New York State
Commission on Sentencing Reform

Public Hearing in Buffalo
November 19, 2007
Commission on Sentencing Reform - 11-15-2007

COMMISSION MEMBERS:

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Commission on Sentencing Reform - 11-15-2007

(The hearing commenced at 9:40 a.m.)

MS. O'DONNELL: Good morning.

I'm going to ask you please to be seated. We're going to begin our hearing of the New York State Commission on Sentencing Reform. The Commission was created by Executive Order of Governor Spitzer with a wide mission to look at all of our sentencing laws in New York, alternatives to incarceration, re-entry, victim issues. And we have issued a preliminary report on October 15th, 2007, with our preliminary recommendations for simplification of New York Sentencing laws for expansion of the use of alternatives to incarceration, victims -- focusing on victim's rights and a number of other recommendations.

Today is our opportunity to hear from members of the public, the Advocacy Community, formerly incarcerated individuals, attorneys, the Judiciary and the public about your views on New York Sentencing Laws.

I'd like to begin by introducing members of the commission. My name is Denise
Commission on Sentencing Reform - 11-15-2007

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

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

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

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

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

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

MS. O'DONNELL: Thank you. And
we do have a timekeeper here that will be keeping
Commission on Sentencing Reform - 11-15-2007

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

MR. BALONE: Right there.

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

MR. BALONE: Good morning.

MS. O'DONNELL: Good morning.

MR. BALONE: I was just released from prison on August 14th, after having served thirty-seven and a half years for my involvement in a crime in which three people were killed. While incarcerated I had the good fortune of being able to obtain five college degrees and take numerous programs that helped with my transition while I'm out here. I'm currently residing at Cephus House, which is a transitional service program for ex-offenders, for most of us who have been -- were in prison for over twenty years. While there, they are teaching me and showing me all the ways and
Commission on Sentencing Reform - 11-15-2007

things that I should do while I remain out here in
order to make it.

While I was in prison there were
a lot of things that I did wrong in my early
incarceration. But one thing that helped me out of
everything that I ever did is I had an opportunity
to go to college. Because of my college
credentials, I now have an opportunity to get a
job. In 1995 the -- the -- Governor Pataki
eliminated college programs for -- for prisoners
and that was probably one of the worst mistakes he
could have made. Because of an education, most of
the people that I know that got out of prisons with
educations are now successfully employed, doing the
right thing, paying taxes, and doing all the other
things.

Right now, most all the people
that I know that are getting out of prison with
GEDs, they're having a hard time making it. Nobody
wants to hire them. Nobody wants to do anything to
help in their transition. Because I do not have a
mental or physical disability, the only
organization that would help me in my transition is
the Cephus program. If I had a mental or physical disability there would be all kinds of people trying to help me out. There is something terribly wrong with that. We -- we talk about reentry. There is a problem with reentry that there is no help being given to people once they get out of prison. Many people are being forced to go to shelters and places like that and they do not have a chance to make it.

I am fortunate in the fact that I will soon be seeking employment, going out on my own. But not that many people have what I have going for me. On behalf of those who are still inside I would ask that this commission would consider letting those people go home who have proved beyond a doubt that they are rehabilitated. If I had not proved that I was rehabilitated, I would not be standing before you right now. I had to go in front of seven parole boards and there are still many people who believe to this day that I should still be spending the rest of my life in prison. And there are others in prison who are just as gifted, who are just as wanting to come out
Commission on Sentencing Reform - 11-15-2007

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

And in regard to the sentencing
laws, I believe that right now I'm -- I'm -- I
don't believe that they should go to determinate
censuses. I am totally opposed to that because
then it becomes a game in prison. People will not
do what I did. They will only do what's mandated
of them. They will take their therapeutic programs
and their educational programs and they will do
nothing else. Those who want to come out and do
Commission on Sentencing Reform - 11-15-2007

the right thing, give them an incentive to do what

I did. I had no incentive. I -- there was really

no incentive for me to be in front of this hearing

except that I made a promise to those that I left

behind that I would come and speak at this

commission and try to convince you that there are

many good people behind the prison walls. They may

have done bad things, but they're not bad people.

Many of them are just as sorry for what they did.

I am so sorry and I have dedicated the rest of my

life to the victims of my crime. And I hope some

day to meet with the families of the victims of my

crime to tell them how sorry I am and maybe work

together with them in establishing programs so we

can come out here and do the right thing for people

out here.

Please don't abandon those people

in prison. They need our help. Give them the

chance. Tell them what to do. The biggest problem

I always had when I went to my parole board, I go

and they would hit me with two years, but nobody --

nobody would sit down and say Gerry, this is what

we want you to do to prove that you'll be ready for
Commission on Sentencing Reform - 11-15-2007

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

We believe, those of us that are
involved in this work, we believe that he should --
those people should be given a fair hearing. How
many times should a person be hit for the nature of
his crime? If, when I was sentenced, that they
would have said Gerry you have to do this or you
have to do that amount of time, that would be all
right. But to make me go to a parole board every
two years with the expectation that I had a
reasonable chance of going home, when it wasn't the
case, is wrong. Graziano case is trying to resolve
that problem. It is saying that if we do something
wrong that we go to the parole board and you hit me
with two years. Tell me what you want me to do in
that two years and if it would -- whatever it is,
and I decide that I don't want to do it, give me
another two years and give me another two years.
Keep doing what you're doing, but if I go and do
what you ask of me and I go above and beyond, and
that's what's happening with some of these guys.
This is my portfolio. I spent years and years
doing everything that I could, taking every
program. And when I would go to some of my
hearings they would say this is commendable, but we
don't care about that. All we're going to do is
consider the nature of your crime.
And that's what's happening with
many of the people that are in prison now,
especially the people that have been in there a
long time. And for those of us that work on a
Crime Victim's Board, there are many guys in prison
who do want to do something for your Committee. We
want to say, what can we do. We don't know what to
do. We want to get out and we want to do the right
thing. We want to work with people like you.
Don't kick us to the curb. I -- some people are
telling me, Gerry take a job in construction, do
this, do that. Get under the radar. Don't get out
there and speak. I can't do that. I want to do
what I'm doing.

My ministry is to come and

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

MS. O'DONNELL: Well we
appreciate you coming. I -- I have one --

MR. BALONE: Sir.

MS. O'DONNELL: Do we have a

question here.

UNIDENTIFIED SPEAKER: You have

the time.

MS. O'DONNELL: Okay. One -- one

quick question. I'm interested in the Cephus

Program. How many people can they have?

MR. BALONE: Cephus.

MS. O'DONNELL: Cephus.

MR. BALONE: Not as many as we

would like to right now because of funding and

budgeting and things like that. We're hoping maybe

with the re-entry money or something like that.

There's not enough help for ex-offenders. Very few

helps. Most -- a lot of people getting out of jail

are being forced to go to shelters and places like

that. There are more programs. We need more

funding. We need people to know that we need help

when we get out. If it had not been for Cephus, I

don't really know. I probably would have had to go

to a shelter. Or I might not have even been
Commission on Sentencing Reform - 11-15-2007

released because that was part of my release plans.

And everybody knows the value of Cephus.

Commissioner?

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

MR. BALONE: Thank you also.

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

MR. BALONE: Yes.

MR. ALEXANDER: Good for you.

God bless you.

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

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

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

UNIDENTIFIED SPEAKER: Isn't it on the bottom? It's on the very bottom, in the back. It's --.
Commission on Sentencing Reform - 11-15-2007

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

MS. GRAHAM: I think so too.

