequately

11 trained staff to meet the specific needs of this

12 population. As a result, many mentally ill and

13 addicted prisoners go untreated or receive

14 treatment that is extremely limited in both

15 quantity and quality. Typically, these individuals

16 will eventually be released in no better, and often

17 far worse condition than they were initially

18 incarcerated compromising their ability to

19 successfully transition into society and increasing

20 the risk for reinventing their behavior. While

21 clearly it is understood that some dangerous

22 offenders require confinement to protect the

23 community, other offenders may be effectively

24 supervised and more importantly safely diverted

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2 into community based treatment programs. Interim  
3 probation supervision can be utilized to  
4 effectively test a person's readiness to receive  
5 and benefit from the appropriate continuing of  
6 services. CCA memorandums have been used as a  
7 vital tool to provide a detailed and precise  
8 picture of why a trial period of supervision is  
9 appropriate for a certain individual.

10 Interim probation supervision is  
11 frequently identified and recommended as an  
12 appropriate, acceptable alternative to  
13 incarceration in many of our plea created reports.  
14 Over the past two years at least fifteen cases in  
15 which CCA was involved were accepted by the DA's  
16 office in the court for interim probation  
17 supervision. Of those fifteen, ten have  
18 successfully completed their interim period of  
19 supervision and were allowed to plea to a reduced  
20 charge, typically a misdemeanor and went on to  
21 successfully complete the imposed sentence. In two  
22 of those cases, which started out at the felony  
23 level, violent offenses, the cases were dismissed  
24 because the DA's Office was so impressed with the



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2 progress that the individuals made. Four of those  
3 cases remain pending that we're still working with  
4 and only one was returned to court following  
5 violation of the term and she received a sentence  
6 of imprisonment, which was reduced from what the  
7 DA's Office was originally seeking. In several of  
8 those cases individuals were permitted to plea to a  
9 violation so as to remove obstacles to future  
10 employment in the health care field.

11 There was one young lady that we  
12 worked with. She -- I think she was twenty-one or  
13 twenty-two, a single mother of three young  
14 children. She was a certified nurse's assistant  
15 and because she was charged with a felony, the case  
16 had not yet been disposed of, she was unable to  
17 find any employment and was relying on Public  
18 Assistance. With continued advocacy from our  
19 agency and the Defense Attorney, the DA's Office  
20 agreed to allow her to plea to a violation  
21 disposing of the case. She found a job within a  
22 week. We -- and appropriate education and  
23 employment services and she is now in a program to  
24 become -- to receive her LPN.

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2 Through the proper use of interim  
3 probation the needs of the individuals are  
4 identified. They can be connected with the  
5 appropriate services, including substance abuse,  
6 mental health treatment, transitional services,  
7 education, job training and employment services,  
8 and community support. Through interim probation  
9 an individual has the opportunity to improve and/or  
10 change their circumstances and develop the skills  
11 they need to lead productive lives and contribute  
12 to their community. Unfortunately, many of the  
13 prosecutorial agencies view their status in terms  
14 of conviction percentages and rate of  
15 incarceration. Many jurisdiction, excuse me --  
16 many jurisdictions in which we are called upon to  
17 provide Advocacy Services, are reluctant to utilize  
18 interim probation and will not even consider it as  
19 an alternative.

20 One jurisdiction, which had  
21 previously supported the use of interim probation  
22 announced to me that they will no longer permit it  
23 because the successful outcomes has interfered with  
24 the conviction rates of the DA's Office.

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2 Isn't it time that those of us  
3 involved in the Criminal Justice System and as a  
4 society, redefine success, isn't an individual's  
5 success and productive reintegration -- and  
6 integration to society the best measure of success  
7 when considering the reduction of recidivism and  
8 public safety. It also requires an individualized  
9 approach to sentencing. Based upon our experience  
10 and the high rate of success in utilizing such  
11 alternative sentencing options, such as interim  
12 probation, we urge jurisdictions to expand it's use  
13 and the use of other alternatives in maintaining  
14 consistence with the evolving concept of  
15 re-entering, reintegration while recognizing the  
16 benefits to public safety.

17 In 2006, a fifth goal was added  
18 to the traditional goals of sentencing to include  
19 the promotion of the defendant's successful and  
20 productive re-entry and reintegration into society  
21 to be considered alongside the more traditional  
22 goals of deterrence, rehabilitation and  
23 retribution. The new law requires every judge  
24 presiding at sentencing or resentencing in a

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2 criminal case to consider carefully what kind of  
3 sentence would best help promote the defendant's  
4 reintegration into society and recognize that such  
5 an integration is the best way to achieve public  
6 safety.

7 MS. O'DONNELL: Thank you very much.  
8 We appreciate it. Karen Murtagh-Monks from  
9 Prisoner Legal Services and after Ms. Murtagh-Monks  
10 we have Patricia Warth, also from Prisoner Legal  
11 Services. Welcome.

12 MS. WARTH: Good morning.

13 MS. O'DONNELL: Good morning.

14 MS. WARTH: I'm not Karen Mertog  
15 Monks. This is Karen. Since we're back to back  
16 we're going to testify together to save on  
17 transition time.

18 MS. O'DONNELL: And also this  
19 microphone is giving us a hard time here, but if  
20 you can, try and keep it close to you. That would  
21 be helpful.

22 MS. WARTH: Okay, thank you.

23 MS. O'DONNELL: Uh-huh.

24 MS. WARTH: I'll testify first

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2 and then Karen will testify second. I'd like to  
3 start off by thanking you for this opportunity to  
4 address before this commission the very important  
5 issues that you are facing right now.

6 Prisoner's legal Services has  
7 been representing inmates for over thirty years and  
8 so I'm going to use expertise that we have learned  
9 in this time to talk to you about the issues  
10 related to preparing offenders from their release  
11 from prison or reintegration from prison to the  
12 community. Each year some twenty-six thousand  
13 individuals are released from prison into our  
14 communities. The successful reintegration of these  
15 individuals into our communities is a critical  
16 public safety issue as this Commission is well  
17 aware. Reintegration efforts to be successful must  
18 begin with arrest and continue through sentencing  
19 and through incarceration, if that's the sentence,  
20 to re-entry into the community.

21 Thus our comments will address  
22 alternatives to incarceration, New York Sentencing  
23 Policy and Laws, Drug Reform -- Drug Law Reform,  
24 and the need for prison based programming designed

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2 to further inmates' reintegration into our

3 communities.

4 What perhaps we do not discuss

5 often enough is the fact that research has shown

6 that prison itself has an criminogenic effect

7 meaning that it increases recidivism. The reasons

8 for this are discussed in our written testimony.

9 But alternatives to incarceration, or ATIs maintain

10 important community connections and as a result can

11 play a significant role in reducing these

12 criminogenic effects and furthering reintegration.

13 Most studies show that ATI significantly decreased

14 recidivism. At worse, the studies show they don't

15 increase it. These studies, of course, are

16 evidence-based research and strongly encourage the

17 use of evidence-based practices to take into

18 account the criminogenic effect of incarceration.

19 In this regard we applaud the Commission for

20 recommending that evidence-based practices be used

21 to guide decision making. We are concerned,

22 however, that the Commission's view of

23 evidence-based approaches is much too limited and

24 that the Commission overlooks the value of

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2 evidence-based approaches in making what is perhaps  
3 the most important decision, and that is whether or  
4 not person should be incarcerated. Therefore we  
5 urge the commission to use evidence-based practices  
6 and to look to the evidence about the criminogenic  
7 impact of incarceration to make the critical  
8 decision about sentencing.

9 As noted in the many research  
10 studies we discuss in our written testimony, there  
11 is no question that diverting offenders to ATI  
12 programs is sound public policy. Because such  
13 diversion reduces recidivism and can save the state  
14 millions of dollars each year. Accordingly, we  
15 agree with the Commission's recommendations that  
16 discusses alternatives to incarceration and we  
17 encourage this Commission to expand both the range  
18 of offenses on which it is available and also the  
19 range of alternatives, including the full  
20 utilization of community based alternatives to  
21 incarceration. Of course ATIs are but one way to  
22 avoid the criminogenic effect of incarceration.  
23 Sentencing is another.

24 In 2003, the United States

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2 Supreme Court Justice Anthony Kennedy urged the  
3 American Bar Association in an address he delivered  
4 to them to think carefully about this country's  
5 sentencing laws. He said to them, when it costs so  
6 much more to incarcerate a prisoner than to educate  
7 a child, we should take special care to ensure that  
8 we are not incarcerating too many for too long. He  
9 went on to -- to acknowledge that our resources are  
10 misspent, our punishments too severe, our sentences  
11 too long. He finished by noting that while there  
12 are realistic efforts, or realistic limits to  
13 rehabilitative efforts, he said we must try,  
14 however, to bridge the gap between proper  
15 skepticism about rehabilitation on the one hand and  
16 improper refusal to acknowledge that the more than  
17 two million inmates in the United States are human  
18 beings whose minds and spirits must be reached.

19 In 2006, the United States made  
20 great efforts to bridge the gap that he describes  
21 by amending Penal Law 1.05 to now include  
22 reintegration as a sentencing goal in New York.  
23 Like Mr. Rosenthal, who spoke to you before, we are  
24 greatly disappointed that this Commission didn't



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2 address this amendment to the sentencing law in  
3 it's report. As Penal Law 1.05 acknowledges,  
4 re-entry cannot be a back end approach, meaning  
5 that we cannot limit our thinking about re-entry to  
6 the few months before an inmate is released.  
7 Meaningful reintegration and re-entry efforts begin  
8 at the point of arrest and sentencing and must be  
9 thought about throughout the person's contacts with  
10 the criminal justice system.

11 Accordingly we ask the sentencing  
12 commission to recommend a sentencing model that  
13 incorporates the principles articulated in New York  
14 Penal Law 1.05, a sentencing model that makes  
15 reintegration meaningful by emphasizing  
16 rehabilitation. We believe that the shift to  
17 determinate sentencing that this Commission has  
18 recommended does not accomplish this goal. It  
19 seems that the Commission's primary justifications  
20 for the recommended shift are simplicity, certainty  
21 and the fact that this has been the recent trend.  
22 These specifications, however, have little to do  
23 with articulating sentencing goals in our penal  
24 law. and Mr. Rosenthal spoke eloquently about how

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2 determinate sentences failed to even meet these  
3 goals, so I won't repeat what he said here.

4 But I want to bring up another  
5 justification this Commission gave and that is the  
6 Commission apparently believes that defendants  
7 preferred a certainty of determinate sentences to  
8 the uncertainty of the parole process. And I'm  
9 here to tell you that that is not what our clients  
10 are telling us, just the opposite. The  
11 overwhelming majority of our clients really want a  
12 shift away from determinate sentencing. To be  
13 sure, for two decades they have told us of their  
14 frustration with the Parole Board's failure to  
15 recognize their honest and true efforts at  
16 rehabilitation. They are frustrated that their  
17 release is measured by the nature of the crime,  
18 something that they can't effect, or they can't  
19 change at this point. But from their perspective  
20 and ours, doing away with indeterminate sentencing  
21 is not the answer. After all, indeterminate  
22 sentencing offers the best hope that genuine  
23 rehabilitations will be rewarded. Our clients  
24 therefore urge us to advocate for changes to

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2 parole, not changes -- a wholesale shift on  
3 determinate sentences. They ask decision makers to  
4 do precisely what Justice Kennedy urged the  
5 American Bar association to do, to remember that  
6 those who commit crimes are human beings whose  
7 minds and spirits must be reached. And we can tell  
8 you our thirty years at PLS, these are minds and  
9 spirits that can be reached. The vast majority of  
10 our clients want to be rehabilitated. And Ms.  
11 Murtagh-Monks will talk about the programs that  
12 they tell us they need and that they are seeking  
13 out and that they welcome to achieve this. There  
14 are a variety of ways to do it. The simplest way,  
15 and the most obvious is to not shift to determinate  
16 sentencing, but to fix parole. Fix parole so that  
17 inmates' meaningful efforts at rehabilitation are  
18 measured, so that inmates are given opportunity to  
19 be released when they show that they are ready to  
20 be released. And from our perspective, this  
21 furthers public safety because you're not keeping  
22 inmates in longer than they are ready -- longer  
23 than they need to be in. You're releasing them  
24 when they've shown that they're ready to go, saving

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2 money and reducing respond recidivism or  
3 encouraging reintegration.

4 Given the critical importance of  
5 reintegration we are also disappointed that the  
6 Commission did not address the need for  
7 comprehensive reform to New York's severe and  
8 antitherapeutic drug laws. In terms of evidence  
9 based practices, there's no question that drug  
10 treatment works, rather than lengthy incarceration.

11 And while we believe that the Drug Law reforms of  
12 2004 and 2005, were good for STAT or encouraging  
13 for STAT, these reforms did not go far enough. I  
14 know that you've heard a lot of testimony from  
15 people about drug law reforms and we would agree  
16 that when you consider -- if one truly considers  
17 the high cost of imprisonment as opposed to  
18 treatment, it is critical that we focus our limited  
19 resources on what we know works, treatment rather  
20 than lengthy incarceration.

21 Therefore, we agree with the many  
22 people and organizations who have urged this  
23 commission to seek an alternative approach to  
24 sentencing for nonviolent drug offenses or at the

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2 very least to extend the drug reform laws of 2004  
3 and 2005. And Ms. Murtagh-Monks will be talking  
4 about prison-based reintegration efforts.

5 Thank you.

6 UNIDENTIFIED SPEAKER: Thank you.

7 MS. O'DONNELL: Thank you very  
8 much. Move forward.

9 MS. MURTAGH-MONKS: I think I'm  
10 in the right lane for this. Good morning.

11 MS. O'DONNELL: Okay, Ms.  
12 Murtagh-Monks.

13 MS. MURTAGH-MONKS: My name is  
14 Karen Murtagh-Monks and I'm the Deputy Director of  
15 Prisoner's Legal Services. As Ms. Worth, my  
16 colleague indicated, I'll be talking to you today  
17 about the reintegration that you'd incur through  
18 in-prison rehabilitation program. Reintegration  
19 means rehabilitation, self-development and  
20 preparation for release into the community. In  
21 order to achieve these goals we suggest that DOCs  
22 work with the Office of Mental Health and the  
23 Office of Alcoholism and Substance Abuse Services  
24 in a four-step process:

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2 First; they should perform a risk  
3 and needs assessment immediately upon an entering  
4 DOCs custody.

5 Second; treatment should begin  
6 immediately upon identifying the inmate's needs,  
7 not waiting until they are six months or twelve  
8 months before their parole release, which is what  
9 is typically done in the Department of Corrections.

10 Third; they should expand the  
11 educational vocational programs that are provided  
12 in prison.

13 And fourth; we need to develop a  
14 strategy to prevent inmates from being released  
15 directly from solitary confinement to the  
16 community.

17 With respect to the  
18 individualized risk and needs assessment, we are  
19 very encouraged by the Commission's recommendation  
20 that each inmates' risk needs be individually  
21 assessed and we are likewise encouraged that the  
22 Commission has recognizing the presentencing for  
23 it, which is often relied on to acknowledge the  
24 resentencing encounter in an inmate is released

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2 from prison. It is not a good mechanism to assess  
3 needs. It is not an effective instrument because  
4 it tends to be fraught with errors and the inmates  
5 are not vested in. We have numerous clients who  
6 have contacted us to tell they believe there are  
7 errors in the presentencing report and they are not  
8 allowed to see it so they can't even get what those  
9 errors are.

10 We are also encouraged the  
11 Commission recommends use of a validated  
12 evidence-based approach to assess needs and risks.  
13 We suggest that the best investment for any program  
14 is one that is fluid, holistic, and multilateral.  
15 By fluid I mean that if inmates needs change  
16 throughout their incarceration that you can't just  
17 look at the status factors, you have to look at the  
18 dynamic factor. For example you may have an inmate  
19 that arrives at DOC who is addicted to drugs. If  
20 that inmate is to be able to get HIV treatment,  
21 over time his needs and risk will change. Thus  
22 original needs must be reassessed to take into  
23 account that which he may have or not achieved over  
24 time.

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2 By holistic I mean that there are  
3 multiple needs that need to be addressed. And this  
4 includes educational, vocational, mental -- mental  
5 health needs, substance abuse, and family and  
6 community relationship needs. I'll talk about  
7 those needs later.

8 With respect to multilateral, the  
9 current prison based programming and treatment  
10 model is that DOC dictates to inmates less  
11 programming they are required to intake. Inmates  
12 are left in the dark as to the rationale for the  
13 DOCs mandate and they are not getting access to the  
14 PSI, so they don't even understand that rationale.  
15 Inmates must be invited into the concept. Doing so  
16 will enhance the likelihood that they would be  
17 invested and engaged in treatment. They obtain  
18 ownership of that.

19 With respect to the second prong  
20 of the action we would like DOCs to take the  
21 resulting treatment that is identified once they  
22 may assess needs. There is just no question that  
23 you have an inmate come into the system and they're  
24 ready to for these treatments and they wait four



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2 years before they get it.

3 You are losing all that time to  
4 do effective treatment and move that person forward  
5 to be rapidly released. With respect to the  
6 holistic approach I talked about, and the mental  
7 health, vocational and educational we'd like to  
8 give this Commission some concrete ideas on what  
9 could be done to improve the program in the areas  
10 we talked.

11 With respect to mental health, ONH  
12 screening is usually done sometime after an inmate  
13 is received in prison, but it relies exclusively on  
14 the inmate reporting. ONH should not get records  
15 from when the inmate was -- when the inmate was  
16 incarcerated. And often times those community  
17 mental health records indicate what the diagnosis  
18 was, what the treatment was, and -- and how the  
19 inmate has responded to treatment. What happens is  
20 that ONH found, based on the inmates  
21 self-reporting. I'm sure you're all aware of the  
22 DAI litigation, but that litigation focused on a  
23 disciplinary entirely. We need expanded programs  
24 for mentally ill inmates that are in general

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2 populations. As of 2004 there were only five  
3 hundred and thirty-four beds available for the  
4 three thousand two hundred inmates diagnosed as  
5 suffering from major mental illness. With respect  
6 to substance abuse, the waiting lists are  
7 particularly long, for ASAT, an alcohol and  
8 substance abuse treatment, which is the largest DOC  
9 program that there is. Inmates often wait years  
10 before their treatment needs are met. There is a  
11 Stay n Out program at Arthur Kill and Bayview  
12 Correctional Facility and CASAT programs in five  
13 other facilities. And they are the only programs  
14 that help inmates identify community-based care  
15 upon their release from prison. We ask the  
16 Commission to recommend that Substance abuse  
17 treatment begin as soon as possible upon receiving  
18 inmates, that there are entry numbers to connect  
19 inmates to community-based long-term treatment that  
20 work release eligibility must be expanded to enable  
21 more inmates to participate in CASAT and that DOCs  
22 be instructed to honor important court orders with  
23 respect to CASAT treatment. And educational  
24 opportunities -- this Commission is aware of the

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2 Pell Grant and the TAP removal of those grants in  
3 prison. We're asking that this Commission follow  
4 the New York State recommend that funding education  
5 is made a priority, that we create opportunity for  
6 college education by restoring funding through this  
7 the TAP program. We have other recommendations in  
8 our testimony but my time is running short. But we  
9 would also strongly recommend segregated housing  
10 that this committee recommends there should be  
11 weekly tutoring those individuals and they not just  
12 be locked up in a box for years without any  
13 education whatsoever. With respect to vocational  
14 programs, once again we would like the Committee to  
15 make a recommendation that those programs be  
16 expanded and that funding increased for vocational  
17 programs. And we would ask that this Committee  
18 recommend that DOCs take more a more realistic view  
19 of why vocational programs should be provided in  
20 the facility. Often times inmates are given jobs  
21 that on the outside, they're not marketable jobs.  
22 They can't find a job to support them. Maintaining  
23 family and legitimate community ties in issue to  
24 once again look at New York State Bar Association

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2 Special Committee where it explains how important  
3 maintaining family ties especially with children  
4 and we ask this committee empathize that in prison  
5 family visitation is incredibly important and that  
6 they recommend the Maximum Security Facilities  
7 and -- and Medium Security Facilities increase  
8 their visiting hours. The problem right now with  
9 medium facilities, there is no visiting hours  
10 during the week. I can see that my time is up.  
11 You've done a wonderful job on your preliminary  
12 report. If you have any questions or would like  
13 any of our assistance, please call.