Good morning.

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

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

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

Okay.

UNIDENTIFIED SPEAKER: No.

MS. O'DONNELL: No?

UNIDENTIFIED SPEAKER: No.

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

UNIDENTIFIED SPEAKER: Actually you're on this black microphone here. This is the
Commission on Sentencing Reform - 11-15-2007

one you want to speak into.

MS. GRAHAM: Okay.

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

MS. GRAHAM: Can you hear me now?

UNIDENTIFIED SPEAKER: Oh yeah.

Yes.

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

Are there people who belong in prison? Certainly there are. There are people who committed horrible offenses and they are true sociopaths. They have no remorse and for that, you know, we have to be grateful to the Department of Correctional Services, it's a wonderful job at what
they do. But they represent a very small slice of
the inmates that are incarcerated. Like many of
you, every day I work with men who desperately want
a chance to succeed after incarceration and who get
to face the reality that the odds are stacked
against them. They can't undo whatever harm they
did. They can only try to get it right this time.
And public sentiment often seems to say so what,
that's the price they pay for -- for the crime they
committed. But unfortunately it would be more
correct to say that's the price we'll pay for the
crime they committed. Because unless we confront
and create the right tools and opportunities for
former offenders to succeed, we have to expect that
they're going to return to what they know as a
means of survival.

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

We have to acknowledge that about ninety-eight percent of people who go to prison get out, regardless of the crime. And the longer they're in prison, the greater the chances are that they'll never effectively integrate back into the community. The loss of family ties, little or no skills or work experience, mental health and substance abuse issues and this -- a general inability to navigate life on the outside makes for failure and subsequent return to criminal activity nearly inevitable. Because in spite of the many vocational programs and counseling, and treatments that the prisons provide, and they certainly have a wealth of programs, prison does one thing above everything else. It teaches men how to be prisoners. And that's not a marketable skill out here in the community. It -- it -- incarceration just robs them of the very stuff they have to develop, good decision making, responsibility, close social relationships, if they're ever going to be law-abiding, productive members of a community.
Commission on Sentencing Reform - 11-15-2007

The Commission's report ranges over so many critical topics and I just want to touch on a few that -- that jumped out at me.

Re-entry must be an integral part of the Criminal Justice System and it must begin at conviction.

Judges need to have the ability to consider what is ultimately invested in the public safety and that may not be a prison sentence. When it is a prison term the sentence should consider the inevitable day the offender will be released and how he or she can best be prepared to live a law-abiding life, or we're doomed to maintain a perpetual revolving door that's to no one's advantage. Evidence based re-entry services, such as the transition from prison and community models has also adopted task forces needs to be available to every person who needs it and they need to start as soon as possible after conviction right through release. We need to designate some prisons as re-entry facilities where Human Service Professionals can come in to provide services that form a bridge and help the person back into the community. Within these facilities we must incorporate better opportunities for family
Commission on Sentencing Reform - 11-15-2007

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

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

There is literally nowhere to put them.

We have to create and fund a
range of solutions for this population, from
supportive living to secure residential mental
health facilities. It's very frustrating to work
with people, especially in a developmentally
disabled community where there -- just there is no
place to put them to stabilize them when they
immediately get released. They have to go to a
shelter or halfway house like everyone else and
they're not equipped to deal with these problems.

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

Bring back post high school
education in correctional facilities. We could
literally send an inmate to Harvard for what it
Commission on Sentencing Reform - 11-15-2007

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

Thank you very much for allowing
Commission on Sentencing Reform - 11-15-2007

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

MR. GREEN: Ann, before you go --

MS. O'DONNELL: Thanks much.

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

MS. GRAHAM: One problem is certainly that the only source of income most people have when they are going to be released is Public Assistance and Medicaid. And even though RDHS in Monroe County has been very cooperative and we file applications forty-five days in advance, that still doesn't mean the case is open on
Commission on Sentencing Reform - 11-15-2007

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

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

MS. GRAHAM: Right.

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

MS. O'DONNELL: Thank you very much.
MS. GRAHAM: Thank you.

MS. LEVINE: I actually --

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

MS. GRAHAM: Okay.

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

MS. GRAHAM: Uh-huh.

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

MS. GRAHAM: Bring back trailers.

MS. LEVINE: -- bring back trailers.

MS. GRAHAM: Trailer visits at the facilities. It's very -- I don't know if you've ever visited an inmate in a state facility.

It's sort of like the high school cafeteria, but louder. You're sitting four people to a table.

There's nothing for anybody to eat all day except
Commission on Sentencing Reform - 11-15-2007

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

MS. LEVINE: Thank you.

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

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

MR. SEIDEL: Good morning.

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

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

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

Congratulations, by the way.

MS. O'DONNELL: Thanks.

MR. SEIDEL: You -- you earned that, I think. The commission deserves our severe and profound -- profound gratitude. If adopted and
Commission on Sentencing Reform - 11-15-2007

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

This will almost surely be true.
The benefits will be most surely true, of course, if they occur in conjunction with positive things that are happening elsewhere among the many New York State and local agencies dealing with crime adjudication, incarceration and re-entry. I want to say just this for to the Commission about re-entry, move forward, stay the course, continue on the path along which the state has made a strong
and correct commitment to cooperate with coalitions
of local organizers, organizations public and
private, large and small. Around the Monroe County
Re-entry Task Force, whose able and articulate
coordinator, Ann Graham, we heard today, we have
built up a tremendous community-based head of steam
and good will, good work, and good prospects. We
are determined to move forward beyond these
beginnings. I also want to highlight the work of a
person who couldn't come today, Sue Porter,
Coordinator of the Judicial Process Commission.
The JPC has been doing important and excellent work
in advising and then mentoring incarcerated and
re-entering men and women for many years and will
continue to do so, on a shoestring.

I hate to say it, but it may be
one of the most important jobs in society that is
being done by people who's jobs earn benefits that
most high school graduates would sneer at. And I
hate to tell you that. That's crazy. The
Commission is exactly correct to indicate the
importance of multiple handicapping conditions and
constrain -- that constrain many persons who
Commission on Sentencing Reform - 11-15-2007

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

Most of us who have fared quite
well in this regard still have encountered
occasions upon which we have had to forego or
revise completely and even suddenly our
expectations. The fact that we have posted
testimony to our resilience, fortitude,
steadfastness and relationships. How else could we
have dealt with an entirely unforeseen personal
tragedy, vocational debacle or business crisis. I
hope that what occurs regarding the expectations of
men and women nearing the completion of their terms
of incarceration will enable them to handle their
circumstance as well as possible in the field of
dreams, growth and reality. My short experience
tells me just how important it is for all of us to
Commission on Sentencing Reform - 11-15-2007

be aware of and to respond to this phenomenon --

the phenomenon of expectations in the lives of

people who have had a hard time with reasonable

growth and growth-directed expectations.

One story tells it all as far as

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

was mentor experienced a severe crisis. This is

the day for which he had expectations for some

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

However anticipation did not generate

accommodation. In this case, the man's emergency

was heightened and intensified, apparently but the

conjunction of depression, posttraumatic stress

disorder, normal anxieties and a very serious

chronicle medical condition. He claimed that his

over eight years of imprisonment had produced the

PTSD and had accentuated his anxieties. I don't

know this for sure. In any event this man felt

comfortable to call me and I was willing to sit

down with him to help him sort out what he was

thinking and feeling. And I think we averted what

could have been a catastrophe. I came to know the

man even better over time and learned my judgment a
Commission on Sentencing Reform - 11-15-2007

year and a half ago was correct. Mentors to
formerly incarcerated men and women thus take on a
grave responsibility. They are in a position to
help folks who, due to habits, family circumstances
and prison need a lot of help to overcome the
deficits of not having learned how to live in the
real world. This is especially true of youngsters
who did not have good nurturing through their
formative adolescent years. A mentor has to be
aware of the bad habits that accumulate in prison,
particularly dissembling and conning. A mentor can
help teach and be a model for scheduling, making
good notes, handling money, budgeting, dealing with
paperwork, taking responsibility for oneself,
self-advocacy and so forth. But in the end, we all
know from the practices of treatment and recovery,
the individual has in the final analysis to decide
for her or himself. No one of any experience,
myself included, can do it for another person. We
can only walk with them. And mentors must know
their limits and keep reasonable boundaries. This
stuff is subjective and difficult to objectify and
quantify, I know that. Yet I'm sure you know its
values, bad attitudes and habits, ill health and related behaviors in youth and one's encounters with adjudication and incarceration need to be changed or addressed competently and professionally. The systems in place are designed at least in part to deal with them or perhaps to keep all involved as safe as possible in the face of bad attitudes and related behavior.

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

Finally, and most important, go all out to build bridges and foster intra and interagency and organization coordination, connectedness, and information sharing. This is really necessary, it's absolutely necessary among corrections, DCJS, and parole, and the local task
forces, about which I have a little bit of
information. In order to make the system
so-called, will you make it real system, better
able to serve re-entering men and women
comprehensively and to keep them on the right road.

Thank you very much for your time.

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

Welcome DA Clark.

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

If you'll permit me, there's just
a couple of observations I'd like to make. I'm
sure you've heard many of them before, but I think
they're important enough to bear repeating. And I
do so, not lightly. I've been involved in the
Commission on Sentencing Reform - 11-15-2007

criminal justice system for over thirty-five years.

And I've seen the sentences go one way and another.

I've seen things come in and I've seen things go

out. I've seen things work and I've seen things

fail. The first thing I'd like to address is

determinant census. I suppose it comes as no

surprise that I favor them, as I'm sure most

prosecutors will. In the past, indefinite

sentences were -- you -- you never got oh, he got

fifteen years. No he didn't get fifteen years. I

think people who are victims of crimes, I think the

public, I think defendants and prosecutors deserve

a definite sentence. It allows us to resolve cases

more easily and effectively. It allows defendants

to know exactly what's facing them and it allows

the public to understand what punishment is meted

out for crimes that people are convicted of.

Second; we all fear further

reduction in the drug sentences. We all

recognize -- most of us do, I can't say all, that

the old Rockefeller Drug Laws need reformation,

there's no question about that. And it was a long,

arduous, and difficult process that resulted in the
Commission on Sentencing Reform - 11-15-2007

sentencing scheme we now see. I think I fear,
along with many of my fellow prosecutors that
further reduction will be counterproductive. We're
placed in a rather unique position where we have
the courts on one side and our communities on the
other. We see the violence that occurs in our
communities every day. Last year in this
community, the City of Buffalo, we had over seventy
homicides. I think it's no exaggeration to say
that two thirds of those were drug related. It is
a horrible problem that we have to face. And
addressing it is a difficult problem. Violence on
one side, and -- and I think treating drug
offenders fairly is something equally supportive.
It's a very difficult process in determining who is
the addict and who is the dealer. But there is a
difference. You -- you've heard all the problems
that drug dealing creates. And I just -- I
underline that. It's vitally important to us to
reduce sentencing, mandatory minimums, repeat
felonies, to ignore second felony offenders, to
take away the incentive they have to get into drug
treatment programs. I mean sometimes the treatment
Commission on Sentencing Reform - 11-15-2007

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

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

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

The last thing that I'd like to mention is, where we have plea restrictions, I think it's a good idea. And eliminating plea restrictions, I think might be counter productive.
Commission on Sentencing Reform - 11-15-2007

In many situations, perhaps in sixty percent of odds, we resolve cases by superior court information rather than by grand jury indictment. It allows a quick and expeditious resolution of those cases and obviously in a manner, which is satisfactory to both defendant and prosecutor. Often times the restrictions post indictment encourage the defendants to take the plea before the matter goes before -- before the Grand Jury. In our situation, after indictment we don't allow pleas. So if in eliminating the incentive to plea, somebody that might decide not to plea goes to the Grand Jury, we don't offer him a plea, they get convicted and ultimately face a much larger mandatory sentence than they would have with a plea restriction where we permitted them to plea to a lesser offense. I don't think that they're unusual in that respect. I think that it results, quite frankly, in a more fair, equitable resolution cases and it certainly does expedite the -- the handling of cases. I'm looking to see if I have any --. I -- I think those are the things that bother me the most. I think these are the things that we
Commission on Sentencing Reform - 11-15-2007

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

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

UNIDENTIFIED SPEAKER: Thank you sir.

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

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

MS. KATES: Good morning.

MS. O'DONNELL: Good morning Ms.

Kates.

MS. KATES: As you said, I'm an
attorney in private practice. My practice focuses
Commission on Sentencing Reform - 11-15-2007

on parole and that's everyone knows about me.

However, that's not who I am as a

person. I started out in a broken family. My

father divorced my mother at seven. I ended up in

juvenile detention centers when I was fifteen years

old. So I'm here speaking to you not just as an

attorney, but as someone who has experienced the

system. I've also been a victim of brutal crimes,

so I've also been a victim. So please take what

I'm saying not just from the point that I'm an

attorney. I've submitted to you my written

submission, which is over -- I think it's around

forty pages long, giving you my legal opinion of

what I'm going to speak about including

constitutional and statutory analysis.

I'm here to talk to you about the

discretion of the Parole Board. I do commend Mr.

Alexander, since he's taken over in January to

attempt to obtain tame the beast that Pataki has

left behind for him. However, my thoughts about

whether that can be done, I think, is a little bit

contradictory to his position in your preliminary

report.
What I'm here to talk to you about is the effect of a plea bargain for a criminal defendant. As you know, in this country constitutional rights are afforded to criminal defendants and they waive those rights in order to enter a plea bargain. My experience -- I've been fighting this issue for the past two years, a year under the Pataki administration and eleven months now under Mr. Alexander. The position of the Parole Board, as evidenced to me by Head Counsel Terrance Tracy is that they do not consider plea minutes as part of their decision making process in reviewing someone for parole. To me that is totally unconstitutional and against what the law currently says. If you think about it, someone has waived their constitutional rights and taken a plea, which half of it almost -- I think the stats are close to ninety percent of all criminal cases, in order to expedite the system, and allow our courts to function efficiently. The problem is, defense attorneys and many other people are not aware of the effect of this plea bargain on a criminal defendant once they serve their time and
Commission on Sentencing Reform - 11-15-2007

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

However, what's happening is there's a new body of case laws mandating parole to look at sentencing minute and they refuse to look at parole decisions when they are evaluating them and consider the plea allocation along with those sentencing minutes. Their position has unequivocally been, since I've been fighting this, we don't have to look at those plea minutes. In my submission it goes to this in much more detail, but how can you do that when someone entered a plea and that becomes the source of their conviction. How can you ignore what was said in the plea allocation as that's where, generally, the District Attorney, the sentencing Judge, and the Defense Attorney give their recommendation for that person. That's where a lot of the language indicating why they were allowed to take a plea, which is opted, a minimum sentence. How can you ignore that and say that's
Commission on Sentencing Reform - 11-15-2007

constitutional. You can't do that.