14 MS. O'DONNELL: Thank you very  
15 much.

16 UNIDENTIFIED SPEAKER: Thank you.

17  
18 MS. O'DONNELL: We appreciate it.  
19 Thomas Green from the Altamont Program. And after  
20 that James Redfern from the Manhood Reentry  
21 initiative. If he would come down. Okay, and this  
22 is Mr. Green?

23 MR. GREEN: Okay, good -- good  
24 morning.

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2 UNIDENTIFIED SPEAKER: Good

3 morning.

4 MS. O'DONNELL: Good morning.

5 MR. GREEN: Good morning ladies

6 and gentlemen. I'm Thomas Green and I'm the

7 Director for the Altamont Program Inc's Housing

8 services and we're a division of PYHIT, which

9 stands for Peter Young Housing Industries and

10 Treatment. We've been in existence now for over

11 forty-five years and we have ninety-three various

12 programs throughout the state of New York. I would

13 like to talk to you today about the enormous need

14 for housing, education, vocational, and employment

15 services for the prison re-entry client. And I

16 stand before you today being a person who has gone

17 through the system, who is also -- I mean I stand

18 before you being an ex-offender as well as a person

19 of recovery. And I don't mind sharing with you the

20 apprehension, the intimidation, and -- and all the

21 anxiety that I felt coming home. It -- everything

22 just seemed overwhelming and basically there was --

23 there existed programs and the understanding,

24 compassionate staff in such places as Altamont

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2 Program. Men like Father Young with the mission  
3 and vision of assisting and encouraging people like  
4 me, people in crisis, with the opportunity to share  
5 in the vision of being a clean and sober tax paying  
6 citizen, guiding and providing a clean, healthy,  
7 therapeutic environment conducive to change. It  
8 was a place where I could refocus my life and  
9 channel my energies in a positive direction.

10 The environment motivated me to  
11 change in ways I had never thought possible. I  
12 returned to the educational process and I'm now a  
13 CASAC-T, (Comprehensive Alcohol Substance Abuse  
14 Counselor. I hold the position of Director for the  
15 Altamont Program's Housing Services and I supervise  
16 the Homeless Veterans Program since 2002.

17 I'll share with you some of the  
18 barriers and challenges to providing housing for  
19 the Criminal Justice client. I have worked closely  
20 with those individuals returning to society through  
21 work release and now parole. Some of the primary  
22 barriers that exist in the Housing Continuum that  
23 cause gaps in services are: the need for adequate  
24 Emergency Shelters, Transitional Housing, Permanent

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2 Supportive Housing and Permanent Housing along with  
3 job readiness, vocational training, educational as  
4 well as employment opportunities, along with  
5 support services.

6 There -- there also exists the  
7 need for a seamless transition from one level of  
8 this process to the next. At Altamont we believe  
9 in the three-legged stool concept, treatment,  
10 housing, education and employment in order to  
11 better equip the population to maintain permanent  
12 housing and improve the quality of their life.

13 Funding is also a major concern  
14 for providers. The lack of adequate funding can  
15 limit success and increase the chances of failure  
16 for the client. There are an increasing number of  
17 Housing Assistance Programs and that number has  
18 continued to increase since the 1980s and early  
19 1990s becoming a two billion dollar a year endeavor  
20 today as quoted by the National Alliance to end  
21 homelessness in 2000. Yet, the problem remains a  
22 serious problem in many communities across the  
23 country. Some of us believe we need to shift to  
24 new approaches, not suggesting innovation but

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2 rather renovation. Looking at the characteristics  
3 of the criminal Justice re-entry client, it's  
4 obvious that most have serious mental illnesses,  
5 substance abuse disorders, HIV/AIDS, or physical  
6 disabilities. Many have more than one of these  
7 major problems which frequently results in their  
8 being turned away from traditional Housing  
9 Assistance programs. Many of the clients have been  
10 homeless for a long time. Many have no ties to  
11 family or other supports and lack resources. Their  
12 skills -- their skills are -- let's see --  
13 orientated toward survival on the streets, not  
14 living in housing. Any efforts that expected to  
15 reduce this housing plight to any significant  
16 degree must attract and hold this targeted  
17 population:

18 First; there has to be an effective  
19 way to contact and recruit these individuals.  
20 Equally important, there must be something to offer  
21 them that they will take. The program needs to fit  
22 the people, rather than the reverse. Outreach,  
23 housing, and supportive services are obvious  
24 components to a solution.



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2 In addition, job readiness and  
3 continued education would be positive additions to  
4 any transitional housing solution.

5 Preventive efforts are also  
6 increasingly becoming a part of this picture. More  
7 and more providers have recognized that outreach,  
8 housing, support services, discharge planning, job  
9 readiness skills, training must incorporate the  
10 following abilities in order to be a viable  
11 solution to this problem:

12 One; we must have the ability to  
13 attract people with addictions and encourage  
14 willingness to sobriety. We must have the ability  
15 to attract those people with serious mental  
16 illness. They often find shelters intolerable due  
17 to overcrowding and a sense of vulnerability. They  
18 feel threatened by the residents or the Housing  
19 Providers won't serve them because their -- their  
20 symptoms are too disruptive.

21 Three; we must have the ability  
22 to work with people co-occurring disorders. No  
23 longer can we remain single focused in our approach  
24 to these ever-increasing problems.

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2 In closing, it should be said  
3 that there are no single answers to the problem.  
4 It's -- it will take collaboration, networking and  
5 partnering if we are to be effective in providing  
6 viable solutions to address these needs.

7 Thank you for your time and your  
8 concern in this problem.

9 MS. O'DONNELL: Thank you Mr.  
10 Green.

11 MR. BERGONO: Mr. Green, Mr.  
12 Bergono. First of all I appreciate Altamont and  
13 Father Young and the work they've done throughout  
14 the State. So thank you for the things that you  
15 do. The assistance in -- in working with that  
16 population. As you may or may not know, both --  
17 well the Division of Criminal Justice Services,  
18 Parole, Corrections and OASIS have started a pilot  
19 out at Orlean Correctional facility to do some of  
20 the things that you're saying to create the  
21 partnership and create that seamless transition  
22 from incarceration back to the community. And I  
23 invite your group and any other service provider  
24 out there to join us in those efforts because we

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2 need as many resources around the table. As I  
3 always say, it's not just our problem in the  
4 Criminal Justice System, it's everybody's problem.  
5 So we invite you to -- to sit with us and try to  
6 resolve some of those issues that you raised. I  
7 agree with your report one hundred percent.

8 MR. GRANT: Thank you sir.

9 MR. BERGONO: And so we want to  
10 try to use as much as we can possibility have at  
11 our -- at our availability to deal with those  
12 issues.

13 MR. GRANT: And we do welcome  
14 that opportunity. I presently am a member of the  
15 Prison Re-entry Group that meets every second  
16 Tuesday --

17 MR. BERGONO: Uh-huh.

18 MR. GRANT: -- I believe it is,  
19 at the Parole office once a month and I've also  
20 taken the volunteer services questionnaire to enter  
21 Orleans and -- and start to network with the  
22 clients in preparation for that transition.

23 MR. BERGONO: Thank you.

24 MR. GREEN: So we're welcoming

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2 any opportunity to do our share in trying to

3 alleviate the recidivism rate as well as produce,

4 as we say, clean and sober taxpaying citizens.

5 MR. BERGONO: Actually we think

6 that that's a good thing.

7 MR. GREEN: Thank you.

8 MS. O'DONNELL: Thank you very

9 much for your work.

10 MR. GERGONO: Thank you for your

11 time.

12 MR. GRANT: Thank you sir.

13 MS. O'DONNELL: James Redfern

14 from the Manhood Re-Entry Initiative. Is Mr.

15 Redfern here?

16 Okay, we'll be coming back to him.

17 Nicolas Texido from Legal Aide of Buffalo.

18

19 MR. TEXIDO: Good morning

20 Commissioners.

21 MS. O'DONNELL: Welcome.

22 MR. TEXIDO: I thank you for the

23 opportunity to speak today. My name is Nicholas

24 Texido. I work with the Legal Aid Bureau of

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2 Buffalo in the Felony Appeals Unit. We handle  
3 appeals to the Appellate Division from felony  
4 convictions from Erie County resulting from pleas,  
5 non-jury trials, and jury trials, a total of  
6 approximately two hundred appeals per year. Upon  
7 reading the Commission's preliminary report we were  
8 pleased and excited that the entire realm of  
9 sentencing was to be re-examined. We're here today  
10 to voice our hope regarding the maintenance or the  
11 expansion of the discretion of trial judges in  
12 sentencing, particularly as we are in the unique  
13 position of witnessing the sentencing work done by  
14 these judges on each and every case. As part of  
15 our appellate representation we become familiar  
16 with all of the facts and the circumstances of each  
17 case. Often, after reviewing these facts and  
18 reviewing the pre-sentence reports, we argue that  
19 the sentence was unduly harsh and severe. And we  
20 are overwhelmingly, more often than not  
21 unsuccessful in our actuating that.

22 But removing the hat of an  
23 advocate and putting on the hat of a -- an neutral  
24 observer, we have to say the trial judges generally

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2 do a remarkable job of exercising their discretion  
3 in most cases.

4 The specific concern we had after  
5 reading the preliminary report, from a judicial  
6 discussion standpoint, was the notion that  
7 sentencing courts would use a risk and needs  
8 assessment instrument in determining a proper  
9 sentence. Our desire to maintain and expand  
10 judicial discussion flows mainly from our  
11 perception of the fairness and the sound judgment  
12 of trial judges. Today, however, our presentation  
13 will deal mostly in the negative, the risks, the  
14 cost, and the problems involved in employing  
15 evidence-based guidelines by sentencing model.

16 First; it's nearly impossible to  
17 create an exhaustive evidence based or -- or  
18 guideline system that accounts for all the factors  
19 that judges need to take into account at  
20 sentencing. An evidence-based system limits and  
21 prescribes these factors, reduces the role of  
22 advocacy and judgment from sentencing. For  
23 instance, the Federal Guideline makes no allowance  
24 for education, vocational skills, mental and

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2 emotional conditions, physical conditions, drug or  
3 alcohol dependence, employment history, level of  
4 guidance as a youth, or charitable works. All of  
5 these are presumably taken into account by the  
6 judge attempting to achieve a just result in a  
7 given case. For example, a judge free from any  
8 guideline restraints may wish to take the  
9 offender's age into account for effectuating the  
10 goals of rehabilitation and/or re-entry.

11 Under a Guideline Scheme, age  
12 could not be a guidelines factor without inviting a  
13 constitutional challenge in the first place and  
14 we've seen that across the nation. Things like  
15 that have not been included in Guideline Schemes.  
16 There will always be factors not taken into account  
17 by an evidence-based model.

18 Also, a particularly compelling  
19 factor that impacts on sentencing, such as a  
20 physically or mentally disabled victim may warrant  
21 more consideration in a given case than the  
22 guideline system allows for. Allowing the judge to  
23 take a holistic view of the offense, the offender,  
24 the circumstance of the case, is a whole new way to

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2 achieve sentencing and fairness for offenders who  
3 are victims and for society as a whole.

4 In addition, the likely effect of  
5 any evidence-based model on the current plea  
6 bargaining practices could be catastrophic. In New  
7 York State plea bargaining is mainly done by way of  
8 sentence bargaining. That is, defense counsel, the  
9 prosecutor, and the judge will negotiate  
10 together -- well defense counsel and the prosecutor  
11 will negotiate in the presence of the judge and  
12 come to an agreed upon sentencing commitment as  
13 part of the plea bargaining process. As a result  
14 of -- of that practice, an evidence-based model  
15 would either have to be circumvented by these  
16 practitioners of New York State or it would resolve  
17 in a vast decrease in the number of cases disposed  
18 of by guilty plea.

19 I'll explain it. If criminal  
20 defendants are not offered a particular sentence as  
21 part of the plea-bargain, it logically follows that  
22 fewer defendants would plead guilty. The likely  
23 response would be fact-bargaining in which  
24 prosecutors, Defense attorneys and judges would



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2 bargain on the assignment of points in order to  
3 determine an offered sentence. Researches have in  
4 fact found that the Federal Guidelines are  
5 circumvented in at least twenty percent of all  
6 federal criminal cases that are disposed of by  
7 guilty plea. Not only would this practice  
8 circumvent any evidence-based model put into place,  
9 but it would also encourage dishonesty and be  
10 counterproductive to the pursuit of the truth.  
11 Officers of the court would be in a position where  
12 they were forced to nod and wink their way to a  
13 mutually agreeable resolution of the case.  
14 This practice is undesirable but -- but maybe it's  
15 seen as -- as preferable to the -- to the  
16 alternative, which is a reduction in guilty please  
17 to the point where the judicial economy is  
18 negatively impacted.

19 Another concern is that, as I'm  
20 sure the Commission is aware, no more Supreme Court  
21 cases which we cited more in our written testimony.  
22 We won't deal with that today.

23 Of the evidence-based modeling  
24 the question, they rendered the once mandatory

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2 federal law merely advisory. And the New York  
3 State Constitution often offers greater protection  
4 to the defendants that does the Federal  
5 Constitution. So the viability of any  
6 evidence-based sentencing procedure is -- is  
7 questionable on constitutional grounds. Now I do  
8 need to acknowledge the fact that weighs -- weighs  
9 in favor of an evidence based model, which is  
10 uniformity in sentencing. While that is a laudable  
11 goal, the effect of any evidence-based procedure in  
12 promoting uniformity is not proven. Researchers  
13 have found that non-uniformity in sentencing  
14 persists under the Federal Guidelines, for example.  
15 Sentence -- sentence severity under the Federal  
16 Guidelines and departures from the presumptive  
17 sentences have been linked with the race and  
18 ethnicity of the defendant, the citizenship of the  
19 defendant and the particular district court of  
20 conviction. Any gain in uniformity that would  
21 result from an evidence-based model must be weighed  
22 against the corresponding costs and risks that I've  
23 already outlined. The -- the risk of endless  
24 litigation and constitutionality, the effect on

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2 judicial economy. We do recognize the potential  
3 benefits of evidence-based practices in a  
4 correctional setting and in determining  
5 rehabilitative services. We do respectfully  
6 recommend that no such model be used in sentencing,  
7 however. Just briefly we'd also like to talk about  
8 the Commission's recommendation to relax post  
9 indictment plea restrictions.

10 MS. O'DONNELL: You are over your  
11 time limit so another minute or so if you could.

12 MR. TEXIDO: Oh. Okay. I would  
13 just say that we -- we do support that  
14 recommendation and it's for basically the same  
15 reasons. Allowing judges and prosecutors  
16 discretion in -- in resolving cases on a case by  
17 case basis we feel will be beneficial to the  
18 pursuit of justice.

19 Thank you.

20 MS. O'DONNELL: Thank you very  
21 much.

22 UNIDENTIFIED SPEAKER: Thank you.

23

24 MS. O'DONNELL: Paul Vanouse,

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2 Associate professor at the University of Buffalo.

3 Professor Vanouse here?

4 Okay. John Curr and he is here from  
5 the NYCLU. No?

6 Okay. So Let me switch over to the  
7 individuals that were filling in who asked to speak  
8 today.

9 MS. O'DONNELL: Okay. Okay.

10 Leigh Kwiatek, Law student at the University of  
11 Buffalo.

12 Thank you for coming.

13 MS. KWIA TEK: Thank you very much  
14 for giving me this opportunity to speak. The  
15 bulletin stated that the Commission wanted to talk  
16 about issues that the look for. And I think that  
17 after more than thirty years since the passage of  
18 the Drug -- drug laws, I think the Commission would  
19 be absolutely remiss if they did not recognize the  
20 blatant racial and ethnic bias that has gone with  
21 the enforcement of these laws. Since it's  
22 inception in May of 1973, over one hundred and  
23 fifty thousand New Yorkers have been imprisoned for  
24 nonviolent drug offenses that has fueled this

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2 unprecedented rise in the state prison population.  
3 So in between the period from 1974 to 2002, the New  
4 York State Prison population growth is five hundred  
5 percent, which is the highest incarceration rate in  
6 the State's History. But the demographic  
7 characteristics of the RDL population are  
8 distinctive and significantly different from those  
9 of the general population of New York State as a  
10 whole or even those of the rest of the rest of the  
11 New York Prison System. The drug offense  
12 population incarcerated under these laws are  
13 overwhelmingly composed of young minority males  
14 from New York City. Because of demographic  
15 characteristics of the population are skewed  
16 relative to state population as a whole, the impact  
17 as well of these drug law incarcerations are not  
18 evenly distributed over the general population of  
19 the state. The highest rates are seen in the age  
20 groups from twenty-one to forty-four for all  
21 groups, which constitutes over eighty percent of  
22 the total RDL prison population. But within that  
23 age range, black males have the highest rate, one  
24 thousand five hundred and sixteen per one hundred

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2 thousand population versus white males at  
3 thirty-four per one hundred thousand. White  
4 females are the lowest at six to one hundred  
5 thousand of the population versus one hundred and  
6 nine per one hundred thousand for black females.  
7 The racial disparities are seen at every age for  
8 males and females and most strikingly, the ration  
9 of black to white males aged twenty-one to  
10 forty-four is forty to one. For male Hispanics to  
11 white, the ratio is thirty to one. While blacks  
12 and Hispanics represent only thirty-three percent  
13 of the New York State Population, over ninety-four  
14 percent of the RDL inmates are from these  
15 minorities. And based on the arrest data,  
16 approximately seventy-eight percent come from New  
17 York City.