What I'm going to do is, it's in

my written submission, but I want it to be on the

record. I've used three real cases in my written

submission to talk about what the discretion of the

Parole Board has done to real people and that's

what you need to realize. You're dealing with

human beings, not just a number, or someone locked

up in prison. These people are real people. They

have feelings. They have families, and they are

striving to try to reach rehabilitation, but they

are constantly denied parole over and over again

every two years for no reason. There's three cases

in my submission.

One is Donald Farin (phonetic

spelling). This man is elderly. He is currently

in Westchester County Hospital dying or being

treated, they don't -- they can't tell, for cancer.

He can't even speak. The man has a tracheostomy

and George has been trying to help us with this

person. This man had a sentence of twenty to life.

It was by trial he was given a plea bargain. But,

he has been denied parole nine times for the
serious nature of the crime. We -- and I have been
his attorney since I became an Attorney. I worked
with this man when I was in Law School and so I've
known them for over seven years now. This man does
not deserve to be continually denied parole because
the parole board has discretion. He can't even
speak. He is not a threat to society. I had a
psychological evaluation done and we submitted that
to the board as well he was tested, they said he's
not a danger, he shows his remorse. Two letters
have been submitted by a sentencing judge, but the
Parole Board continues to ignore this. He's going
to the board for his tenth time in January and
they've assured me that if he is not out of the
hospital, they will go to his bedside to review him
for parole. But if the discretion is still there,
I don't have much faith that this man is going to
be allowed to come home. Yes, George issued a
memorandum saying you must follow New York State
Executive Law, however, I've been practicing. I
have case after case where they have continued to
ignore New York Executive Law and issued arbitrary
decision while fighting for de nova hearings for my
Commission on Sentencing Reform - 11-15-2007

clients on a daily basis.

The second case is Joel Montequence (phonetic spelling) and this case, I think is a good example for you because, as you know, they just scrapped the settlement Graziano, which I contribute to the large public pressure of the Police Benevolent Association, which there's no mention of them in the statute of the law that they can push you to make a different decision. My client, Joel Montequence was convicted in 1971 on allegations that he murdered two police officers in New York City. He's been denied parole three times. I've also argued this case in court over and over again, most recently in the third department appellate division in 2004. At that point we had a victim impasse statement from one of the officers sons. He came from down south, he did a big, huge press thing in Brooklyn. The whole family was there and they ignored the statement totally. They escaped it being reviewed in courts because it was not available because it's confidential. I had to get him to obtain a copy of that impact statement so I had it for litigation.
I didn't receive it until the case was already in the third department and I attached it as part of the side brief. The court found that had this been available it would afford intelligent Appellate Review. However, now we go again to the board, my client is hit again for the serious nature of the crime in 2006. Shortly after that he was extradited to San Francisco to face charges for a 1971 alleged murder of another officer when he was already incarcerated. So now the Parole Board says well, we don't do parole hearings because your client is in California. So despite the statute saying my client can have a hearing in twenty-four months, he doesn't get one. And they don't know when he will get one because they told me in an affidavit to the court that until he's returned to New York, he won't see the parole board. So I then responded, I filled a clemency application because it said you can't be eligible for parole. Parole answered to that, well I'm sorry, your client is eligible for parole so we won't consider his clemency application. So we're currently litigating that issue. But this again is another
Commission on Sentencing Reform - 11-15-2007

abuse of the discretion that they have.

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

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

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

Defendant -- yes.

You have discussed this matter to
your satisfaction with your attorney? Defendant --
yes. Have you had enough time to speak with your
attorney, family, friends, advisors, whomever you
wish to speak with so you know you will proceed
here today in reference to this plea bargain? Yes.
Have you discussed with your attorney the strengths
and weaknesses of the people's evidence against you
in this case as he views the evidence?

Defendant -- yes. In addition, have
you discussed with your attorney any possible legal
or constitutional defenses that you might have for
the crimes charged against you on the indictment?
Yes. Are you satisfied with the legal
representation given to you in this matter by your
Attorney? Yes I am.

In addition to your Attorney, is
there anyone else that you feel that you absolutely
have to speak with or have present here today
before you can proceed with this matter?

Defendant -- no.

Do you understand that you have a
right to a trial by jury or by the court sitting
alone without the jury with regard to the charges
Commission on Sentencing Reform - 11-15-2007

pending against you in this indictment?

Defendant -- yes.

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

Defendant -- Yes.

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

Defendant -- yes.

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

And in my written submission,

this continues on for another additional page.
Commission on Sentencing Reform - 11-15-2007

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

Thank you very much.

MR. ALEXANDER: Ms. Kates, before you go away, for -- a couple of points. One is the Decker Laws is very clear in terms of what the
Parole Board is to consider in making decisions with regards to a person's release. We do take into consideration the sentencing minutes. In the absence in the sentencing minutes we have granted De Nova hearings so that those sentencing minutes are made present to the parole board when they're making those decisions.

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

MS. KATES: Can I respond to that please? In the first statement, yes you're supposed to follow sentencing minutes, but your
Commission on Sentencing Reform - 11-15-2007

head counsel says the sentencing minutes involve

just the sentencing. I have a letter written to me

and it's in my written submission where he said

there's no statutory or constitution or anything

else that tells him he has to look at the plea

minutes. So if that's not where your position is,

I would suggest you speak to your Head Counsel

because that's what he's telling us and then he

keeps refusing to get plea minutes. Yea he gave me

DE Nova's on all my client's re-sentencing minutes.

But if they were plea bargain defendants and they

went ahead with just the sentencing minutes, he

won't listen to me about getting the plea minutes

and he refuses to do so. Secondly, on Mr. Bob case

yeah, you do face to face interviews, but you also

do telecommunications with, you know, not being

face to face. And you do it at Albany Correctional

or other places. So I think that that -- because

it's in California, that makes no difference, that

you should still afford him his parole board

hearing. He could be there for years and he is

eligible to apply for bail. The rest of the

defends on that case have been bailed out and
there's six of them. The only two incarcerated in
California are Herman Bell, who's under your
jurisdiction and also Anthony Bottom. They both
will be there for several years while this goes on.

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

MS. KATES: Thank you.

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

MR. ROSENTHAL: Thank you. I want to thank -- thank the Commission for the
opportunity to speak at these public hearings. I know this is the third in a series. I'd also like
to thank you for your -- your time and commitment.

I know that since this Commission was first put
together it's been on -- it seems like -- seems
like it's been on a fast track and I thank you for
your hard work.

The Center for Community
Alternatives with offices in Syracuse, Manhattan
and Brooklyn has as its mission the promotion of
reintegrative justice and the reduced reliance on incarceration through efficacy, services, and public policy development and pursuit of civil and human rights. We are uniquely situated to comment on the report because we're involved in direct service for people coming out of prison. At the same time we're involved in sentencing advocacy. At the front-end research and policy development. I'd like to spend most of the time talking about determinate sentencing and -- and the proposal and -- and -- and then finish up with a couple of comments about issues raised in the report. The -- the focus on re-entry over the last few years, from the beginning of this decade culminating in President Bush's remarks at his State of the Union Message was viewed as many as an opportunity to take a new look at our sentencing goals. In the summer of 2006, the New York State Legislature did exactly that by amending a longstanding session of one point oh five, subdivision six to add in a new sentencing goal to the four traditional goals, that of the promotion
Commission on Sentencing Reform - 11-15-2007

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

Equipped with the knowledge
that -- and the consciousness that both re-entry
and reintegration are inextricably linked to public
safety. There were those of us who had hoped that
the Commission would fashion a sentencing model
that would reflect the new course that the
Legislature had charted. Many had hoped that the
Commission would search out the sentencing model
that would be compatible with our new current
sentencing goals, concerns over racial disparities,
mass incarceration, the recognized disintegrative
effects of incarceration, and our new understanding
of re-entry and reintegration. Instead, what is
suggested is the determinate sentencing model.

And -- and I'd like to talk about why I think that
that model is the wrong model at the wrong time.

The report does a wonderful job
of laying out the history of sentencing models in
New York tracing all of the way back to 1796, when
the goal of punishment and deterrents. That's the
goal of determinate sentencing. In the period 1877
to -- to 1970 we see the sentencing of
rehabilitation as a goal. New York, along with
many sister states fashioned the indeterminate
sentencing model as compatible with the
rehabilitation goal. Between '70 and present we
saw rehabilitation fall into disfavor and the
embracing, once again, of the -- the goal of
retribution as the primary goal. It took time for
New York to catch up. It had a system out of sync.
It had an indeterminate sentencing model at the
same time that it had, for all intents and
purposes, abandoned rehabilitation. But the goals
and the model need to be in sync and -- and I
suggest that since 1995 when we started down the
path of -- of determinate sentencing first for
violent offenses that we would try to find that
synchronization. To determine what platform
certainly one designed to address the goal of
punishment and that is the force indicated. It was
driven by federal funds, being held out for all
states to increase their Criminal Justice Systems,
Commission on Sentencing Reform - 11-15-2007

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

What I'd like to do is go through
four of the more -- more significant ones. First,
as to simplification, there's no doubt that New
York is a system in need of simplification. And --
and what that might be is a different question than
simply simplifying for simplification sake. But
inconsistency between the model of permanent
sentencing and our new goals is certainly not
desirable. Certainty, the centerpiece, as
indicated by District Attorney Clark, the
centerpiece of determinate sentencing is certainty.

Opponents of determinate sentencing point out, look
at all of the uncertainty in indeterminate
sentencing. They point out five potential release
Commission on Sentencing Reform - 11-15-2007
dates. Supplemental merit time, which gets you to
a release date for drug dependence anyway.
Merit release date, parole
release date, conditional release date, and maximal
release date. That's five. But when we look at
determinate sentencing we find no greater
certainty. We see a merit release date, a
conditional release date, a maximum release date, a
maximum determinate release date plus post -- post
release supervision which may differentiate that
for any one of a -- a number of years. A six-month
kicker, provided by penal law 70.45, which adds
additional uncertainty and for sex offenders, just
as of April 13th of this year of the determinate
system, which is compounded by an indeterminate
system in which anyone whose parole is violated --
post release supervision is violated and sent back
for more than three year time assessment, faces the
prospect of going to the Parole Board in
uncertainty.
Comparing the two, we now have
six possible release dates for determinate
sentencing as compared to five for indeterminate.
But release dates for determinate sentencing don't stop there. There are five more. There's a work release date, a case set release date, a Willard release date, a shop release date, and for most cases, still no commitment. A release date that may never come.

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

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

The criticism of the Parole Board discharged some of that about decision making. And
Commission on Sentencing Reform - 11-15-2007

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

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

MR. GREEN: If I could just ask one question? Given your feeling on determinate sentences, what are your thoughts on, for example
Commission on Sentencing Reform - 11-15-2007

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

               MR. ROSENTHAL: Not -- not necessarily.

               MR. GREEN: Would -- would this thing.

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

               MR. GREEN: My question goes to
Commission on Sentencing Reform - 11-15-2007
determinate versus indeterminate. What's the
distinction then between the nonviolent and what we
classified as a nonviolent drug felony and the
nonviolent felonies that we're dealing with in the
report. Why does one of those get a determinate in
your mind, and one get an indeterminate?
MR. ROSENTHAL: To me the
overriding goal is when a person is ready to return
to the community -- when they are either ready to
reintegrate or rehabilitate that we not keep them
in prison unnecessarily.
MR. GREEN: Uh-huh.
MR. ROSENTHAL: Under either
system.
MR. GREEN: What I'm wrestling
with is is there -- is there a reason that you
would point to that would say that it would make
logical sense to treat this group of cases with
indeterminate and treat this group of cases with
determinate. Is -- is there something that we
could look to that would say this is justification
as to why we treat this group one way and this
group another way.
MR. ROSENTHAL: Honestly I -- I don't see a justification for -- for that disparate treatment. I -- I see -- I -- I see the reason for indeterminacy. Because it -- it -- it puts us in a better position not to over punish, to allow somebody to go home when they're ready to go home, to go home to their families and so on. The -- the simplicity of determinacy means that no matter how soon you are ready to go home, nobody's there to open the gate. That's a function of the parole board. As much as we criticize them, it a function of the parole board that is consistent with our new notions of re-entry and reintegration. Thank you.

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

You -- you had mentioned that you have felt that there is a certain degree of racial disparity that hasn't really been taken into consideration when it comes to sentencing. My question for you, especially since you've been involved in -- with the sentencing commission and involved in one of the subcommittees and it's
Commission on Sentencing Reform - 11-15-2007

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

MR. ROSENTHAL: Short question would be a long -- let me try to be very precise.

We -- we've done a good amount of research on this. There are actually twelve junctures in -- in the processing of a criminal case. Your race can be a factor beginning with the very deployment of police and -- and where put that. Moving on to arraignment and who gets bail and who doesn't. Each one of those needs to be analyzed and -- and thought through more carefully about where race affects the process and what we can do on an institutional basis to try and buffer that and so the -- the short answer is I would -- I would pick apart each of those twelve places where race can enter and to it and try and create a prophylactic system to prevent it.

MS. O'DONNELL: Alan I want to thank you for your work on our subcommittee. We appreciate it and hope that you'll continue to
Commission on Sentencing Reform - 11-15-2007

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

MR. ROENTHAL: Thank you.

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

MS. USBORNE: Hello.

MS. O’DONNELL: Welcome.

UNIDENTIFIED SPEAKER: Good
morning.

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

MR. BERGONO: Ms. Usborne?

MS. USBORNE: Yes.

MR. BERGONO: I apologize.
Commission on Sentencing Reform - 11-15-2007

Please speak a little bit higher, little bit louder.

MS. USBORNE: Okay.

MS. O'DONNELL: We have some noise up here that we can't get rid of that is --

MR. BERGONO: Fan behind us.

MS. O'DONNELL: -- interfering, so.

MS. USBORNE: Upon referral from the Defense Attorney and more recently the District Attorney's Office and the Judges themselves our staff in client specific planning, excuse me, conducts thorough background investigations and assessments of the defendants that are referred. A comprehensive written report is prepared detailing the individual's personal history and circumstances, their strength and needs, and suggestions regarding sentencing alternatives. And those include supervision and programming such as substance abuse, mental health treatment, educational, employment services, family-related services, and community support. In completing their alternative sentences many of our CSP clients
have donated countless hours of community service at varied Human Service Organizations and Community Agencies. More importantly, approximately eighty percent of our clients successfully complete their sentences and move on to healthy and productive lives. In addition, in those cases --

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

MS. USBORNE: I'm sorry.

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

MS. USBORNE: In addition to --

MS. O'DONNELL: That's better.