18 As the numbers of prisoners roses  
19 under RDL over the last three decades, the racial  
20 mix of those incarcerated for drug offenses go  
21 progressively more disparate, relative to the  
22 state's population. What I found interesting was  
23 that the New York Academy of Medicine says, on  
24 complete of what they called an analysis of the

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2 drug laws with years of life lost. And what they  
3 suggested was that thirty years of forced removal  
4 to prison of one hundred and fifty thousand young  
5 males from particular communities of New York  
6 represents collective losses similar in scale to  
7 those losses due to epidemics, wars, and terrorist  
8 attacks with the potential for comparable effects  
9 on the survivors and the social structure of their  
10 families and communities. Such highways of actual  
11 mortality are large scale years of life lost due to  
12 imprisonment where they're concentrated in a brief  
13 period, such as the World Trade Center attack or  
14 spread out over many years, with the AIDS crisis,  
15 have similar profound effects on the populations  
16 most effective -- affected, excuse me. For  
17 example, the impact of three hundred and  
18 twenty-five thousand years of life lost due to RDL  
19 incarceration includes collateral damage with it's  
20 own set of innocent victims, meaning more than one  
21 hundred and twenty-five thousand children have been  
22 separated from an imprisoned parent in the past  
23 thirty years. There are other ways in which the  
24 effects or mass incarcerations have an adverse

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2 impact that extend well beyond the prison walls and  
3 long sentences. In the U.S., approximately forty  
4 percent of young black men ages twenty to  
5 forty-four are currently under Criminal Justice  
6 Control at any given time. In prison, in jail, on  
7 parole, or probation. This status includes felony  
8 disenfranchisement, the loss of the right to vote.

9 In the U.S. an estimated one  
10 million Americans convicted of drug offenses have  
11 temporarily or permanently lost his vital right.  
12 Drug felony convictions mean loss of driver's  
13 licenses and many of the job opportunities that  
14 require one; loss of eligibility for military  
15 service; disqualification for many professional  
16 licenses, as we heard about earlier, beauticians,  
17 barbers, as well as federal benefits, home and  
18 school loans. So the cumulative of impact of these  
19 extensions of incarceration reach far into the  
20 lives of the most heavily affected communities and  
21 may well account for the intergenerational  
22 persistence of violence, crime, and widespread  
23 family and social dysfunction.

24 I think the striking racial and



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2 ethnic disparity so apparent with the drug laws and  
3 incarceration rates have helped sustain a bitter  
4 sense of injustice in the minority community. It's  
5 imperative to note that illegal drug use is  
6 ubiquitous in America and there's no evidence of  
7 great difference in drug use rates between  
8 different racial and ethnic groups in this country.

9 But unlike deaths due to illness,  
10 natural disaster, or terrorist attacks where public  
11 sympathy typically flows to the survivors and  
12 promises of community support are the norm, the  
13 losses associated with large scale incarceration  
14 under the drug laws are largely unrecognized either  
15 as losses or as collective events. On an  
16 individual basis, each family affected by drug  
17 incarceration must carry it's own burden of stigma  
18 and compensate for the loss on their own. The  
19 collective stigmatization and fear of criminalized  
20 young black men continues to be a core element of  
21 racism in American society.

22 I'm going -- David Cole, one of  
23 my favorite professors at Georgetown Law School  
24 wrote that when the effects of criminal law reach

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2 the sons and daughters of the white majority, our  
3 response is not to get tough, but rather to get  
4 lenient. Americans have been able to sustain an  
5 unremittingly harsh, tough-on-crimes, attitude  
6 precisely because the burdens of punishment fell  
7 disproportionately on minority populations. The  
8 white majority could not possibly maintain it's  
9 current attitude to crime and punishment where the  
10 burden of punishment felt by the same white  
11 majority that prescribes it.

12 The problem of inequality in  
13 today's criminal justice systems requires a  
14 three-fold response:

15 First; we must acknowledge the  
16 problem by recognizing that we have built the  
17 current system on a fiction that we are all equal  
18 before the law.

19 Second; we must seek to restore  
20 the legitimacy that the system's double standards  
21 have forfeited by adopting measures that extend the  
22 same rights and protections to all.

23 And third; we must identify and  
24 develop community-based responses to crime both at

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2 the preventative and punitive stages. The  
3 Rockefeller Drug Law has made a mockery of equal  
4 protection and due process. This modern day  
5 version of Jim Crow must stop. That's why I'm very  
6 pleased that we are here today, the Commission is  
7 here today addressing these very issues. We hear a  
8 lot about reform in Albany and I think the best  
9 place to start would be with reforming the Drug  
10 Laws.

11 Thank you.

12 UNIDENTIFIED SPEAKER: Thank you,  
13 very nice.

14 MS. O'DONNELL: Thank you very  
15 much.

16 MS. KWIATEK: Thank you for  
17 coming.

18  
19 MS. O'DONNELL: I notice we have  
20 Karima Amin here in the audience from Prisoners are  
21 People Too. Would you mind? We're missing a few  
22 speakers and if you would mind testifying next,  
23 that would be great. Then we might take a very  
24 short recess to grab a quick lunch and would be

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2 right back. Ms. Amin. Welcome.

3 MS. AMIN: Good morning. Thank  
4 you. My name is Karima Amin and I'm the founder  
5 and Director of Prisoners are People Too here in  
6 the City of Buffalo. And I will be reading for two  
7 prisoners who would like to say they appreciate the  
8 opportunity to have this time to address you.

9 The first statement comes from  
10 George Eng. He is incarcerated in Auburn prison  
11 and this is to the Commission.

12 When we consider the need for  
13 sentencing reform we must consider it as a need  
14 that impacts victims and offenders in a cycle of  
15 crime and punishment, recidivism and punishment,  
16 and continued suffering and hopelessness to all  
17 parties involved. Sentencing and the criminal  
18 justice reform must be designed to ameliorate the  
19 harmful impacts of unequal and unjust sentencing  
20 and legally and social deficient criminal justice  
21 practices. Only then will we address the problem  
22 appropriately as an issue of social responsibility  
23 and not just a problem that is limited to what some  
24 might consider to be the subclass of social

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2 deviants. Prisoners are people too. If we accept  
3 the reality that there are systemic inequities and  
4 injustices in the criminal justice system that  
5 begins with arrest and continues into the  
6 sentencing process, then we must also accept the  
7 reality that race is a major factor in the  
8 imposition of injustice and inequity in the  
9 application of criminal justice.

10 Throughout the country, and for  
11 the purposes of this hearing, as you were saying,  
12 all data and statistical evidence reveal that the  
13 majority of people entrapped in the cycles of  
14 despair are people of color. Of course, non-blacks  
15 sometimes do get collaterally caught up in a system  
16 where inequity and injustice has become the  
17 so-called norm. However, in those cases, though  
18 remedies must be sought for those people, we must  
19 be clear that inequities in the application of  
20 criminal justice and the disparities in sentencing  
21 have been intentionally made systemic because it is  
22 not only well know, but even expected that the  
23 majority of people who come through the system will  
24 be people of color, primarily African American.

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2 African Americans are the majority of those  
3 convicted and sentenced to prison terms in the  
4 State of New York. Also, the majority of the  
5 victims of those -- of these convicted offenders  
6 are either African American or other people of  
7 color.

8 Therefore any meaningful reform  
9 of the criminal justice system, that includes  
10 sentencing provisions and practices, must be  
11 two-pronged:

12 One; involves the legislation of  
13 reform in the laws, that is sentencing guidelines  
14 and the overseeing of practices throughout the  
15 Criminal and Supreme Court systems;

16 Two; involves focus on programs  
17 and initiatives to prevent delinquency and criminal  
18 thinking and behavior in the African American  
19 community.

20 In terms of legislation there  
21 needs to be a reformulation of sentencing  
22 guidelines that give judges both the discretion and  
23 instruction to actually make the punishment fit the  
24 crime. This must be based on a full consideration

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2 of the full circumstances of each offender, which  
3 would require full psychological and sociological  
4 evaluations and not just the perfunctory criminal  
5 history summaries that are usually compiled by the  
6 Department of Probation in what are called  
7 pre-sentence reports, that are supposed to help  
8 Judges make determinations in deciding appropriate  
9 sentences.

10 The purposes of sentencing must  
11 also be stressed -- the purposes of the sentencing  
12 must also be stressed in these new guidelines with  
13 a focus on rehabilitation. Sentences must allow  
14 for that aspect of sentencing because that aspect  
15 of the sentencing intent has been neglected for the  
16 last forty years as Blacks became the dominant  
17 group being processed through the criminal justice  
18 and prison systems. When whites were the majority  
19 of the prison population during the sixties, there  
20 was an emphasis on rehabilitation. That legal  
21 practice must be reinstated. A sentencing review  
22 board should be assembled, composed of legislators  
23 and judges to review any alleged inequities that may  
24 continue by judges who do not comply with the new

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2 legislation. Judges have authority that must be  
3 respected, but there must also be accountability  
4 and oversight.

5 Prosecutors must also somehow be  
6 brought in line with the law. Prosecutors have  
7 enormous authority that is often abused when  
8 prosecuting defendants of color. The mentality is  
9 one of thinking only of gaining advantage and  
10 obtaining as many convictions as possible, no  
11 matter what the degree of guilt, or even innocence  
12 actually are.

13 Finally, our responsibility, as a  
14 society of people wounded by crime, social inequity  
15 and even terrorism, is to focus on our human  
16 resources on developing programs and practices that  
17 promote healing among victims and offenders. We  
18 all have a God given right to develop to our  
19 greatest potential to contribute the best that is  
20 within us to a society that embraces and benefits  
21 us all, remembering that Prisoners are People too.

22 That's from George ENG. Briefly  
23 from Lawrence Bartley, also at Auburn Correctional  
24 facility -- he just has several bullet points that



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2 he feels are important.

3 LAWARNCE BARTLEY: (Reading);

4 Regarding sentencing reform, the previous and

5 current sentencing trends are indicative of a

6 criminal justice system out of touch with the

7 characteristics of each particular offender.

8 Previous cases have shown that the characteristics

9 of each particular offender should play a part in

10 his or her adjudication. Youthful offenders

11 between the ages of fourteen and twenty-one are

12 being prosecuted and sentenced to exorbitant prison

13 terms for crimes they committed when they were

14 adolescents. Instances such as these cry out for

15 change. Of course it is necessary to punish any

16 individual who commits a crime, but the sentence

17 must fit the individual as well as the crime. See

18 the Human Rights Watch report entitled For the Rest

19 of Our Lives: Life Without Parole for Child

20 Offenders in the U.S.

21 This Commission should explore

22 creating a committee in each Correctional

23 institution to evaluate each inmate that was

24 sentenced to a lengthy term of imprisonment due to

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2 a crime he/she committed when they were under  
3 eighteen years old, then adjust their sentence  
4 accordingly.

5 Good behavior. At minimum New  
6 York State should afford all felony offenders,  
7 violent and indeterminate sentences included an  
8 opportunity to earn time off their sentences for  
9 good behavior. Refer to Senator Montgomery's Bill  
10 #S03575.

11 If rehabilitation is truly an  
12 integral part of the New York State Criminal  
13 Justice System, an inmate that provides -- that  
14 proves he's ready to be a productive member of  
15 society by exhibiting good behavior, program  
16 completion, and overall effort to transform him or  
17 herself in the prison setting, should be issued  
18 merit time, as explained in Senator Montgomery's  
19 Bill. Said Bill and/or it's logic should be  
20 adopted by this Commission.

21 Regarding the Parole board:

22 The parole board should be made up of  
23 the subject's peers. Said peers should be members  
24 of the community in which the crime was committed

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2 secondarily, but primarily be comprised of members  
3 of the community in which the subject is to be  
4 potentially -- potentially paroled to. These  
5 people are the ones who should have the ultimate  
6 say on whether or not the prisoner before them  
7 should be able to enter their communities.

8           Regarding Rehabilitation  
9 Programs; bring back opportunities for prisoners to  
10 get a college education behind bars. And number  
11 two, investigate the success of RTA, Rehabilitation  
12 through the Arts. Consider being instituted in all  
13 New York State Prisons. I happen to like that in  
14 particular. I have been on the stage many times  
15 before as a storyteller, a poet, even danced a  
16 little bit and talked a little bit. And it was a  
17 fact, the Arts is what got me into this kind of  
18 work in the first place. Having been invited in  
19 1994 into Attica Prison to share stories. And that  
20 story telling is what then got me invited into  
21 other New York State Prisons. And since starting  
22 Prisoners Are People Too, two and a half years ago,  
23 I discovered that the most important thing that  
24 fuels our community meetings and I talked earlier

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2 of programs are the stories of formerly  
3 incarcerated people. Prisoners Are People too.

4 Thank you very much for this  
5 opportunity.

6 MS. O'DONNELL: Thank you.

7 MR. ALEXANDER: Karima I'd just  
8 like to thank you for your continued advocacy in  
9 and all the things that you're doing in the  
10 community.

11 MS. AMIN: Thank you Mr.  
12 Alexander. I appreciate that. And thank you too  
13 for assisting us in any way we can you've been  
14 able.

15 MR. ALEXANDER: Absolutely.

16

17 MS. O'DONNELL: Thank you very  
18 much. Kate Metz, Director of Legal Services at the  
19 University of Buffalo. Welcome.

20 MS. METZ: Thank you. I'd like  
21 to speak on the inequity of Rockefeller Drug Laws  
22 and the need for a sentencing reform.

23 MS. O'DONNELL: Ms. Metz, this is  
24 a big room. So if you can kind of grab that

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2 microphone a little bit, that would help. Thank

3 you.

4 MS. METZ: I'd like to speak

5 today on the inequity of the Rockefeller Drug law

6 and the need for sentencing reform. There is

7 definite need for a program, an alternative to

8 imprisonment for nonviolent offenders, such as with

9 drug offenders. A wealth of evidence does support

10 this. The possession of drugs in selling and

11 attempting to sell does not equal violence. These

12 punishments do not fit the crimes and they don't

13 fit the individuals. Drug peddlers need options,

14 opportunities, and not imprisonment. So does our

15 society. It is not logical for these severe

16 penalties to follow up with the drug use or sale.

17 It is only expensive and promotes a perpetual cycle

18 of incarceration and poverty. Thank you.

19 MS. O'DONNELL: Thank you very

20 much for being here. We really appreciate it.

21 And Andrew Blake. Is Andrew

22 Blake also here from the University of Buffalo.

23 Okay. Before lunch we will have two other people.

24 Michael Munoz and he's here from the Center for

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2 Employment Opportunities. Thank you very much for  
3 joining us today.

4 MR. MUNOZ: Thank you.

5 Hello. I'm Michael Munoz and I'm the  
6 Community Relations Manager at the Center for  
7 Employment Opportunities, or CEO. I thank you for  
8 the opportunity to address the Commission. CEO is  
9 providing comprehensive employment services for  
10 people coming home from prison and jail for over  
11 thirty years in New York City. We are now engaged  
12 by the New York Division of Parole through a  
13 feasibility study to see if CEO's model transition  
14 will work, leading to permanent employment, and  
15 fill a need for people on parole in Erie County.  
16 I've been leading the study here in Buffalo. I  
17 talk to Parole Officers, people on parole,  
18 representative of the current Public Work Force  
19 System, staff at the State Department of  
20 Correctional Services. I've been to Orleans Prison  
21 and the County Department of Social Services.  
22 Staff members at other nonprofits, such as the  
23 Urban League who also serve people returning from  
24 prison and their families. What I've heard over

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2 and over again is that people returning to Erie  
3 County from the State Correctional System want to  
4 work but are having a very hard time finding jobs  
5 and that more could be done to help those people  
6 enter the work force, particularly right after they  
7 get home. It's true that in Erie County as in New  
8 York City people with criminal record and  
9 particularly those who have spent time are not easy  
10 to place in jobs. They often have limited work  
11 experience and low skill level and there are legal  
12 barriers to employment in several fields, such as  
13 financial services and health care. Finally  
14 there's the fact that many employers are reluctant  
15 to hire people with criminal records, a point that  
16 the Commission notes in its report.

17 One approach to this reluctance,  
18 the Commission notes is the potential affirmative  
19 defense to the negligent hiring claim that employer  
20 complied with Article 23A of the Correction Laws  
21 and considered whether a person's crimes were  
22 directly related to the job under consideration.  
23 We support Approach and we believe many employers  
24 would as well.

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2 Additionally, the way to help  
3 alleviate employer's concerns, though, is to expand  
4 the approach we take to coming home from prison  
5 into the work force and that's through transitional  
6 work. At CEO people come to us within days and  
7 weeks of release. They come to CEO and they start  
8 to work on our work crews immediately doing  
9 maintenance and repair work on sites throughout the  
10 city and they get paid at the end of each day.

11 This provides them with the needed income and very  
12 importantly builds a work reference. Meanwhile we  
13 provide job coaching to help people get ready for a  
14 permanent job with a private employer. Our job  
15 developers then market participants to potential  
16 clients using the transitional work as a key  
17 factor. We're not asking employers to take a  
18 chance on someone with an unproven work  
19 performance. The job seeker has already proven he  
20 can come to work on time, work hard, follow  
21 instructions from a supervisor and understands the  
22 demands and cultures of the work place.

23 So far, employers have responded  
24 to this approach, which is why in the last ten



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2 years of being an independent nonprofit, we placed

3 over ten thousand formerly incarcerated people in

4 permanent jobs.

5 Transitional work also serves the

6 Commission's stated interest in evidence-based

7 approaches to reduce recidivism. The CEO program

8 is being evaluated by the National Research Group,

9 MDRC in order to test our long held belief that

10 providing immediate employment to people returning

11 home from prison reduces their likelihood of

12 re-offending. After one year from random

13 assignment into treatment groups and control

14 groups, MBRC found that a reentry group of people

15 who were randomly assigned three months or less

16 from release from prison the CEO group has

17 substantial, statistically significant lower rates

18 of felony convictions, parole revocations,

19 incarceration for new crimes and overall

20 incarcerations than control group members. The

21 difference between the reentry group and the

22 control groups for re-incarceration of any reason

23 are full ten percentage points. A difference

24 between the groups of more than fifty percentage

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2 points.

3 MBRC noted that impacts of this  
4 size in a random assignment criminal justice study  
5 are rare. The MBRC findings on CEO stated simply  
6 show that people who start working right after  
7 release have lower recidivism rate than those who  
8 do not start working right away. This may be  
9 because work lends a powerful stabilizing force to  
10 their lives at a time when it's most needed, right  
11 after release.

12 Indeed, national statistics on  
13 re-offending showed the greatest incidence of  
14 arrest occur in the first six months after release.  
15 This appears to be true in New York State as well,  
16 judging from the data in the Commission's report.

17 CEO's way of getting people  
18 through this period of highest risk is through  
19 transitional work leading to a permanent job  
20 placement, usually within two to three months from  
21 release. This approach appears to be working  
22 according to the study, leading, we think, to a  
23 clear recommendation to the Commission.

24 Consider expanding the use of

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2 transitional work as a re-entry strategy throughout  
3 the state. In the meantime, the feasibility we're  
4 conducting with parole may result in transitional  
5 job options for people returning to Erie County.

6 Thank you.

7 MS. O'DONNELL: Thank you very  
8 much and I mainly want to commend Chairman  
9 Alexander for reaching out and forming this  
10 relationship with CEO and bringing him here to  
11 Western New York. And I hope he'll be here to stay  
12 after the study.

13 MR. MUNOZ: I hope we --

14 MS. O'DONNELL: -- because we  
15 definitely need your help.

16 MR. MUNOZ: -- I hope we will to  
17 and so far everything looks great. We're very  
18 welcome in the area and it looks like we can really  
19 provide some help for these guys coming out.

20 MS. LEVINE: And congratulations  
21 on placing ten thousands.

22 MR. MUNOZ: Thank you very much.

23 MR. ALEXANDER: Thank you very  
24 much.

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2 MR. MUNOZ: Thank you. Thank you  
3 very much.

4

5 MS. O'DONNELL: I understand  
6 Andrew Blake is -- is here. Would you come down  
7 and -- and join us. Andrew is also a student at  
8 the University of Buffalo. Welcome.

9 MR. BLAKE: Thank you. Good  
10 morning.

11 MR. ALEXANDER: Good morning.

12 MR. BLAKE: Since the  
13 introduction of the Rockefeller Drug Law over three  
14 decades ago, criticism from all sides of the  
15 political spectrum have demanded reform. While  
16 there have been changes, like the substantial  
17 changes of 1973, I imagine there is still a lot of  
18 progress to be made as far as law, which in many  
19 cases disrupted normal lives of nonviolent  
20 individual leaders. We agree there are many crimes  
21 that should not go unpunished. We feel that yes,  
22 possession and intent to sell certain narcotics  
23 should without a doubt should be illegal.

24 However sentencing for charges as

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2 it exists in New York State today, while greatly  
3 improved since Governor Rockefeller installed it  
4 thirty years ago.

5 Nearly thirteen thousand of the  
6 fourteen thousand plus New York men and women in  
7 jail on drug charges right now are black or Latino.  
8 That is just the number of incarcerates right now.  
9 Today there are tens of thousands of minority would  
10 be voters who have lost the right for  
11 representation due to the State's disenfranchising  
12 law. While it has been proven that seventy-two  
13 percent of the legal drug users in New York State  
14 are white, injustice in our system is prosecuting  
15 the minorities, thus leaving a large chunk of our  
16 state incapable of representation. It is  
17 understandably crucial for our democracy across the  
18 state.

19 MS. O'DONNELL: Thank you very  
20 much. We appreciate it. And I understand Mr.  
21 Walker is here, John Walker. He's been here for  
22 some time. Would you mind going ahead of schedule?

23 MR. WALKER: My name is John  
24 Walker.

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2 MR. ALEXANDER: Walker.

3 MR. WALKER: I stand here before  
4 you on wrongfully convicted murder. I'm on  
5 lifetime parole. And my story started from back in  
6 1976.

7 MS. O'DONNELL: Can you just  
8 speak up?

9 MR. WALKER: He was falsely  
10 convicted of a murder and after serving twenty-two  
11 years of imprisonment I -- I've been out here for  
12 the last eight, nine years and I've been trying to  
13 get my case -- I've been very successful in getting  
14 all the community support. But that's not my  
15 purpose here today. My purpose here today is to  
16 talk about parole. I've -- I've been on parole the  
17 last ten years. I have no -- I have not been sent  
18 back to prison with no violations of my parole.  
19 But after ten years I can't get off parole, it  
20 seems like. I -- I asked my parole officer one  
21 day, you know I've -- I've been on parole now ten  
22 years. At the time it was about eight years and I  
23 said how can I get off parole. And she told me the  
24 only way I could get off of parole is if I die.

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2 That would be the only way I could get off parole.  
3 Consider that I was incarcerated for a crime I had  
4 nothing to do with, but I do want to say that once  
5 I was convicted they actually treated me like I was  
6 -- like I was a convicted murderer. But I think  
7 that if a person came out here and displayed, you  
8 know, his conduct was that he didn't get sent back  
9 to jail in ten years. There ought to be some type  
10 of law that would relax the parole rules of me  
11 going out every month, once a month. It's like I'm  
12 frightened and scared to death I go down to Parole,  
13 I sit there for four and a half hours and I go in  
14 for five minutes and see my parole officer. And --  
15 and this -- it has a real effect on my life. I  
16 can't do nothing. I can't do none of the normal  
17 things that most everybody else does because of my  
18 parole stipulation. And I just think that there  
19 should be some type of rule that when -- that  
20 you're willing to live like a law-abiding citizen  
21 with in ten years, at least ten years, you should  
22 allow a man, you know to -- basically, if I get  
23 into some type of trouble, I see them bringing it  
24 back up that you know I'm on lifetime parole. But

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2 if I -- after ten years have not gotten into any  
3 kind of trouble, then there should be some kind of  
4 regulation to be able to release me from parole.  
5 At least from, you know, constant supervision.  
6 Because I've done nothing to harm -- to show that  
7 I'm -- I'm -- I'm a criminal -- I have criminal  
8 ways. I'm doing everything in my power to try to  
9 talk to the youth so that they don't go down the  
10 same road that I went to. I'm -- I'm willing to  
11 give myself over to any type of a committee that  
12 you all might have so that I can give you all my  
13 experience of doing twenty-two years, ten years on  
14 parole and I think one of the better things that  
15 you do have, coming out of the jail is a work  
16 release facilities. I was on a work release for  
17 four and a half years, was only made for somebody  
18 being in it for six months to a year. But I found  
19 myself there for four and a half year, never doing  
20 anything to be taken away from working at the  
21 facility. And I've been best -- one of the best so  
22 at the time I had already sixteen and a half years  
23 of incarceration and allow me to come out here, I  
24 think I might have been. But by me going to a



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2 work -- work release, a job and a home and  
3 everything else. I think that was one of the  
4 better things that I had coming out of prison. My  
5 other problem is I have a codefendant that's still  
6 in prison right now for the same charge. Now not  
7 only me saying he didn't commit it. We were tried  
8 by the same judge, an actual sitting judge saying  
9 that he knows for a fact that we did not commit  
10 this crime, that they sent the wrong people to  
11 jail. So my codefendant was sent to twenty-five  
12 years to life. He was sentenced to twenty-five  
13 years to life. Since his incarceration he has  
14 acquired two college degrees when they were  
15 allowing colleges to be in prison. And after  
16 serving his twenty-five years, he went to a parole  
17 board. Well they gave him, at the Parole board,  
18 two years four times that's an additional eight  
19 years on his twenty-five years. So now he's going  
20 on his thirty-third year of incarceration for a  
21 crime that he had nothing to do with. He didn't  
22 know about any of these new crimes. But any time  
23 he goes to the parole board, they keep hitting him  
24 for the nature of his crime. There is nothing he

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2 can do to change the nature of his crime, it is  
3 what it is. This is -- nothing to change that.  
4 And for him to keeping getting hit at parole board  
5 for the nature of the crime, that's -- it's crazy.  
6 They've actually taken his sentence of twenty-five  
7 years to life and have changed it into a life  
8 sentence because it seems they'll never let him go.  
9 Each time he goes on the parole board they keep  
10 hitting him with two years. He has a college  
11 degree. He's not likely to be involved in those  
12 types of drug activities or stabbings, or anything  
13 like that. He's been -- what you would call a  
14 model inmate, but every time he goes in front of  
15 the parole board, they keep hitting. So again I'm  
16 going to say my problem is when my parole -- the  
17 nature of this crime has nothing to do. And  
18 secondly, they -- because I was one of the last one  
19 of the violent crimes that was allowed to go to  
20 work release facilities. And I still haven't  
21 figured out what they expect of me here on parole.  
22 I have not been back to jail or prison and I have  
23 not violated for anything. I have not committed no  
24 crimes. I've -- I've been doing everything I could

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2 to talk to -- and tried to do everything I could to  
3 help the youth. I'm willing to give myself to any  
4 type of thing that you all might have to possibly  
5 help me to try to help recidivism rates or to help  
6 some of these -- because there's literally nothing  
7 out here. I'm willing to do anything I possibly  
8 could to help in that manner. You know I've been  
9 asking you all to first of all consider my  
10 codefendant that he don't go back in front of the  
11 parole board in November of next year, he's going  
12 back to the parole board. I'm asking you all to  
13 take a look at his case and -- and especially in  
14 the light of the fact that now talk about him in  
15 the community that there's no way possible we could  
16 have committed this crime. We have a judge and  
17 there's no way possible we could have committed  
18 this crime. I can't do nothing. There's no people  
19 that are going to do nothing. I really can't do  
20 nothing and I've demonstrated for ten years now,  
21 I've been out, and I've demonstrated that I'm not  
22 the type that's trying to get into no trouble and I  
23 appreciate you all to do anything -- anything  
24 possible for me. I would appreciate it so very

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2 much and I thank you all for allowing me to speak.

3 Thank you all very much.

4 MS. O'DONNELL: Thank you very

5 much.

6 UNIDENTIFIED SPEAKER: Thank you

7 Mr. Walker.

8 MS. O'DONNELL: Okay, we're now

9 going to take a twenty-minute break and we will

10 resume at one o'clock. Thank you all for being

11 here.

12 ( A Lunch break was taken

13

14 MS. O'DONNELL: We're going to

15 reopen our meeting right now. And we have Daniel

16 Rodriguez, who's going to speak to us today from

17 Group Ministries?

18 MR. RODRIGUEZ: Yes.

19 MS. O'DONNELL: And welcome Mr.

20 Rodriguez.

21 MR. RODRIGUEZ: Yes I've been on

22 the Rockefeller law since 2001. I was convicted.

23 I came out on parole with it in 2004 and I'm still

24 on it as of right now. My lawyer advised me not to

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2 get it resentenced because that would be -- that  
3 would make things -- my length of time worse than  
4 what -- I should -- I just stay good for three  
5 years and then maybe they'll let me off on it. I  
6 have failed twice. You know, I've gotten caught  
7 drinking twice and violated twice for drinking due  
8 to the situation, due to the fact that I have a  
9 felony. And -- and one of the workers at Cold  
10 weren't very helpful, Mr. Higgins was not very  
11 helpful for exceeding -- for moving forward for my  
12 education. That's what got me back to the -- it  
13 was part of the problem. When I was wanting to  
14 push education so I've got to go to school, got to  
15 go to school because that was my only way out, to  
16 get out of this situation that I created for  
17 myself. And when the other side doesn't help me it  
18 created my own personal issue and I started  
19 drinking and got in trouble again. Now today I  
20 haven't drink in a year. December 12th, will be a  
21 full year I've been out from the violation and I  
22 haven't done no drinking, I'm doing very well.

23 MS. O'DONNELL: Congratulations.

24 MR. RODRIGUEZ: I'm also -- I'm

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2 also one of the ITT student and -- and I'm working  
3 on becoming a network Administrator right now, to  
4 keep your systems going, eventually. But the main  
5 issue is -- is that the Rockefeller Law is still  
6 following me around and I know I should have been  
7 released by now, no matter what, even with  
8 violations I could have been off of anything, you  
9 know, considering it wasn't -- it wasn't no new  
10 crime. And I see it as I violated the general -- a  
11 general public -- a rule that the general public  
12 does. Alcohol is legal. That's how I -- you know  
13 I see it. In my case, it's -- it's not legal due  
14 to the fact that I -- that I am a felon. Other  
15 than that, it would be okay, as long as I don't  
16 drink and drive or anything else. But I just --  
17 I -- I -- I don't see no leeway with it too much  
18 because you did it, that's it and, you know, which  
19 I'm seeing as that I did not -- I -- I followed the  
20 rules of the public. Now I only violated --  
21 nothing that had to do with the public at this  
22 time, which is the main concern is the safety of  
23 the public. You know, and mainly others are  
24 involved with illegal activity, that's illegal no

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2 matter what you are. Non felon or a felon, that's  
3 illegal. But I'm -- I'm -- I'm going to try to  
4 work with that man, and Mrs. Hughes has been real  
5 good. She's one of the better parole officers I've  
6 had. You know, that's the best one I had. The  
7 first other two Mr. Higgins and DeCarlo (phonetic  
8 spelling), they're there for a pension. And it's  
9 just -- it's just having the support of a decent --  
10 decent worker, the person I report to, helps out  
11 very much to -- to move forward because it isn't  
12 that -- that stress and pressure, I've got to watch  
13 out, I've got to watch out. Because as soon as I  
14 fail my -- my time goes back to zero. And that's  
15 what happened. It went all back to zero. So  
16 anything I've done just went pfsst, gone. And if I  
17 would have committed a different type of time,  
18 crack someone's head open, I would have not had  
19 this life at the end of it. I would have actually  
20 have had a number and I could say at this time I'm  
21 done. But I have to be very careful due to the --  
22 to the nonviolent crime.

23 So I've just been trying to  
24 figure out when you are going to work with this,

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2 fix it up, because I'm one of the old -- one of the  
3 older sentences under Rockefeller and it still  
4 effects me to this day. So it's not very -- not  
5 very helpful. And I know education is the only way  
6 out for us. There is no other way. there is no  
7 other way to -- to fix any of us. Damaged lives  
8 are very difficult to fix, you know. I know we put  
9 ourselves here, but I guess stuff that your parents  
10 do to you, neglect, you know. There's one guy I  
11 spoke to, he said he never -- never loved nothing  
12 his whole entire life. That's -- that's bad, you  
13 know, when you never loved nothing. So that also  
14 affects a problem with you exceeding forward and  
15 recidivism rate, that's the -- you're just part of  
16 the pile if you can't find no hope, no love, you're  
17 done. You ain't going to make it nowhere. So I --  
18 so -- so for me, what's worked for me today is my  
19 education and -- and I -- and I also have a ferret.  
20 I own a ferret at home. So he runs around. So at  
21 least I have something that I go home to, you know.  
22 Yeah, I gotta take care of the ferret, I've got to  
23 take care of the ferret. So that's kind -- you  
24 know that keeps me a little bit thinking positive



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2 too. Between education and also having a pet works  
3 perfect. But I'm hoping that you could definitely  
4 terminate my -- my Rockefeller time because I've  
5 been out since 2004 and now I'm reaching 2008 and  
6 still nothing is changed. But I go up for review  
7 next month.

8 MS. O'DONNELL: Can you tell us  
9 what happened when you violated your parole? Were  
10 you sent back to State Prison, or --?

11 MR. RODRIGUEZ: The first time,  
12 yes. I was -- no I was sent to the Anchor Monitor  
13 Program. So I spent two months in -- two months in  
14 County and Monitor program. But by that time I  
15 really lost hope because I couldn't make it to the  
16 College semester due to that the letter wasn't sent  
17 from my parole officer. That letter has to be  
18 sent. They have to know who's on campus.

19 MR. ALEXANDER: What about with  
20 your second violation?

21 MR. RODRIGUEZ: The second  
22 violation. The second time, once again  
23 hopelessness kicked in due to the fact that I  
24 couldn't go again to -- to school. Because ECC

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2 requires you to have this -- this felony paperwork  
3 in. So I called investigators at your internal  
4 affairs. They had both grievances filed on me.  
5 The -- actually they spoke to me in this Library,  
6 upstairs. That's where I met them at, in this very  
7 building, to speak to me.

8 MR. ALEXANDER: What was the  
9 outcome of the last violation. Did you go back to  
10 jail?

11 MR. RODRIGUEZ: Yes.

12 MR. ALEXANDER: Did you go to  
13 Willard or what?

14 MR. RODRIGUEZ: Yes, Willard,  
15 they sent me to Willard.

16 MR. ALEXANDER: Did you go to  
17 Willard for ninety days?

18 MR. RODRIGUEZ: Yes.

19 MR. ALEXANDER: What could parole  
20 have done for you to prevent you from violating?

21 MR. RODRIGUEZ: Let me go to  
22 college. That's it. That was it. Because it  
23 started to create the old feelings back that I live  
24 by myself, that I -- you know you start -- the

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2 hopelessness starts to kick back in. It started to  
3 slide right back in. And then the easiest way to  
4 suppress this to using alcohol. That's the easiest  
5 way that people deal with problems nowadays.  
6 They'd rather use an outside substance.

7 MR. ALEXANDER: And your concern  
8 is that you want us to look at the Rockefeller Drug  
9 Law so that people aren't kept on for the rest of  
10 their life for drug-related offenses.

11 MR. RODRIGUEZ: No, that's --  
12 they should not keep them. Drug related offenses  
13 should be just kept out for their time and make  
14 sure everyone does something that's -- that's  
15 positive, which would be work, with education, with  
16 volunteer work, which I volunteer for an  
17 organization too hoping that was going to work for  
18 college. Now that I go to ITT and they ain't  
19 worried about that, I still, since I made the  
20 promise to the organization to volunteer for them  
21 for Read to Succeed. And you know about Read to  
22 Succeed. I'm -- I'm involved with Read to Succeed.  
23 And I kept my promise to them so I stayed -- I  
24 stayed with them. But the volunteer -- education

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2 and volunteer work would be the two things that  
3 would prove that someone is actually doing  
4 something positive and forward, that they're not --  
5 that they're not going to slide back into the old  
6 way of things.

7 MS. LEVINE: What was your  
8 experience like at -- at Willard. Did you feel  
9 that you profited by your time at Willard?

10 MR. RODRIGUEZ: Nah. Nah, that  
11 was all personal. I -- I was -- I was -- since I  
12 had some knowledge already about how to -- how to  
13 work on fixing myself, all -- all it did was make  
14 sure I did it. But actually from the programs  
15 received, most of the information I already knew.  
16 The exercise is just, I guess, for something to  
17 relieve stress, pretty much. Yeah.

18 MS. LEVINE: Was there anything  
19 at Willard that could have improved your  
20 experience, do you think?

21 MR. RODRIGUEZ: Yeah, to control  
22 your employees, make them accountable for their  
23 actions. Some -- some of it let -- they let their  
24 position go to their head because they're not

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2 worried about being fired due to the fact that they  
3 will run to the Union steward right away. I'll --  
4 I'll go -- go to my union. So right away that's  
5 what they -- how they fall back on it. That the  
6 only thing. They -- some worked okay, then the  
7 other ones didn't. You know you always -- you  
8 always were like oh, here comes this person. And  
9 then others like, oh, this one's all right so  
10 everyone felt more comfortable. But they knew when  
11 the -- when the bad ones were coming.

12 MR. ALEXANDER: Mr. Rodriguez,  
13 what could you have done yourself, first of all, to  
14 make it a better experience for you while you were  
15 on parole and secondly to make it a better  
16 experience while you were at Willard.

17 MR. RODRIGUEZ: While -- while I  
18 was on parole I could have made it a better  
19 experience by finding something to love outside  
20 myself, which would do with volunteer work, which I  
21 have attempted to do. Also hang out in Nursing  
22 Homes. I had a handful of nursing home experience,  
23 you know, because I believe them as -- they're just  
24 locked up, almost like people in prison, you know.