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

In addition to my current
Commission on Sentencing Reform - 11-15-2007

position of employment I would also like to mention

that I worked as a Probation Officer for fifteen

years in both New York and Massachusetts. And

during that time I was also very involved in the

youth assistance program at Sullivan Correction

Facility and I served as a Volunteer Coordinator

and Facilitator for the Alternatives to Violence

Program at Eastern Correctional Facility. So I do

have some experience within the facility as well as

in the community based program.

I feel that based on my

experience as a probation officer and now as an

advocate for the defender based criminal justice

agency, I'm able to offer a unique perspective

regarding our present sentencing model and more

specifically the use of Alternatives to

Incarceration, which is -- I'd like to talk today

about one specific alternative that we've become

pretty familiar with in our area. So I would like

to highlight the use or lack of interim probation

supervision as an alternative to incarceration.

MS. O'DONNELL: Ann. Maybe you

can move the microphone even closer to you.
Commission on Sentencing Reform - 11-15-2007

MS. USBORNE: I'm sorry.

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

But it's a big auditorium.

MS. USBORNE: Okay then. As an alternative to incarceration and a tool to reduce recidivism and restore individuals to law abiding and productive lives. In 1998 section 390.30 of the Criminal Procedure Law was amended to include subdivision six permitting local probation departments to supervise eligible defendants for up to one year prior to formal sentencing under interim probation supervision. Interim probation allows certain individuals charged with criminal offenses to participate in the appropriately identified services while being held accountable for their actions. As you all know, multiple research studies have determined a remarkable percentage of those individuals caught up in the criminal justice system suffer from addiction, either from a significant mental illness. One such study released by the Department of Justice in September of 2006, indicated that fifty-six percent of State Prison Inmates in the United States were
found to suffer with mental health issues. Seventy-four percent were found to be inflicted with alcohol and drug addiction. Additionally approximately sixty-eight percent state prison inmates do not have a high school education. Other research consistently tells us that correctional facilities and staff are not equipped to deal with these individuals, nor are there sufficient program services or adequately trained staff to meet the specific needs of this population. As a result, many mentally ill and addicted prisoners go untreated or receive treatment that is extremely limited in both quantity and quality. Typically, these individuals will eventually be released in no better, and often far worse condition than they were initially incarcerated compromising their ability to successfully transition into society and increasing the risk for reinventing their behavior. While clearly it is understood that some dangerous offenders require confinement to protect the community, other offenders may be effectively supervised and more importantly safely diverted
Commission on Sentencing Reform - 11-15-2007

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

Interim probation supervision is frequently identified and recommended as an appropriate, acceptable alternative to incarceration in many of our plea created reports. Over the past two years at least fifteen cases in which CCA was involved were accepted by the DA's office in the court for interim probation supervision. Of those fifteen, ten have successfully completed their interim period of supervision and were allowed to plea to a reduced charge, typically a misdemeanor and went on to successfully complete the imposed sentence. In two of those cases, which started out at the felony level, violent offenses, the cases were dismissed because the DA's Office was so impressed with the
Commission on Sentencing Reform - 11-15-2007

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

There was one young lady that we
worked with. She -- I think she was twenty-one or
twenty-two, a single mother of three young
children. She was a certified nurse's assistant
and because she was charged with a felony, the case
had not yet been disposed of, she was unable to
find any employment and was relying on Public
Assistance. With continued advocacy from our
agency and the Defense Attorney, the DA's Office
agreed to allow her to plea to a violation
disposing of the case. She found a job within a
week. We -- and appropriate education and
employment services and she is now in a program to
become -- to receive her LPN.
Commission on Sentencing Reform - 11-15-2007

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

One jurisdiction, which had previously supported the use of interim probation announced to me that they will no longer permit it because the successful outcomes has interfered with the conviction rates of the DA's Office.
Isn't it time that those of us involved in the Criminal Justice System and as a society, redefine success, isn't an individual's success and productive reintegration -- and integration to society the best measure of success when considering the reduction of recidivism and public safety. It also requires an individualized approach to sentencing. Based upon our experience and the high rate of success in utilizing such alternative sentencing options, such as interim probation, we urge jurisdictions to expand it's use and the use of other alternatives in maintaining consistence with the evolving concept of re-entering, reintegration while recognizing the benefits to public safety.

In 2006, a fifth goal was added to the traditional goals of sentencing to include the promotion of the defendant's successful and productive re-entry and reintegration into society to be considered alongside the more traditional goals of deterrence, rehabilitation and retribution. The new law requires every judge presiding at sentencing or resentencing in a
Commission on Sentencing Reform - 11-15-2007

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

MS. O'DONNELL: Thank you very much.

We appreciate it. Karen Murtagh-Monks from
Prisoner Legal Services and after Ms. Murtagh-Monks
we have Patricia Warth, also from Prisoner Legal
Services. Welcome.

MS. WARTH: Good morning.

MS. O'DONNELL: Good morning.

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

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

MS. WARTH: Okay, thank you.

MS. O'DONNELL: Uh-huh.

MS. WARTH: I'll testify first
and then Karen will testify second. I'd like to start off by thanking you for this opportunity to address before this commission the very important issues that you are facing right now.

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

Thus our comments will address alternatives to incarceration, New York Sentencing Policy and Laws, Drug Reform -- Drug Law Reform, and the need for prison based programming designed
Commission on Sentencing Reform - 11-15-2007
to further inmates' reintegration into our communities.

What perhaps we do not discuss often enough is the fact that research has shown that prison itself has an crimnogenic effect meaning that it increases recidivism. The reasons for this are discussed in our written testimony.

But alternatives to incarceration, or ATIs maintain important community connections and as a result can play a significant role in reducing these crimnogenic effects and furthering reintegration. Most studies show that ATI significantly decreased recidivism. At worse, the studies show they don't increase it. These studies, of course, are evidence-based research and strongly encourage the use of evidence-based practices to take into account the crimnogenic effect of incarceration. In this regard we applaud the Commission for recommending that evidence-based practices be used to guide decision making. We are concerned, however, that the Commission's view of evidence-based approaches is much too limited and that the Commission overlooks the value of
evidence-based approaches in making what is perhaps
the most important decision, and that is whether or
not person should be incarcerated. Therefore we
urge the commission to use evidence-based practices
and to look to the evidence about the criminogenic
impact of incarceration to make the critical
decision about sentencing.

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

Sentencing is another.

In 2003, the United States
Commission on Sentencing Reform - 11-15-2007

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

In 2006, the United States made
great efforts to bridge the gap that he describes
by amending Penal Law 1.05 to now include
reintegration as a sentencing goal in New York.

Like Mr. Rosenthal, who spoke to you before, we are
greatly disappointed that this Commission didn't
address this amendment to the sentencing law in its report. As Penal Law 1.05 acknowledges, re-entry cannot be a back end approach, meaning that we cannot limit our thinking about re-entry to the few months before an inmate is released. Meaningful reintegration and re-entry efforts begin at the point of arrest and sentencing and must be thought about throughout the person's contacts with the criminal justice system.

Accordingly we ask the sentencing commission to recommend a sentencing model that incorporates the principles articulated in New York Penal Law 1.05, a sentencing model that makes reintegration meaningful by emphasizing rehabilitation. We believe that the shift to determinate sentencing that this Commission has recommended does not accomplish this goal. It seems that the Commission's primary justifications for the recommended shift are simplicity, certainty and the fact that this has been the recent trend.

These specifications, however, have little to do with articulating sentencing goals in our penal law. and Mr. Rosenthal spoke eloquently about how...
determinate sentences failed to even meet these
goals, so I won't repeat what he said here.