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2 Just -- just a different -- it looks different, but  
3 they've been lonely. So I try to cure my  
4 loneliness and -- and try and find something to  
5 love. And that's what really a lot of it helped  
6 out. It balanced out everything. And then hope  
7 with the education. That brought hope that I was  
8 going to do something to make myself proud.

9 MS. O'DONNELL: Thank you very  
10 much.

11 MR. RODRIGUEZ: Yes Ma'am.

12 MR. ALEXANDER: Thank you.

13 MS. O'DONNELL: Okay, is anyone  
14 else here scheduled to testify. Could you step  
15 forward. I'm sorry. I have a list and --

16 MR. WILLIAMS: Frank Williams.

17 UNIDENTIFIED SPEAKER: Frank  
18 Williams.

19 MS. O'DONNELL: Okay. I didn't  
20 hear your name.

21 MR. WILLIAMS: Frank Williams.

22 MS. O'DONNELL: Okay, thank you  
23 Mr. Williams.

24 MR. WILLIAMS: Yeah, Frank

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2 Williams. And I'm here on behalf of Prison  
3 Ministry. And I wanted to speak about inmates  
4 helping inmates. Like, I'm assistant pastor at  
5 down the Mall Albany Center and we do job referrals  
6 and housing for people and I have a lot of guys  
7 that know me because I did twenty-eight years of  
8 incarceration. So a lot of these guys hear -- hear  
9 about me and they write me up at the church and I  
10 try to help them and like that. But as you know,  
11 my hands are tied with work and helping inmates,  
12 you know. And there's a lot -- lot of inmates that  
13 need jobs, you understand. And we do good job  
14 referrals. A couple of them I have sent jobs to.  
15 There's a lot, you understand. I cannot help  
16 because it's inmate to inmate contact. And so what  
17 I want to speak about is if there could something  
18 change to where as we could help each other and  
19 work with each other under special conditions, you  
20 know. And -- and where we can communicate with  
21 some guys that are already incarcerated, who's  
22 going through the parole board, who's trying to  
23 find a house and job where maybe they could write  
24 to myself or someone in my capacity, more or less

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2 and help them to have -- help them with houses and  
3 jobs for right now, do you understand? Like we  
4 would like -- I got educated myself. I've got a  
5 Master's degree through prison, you know, and so  
6 I'd like to utilize it for helping other people in  
7 prison. Because there's a lot of help that I can  
8 do, I feel that I can do, but I don't want to get  
9 in trouble doing it. So I think maybe if this  
10 could be looked into, something can be worked out  
11 where I can utilize the education that I got in  
12 prison to help prisoners when they come up and show  
13 them that -- there is things I help them to do and  
14 people do care. And then we can more work  
15 together. And this is what I'd like to -- just  
16 remember, what I would like to do.

17 MS. O'DONNELL: I appreciate you  
18 bringing this issue up. And I don't know if there  
19 are any procedures in place to certify individuals  
20 to be mentors or whatever who have been through the  
21 prison system. But it's certainly an important  
22 issue for us to look into.

23 MR. ALEXANDER: And -- and that's  
24 one of the things we'll look at, Mr. Williams. I



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2 know we had talked before.

3 MR. WILLIAMS: Yes.

4 MR. ALEXANDER: Because of, you

5 know some our re-entry strategies is looking at

6 everything and seeing how we might bring everybody

7 to the table and utilize their expertise in hoping

8 to turn around certain people's behavior and then

9 making that re-integration process a lot more

10 meaningful, a lot more successful. So those are

11 some things we're looking at. We haven't gotten

12 there yet in terms of making some firm decision,

13 okay. And then some of it may be tied up with

14 legislation. So it's -- it's -- it's a long

15 process. But it's certainly something that we have

16 considered and we are continuing to consider.

17 MR. WILLIAMS: Okay. Well I

18 appreciate it very much if you will take my name

19 and keep it in -- and keep it in file --

20 MR. ALEXANDER: I've got your

21 name right here Mr. Williams.

22 MR. WILLIAMS: Okay, so when do

23 you get a chance, I'd like to work on that program

24 helping those people.

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2 MR. ALEXANDER: Yes sir.

3 MR. WILLIAMS: Okay, thank you  
4 very much.

5 MR. ALEXANDER: Thank you.

6 MS. O'DONNELL: Thank you.

7 UNIDENTIFIED SPEAKER: Thank you  
8 Mr. Williams, thank you sir.

9 MR. WILLIAMS: Yes sir.

10 UNIDENTIFIED SPEAKER: Thank you  
11 sir, thank you. Thank you.

12

13 MS. O'DONNELL: Brian Irwin. Mr.  
14 Irwin is an attorney who would like to speak to us  
15 about the Rockefeller Drug Laws.

16 MR. IRWIN: If -- if I could, and  
17 again just for the record, my name is Brian Irwin,  
18 and I consider myself a --

19 MS. O'DONNELL: Could you try to  
20 use that mic. Thanks.

21 MR. IRWIN: I consider myself a  
22 low-level criminal defense attorney. I won't take  
23 anything where there's a potential for severe  
24 sentences because I feel like I'm part of a process

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2 that's facilitating corruption. It's based on

3 racism and it's based on classism.

4 I wanted to start today with a

5 question. From what I understand this is about --

6 this is the fifth commission appointed to study

7 sentencing reforms since the Draconian introduction

8 of the Rockefeller Drug Laws that have destroyed

9 lives in this state for over a generation. And I'm

10 just curious when -- when a committee like this

11 meets and -- and I am -- I'm familiar with some of

12 your credentials and I'm in awe and I -- and I

13 applaud you. I'm just wondering, realistically, is

14 the fix already in. Does everybody know what's

15 going to happen. And what I further understand,

16 these hearing were -- were barely publicized.

17 You're -- you're getting the tip of the iceberg

18 here as far as the parties and persons concerned.

19 I know that a lot of people I know personally, that

20 requested the right to be heard here today, were

21 denied that right, or they did not even hear from

22 the Committee with regard to the right to speak

23 today. I was fortunate enough, I did receive an

24 e-mail. I thank those responsible for that. And I

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2 am here today and do have this opportunity. But my  
3 first -- I would like to start again with a  
4 question.

5 Is this Committee really prepared  
6 to make significant changes in trying to go back to  
7 re-evaluate the Draconian Drug Laws. You've all  
8 heard the horror stories. There's people in there  
9 in jail for life and in -- in a state, in a country  
10 where what do we see happen time after time. The  
11 rich get prescriptions while the poor get busted.  
12 And by way of example, and I don't mean this, I  
13 know he's not out of this state, Rush Limbaugh, in  
14 1995, said in response to his why I'm seeing more  
15 people go to jail for drugs, one of his callers,  
16 apparently not properly screened, said well what --  
17 what would you say to the fact that there's racial  
18 disparity but many times more black people and  
19 Latino go to jail for the exact same thing that  
20 white offenders get off on. And his response in  
21 1995, was, I want to see more white people go to  
22 jail. That is, until it's his turn and he was  
23 caught with white man's heroin, which most of you  
24 probably know, is OxyContin. Because that's what

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2 the rich do. They go -- while I'm trying to regain  
3 my composure, is there an answer to my question?

4 MS. O'DONNELL: Well, I will  
5 answer your question about people not being  
6 entitled to speak. We -- we didn't turn anyone  
7 away who wanted to speak here today. We still have  
8 openings for people to speak. And we sent out  
9 hundreds and hundreds of invitations, posted  
10 information on our web site, sent it around to  
11 re-entry programs and alternatives to incarceration  
12 and advocates we did the back seat pull in to try  
13 to get the word out about the hearing.

14 And I'm glad that you're able to  
15 join us and share your views with us. We haven't  
16 decided on -- on issues. We -- issued track  
17 reforms, we made that very clear in our report.  
18 We're out here to listen to people. And we've  
19 heard passionate testimony from a lot of different  
20 people about reform and opposed to reform. So we  
21 have a difficult job. But we haven't --

22 MR. IRWIN: I -- I agree.

23 MS. O'DONNELL: -- pre-decided  
24 where we're going with respect to these issues.

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2 MR. IRWIN: Can I just take,  
3 probably less than five minutes. I just want to  
4 make a couple of points. In -- in my opinion, the  
5 state of affairs in this state and in this country  
6 is quickly becoming a joke. We don't make anything  
7 anymore so in an effort to make jobs, we make up  
8 useless laws so that we can replace the company  
9 towns with prison towns. And by way of example, I  
10 know at least forty-five thousand have been  
11 transferred from the New York City area up to here,  
12 which is a whole other problem because then the  
13 local gerrymandering is based on that population,  
14 which can't even vote. So they're not being  
15 represented by their representatives, their  
16 representatives don't give a rat's ass about them  
17 because they can't vote. And they they're using  
18 their numbers to garnish power, which in and of  
19 itself I believe is sickening. The useless laws  
20 I'm talking about are, in this particular case,  
21 Drug Laws. The one cause is going and has been  
22 basically going about as well as this alleged war  
23 on terror. Again, it's a joke. A joke used to  
24 create base jobs, create, who will willingly waiver

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2 their constitutional rights. In the case of the  
3 war on -- people are passionate in due process.  
4 There's about fourteen hundred people, I believe,  
5 that are in New York locked up on drug charges, the  
6 majority of which are nonviolent and low level drug  
7 crimes. T.

8 His is in a country where the  
9 poor get busted, as I said and the rich get  
10 prescriptions. So it's no surprise that  
11 seventy-two percent of the drug users in this state  
12 are white while ninety-two percent of the drug  
13 crime prisoners are either black or Latino. Why is  
14 that, in two words, and a name, Jim Crow. And then  
15 there's the Buffalo's number one. The poors in the  
16 city, literacy rates in the city, are worse than  
17 some of the countries we arrogantly refer to as the  
18 third world. But do you know that one out of three  
19 in the City of Buffalo is functionally illiterate  
20 That's about sixty-five thousand people. And I ask  
21 you, what are they supposed to do.

22 The only cottage industry around  
23 here is selling drugs. I -- I -- there's part of  
24 me, the cynical part is against legalizing it

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2 because somehow the pharmaceutical companies would  
3 be making all the money. But realistically, I  
4 think we need to do something about this. And is  
5 it a coincidence that not only is Buffalo one of  
6 the poor cities, it's also one of the most  
7 segregated. I submit to you it is not literally  
8 racist and classist state. There's a racist and a  
9 classist country and I think one of the first  
10 things we can do is start to look at this and maybe  
11 admit it, yes there is classism, there is racism.  
12 And let's stop labeling the poor.

13 What did we do. We've got  
14 somebody functionally illiterate on the inside of  
15 the state. There are -- in Buffalo in particular,  
16 they sell your house if you can't pay your water  
17 bill. There's one of the reasons to sell the  
18 house. You're not going to get -- you're not going  
19 to get a job in the city because you can't read and  
20 write, not that you can get a job if you can read  
21 and write. But then to add insult to injury, you  
22 end up with even a misdemeanor confession, forget  
23 it, you're state property. And hence the system  
24 begins, the institution. And I think it's



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2 self-serving. I was in court the other day with my  
3 friend and I was joking -- not my -- my friend, my  
4 client, actually I consider all my clients friends.  
5 Maybe that was a good Freudian slip. But I  
6 jokingly said to him, crime does pay, it puts bread  
7 on my table. And then he goes, yeah as well as  
8 everybody else's in that courtroom. And I never  
9 really thought about that. Everyone in that  
10 courtroom is making money off drugs. The only one  
11 being punished is my client. And I so I ask you to  
12 seriously consider this. Consider poverty,  
13 consider racism, and do us all a favor. And I  
14 thank you very, very much, because I wouldn't want  
15 to have your job.

16 MS. O'DONNELL: Thank you very  
17 much for being here today. Anybody else scheduled  
18 here to speak?

19 MR. ANDERSON: Sir, your coat.  
20 Sir. Sir. Your coat.

21 MR. IRWIN: Thank you.

22  
23 MS. O'DONNELL: I think we do  
24 have someone else. Yes.

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2 MR. BRUCKMAN: Good afternoon.

3 My name is James Bruckman. I represent  
4 C.E.P.H.U.S. As a youth, at seventeen, I just  
5 turned seventeen and the drug of my choice at that  
6 time I was practicing drug of the generation this  
7 time is PCP. I got involved in that. I did a  
8 stick-up and in that stick-up a person got shot and  
9 died a few days later. And because of that, it was  
10 my first offense, first arrest made me a kid messed  
11 up on drugs, made a mistake, a person died. I was  
12 convicted, given twenty to life. The first few  
13 years of incarceration I was just trying to prove  
14 I'm all right. Prove, you know, prove I'm a man.  
15 I was a -- I was a boy. I was a youth. Here I am  
16 an adult. I was sent to prison, had to stay in  
17 prison to survive. And that's the environment I  
18 put myself in by doing my crime.

19 In 1980 my mom died while I was  
20 incarcerated, in Attica. And to this day it still  
21 bothers me because they didn't let me go to the  
22 funeral. They said I was an escapist or risk or  
23 something like that. After they suited me up, had  
24 me go to -- to the hospital to see her. Then she

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2 died on December 22nd and they said you can't go to  
3 the funeral. And then on Christmas Day they told  
4 me no, you can't. How do you tell a kid, all  
5 right? You can't kiss your mother goodbye when  
6 she's on her deathbed. I don't understand. So it  
7 bothers me to think of it.

8 To get to the point, there I  
9 decided to change my ways. I wasn't running around  
10 trying to be a tough guy. I stopped using all  
11 kinds of drugs. Pot was my other drug. I never  
12 did marijuana; never did coke. I never did Vicodin  
13 pills, I never drank. I never drank jailhouse  
14 wine, those twenty-eight years, because I gave up  
15 drinking at fifteen. Because when I drank I was a  
16 complete imbecile. I knew alcohol and me didn't  
17 work.

18 So I took advantage of the  
19 opportunity that they offered me with the college  
20 and there I started. I went to the consortium.

21 It took me eight years but I  
22 finally graduated from Syracuse University in  
23 Auburn. And as I say, I changed my ways. I  
24 decided I wanted to work with youth. What can I do

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2 while I'm here because I'm not through supremacy.  
3 Going to appeals I lost all my appeals. I went  
4 through clemency, lost my clemency. And I decided  
5 I want to work with kids. I want to make a  
6 difference. So I work with, DAT with the sister  
7 program while I was incarcerated.

8 And the point that I want to make  
9 now, since I've been released, I went before the  
10 parole board and first offense, first arrest,  
11 college education, did everything working with the  
12 kids for years. I go to my parole board; they hit  
13 me with two years. Okay, I accepted that. I was  
14 under Governor Cuomo. And then George Pataki came  
15 in and it was '93. And they said, well you know  
16 because he's in there you've buy me time. You're  
17 not going home so he is in there you got to buy me  
18 time you are not going home. I'm a first offense  
19 person. I was a kid who made a mistake. I came  
20 from a big, loving family, I know, I just made a  
21 mistake.

22 So they hit me with that two  
23 years. And the next time I wrote to the judge in  
24 my case. He wrote me a letter saying this

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2 gentleman has rehabilitated himself, paid his debt  
3 to society, and I recommend he be released to  
4 parole -- on parole. I -- and it took me three  
5 tries to get that letter in to the Commissioner to  
6 read it. Finally I found one who actually read the  
7 letter. But he said I have a letter from a judge  
8 and he read the letter. And I said excuse me sir,  
9 it ain't a judge, it's the sentencing judge in my  
10 case. If anybody knows particulars of my case,  
11 it's the sentencing judge. They said okay Mr.  
12 Bruckman, we'll take that into, you know,  
13 consideration. We'll give him another two years.  
14 Come back in two years, again, they hit me with  
15 another two years. Two years after that I came  
16 back again and they hit me with another two years.  
17 Four times, deuce, deuce, deuce. I mean you know,  
18 what am I going to do. This last time, the fifth  
19 board, I finally made it. You know, God or  
20 whatever, I'm an agnostic, as I lost my faith after  
21 that happened with my mom so I gave up my faith,  
22 even though I was a born catholic. First  
23 communication, confirmation, all that. Went to  
24 church every week. I lost my faith. I went astray

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2 there. But my thing is working with the kids,  
3 working with the youth. And I want to say, because  
4 this thing about the college, interesting.  
5 Education is the key. Education is the key. It's  
6 the true fact. Anybody gets educated in prison,  
7 the recidivism rate is minute compared to I just  
8 hung out in the yard and played basketball, lifted  
9 weights, or whatever. So I say bring back, please  
10 reinstate education into the prison system because  
11 that is your key. And that's -- and the whole  
12 thing is to rehabilitate people and make them  
13 productive members of society. I think that's the  
14 understanding of the parole, you know, that you  
15 want. I mean that's what we're trying to  
16 accomplish here. I mean that's how you will  
17 accomplish it, with the education, if you educate  
18 people.

19 And second; another point I want  
20 to make that Mr. Walker talked about is being on  
21 parole. March 5th, I'll be out on parole for five  
22 years. And I've been -- when I was in 2599 called  
23 the Executive law. After three years, if didn't --  
24 if no violation, you could be considered for

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2 release. And then you say, well give us two more.  
3 Because Governor Pataki changed that law. What you  
4 got to fight, you got live, you got it, you're on  
5 parole. I -- like. Mr. Waterson, I asked my  
6 parole officer, when can I get off parole. He said  
7 you're never getting off parole. And in spite I  
8 can live in fear. I can live in fear. Because  
9 like I said, I was stabbed in prison, had stabbed  
10 in prison. Maybe I did somebody or somebody says  
11 you to runs on me. I had to defend myself and if I  
12 hurt him I've got to go back now for a violation  
13 for five years for defending myself. I mean  
14 anything could happen. Anything could happen.  
15 You -- you live in that fear. He said you knew,  
16 what can you do. You've got a curfew. I never  
17 violated my curfew and I won't violate it.  
18 Anything that -- the stipulation that parole has, I  
19 abide by it. Because I am a law abiding citizen.  
20 I'm a laborer for local 210. I got injured so I  
21 got out on comp. Now I'm going to try to get into  
22 the reading enrichment program that Mr. Alexander  
23 has implemented at Orleans. That is simply  
24 achieved. If -- if I had come out to

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2 C.E.P.H.U.S. -- I had my family -- after  
3 twenty-eight year my family basically were  
4 strangers to me. And I didn't want to impose  
5 myself upon my family. I mean they got their  
6 lives. They're all married and have kids. I been  
7 away twenty-eight years who knows, they don't know  
8 me.

9 And I know I needed that -- that  
10 setting there, the restrictions there that  
11 C.E.P.H.U.S. offered. And their motto is we don't  
12 get you out of jail, we keep you out of jail. They  
13 teach you how to live out of jail. And we  
14 offered -- I know I talked to Mr. Alexander before  
15 that when he has that program in Orleans I'll  
16 definitely go in there and do seminars whether it's  
17 with kids or working with other parolees. Because  
18 if I can make out here institutionalized. That's a  
19 mindset. It's up to the individual. They're  
20 making their own choices and decisions and you come  
21 out here. I come out of here and make it, I was a  
22 kid who made a mistake. I was a kid who made a  
23 mistake. And if I can make it out here, anybody  
24 can make it out here. It's the choice you make.



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2 The choice and decision that we have to do to stay  
3 out here. We know what the law is. Everybody  
4 knows what the law is and that's what we have to  
5 do. And I'm sure its -- education is the key and  
6 we're here to improve on that and that definitely  
7 is a good program. I don't know about Medicaid. I  
8 don't know about, you know, getting houses or  
9 nothing like that. If it wasn't for those people  
10 there that cared about me and showed me love, I  
11 probably, you know move with my family, it wouldn't  
12 work out there and what did I do. I go and stick  
13 up. I know I take off a drug dealer. But maybe  
14 whatever crime I need, whatever I think -- crime is  
15 easy, that's the easy way. Staying out there  
16 working and being in the streets, doing the right  
17 thing, that's the hard thing. But you can do it.  
18 Anybody can do it if they want to; it's a mindset.  
19 And that's what we have to tell people right there  
20 and and that's what we need to do, if you come out  
21 you've got a home -- you've got, your help your  
22 health. There's a lot of mentally ill people in  
23 New York City. And then -- and you talk about  
24 disadvantaged when they come out, it's

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2 unbelievable. They've got those, what do they call  
3 it, Salesman they call them. Because when I was in  
4 there you had a -- a -- Marcy was for -- for  
5 criminally insane, or Matterhorn. They ended that  
6 program they just put them all in the prison  
7 population. You talk about chaos -- chaos, it was  
8 unbelievable the chaos with, you know, with these  
9 people. Because if they stabbed me, what they do  
10 is up their medication Thorazine 500 mg, give them  
11 a thousand. Meanwhile, I stab them, you want to  
12 take me outside and give me and throw away the key.

13 The situation needs to be with  
14 setting people up for housing, jobs, counseling,  
15 all that needs to be put in there. The re-entry  
16 program, that is the key, I believe, that made it  
17 more successful in keeping the recidivism rate  
18 down. Thank you for your time. I appreciate it.

19 MS. O'DONNELL: Well thank you  
20 for --

21 MR. ALEXANDER: Thank you sir.

22 MR. BRUCKMAN: Thank you.

23 MS. O'DONNELL: -- coming and  
24 speaking to us. And we have your contact

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2 information, I hope, if we are able to reach out to  
3 you. Thank you. We have Craig Schlanger from the  
4 New York State Association of Criminal Defense  
5 Lawyers.

6 MR. SCHLANGER: Yes.

7 MS. O'DONNELL: Thank you very  
8 much for -- for joining us today.

9  
10 MR. SCHLANGER: Thank you for  
11 having me. Let me just introduce myself briefly.  
12 My name is Craig Schlanger. I'm -- I'm an attorney  
13 in private practice in Syracuse. I've been a  
14 criminal defense lawyer since 1978 and I'm  
15 representing clients in State and Federal court,  
16 mostly in Central New York and sometimes outside of  
17 that area. I'm currently on the board of the New  
18 York State Association of Criminal Defense Lawyers.  
19 I'm here on behalf of that organization, which  
20 represents upwards of nine hundred members,  
21 Criminal Defense Lawyers throughout New York State.

22 I can't speak for every one of  
23 those lawyers, I don't think anybody can, but I  
24 think there's something that -- that we can share

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2 just from the point of view of the Criminal Defense  
3 Bar and our experience in dealing with our cases.  
4 And I did submit a written testimony here. I'm  
5 deviating a little bit from this script though. I  
6 think that makes it more interesting.

7 It's -- many people seem to agree  
8 that the so-called Rockefeller Drug Laws were a  
9 disaster. And -- and it's not just because of the  
10 Draconian results of the laws themselves but  
11 they -- they played a significant role in setting  
12 a -- a national trend, a very dangerous national  
13 trend toward divesting judges to people who really  
14 know the case and know the defendant from -- from  
15 their traditional discretion in setting sentences,  
16 and really transferring that discretion to  
17 prosecutors. Because when it comes down to it,  
18 it's all about how -- how a case was charged and  
19 plea bargaining. And -- and what we've done, I  
20 think, with our Sentencing Law, well it's not just  
21 in New York State, but in the federal system and  
22 I'm sure other state systems as well, it's really  
23 advocated that that responsibility to prosecutors,  
24 which is really not the way the system is supposed

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2 to work. If we even think about the Rockefeller  
3 Drug Laws like Prohibition and it was an experiment  
4 that failed, it -- it's a very small consolation to  
5 all of those thousands of people, not only people  
6 who have served many, many years in prison  
7 unnecessarily and their families, and their lives  
8 were really ruined over the past three decades.  
9 There's been some movement. There's been some  
10 amendments. They're all a step in the right  
11 direction. But I think, obviously we have a long  
12 way to go.

13 One of the things I'd like to  
14 say, and this is very simple, that since --  
15 since -- since I've been practicing, one thing I've  
16 noticed is that New York's sentencing laws have  
17 become something like the Tax Code. And it became  
18 one of the reasons I became a criminal lawyer is  
19 because I couldn't understand the Tax Code. And  
20 it's gotten to the point where I think judges don't  
21 understand the sentencing law anymore. Lawyers  
22 don't, prosecutors don't, Probation officers don't.  
23 Just because we have this hodgepodge of different  
24 kinds of sentences and specialized sentences. And

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2 one thing I think that that the Commission, or a  
3 permanent commission could do is really take a look  
4 at the entire picture and overhaul the whole system  
5 and make it easy for everybody to understand. Of  
6 course clarity and simplicity are not enough. You  
7 could just simply say everybody gets ten years or  
8 everybody gets twenty years and that's not a good  
9 thing either. But I think there are ways to do it.

10 I'm aware of the recommendation  
11 in the preliminary reports of creating a permanent  
12 sentencing commission to advise legislature --  
13 legislators and we believe that's a good idea.  
14 It -- it seems that what happens is crime gets on  
15 the front page. Legislators sometimes trip over  
16 each other to get a bill before the Senate or the  
17 Assembly to increase the sentence or create a new  
18 law. And -- and that seems to be something that  
19 the public supports. Lock them up and throw away  
20 the key. And it looks good and it feels good, but  
21 it really, in -- in the long run does the public no  
22 good.

23 If you look at the federal model  
24 where the sentencing commission has been in place

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2 as long as the guidelines have been in place. I'm  
3 not a big, big fan of the sentencing guidelines.  
4 You know there are a lot of opinions about that,  
5 but one thing that's come out of it is an attempt,  
6 as I just alluded to to create some kind of a  
7 master plan for sentencing so that every time there  
8 is a change in a sentencing law, penal law creating  
9 new statutes, new penalties, amending penalties,  
10 that it's done on the basis of study and due  
11 consideration and not just something that results  
12 from a politician taking -- taking the daily news  
13 and the latest murder or rape that's on the front  
14 page and creating a new law out of it.

15 One of the big controversies  
16 seems to be over determinate or indeterminate  
17 sentencing. Ideally, and that's very revealing  
18 with the traditional indeterminate sentencing,  
19 which really was the sentencing in New York State  
20 for many, many years. People who were serving time  
21 were given incentives to rehabilitate themselves on  
22 parole. And -- and I think the previous speaker's  
23 comments really addressed that in a very big way.  
24 And I would say that there are a lot of things that

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2 he said that I couldn't possibly say the way that

3 he said it.

4 But parole, in a way -- in many

5 ways has become kind of a cruel joke for those

6 people who think that I'll just -- I'll -- I'll do

7 the programs, I'll do everything I'm supposed to do

8 and then there is this administrative body that has

9 unfettered discretion to just simply deny release

10 and -- and it's counterproductive. It -- it looks

11 like determinate sentencing is -- is the way of the

12 future. It looks like it's here to stay. And

13 that's not necessarily a bad thing but there have

14 to be incentives. There has to be some way out.

15 Otherwise people would just simply do their time.

16 They have no incentive whatsoever to get an

17 education, get training, get rehabilitative

18 services. They say I'm going to do my five years

19 anyway, I'm going to do my seven years anyway,

20 what's the point. We have some systems in place

21 for merit release, and early release, and work

22 release, and things of that nature. And those

23 really should be expanded. And there's a danger

24 that under the current political climate that those



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2 are shrinking because more and more groups of

3 offenders are being denied access to those

4 programs. And it really should be going the other

5 way around. As a practical matter, most people,

6 unless they're serving life sentences, are going to

7 be out -- back out on the street some day. And

8 like it or not, we want them to be able to stay out

9 on the street. And I think you can all agree to

10 that.

11 So there should be some -- some

12 very major incentives for earning eligibility for

13 early release, such as merit release, an incentive

14 to complete educational requirements and program

15 requirements. Perhaps an incentive to reduce the

16 security designation so that somebody who's serving

17 a long sentence could move down from let's say

18 maximum security to medium security, to minimum

19 security on their way out and perhaps even halfway

20 houses.

21 And on top of everything else

22 we're talking about incarceration. And this all

23 begs the question of whether it's necessary or

24 desirable to lock more people up than we have been

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2 locking up. It's -- it's counterproductive. And I  
3 think many people out there agree that nonviolent  
4 offenders can function to do better in the  
5 community with community based programs that  
6 provide education. As the previous speaker said,  
7 education is everything. And if it can help you  
8 get a job, get training and be productive and those  
9 people could be with their families, they could be  
10 working, they could be supporting families, they  
11 could be keeping people off welfare, and they could  
12 be learning how to be law-abiding citizens rather  
13 than just being warehoused for some definite period  
14 of time.

15 And the next issue, whether --  
16 whether people have been incarcerated or on  
17 probation, re-entry into the community is  
18 paramount. As the New York times recently  
19 commented that newly released inmates are often  
20 driven right back to prison by difficulty in  
21 obtaining jobs, education, and housing as well as  
22 by the social stigma that comes from having been in  
23 prison. In addition, many of these people suffered  
24 from mental illnesses, but have no access to

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2 treatment. Re-entry is -- is -- is everything. As  
3 I said, people are going to be getting back out and  
4 going to go back into the community. They have to  
5 be able to -- to actually not only rehabilitate  
6 themselves but rejoin the community.

7 And one of the things that we  
8 believe that the commission should seriously  
9 consider in order to overhauling sentencing laws in  
10 particular is to look into expungement; many states  
11 have that. A lot of people call me and they're  
12 surprised to hear that -- that like a -- you get  
13 a -- a traffic offense that goes on your driving  
14 record and after a certain number of years comes  
15 off. You get a new start in life, second chance.  
16 And people are very surprised to hear that in this  
17 state that never happens. When I tell clients, I  
18 don't care what it is, that misdemeanor, that  
19 felony, that's going to be on your record for the  
20 rest of your life. Sometimes they think, oh after  
21 ten years? No. We could understand the situation  
22 with violent offenders, sex offenders, there may be  
23 some distinction, and that's the distinction that  
24 most states have made. But we feel very strongly

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2 that expungement is a major -- major part of any --  
3 of any goal to serve the overall purposes of  
4 sentencing.

5 MS. O'DONNELL: You've traveled  
6 two and a half hours to get here, so you --

7 MR. SCHLANGER: Okay.

8 MS. O'DONNELL: -- can take your  
9 time to finish up.

10 MR. SCHLANGER: All right. Thank  
11 you very much. I -- I've been -- I -- as I said,  
12 shortening the testimony, because I've submitted it  
13 in writing. And I appreciate the time that -- that  
14 you've given us. And on behalf of myself and  
15 behalf of the New York State Association of  
16 Criminal Defense Lawyers I -- we'd just like to say  
17 in closing that this is really only the beginning  
18 of opening the lines of communication between the  
19 Commission and the Criminal Defense Bar. And we  
20 understand that the Commission is hearing from all  
21 people from all walks of life, from prosecutors,  
22 law enforcement, prisoners, people who have served  
23 time, people in the Victim Advocacy Community and  
24 we think that the Criminal Defense Bar is -- is

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2 also an essential component of the voices that

3 should be heard.

4 Our organization, as I said,

5 represents over nine hundred criminal defense

6 lawyers throughout New York State. There are other

7 criminal bar associations as well; New York State

8 Defender's Association and various local

9 organizations, particularly in New York City. And

10 we really hope and -- and ask that the Commission

11 maintain these lines of communication and request

12 the input of the organized criminal defense bar as

13 it continues to fulfill its mission.

14 Thank you very much.

15 MS. O'DONNELL: Well thank you

16 very much --

17 MR. ANDERSON: Thank you sir,

18 thank you.

19 MS. O'DONNELL: -- for traveling

20 here. We -- we have heard from some members with

21 the Criminal Defense Bar and some members served on

22 our various subcommittees previously. But please

23 make sure John Modio (phonetic spelling) gives you

24 contact information. We're working very hard on

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2 recommendations regarding ranges for formerly  
3 indeterminate sentences for over two hundred  
4 crimes. And we'd love to get your input as well  
5 as -- as our examination of the drug laws. So we  
6 would like to continue that dialogue goes forward.  
7 And we appreciate your coming.

8 MS. LEVINE: We appreciate your  
9 coming. Thank you.

10 MR. SCHLANGER: Thank you very  
11 much.

12 MS. LEVINE: Uh-huh.

13 MS. O'DONNELL: Rafkin Salim.

14 MR. SALIM: That would be me.

15 MS. O'DONNELL: We -- we are a  
16 bit ahead of schedule and came today and asked to  
17 be added to our schedule, so welcome.

18 MR. SALIM: Thank you. My name  
19 is Rafik Salim.

20 MS. O'DONNELL: Sorry.

21 MR. SALIM: That's okay. I've  
22 been called worse.

23 My name is Rafik Salim and I am an  
24 ex-felon. I was released from prison in April of

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2 this year. I was incarcerated in May of 1975 and  
3 that's thirty-two years that I sent in prison. My  
4 crime of conviction was felony murder. My sentence  
5 was twenty years to life. There's a couple of  
6 things that I would like to say to the Commission.  
7 A good friend of mine said that for some of your  
8 diatribes, this is probably a most appropriate  
9 forum. At least the people who hear you will be in  
10 a position to maybe address some of the issues that  
11 concern you. The first thing I want to say is that  
12 when we incarcerate people, what do we really --  
13 when you incarcerate a defendant, what do we want.  
14 What do we want them to do? And at the end of  
15 everything, when they leave, what -- what -- what  
16 kind of a result do we want? I think that we want  
17 someone to reform -- not reform, I'll take -- take  
18 it apart, re form. We're -- we're -- we -- we do  
19 what we do because -- people break laws because  
20 their values are distorted, they want things that  
21 don't belong to them, they commit crimes. They  
22 break our rules. And it's almost as if it's a knee  
23 jerk reaction -- reaction to immediately thereafter  
24 put them in cages. And -- and however a euphemism

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2 for having lived in a cage for a long time. It's a  
3 cage. That's our response to crime, social  
4 deviates, is to place people in cages. We will  
5 cringe in horror if we do that to our pet, but we  
6 do that to each other. And we -- we feel good  
7 about it. We -- I mean sometimes we -- we delight  
8 in it. I mean we just hope, we throw the book at  
9 them. Throw them in jail and throw away the key.  
10 Throw them in jail and throw away the cell. And --  
11 and that's our attitude. And I say that if --  
12 if -- the -- if we really -- if what we want  
13 through incarceration is to make the person suffer,  
14 be humiliated, degraded physical, sexual, and  
15 emotional violence. I won't say abuse, because  
16 some would construe whatever happens to them after  
17 he gets inside is deserved so not abuse. Or just  
18 to feel our own vengeance or anger because a person  
19 violates in a really serious way. And taking life  
20 is the ultimate. There is nothing worse that a  
21 person can do even though we've chosen to separate  
22 sex offenders and treat them as if they're worse.  
23 I do have something to good say about sex offenders  
24 from my own personal experience and that is that



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2 their victim survives. We live I have nothing else  
3 good to say about that particular category. But I  
4 say that if -- if we really want to -- to --  
5 people to reform and to change their values, their  
6 beliefs, their attitudes and ultimately their  
7 actions, then probably the worse thing that we  
8 could ever do to them is put them in a cage. Now I  
9 know that kind of sounds crazy, and even my ability  
10 to say that, it might only prove that a little  
11 naivete and maybe optimism can survive thirty-two  
12 years of prison. Perhaps that's all that proves,  
13 my saying that. But institutions, sometimes they  
14 wear out. And they outlive their usefulness for us  
15 as human beings. I mean there was a time when all  
16 we did -- all we really did want as a response was  
17 punishment. You put me in the cages, let's poke  
18 him with sticks, shackle him to the block, put a  
19 letter on their chest.

20 So there was a time when that's  
21 all we really wanted. So I think we really have to  
22 ask the question is, are the things that we want,  
23 are they being served by our -- by our system, by  
24 our knee jerk reaction of incarceration. And I say

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2 no. And I -- and I say that and I-- I'll give you  
3 an analogy. There came a time in all history that  
4 I identify with as an African American where an  
5 institution that existed so long, people -- they  
6 stood up and they said this institution in and of  
7 itself is inhumane. This is not something that  
8 people should do to people. And we said that -- at  
9 least some people said it. And the first people to  
10 say it, as is inevitable, they get steam roll by  
11 just -- just the inertia of an institution that's  
12 lived since the beginning of human history, and I  
13 speak of slavery. They got rolled over. Well  
14 ultimately, whereas society came to the conclusion  
15 that what we were doing, and that had been  
16 sanctioned by scripture, and we find it in the  
17 bible, in the Koran, everywhere. The institution  
18 itself, it didn't serve our purposes any more.

19 And I really believe that with  
20 the professionals now, putting this attention on  
21 re-entry because of the damage that incarceration  
22 must cause -- it must, it's inevitable that when we  
23 send someone to prison, they're going to suffer  
24 emotional depravation, they're going to suffer

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2 violence, they're going to suffer sexual abuse,  
3 they're going to be acculturated into an  
4 institution, into a way of thinking that does not  
5 fit out here. I say that. I -- after having been  
6 that long in prison, I'm still in cultural shock.

7 It simply is -- is not the way to  
8 go. And now we've given our institution a new  
9 charge, an impossible charge. We've asked an  
10 institution that by it's very nature damages human  
11 beings to prepare them for re-entry. How -- how  
12 does it do that. How does that work? The real  
13 story -- and -- and I envy -- I envy you  
14 Commissioner and I'm really, really happy and I'm  
15 glad that you've taken the time to listen to me, I  
16 really appreciate it. But I envy you and I'm happy  
17 that you really do not know what it is you're  
18 talking about, what you're doing to people. I'm --  
19 I'm glad you do not know. You do not know It's  
20 impossible. There's a particular thing in  
21 sentencing Having said that there is a -- one point  
22 that I want to make about sentencing.