But I want to bring up another

justification this Commission gave and that is the
Commission apparently believes that defendants
preferred a certainty of determinate sentences to
the uncertainty of the parole process. And I'm
here to tell you that that is not what our clients
are telling us, just the opposite. The
overwhelming majority of our clients really want a
shift away from determinate sentencing. To be
sure, for two decades they have told us of their
frustration with the Parole Board's failure to
recognize their honest and true efforts at
rehabilitation. They are frustrated that their
release is measured by the nature of the crime,
something that they can't effect, or they can't
change at this point. But from their perspective
and ours, doing away with indeterminate sentencing
is not the answer. After all, indeterminate
sentencing offers the best hope that genuine
rehabilitations will be rewarded. Our clients
therefore urge us to advocate for changes to
Commission on Sentencing Reform - 11-15-2007

parole, not changes -- a wholesale shift on
determinate sentences. They ask decision makers to
do precisely what Justice Kennedy urged the
American Bar association to do, to remember that
those who commit crimes are human beings whose
minds and spirits must be reached. And we can tell
you our thirty years at PLS, these are minds and
spirits that can be reached. The vast majority of
our clients want to be rehabilitated. And Ms.
Murtagh-Monks will talk about the programs that
they tell us they need and that they are seeking
out and that they welcome to achieve this. There
are a variety of ways to do it. The simplest way,
and the most obvious is to not shift to determinate
sentencing, but to fix parole. Fix parole so that
inmates' meaningful efforts at rehabilitation are
measured, so that inmates are given opportunity to
be released when they show that they are ready to
be released. And from our perspective, this
further's public safety because you're not keeping
inmates in longer than they are ready -- longer
than they need to be in. You're releasing them
when they've shown that they're ready to go, saving
Commission on Sentencing Reform - 11-15-2007

money and reducing respond recidivism or
encouraging reintegration.

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

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

Therefore, we agree with the many
people and organizations who have urged this
commission to seek an alternative approach to
sentencing for nonviolent drug offenses or at the
Commission on Sentencing Reform - 11-15-2007

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

Thank you.

UNIDENTIFIED SPEAKER: Thank you.

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

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

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

MS. MURTAGH-MONKS: My name is Karen Murtagh-Monks and I'm the Deputy Director of Prisoner's Legal Services. As Ms. Worth, my colleague indicated, I'll be talking to you today about the reintegration that you'd incur through in-prison rehabilitation program. Reintegration means rehabilitation, self-development and preparation for release into the community. In order to achieve these goals we suggest that DOCS work with the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services in a four-step process:
First; they should perform a risk and needs assessment immediately upon an entering DOCs custody.

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

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

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

With respect to the individualized risk and needs assessment, we are very encouraged by the Commission's recommendation that each inmates' risk needs be individually assessed and we are likewise encouraged that the Commission has recognizing the presentencing for it, which is often relied on to acknowledge the resentencing encounter in an inmate is released.
Commission on Sentencing Reform - 11-15-2007
from prison. It is not a good mechanism to assess
needs. It is not an effective instrument because
it tends to be fraught with errors and the inmates
are not vested in. We have numerous clients who
have contacted us to tell they believe there are
errors in the presentencing report and they are not
allowed to see it so they can't even get what those
errors are.

We are also encouraged the
Commission recommends use of a validated
evidence-based approach to assess needs and risks.
We suggest that the best investment for any program
is one that is fluid, holistic, and multilateral.
By fluid I mean that if inmates needs change
throughout their incarceration that you can't just
look at the status factors, you have to look at the
dynamic factor. For example you may have an inmate
that arrives at DOC who is addicted to drugs. If
that inmate is to be able to get HIV treatment,
over time his needs and risk will change. Thus
original needs must be reassessed to take into
account that which he may have or not achieved over
time.
Commission on Sentencing Reform - 11-15-2007

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

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

With respect to the second prong of the action we would like DOCs to take the resulting treatment that is identified once they may assess needs. There is just no question that you have an inmate come into the system and they're ready to for these treatments and they wait four
Commission on Sentencing Reform - 11-15-2007

years before they get it.

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

With respect to mental health, ONH
screening is usually done sometime after an inmate
is received in prison, but it relies exclusively on
the inmate reporting. ONH should not get records
from when the inmate was -- when the inmate was
incarcerated. And often times those community
mental health records indicate what the diagnosis
was, what the treatment was, and -- and how the
inmate has responded to treatment. What happens is
that ONH found, based on the inmates
self-reporting. I'm sure you're all aware of the
DAI litigation, but that litigation focused on a
disciplinary entirely. We need expanded programs
for mentally ill inmates that are in general
Commission on Sentencing Reform - 11-15-2007

populations. As of 2004 there were only five

hundred and thirty-four beds available for the

three thousand two hundred inmates diagnosed as

suffering from major mental illness. With respect

to substance abuse, the waiting lists are

particularly long, for ASAT, an alcohol and

substance abuse treatment, which is the largest DOC

program that there is. Inmates often wait years

before their treatment needs are met. There is a

Stay n Out program at Arthur Kill and Bayview

Correctional Facility and CASAT programs in five

other facilities. And they are the only programs

that help inmates identify community-based care

upon their release from prison. We ask the

Commission to recommend that Substance abuse

treatment begin as soon as possible upon receiving

inmates, that there are entry numbers to connect

inmates to community-based long-term treatment that

work release eligibility must be expanded to enable

more inmates to participate in CASAT and that DOCs

be instructed to honor important court orders with

respect to CASAT treatment. And educational

opportunities -- this Commission is aware of the
Commission on Sentencing Reform - 11-15-2007

Pell Grant and the TAP removal of those grants in prison. We're asking that this Commission follow the New York State recommend that funding education is made a priority, that we create opportunity for college education by restoring funding through this the TAP program. We have other recommendations in our testimony but my time is running short. But we would also strongly recommend segregated housing that this committee recommends there should be weekly tutoring those individuals and they not just be locked up in a box for years without any education whatsoever. With respect to vocational programs, once again we would like the Committee to make a recommendation that those programs be expanded and that funding increased for vocational programs. And we would ask that this Committee recommend that DOCs take more a more realistic view of why vocational programs should be provided in the facility. Often times inmates are given jobs that on the outside, they're not marketable jobs. They can't find a job to support them. Maintaining family and legitimate community ties in issue to once again look at New York State Bar Association
Commission on Sentencing Reform - 11-15-2007

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

MS. O'DONNELL: Thank you very much.

UNIDENTIFIED SPEAKER: Thank you.

MS. O'DONNELL: We appreciate it.

Thomas Green from the Altamont Program. And after that James Redfern from the Manhood Reentry initiative. If he would come down. Okay, and this is Mr. Green?

MR. GREEN: Okay, good -- good morning.
Commission on Sentencing Reform - 11-15-2007

UNIDENTIFIED SPEAKER: Good morning.

MS. O'DONNELL: Good morning.