23 Life sentences, indeterminate  
24 life sentences. They are cruel. I will tell you

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2 about a parole board experience, and I went to  
3 several of them. My first parole board was in  
4 1995. Every one of those parole boards, I received  
5 a two-year -- two year hold. My record, while  
6 incarcerated, was probably exceptional. And like  
7 everyone else who's incarcerated, they rebel  
8 against dehumanization. Well, not everyone. Some  
9 people accept it. I rebelled. But I learned to  
10 rebel with my intellect and not with my hands so I  
11 fought, I fought legally. I had a parole  
12 commissioner -- a series of parole commissioners  
13 tell me one day at a hearing, they said it is clear  
14 for what you said and for what the record says,  
15 that you're a different person. Your -- your  
16 values are different and you're changed. You have  
17 a different direction and it has been that way for  
18 some time. However, however much you have changed,  
19 the crime has not changed. Your victim is dead and  
20 your victim will always be dead. That's what we've  
21 empowered our parole commissioners to do to people  
22 who have life sentences.

23 When you send someone to prison,  
24 if we're going to do that, and clearly we're going

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2 to do that, we should never put an open-ended  
3 sentence on their back. Give someone a definite  
4 sentence and then create incentives for them to  
5 shorten that sentence. I will name a prisoner, his  
6 name is Ty G. B. Hussin (phonetic spelling). He's  
7 in Collin's Correctional Facility right now. I  
8 worked side by side in an office with him. He's an  
9 HIV AIDS educator. He's gone to a few parole  
10 boards. He plead guilty to murder in the second  
11 degree. He pled guilty because he struck his wife  
12 in the throat with his hand and he was a -- he  
13 knows martial arts. And he said -- whatever, he  
14 said he didn't really mean it, it was just  
15 instinct. The parole board does not accept his  
16 explanation that I really didn't want to kill my  
17 wife. And that's the reason they will not let him  
18 out of prison. They don't question whether he's a  
19 changed man or whether he's a good man. They don't  
20 question it. And I tell you, Ty G. B. Hussin has  
21 no idea that I would say this about him today. I  
22 tell you this because his case is typical of so  
23 many cases. It's that the rehearing when there's  
24 an open-ended sentence and the Parole Board has the

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2 decision it's a retrial. That's what it is.

3 Now there are people, that I'll

4 be the first to say are incorrigible; that when you

5 look into their eyes, it's like looking into a

6 black hole. No matter what you pour in, whatever

7 light you try -- you try to shine and bestow upon

8 them, they just absorb it and they give nothing

9 back they're takers, they're predators. We've met

10 people like that, haven't we? I hope not. But I

11 have. And I've looked into eyes like that and it's

12 frightened me and I don't frighten easily. But

13 it's frightened me.

14 So of course there are going to

15 be provisions to deal with these kind of

16 individuals. But that's not what's going on in

17 that system right now. What we have going on there

18 now are men who are hopeless because they've been

19 given this kind of attitude that I received. It

20 doesn't matter, you're never going home.

21 The last thing that I want to say

22 about re-entry is that life sentence, it doesn't

23 even end when you leave prison. Having served

24 thirty-two years and having been out here six

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2 months and colleagues judge me -- judge me to be a  
3 decent person. People have thought me a decent  
4 person for years. I think of myself as a decent  
5 person and I don't look at the ground when I say  
6 it. I know who I am but do you realize that I will  
7 be on parole for the rest of my life? That if I am  
8 picked up on a street corner because of something  
9 that has nothing to do with me -- anything, no  
10 matter what, some -- any circumstances. If I have  
11 any contact with the police I will go back to  
12 prison. Even if it happens ten years from now.  
13 That is horrible and that is the situation that  
14 everyone who has a life sentence on the end, for  
15 a -- a murder conviction that is -- that is their  
16 situation, that is their situation That's horrible.  
17 It never ends.

18 Now, if -- if the intent is just  
19 to punish, to humiliate, to keep people on a  
20 string, to jerk their strings whenever you feel  
21 like if that's the purpose then I say don't touch  
22 that provision that's fine. Don't touch it leave  
23 it alone. But if you really want people to  
24 reintegrate and have some freedom to become

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2 productive members of society, those things don't

3 help. I can not read that far, so sir. My eyes

4 suffered from a lot of reading inside cells.

5 UNIDENTIFIED SPEAKER: You're --

6 you're time's up sir.

7 MS. STANFORD: If I could have a

8 question.

9 MR. SCHLANGER: Thank you very

10 much. My pleasure. I appreciate it.

11 MR. BERGONO: I -- I have a

12 question.

13 MS. O'DONNELL: Okay. We have

14 two questions for you though --

15 MR. SALIM: Please.

16 MS. O'DONNELL: -- before you sit

17 down.

18 MR. SALIM: Please.

19 MS. O'DONNELL: Okay. Ms.

20 Stanford.

21 MS. STANFORD: Mr. Salim you

22 talked about the offender who you looked at and

23 realized there was no light in their soul. Have

24 you given any thought to what future should hold



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2 for those people and who gets to decide what their  
3 punishment is?

4 MR. SALIM: Well, I had a  
5 conversation with -- I have given it some thought,  
6 with a psychologist inside. Before having parole  
7 with you, an individual has to go before a  
8 psychologist. And I found the professionals in  
9 that field to be a bit more -- no offense  
10 intended -- ethical than the political appointees  
11 that sit on parole boards, a bit more ethical. So  
12 I -- I think those kinds of decisions where the  
13 person is dangerous to society and will always be  
14 that way, I think those decisions are best made by  
15 mental health professionals not by politicians and  
16 not by political appointees. And that's where the  
17 decision is being made now when they're made by  
18 Parole Commissions.

19 So that's -- that's -- that's the  
20 direction that I think those decisions should be  
21 made. And I -- I -- I can -- I can think of one  
22 more. I can think of an individual. I won't name  
23 the -- the individual because that is beyond me and  
24 I'm not that professional who could make that

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2 decision. But there is an individual who was  
3 convicted of beating his mother to death with a  
4 baseball bat. That's what he did he beat his  
5 mother to death with a baseball bat. This case has  
6 got to been raise -- he's going to stay.

7 Somebody's going to do something. And he was  
8 sentenced to five to fifteen as manslaughter. He  
9 was -- his sentence was reduced by the appellate  
10 division to one and a half to three. He got out I  
11 was incarcerated with him. I thought he was a  
12 psychopath -- a sociopath, brilliant guy. Not a  
13 moral fiber anywhere in his body. Brilliant the  
14 way a sociopath can be. He got out and went to  
15 Canada he enrolled in a university and began to  
16 rape women. When he was finally apprehended by  
17 Canadian Authorities the professionals the  
18 psychologists their judgment of him was that he's a  
19 sociopath and he should never be let out of prison.

20 That's the process. To receive an  
21 open-ended sentence, then to do a lot of great  
22 things and then be told you can't go. So that --  
23 that is the direction that we're going in.

24 MS. STANFORD: Thank you.

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2 MR. SALIM: And I think there are  
3 people like that.

4 MS. O'DONNELL: We have one more  
5 question? Anthony?

6 MR. BERGONO: Mr. Salim, you  
7 spoke with quiet dignity and eloquently. I --

8 MR. SALIM: I'm sorry?

9 MR. BERGONO: -- you spoke with  
10 quiet dignity and eloquently.

11 I want to thank you. I'd like to  
12 go back to what you recently said. And by the way,  
13 I agree with you about prison being dehumanizing,  
14 humiliating, all those things you said. If you  
15 have an alternative suggestion, I'm quite serious  
16 when I say this, for offenders.

17 MR. SALIM: Well --

18 MR. BERGONO: Will it ever make a  
19 difference.

20 MR. SALIM: -- the first thing I  
21 would do is -- is try to think outside the box.  
22 Get just -- just -- we have to stop of thinking of  
23 prison as a knee jerk reaction. If a person robs  
24 someone, you suffer financially, you suffer

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2 emotionally, you maybe live in fear in your home.  
3 When that individual goes to prison, the only thing  
4 that happens is number one, he doesn't have to deal  
5 with what he did any more it's gone he doesn't deal  
6 with that. In the case of murder he doesn't deal  
7 with that any more. I see personally I killed. I  
8 go to prison, the family suffers, my family  
9 suffers, the spouse suffers, the children suffer,  
10 but I don't not that way because I don't have to  
11 see that I'm separated. I go somewhere else for a  
12 long time so I never see the community suffer. I  
13 never experience any of that. A person who commits  
14 a crime should not be separated from the emotional  
15 impact of his crimes he should not be he should  
16 have to see that. If -- if I robbed you I should  
17 pay you back. I should work to replace what I've  
18 taken from you. If that means wearing a bracelet  
19 until I've -- until I've completed that, then  
20 that's what I should do. But I just don't see  
21 anything that -- that comes -- that's good that  
22 comes of placing someone in a cell when you can  
23 accomplish those same ends another way without  
24 creating more damage. Then we have to create

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2 programs and -- and -- and designate fifteen  
3 million dollars. And fifty million dollars to  
4 create programs to correct the damage that our own  
5 institutions have created. And -- and we created  
6 this damage in an attempt to solve the problem?  
7 We've created a another one.

8 No, so I don't have the answer.  
9 I wish I did have it though, a very easy answer to  
10 say that but hey, who had an answer in the 1850s.  
11 they didn't have an answer who had answers.

12 But they struggled, they  
13 struggled -- they struggled with the issue. And  
14 that's all I ask that we as a society, as people  
15 struggle with the -- with the -- with the problem.  
16 Because it is a contradiction. And we can't ignore  
17 it. We can try, but we can't ignore it.

18 MS. O'DONNELL: Okay, thank you  
19 very much.

20 MR. SALIM: Thank you.

21 MS. O'DONNELL: We really  
22 appreciate.

23 MS. STANFORD: Your words are  
24 extremely eloquent, thank you Mr. Salim.

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2 MR. SALIM: Thank you.

3 MS. O'DONNELL: Robert Lonski,  
4 who is speaking on behalf of the Erie County Bar  
5 Association. Welcome, Mr. Lonski. Nice to see  
6 you.

7 UNIDENTIFIED SPEAKER: Bob, how  
8 are you.

9 MR. LONSKI: Good, thank you.  
10 Thank you for giving me this opportunity to spend a  
11 few moments with you.

12 I'm actually here as the  
13 administrator of the Assigned Counsel Program,  
14 which is the primary provider in Erie County.

15 MS. O'DONNELL: Bob, we -- we  
16 have a bit of a hard time with the sound system.  
17 So as close as you can get.

18 MR. LONSKI: I'll place the  
19 device closer.

20 MS. O'DONNELL: -- to the  
21 microphone if --

22 MR. LONSKI: Okay, right.

23 MS. O'DONNELL: Thank you.

24 MR. LONSKI: I support the

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2 Commission's work. I -- I reviewed their  
3 preliminary report. I agree that there's a cry and  
4 need for simplification of sentencing standards  
5 from the viewpoint of both the defense attorney and  
6 the -- the client.

7 The caveat that I have, in terms  
8 of simplification is that we should not sort of  
9 collaterally end up enhancing sentences as a  
10 byproduct of trying to simplify them. For example,  
11 if, in fact the state will move eventually toward a  
12 more determinate sentencing scheme rather than  
13 giving indeterminate sentences. I think that we  
14 need to not automatically make those determinate  
15 sentences at the high end of the current  
16 indeterminate sentences. I think that -- that's  
17 kind of an obvious point that I don't think that I  
18 need to say.

19 I also support generally the, as  
20 a general point, the Commissions principle that  
21 sentencing reform and sentencing legislation must  
22 be driven by empirical data. It must be  
23 evidence-based. And I think that -- that -- if  
24 that would happen, that would be a dramatic

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2 changing force from what generally, although not  
3 always tends to happen. You know we -- we do live  
4 in the real world and the real world is that many  
5 times sentencing perhaps other types of legislation  
6 is driven by political considerations rather than  
7 by considerations of what's effective and what will  
8 meet the goals of the state and of society best.

9 The -- and I'm sure that you're  
10 very, very well aware that there's been a  
11 blossoming -- blooming of empirical studies on all  
12 kinds of interventions and what tends to be  
13 effective and what tends not to be. I suspect that  
14 we're at the baby stage of that research but I  
15 think that we need to -- we need to focus on it as  
16 much as possible. If a permanent sentencing  
17 commission is established, and I think that that  
18 would be a good idea, that would be a very good  
19 vehicle to carry that concept forward and -- and  
20 develop it as a matter of policy.

21 I have basically three main  
22 points that I would like to give to you today. I  
23 realize that my time is limited. I understand that  
24 the Commission is looking to continue to move more



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2 toward a determinate sentencing structure while at  
3 the same time probably recommending maintaining  
4 some indeterminate sentencing for certain types  
5 of -- certain types of crimes. To the extent  
6 that -- that indeterminate sentencing survives, and  
7 even if it doesn't survive in terms of -- of going  
8 forward, sentencing reform, there certainly are  
9 thousands and thousands of people who remain in  
10 prison for many years having sentenced. Going  
11 forward with surviving indeterminate sentencing and  
12 even if we don't, dealing with people who are in  
13 there.

14 One specific recommendation that  
15 I would make would be to modify the law to prevent  
16 the -- the division of parole from denying release  
17 solely on the basis of the nature of the underlying  
18 offense. There are many, many people in prison who  
19 are coming before the Board and are denied release  
20 for no reason and by their own terms for no reason  
21 other than the nature of the underlying offense.  
22 And these can be people who have good or -- good  
23 institutional records or institutional records that  
24 started out not being good, but they never proved

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2 over time. People who have successfully  
3 participated in and completed programs within the  
4 prison, but whose crime, as judged by -- by the --  
5 the commissioners, is not one that -- where the --  
6 the inmate should be -- the individual should be  
7 released because of the -- the nature of their  
8 crime.

9 Now I believe that there are many  
10 factors that can develop in the course of an  
11 individual's life in prison that will come to the  
12 attention of both DOCs and the Division of Parole  
13 that are appropriate to consider when making a  
14 decision on release.

15 And obviously there are things  
16 like serious misbehavior, escalating misbehavior,  
17 new crimes while in prison. There's all kinds of  
18 things that -- that -- that -- it's information.

19 But in terms of the nature of the  
20 crime and the detail of that crime, no one is in a  
21 better position to assess that than the judge at  
22 the time of sentencing. Certainly, more so than --  
23 than Department of Corrections or the division of  
24 parole. In many cases that Judge has just sat

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2 through days or even weeks of detailed testimony  
3 about what this crime is that this judge has -- has  
4 worked with this person face to face there's been a  
5 lot of data and we all know that -- that in a  
6 trial, credibility of a witness is something that  
7 can be assessed really only by the people who are  
8 sitting there and not by reading a transcript.

9 So in setting the -- the -- in --  
10 in determining what the minimum sentence is on that  
11 indeterminate sentence is, I think that the judge  
12 has already determined if there is no other  
13 complicating factors that come to the fore in the  
14 years that the individual is in -- incarcerated  
15 that that is the appropriate time to release the  
16 person. That decision has already been made  
17 because the Judge knows at the time of sentencing  
18 what the nature of that crime is.

19 Secondly, Rockefeller reform --  
20 Drug Law Reform, I believe was a good first step.  
21 I think it needs to be expanded downward and it  
22 needs to be expanded backward. Downward in the  
23 sense of taking the A1 and A2 kind of reform and  
24 moving it down so that we don't have situations

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2 where it expanded into -- into lower level

3 felonies, so that we don't have situations where

4 someone who was convicted in 2004, on a B drug

5 felony may doing an eight and a third to

6 twenty-five and someone who's convicted today of an

7 A1 or an A2 would be able to get no more than a

8 twenty-year determinate or a ten-year determinate

9 respectfully. With what we have done, by stopping

10 where we stopped at the A1 and A2 has created a

11 situation where people who -- obviously had -- who

12 were convicted of less serious drug offenses can

13 and are in prison sentences than people who -- who

14 are convicted, who happen to be convicted today.

15 In terms of expanding backward,

16 one of the provisions of the reform legislation was

17 that the individual needed to be removed in time

18 from his eligibility for -- for parole. And the

19 way the statute was written was a little bit vague.

20 Most people felt that it meant that you had to be

21 more than three years from your parole eligibility,

22 there was a way to read the statute that you -- you

23 could be up to but not closer than one year from

24 parole eligibility, eligibility to appear before

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2 the court. If you were too close to your board  
3 eligibility you weren't even eligible to apply to  
4 be resentenced under the A1 and A2 reform laws.

5 Now some of those people, and  
6 many of them did not get parole. So those people  
7 are still in prison and because they continue to be  
8 on an ongoing basis, you know, and hit for two  
9 years at a time they continue to be too close to  
10 their parole eligibility to even ask the sentencing  
11 judge. Whereas someone who was three and a half  
12 years from his parole eligibility could go, and  
13 many of those people did have their sentences  
14 modified as I believe was the intent of the  
15 legislature.

16 Finally, and very quickly because  
17 I know I'm out of time, there's an interest, I  
18 know, in alternatives for incarceration, and  
19 specifically, treatment for mentally ill and drug  
20 addicted persons.

21 And the one thing that I would  
22 like to -- to leave you with, the one point is that  
23 we need to recognize over, and over, and over again  
24 that New York is primarily a rural state. And

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2 many, many, many of our clients who live in rural  
3 areas do not have access to treatment. And we need  
4 to do one of two things, we need to either get more  
5 treatment facilities in those areas where people  
6 can -- can get to and mind you, you know, my  
7 clients tend not to have access to private  
8 transportation. Or if we can't put -- bring the --  
9 the treatment who need it in rural areas, we need  
10 to settle down and create a transportation  
11 mechanism to bring the people to and from where the  
12 treatment is.

13 Thank you for your time and again I  
14 commend you and -- and the good work you're doing.  
15 If you have any questions, I'll try to answer them.

16 MS. LEVINE: I actually have a  
17 question. Thank you first of all for coming. You  
18 had mentioned the -- as a suggestion you had  
19 mentioned a permanent sentencing commission and I  
20 just wondered if you had any concrete suggestions  
21 as to what that permanent sentencing commission  
22 would look like, for example would it be elected,  
23 would it be not -- would it be unelected, would it  
24 be appointed staff, would it be revolving staff?

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2 How did you see yourself when you actually made  
3 that suggestion, how did you see it?

4 MR. LONSKI: Well you know I --

5 I -- specific to this -- to -- to -- to this

6 Commission I haven't given it a great deal of  
7 thought. But generally speaking, I believe that  
8 those types of bodies are best created and  
9 maintained by drawing from the expertise of  
10 existing entities that -- that are well respected  
11 within the criminal justice committee. I would  
12 suggest generally, without having focused, you  
13 know, on -- on that particular aspect of a  
14 permanent sentencing commission, that -- that there  
15 be a -- a structure set up whereby there would be  
16 so many appointments from so many private, so many  
17 appointments from -- from a pool that was  
18 recommended by say the State Bar Association. And  
19 I think that that tends to, you know, and -- and  
20 you can build in important things like diversity.  
21 You know you can build in things like women's bar  
22 associations and AACP, Legal Aide and --. You  
23 can -- you can institutionally diversify that kind  
24 of commission so that it's drawing from important

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2 elements of the community; the legal elements,  
3 the -- the -- the -- of -- of both sides. The --  
4 the organized bar and the community of people who  
5 are most affected by the sentencing, which is the  
6 family and -- and ex-offenders.

7 MS. O'DONNELL: All right Bob,  
8 I -- I'd like to follow up on your discussion about  
9 availability of drug treatment or transportation  
10 and hopefully we can meet on another --

11 MR. LONSKI: Sure.

12 MS. O'DONNELL: -- occasion to be  
13 able to do that. Because some of it may require  
14 legislation, some of it may require reordering  
15 where OASIS has drug treatment available and how we  
16 are able to deliver that to individuals. But I'm  
17 very focused and concerned about that topic and  
18 would like to do whatever we can to increase the  
19 availability of drug treatment as an alternative to  
20 incarceration in our rural communities where it's  
21 not available.

22 MR. LONSKI: I -- I'll -- I'll  
23 make myself available to do that on that subject  
24 and there are other subjects that are related that



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2 are probably more administrative than -- than  
3 legislative. And -- and obviously it's gotten to  
4 that. I think it goes without saying that the same  
5 thing goes for anyone on the panel who -- who might  
6 find it helpful to follow up with me. I know Mr.  
7 Alexander and I have worked closely on a number  
8 of -- of projects in the past and I think very  
9 productive.

10 MS. O'DONNELL: All right. Thank  
11 you very much.

12 MR. LONSKI: Thank you.

13 MS. O'DONNELL: And that -- our  
14 next speaker is Susan Wright and Ms. Right is here  
15 from the Coalition for Parole Restoration.

16 Thank you for joining us today.

17 MS. WRIGHT: Good afternoon.

18 MR. ALEXANDER: Good afternoon.

19 MS. WRIGHT: I need to apologize  
20 in advance. I'm getting over a really bad cold, so  
21 I have some sneezing, coughing going on, that's the  
22 reason for it.

23 My name is Susan Wright and I'm  
24 probably different from most of the people who

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2 appeared before you either today or in New York  
3 City or in Albany because I represent three clear,  
4 distinct groups. I am the president and a  
5 co-founding member of the coalition for parole and  
6 restoration, a grass roots organization formed to  
7 bring to light and educate family members about the  
8 Criminal Justice System and more specifically,  
9 parole.

10 I am the wife of someone who's in  
11 prison for an A1 violent felony offense. I'm  
12 having a hard time seeing. And I'm also the family  
13 member of two people murdered in the State of New  
14 York in the last eleven years. In 1980 I fell in  
15 love with and married Jerome Wright, a childhood  
16 friend who, at that time was serving eighteen and a  
17 half to life for second degree murder. To date,  
18 Jerome has served twenty-eight and a half years in  
19 prison and has appeared before six parole boards.

20 Following each appearance he --  
21 except for the first one he was -- had acquired  
22 addition of eighteen months. With the nature of  
23 the crime being the primary reason each time.  
24 although the legislative commission on expenditure

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2 review published in the nineteen -- in it's  
3 nineteen eighty-three findings that and I quote, an  
4 applicant held for twenty-three months or less has  
5 a contract or tentative release date and implied  
6 and the inmate is generally released upon the  
7 appearance that he has maintained good behavior in  
8 prison and followed the board of recommendations.

9 The board has never made any  
10 recommendation and Jerome still remains  
11 incarcerated. Together we have raised four  
12 children, one of whom recently graduated from the  
13 University of Buffalo Law School and just last week  
14 passed the Bar Exam. Through the years I've  
15 watched Jerome from a teenager, head down a path of  
16 destruction, into a man, who I'm proud to call my  
17 husband. A man who is eager to help anyone who  
18 crosses his path. The major part of the change  
19 that I've seen in him comes from his feelings with  
20 the impact of his crime on his family and the  
21 community.

22 Currently located in Collin's  
23 Correction Facility, he is the lead facilitator in  
24 the youth assistance program, a program designed to

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2 work with at risk youth in Erie and the surrounding  
3 counties. On any given Wednesday you can find him  
4 working with adolescents, many of whom were  
5 referred by the court in an effort to prevent them  
6 from spiraling out of control. Due to his work at  
7 Collins, he has solid job offers in both Erie and  
8 Chautauqua counties.

9 In 1996 my cousin and my aunt's  
10 only son Christopher Little was murdered, shot in  
11 the back while interceding in a domestic abuse  
12 situation. This was the first time my family  
13 experienced a loss of this nature, but it would not  
14 be the last time that we were victimized.

15 Throughout the judicial process  
16 we were sold a bill of goods and after numerous  
17 court appearances where the family packed the court  
18 room we were left out of the plea negotiation and  
19 then bullied into agreeing with the offer out of  
20 fear that this murderer would go free.

21 The District Attorney in this  
22 case had appeared concerned and compassionate  
23 throughout the process, only to turn into someone  
24 who sees their only concern was disposition of the

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2 case. After the day of sentencing, the first time  
3 we heard from the DAs office was one year later  
4 when she called my Aunt for Victim's impact  
5 Statement, again showing no compassion. She came  
6 at us using scare tactics. This is necessary to  
7 keep him in jail. He might hurt someone in your  
8 family or someone else. However this man was a  
9 stranger to us. He was a stranger to my husband,  
10 so we had no fear of him. Little did she know --  
11 did she know my Aunt had just died and the  
12 responsibility rests with me. My response was one  
13 that shocked not only me, but my entire family. We  
14 did not get the justice we were looking for in  
15 court. Christopher's murder received fifteen years  
16 to life and now she wanted us to do the job she --  
17 the job she failed to do when given the chance.

18 This young man was offered and  
19 accepted a deal. After the initial shock I  
20 realized that no matter what we wanted I'm sorry,  
21 no matter what happened the thing that we wanted  
22 most would never be returned to us, that no matter  
23 how much time this young man spent in prison,  
24 Christopher would still be dead. I advised the DA

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2 that the impact statement would be written at a  
3 more appropriate time. We still had fourteen years  
4 until his admission would end and that we would  
5 deal with it then. It is my prayer that in the  
6 time, given the opportunity he will no longer be  
7 the person who took so much away from us, but  
8 rather someone who has learned to give. In  
9 November 1999, I became of a group of family  
10 members and attorneys who called a meeting at the  
11 Legal Aide Society in New York City. What was  
12 supposed to be a meeting of thirty people to  
13 brainstorm about the state of parole turned into a  
14 rowdy attended by between three and four hundred  
15 people, mostly family members hopeless over  
16 repeated parole denials received by their loved  
17 ones and desperate for information and answers.

18 The Coalition for Parole  
19 Restoration, CPR, was born on this day and the  
20 current and as current president, I'm charged with  
21 the mission of educating families about the parole  
22 process and their role is successful release and  
23 re-entry plan.

24 BPR travels across the state

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2 holding workshops to educate families about their  
3 role in the rehabilitative process, and how  
4 important it is that they hold their loved one  
5 accountable for their action. With accountability  
6 comes understanding and with that, hopefully  
7 insight into the crime and it's impact on the  
8 victim and the victim's family. In March 2005, my  
9 nephew, Jamie Robinson, six months shy of his  
10 second birthday was brutally murdered and tortured  
11 by his babysitter. And arrest was made immediately  
12 and four rated the District Attorney's office and  
13 five of the nine charges and the sentence they  
14 would be seeking in each. Later in the process we  
15 were told that they would receive an accumulative  
16 sentence of fifty-four years to run consecutively  
17 with no plea bargain.

18 By this -- by this time I was  
19 well versed in the workings of the system and I was  
20 able to prepare my family for what was to come. We  
21 were left out of the plea negotiations and the  
22 final outcome was that Jamie's murderess received a  
23 seventeen determinate sentence. Jamie's murder had  
24 the potential to be released in fourteen years.

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2 That would be 2019, and the ironic part of this is  
3 her release date, her conditional release date is  
4 six days before what would have been his sixteenth  
5 birthday.

6 I stand before you today with a  
7 wish list. As someone personally affected by every  
8 aspect of the system's structure that you have been  
9 appointed to evaluate. As a wife, I would like to  
10 see a revision of parole and the Department of  
11 Correction that is as good as its promise.  
12 Returning to community -- to wounded communities,  
13 men and women who are truly and not just parole  
14 eligible. People fortified with rehabilitative  
15 program and enhanced education, therapeutic  
16 treatment and successful transitional planning and  
17 opportunities for smooth reintegration. As a  
18 family member of two murder victims, I would like  
19 to see a judicious system, specifically a  
20 prosecutorial system that is built on honesty,  
21 fairness, and that promotes healing, and not just  
22 the acquisition of a victim's impact statement.

23 What we need is a state and  
24 inclusive in the disposition of the case and not



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2 just the disposal part. We want indeterminate  
3 sentencing when applicable to allow for  
4 discretionary release and a panel of Commissioners  
5 willing to apply the spirit of executive law as it  
6 was intended.

7 As an advocate I would like to  
8 see a marriage between correction and parole. I  
9 would like to take this opportunity to acknowledge  
10 and congratulate commissioners Alexander and Fisher  
11 on a new family their newfound fortune and the  
12 transparency with which each of it's agencies has  
13 begun to operate under their administration. I  
14 would like to see the vision of parole, whose  
15 legacy is founded in principles of logic and not  
16 opinions and motions. Consistency and and not what  
17 has amounted to a lot in recent years as public  
18 safety and not political pandering.

19 I'm also here today to endorse,  
20 but I don't know, you've gotten probably  
21 twenty-five times, which is the parole reform that  
22 was put together by an ad hoc of committee which I  
23 am a member. And I wish that you would take a look  
24 at that and consider any changes that you make.

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2 I would like to thank the  
3 Commission for allowing me the opportunity and for  
4 hearing me on these issues that are for some, a  
5 matter of life now.

6 Thank you.

7 MS. O'DONNELL: Thank you very  
8 much Ms. Wright.

9 MR. ALEXANDER: Thank you.

10 MR. BERGONO: Ma'am.

11 MS. WRIGHT: Yes.

12 MR. BERGANO: Thank you for your  
13 courage. Sorry for your pain. Appreciate you're  
14 being here.

15 MS. WRIGHT: Thank you.

16 MS. O'DONNELL: We were scheduled  
17 to complete our proceedings here at three o'clock,  
18 but we still have several individuals who we  
19 haven't heard from. Pedro Lopez we didn't hear  
20 from.

21 MR. ALEXANDER: Oh, very good.

22 MS. O'DONNELL: Okay. Stephanie  
23 Davis, we have not heard from and Abu Rahman?

24 MR. ALEXANDER: Yeah, that's the

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2 only person that hasn't spoken.

3 MS. O'DONNELL: Okay. And, yeah  
4 we did have some earlier. Dawn McKinley, Ric  
5 Mills, and Paul Fallon. Are any of them here?

6 Okay. We are going to take a  
7 very brief break until three o'clock in case Abu  
8 Rahman can make it. We don't want to cut off  
9 anyone who is scheduled to testify today. In the  
10 meantime is there anyone who is not scheduled that  
11 would like to speak. I know we -- we tried to  
12 reach out and fill our day. Okay, we'll take a  
13 five-minute break and we'll return in case Mr.  
14 Rahman shows up.

15 MS. O'DONNELL: Okay. I  
16 understand Mr. Rahman is here. We appreciate your  
17 coming. We were ahead of you, you're not late.  
18 But if you could come down here and approach the  
19 podium. You are our last speaker of the day and we  
20 appreciate very much that you agreed to come and  
21 address us.

22 MR. RAHMAN: Good afternoon sir.

23 MR. ALEXANDER: How are you sir:

24 MR. RAHMAN: Good thank you.

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2 MS. O'DONNELL: Please start.

3 MR. RAHMAN: Oh, okay. Well

4 basically my name is Abu Barack Rahman and I am  
5 here on basically a consortium. An organization  
6 called Reducing Recidivism, Back to Basics Outreach  
7 Ministry, and Prisoner's are People Too. Primarily  
8 there's actually three things I want to give  
9 testimony about.

10 A) as a person formerly  
11 incarcerated and a successful re-entry candidate, I  
12 feel it is imperative that the Department of  
13 Correction somehow establish employment rights  
14 because they have trained us, they have  
15 rehabilitated us, so a position such as Commissary,  
16 Laundry, Ground civilian any position that don't  
17 require security that they hire normal civilians  
18 for that people formerly incarcerated can fill  
19 these positions. History shows that people  
20 formerly incarcerated that were employed as  
21 Chaplains for the Department of Corrections twenty,  
22 twenty-five years ago have never recidivated. They  
23 never re-serve. Making a State Civil Service wage  
24 is a good initiative to or incentive rather to stay

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2 out of prison. Most people formerly incarcerated  
3 are not in jail for a devious sexual crime. The  
4 average person is there as a -- entrepreneur. So  
5 they come home with business ideas.

6 VESID has in their hand out we  
7 will supply you with your initial inventory.  
8 That's not true. I personally submitted for a  
9 business plan, I was turned down, sorry. So my  
10 first thing at that Department of Correction System  
11 was a some sort of hiring process for people  
12 formerly incarcerated. The other one is that if I  
13 were to take either one of you up there and  
14 incarcerate you pick your records up and release  
15 you with forty dollars ten years later you would  
16 stand just a minimal chance of turning your life  
17 around as well. What we are proposing is that an  
18 individual, at the time of his court sentencing, he  
19 be given preparing educational plan, writing a  
20 business plan, and be submitted with a micro loan  
21 or some sort of grant to help them get restarted.  
22 Statistics and financial records show that it costs  
23 a minimum of fifty thousand a year to keep an  
24 individual incarcerated. And individual that goes

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2 to a program called ASAT that's another fifty  
3 thousand. If he gets kicked out of ASAT he will be  
4 readmitted and it will be another fifty thousand.

5 That's a hundred and fifty thousand dollars for one  
6 year. So now if this individual was given a grant,  
7 a micro loan, or some sort of five thousand dollars  
8 with a mentor of success re-entered already, other  
9 Community or Activists and so forth to help him --  
10 help him with his plan, that would reduce  
11 recidivism tremendously among the group that went  
12 to jail for being entrepreneurs.

13 Thirdly, recently I spoke on DOC  
14 employing people, some type of micro grant or loan,  
15 micro loan or grant and then there was one more --  
16 oh yes, that we as individuals, be allowed to while  
17 they are sentencing to start working on re-entry,  
18 and that organizations that are really out here.  
19 We have grass root organizations in Buffalo you  
20 referred to. I could fit you and such as we  
21 groups, individuals that are really doing the brass  
22 tacks.

23 We took pop bottles last week to  
24 get gas to go pick up an individual from jail to

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2 deliver him to parole because that reduced  
3 recidivism. Many individuals never made it to the  
4 initial report. So I'm proposing that the  
5 organizations that are really doing that work to  
6 help re-entry be provided a profit funding. So  
7 many of the organizations are getting an enormous  
8 amount of money. I, myself, have applied for a  
9 loan to at least three of the organizations that  
10 sit on the Western New York Re-entry Council. One,  
11 I was told they were intimidated by my name, Abu  
12 Rakmin. The other one was that two and a half  
13 years out of prison is not enough. One of the  
14 resources people told him that when a person gets  
15 on drug program, you're two years behind so I -- I  
16 mean I -- I have a plethora of background in  
17 administration. I wrote my own program, I have my  
18 own small business but trying to get a loan out of  
19 one of these organizations -- it's just not  
20 happening.

21 And so that was my third -- third  
22 piece that the programs and organizations that say  
23 they are actively involved in reentry somehow had  
24 to share that money with organizations such as

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2 Rural Ministry, Back To Basics, Prisoners are  
3 People too, and Reduce Recidivism. And also that  
4 the DOC does somehow work out a plan to employ  
5 people formerly incarcerated. That's my answer.

6 MS. O'DONNELL: Well thank you  
7 very much for being here. I think we saved the  
8 best for last.

9 MR. RAHMAN: Are you supposed to  
10 ask me questions at this time or is that -- that --

11 MS. O'DONNELL: Any questions?

12 MR. ANDERSON: I did have one  
13 question for you. And one of the questions, and it  
14 isn't directly related to the things that you said  
15 here, but one of the things that have come up over  
16 the last couple of hearings that I've sit in on, is  
17 this whole idea of -- of peer mentoring type of  
18 relationship.

19 MR. RAHMAN: Yes.

20 MR. ANDERSON: And you know the  
21 parole rule is that whole condition against  
22 association. Does the benefit from mentoring out  
23 weight the dangers of -- of -- of association?

24 MR. RAHMAN: Yes sir and to



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2 really show you that it's a --as far as the rules  
3 because one thing that parole mandates is that an  
4 individual goes to alcohol anonymous or narcotics  
5 anonymous.

6 MR. ANDERSON: Uh-huh.

7 MR. RAHMAN: In that program you  
8 are assigned a sponsor. You cannot deny the  
9 sponsor because he's a person who was formerly  
10 incarcerated. Your parole officer can't say well  
11 Joe Citigay (phonetic spelling) cannot be your  
12 counselor, I mean your sponsor. So a) it does out  
13 weight and b) it's already in effect. So now does  
14 the parole officer have a right to know this? Of  
15 course, because the seekers will keep us safe.  
16 Unless we really work at the primary objective to  
17 reduce recidivism and it's not you went home, boy.  
18 Hold that -- no, we have to really work together so  
19 it's dedicated. Yes, it out weighs it  
20 tremendously.

21 MR. ANDERSON: Thank you.

22 MR. RAHMAN: You're most welcome.

23 MS. O'DONNELL: Thank you very  
24 much.

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2 MR. RAHMAN: Thank you.

3 MS. O'DONNELL: And thank you all  
4 for attending the hearing and those of you who've  
5 been sitting here for most of the day. And we  
6 appreciate you being engaged and -- and we very  
7 much appreciate the input that you've had into our  
8 process.

9 We do intend to -- we -- we are  
10 taking a transcript of everyone's testimony here.  
11 I think it'll take two or three weeks at least for  
12 them to transcribe it. We do intend to put it on  
13 our web site at DCJS as well as your written  
14 remarks will be distributed to all of the  
15 Commissioners, including the ones that couldn't be  
16 here today. So thank you very much for being here.

17 MR. ANDERSON: Thank you.

18 (The hearing concluded at 3:08

19 p.m.)

20 pwss

21

22

23

24

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2 STATE OF NEW YORK

3 I, G. Michael France, do hereby certify that

4 the foregoing was reported by me, in the cause,

5 at the time and place, and in the presence of

6 counsel, as stated in the caption hereto, at

7 Page 1 hereof; that the foregoing typewritten

8 transcription, consisting of pages number 1

9 through 226, inclusive, was prepared under my

10 supervision and is a true record of all

11 proceedings had at the hearing.

12 IN WITNESS WHEREOF, I have

13 hereunto subscribed my name, this the 13th day

14 of December, 2007.

15

16 \_\_\_\_\_

17 G. Michael France, Reporter

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24

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