MR. GREEN: Good morning ladies and gentlemen. I'm Thomas Green and I'm the Director for the Altamont Program Inc's Housing services and we're a division of PYHIT, which stands for Peter Young Housing Industries and Treatment. We've been in existence now for over forty-five years and we have ninety-three various programs throughout the state of New York. I would like to talk to you today about the enormous need for housing, education, vocational, and employment services for the prison re-entry client. And I stand before you today being a person who has gone through the system, who is also -- I mean I stand before you being an ex-offender as well as a person of recovery. And I don't mind sharing with you the apprehension, the intimidation, and -- and all the anxiety that I felt coming home. It -- everything just seemed overwhelming and basically there was -- there existed programs and the understanding, compassionate staff in such places as Altamont
Commission on Sentencing Reform - 11-15-2007

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

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

I'll share with you some of the barriers and challenges to providing housing for the Criminal Justice client. I have worked closely with those individuals returning to society through work release and now parole. Some of the primary barriers that exist in the Housing Continuum that cause gaps in services are: the need for adequate Emergency Shelters, Transitional Housing, Permanent
Commission on Sentencing Reform - 11-15-2007

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

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

Funding is also a major concern for providers. The lack of adequate funding can limit success and increase the chances of failure for the client. There are an increasing number of Housing Assistance Programs and that number has continued to increase since the 1980s and early 1990s becoming a two billion dollar a year endeavor today as quoted by the National Alliance to end homelessness in 2000. Yet, the problem remains a serious problem in many communities across the country. Some of us believe we need to shift to new approaches, not suggesting innovation but
rather renovation. Looking at the characteristics of the criminal Justice re-entry client, it's obvious that most have serious mental illnesses, substance abuse disorders, HIV/AIDS, or physical disabilities. Many have more than one of these major problems which frequently results in their being turned away from traditional Housing Assistance programs. Many of the clients have been homeless for a long time. Many have no ties to family or other supports and lack resources. Their skills -- their skills are -- let's see -- orientated toward survival on the streets, not living in housing. Any efforts that expected to reduce this housing plight to any significant degree must attract and hold this targeted population:

First; there has to be an effective way to contact and recruit these individuals. Equally important, there must be something to offer them that they will take. The program needs to fit the people, rather than the reverse. Outreach, housing, and supportive services are obvious components to a solution.
Commission on Sentencing Reform - 11-15-2007

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

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

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

Three; we must have the ability to work with people co-occurring disorders. No longer can we remain single focused in our approach to these ever-increasing problems.
In closing, it should be said that there are no single answers to the problem. It's -- it will take collaboration, networking and partnering if we are to be effective in providing viable solutions to address these needs.

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

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

MR. BERGONO: Mr. Green, Mr. Bergono. First of all I appreciate Altamont and Father Young and the work they've done throughout the State. So thank you for the things that you do. The assistance in -- in working with that population. As you may or may not know, both -- well the Division of Criminal Justice Services, Parole, Corrections and OASIS have started a pilot out at Orleans Correctional facility to do some of the things that you're saying to create the partnership and create that seamless transition from incarceration back to the community. And I invite your group and any other service provider out there to join us in those efforts because we
need as many resources around the table. As I always say, it's not just our problem in the Criminal Justice System, it's everybody's problem. So we invite you to -- to sit with us and try to resolve some of those issues that you raised. I agree with your report one hundred percent.

MR. GRANT: Thank you sir.

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

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

MR. BERGONO: Uh-huh.

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

MR. BERGONO: Thank you.

MR. GREEN: So we're welcoming
any opportunity to do our share in trying to alleviate the recidivism rate as well as produce, as we say, clean and sober taxpaying citizens.

MR. BERGONO: Actually we think that that's a good thing.

MR. GREEN: Thank you.

MS. O'DONNELL: Thank you very much for your work.

MR. GERGONO: Thank you for your time.

MR. GRANT: Thank you sir.

MS. O'DONNELL: James Redfern from the Manhood Re-Entry Initiative. Is Mr. Redfern here?

Okay, we'll be coming back to him.

Nicolas Texido from Legal Aide of Buffalo.

MR. TEXIDO: Good morning Commissioners.

MS. O'DONNELL: Welcome.

MR. TEXIDO: I thank you for the opportunity to speak today. My name is Nicholas Texido. I work with the Legal Aid Bureau of
Commission on Sentencing Reform - 11-15-2007

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

But removing the hat of an advocate and putting on the hat of a -- an neutral observer, we have to say the trial judges generally
do a remarkable job of exercising their discretion in most cases.

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

First; it's nearly impossible to create an exhaustive evidence based or -- or guideline system that accounts for all the factors that judges need to take into account at sentencing. An evidence-based system limits and prescribes these factors, reduces the role of advocacy and judgment from sentencing. For instance, the Federal Guideline makes no allowance for education, vocational skills, mental and
emotional conditions, physical conditions, drug or alcohol dependence, employment history, level of guidance as a youth, or charitable works. All of these are presumably taken into account by the judge attempting to achieve a just result in a given case. For example, a judge free from any guideline restraints may wish to take the offender's age into account for effectuating the goals of rehabilitation and/or re-entry.

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

Also, a particularly compelling factor that impacts on sentencing, such as a physically or mentally disabled victim may warrant more consideration in a given case than the guideline system allows for. Allowing the judge to take a holistic view of the offense, the offender, the circumstance of the case, is a whole new way to
Commission on Sentencing Reform - 11-15-2007

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

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

I'll explain it. If criminal
defendants are not offered a particular sentence as
part of the plea-bargain, it logically follows that
fewer defendants would plead guilty. The likely
response would be fact-bargaining in which
prosecutors, Defense attorneys and judges would
Commission on Sentencing Reform - 11-15-2007

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

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

Of the evidence-based modeling
the question, they rendered the once mandatory
Commission on Sentencing Reform - 11-15-2007

federal law merely advisory. And the New York
State Constitution often offers greater protection
to the defendants that does the Federal
Constitution. So the viability of any
evidence-based sentencing procedure is -- is
questionable on constitutional grounds. Now I do
need to acknowledge the fact that weighs -- weighs
in favor of an evidence based model, which is
uniformity in sentencing. While that is a laudable
goal, the effect of any evidence-based procedure in
promoting uniformity is not proven. Researchers
have found that non-uniformity in sentencing
persists under the Federal Guidelines, for example.
Sentence -- sentence severity under the Federal
Guidelines and departures from the presumptive
sentences have been linked with the race and
ethnicity of the defendant, the citizenship of the
defendant and the particular district court of
conviction. Any gain in uniformity that would
result from an evidence-based model must be weighed
against the corresponding costs and risks that I've
already outlined. The -- the risk of endless
litigation and constitutionality, the effect on
Commission on Sentencing Reform - 11-15-2007

judicial economy. We do recognize the potential

benefits of evidence-based practices in a

correctional setting and in determining

rehabilitative services. We do respectfully

recommend that no such model be used in sentencing,

however. Just briefly we'd also like to talk about

the Commission's recommendation to relax post

indictment plea restrictions.

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

MR. TEXIDO: Oh. Okay. I would

just say that we -- we do support that

recommendation and it's for basically the same

reasons. Allowing judges and prosecutors

discretion in -- in resolving cases on a case by

case basis we feel will be beneficial to the

pursuit of justice.

Thank you.

MS. O'DONNELL: Thank you very

much.

UNIDENTIFIED SPEAKER: Thank you.

MS. O'DONNELL: Paul Vanouse,
Commission on Sentencing Reform - 11-15-2007

Associate professor at the University of Buffalo.

Professor Vanouse here?

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

Okay. So let me switch over to the individuals that were filling in who asked to speak today.

MS. O’DONNELL: Okay. Okay.

Leigh Kwiatek, Law student at the University of Buffalo.

Thank you for coming.

MS. KWIA TEK: Thank you very much for giving me this opportunity to speak. The bulletin stated that the Commission wanted to talk about issues that the look for. And I think that after more than thirty years since the passage of the Drug -- drug laws, I think the Commission would be absolutely remiss if they did not recognize the blatant racial and ethnic bias that has gone with the enforcement of these laws. Since it's inception in May of 1973, over one hundred and fifty thousand New Yorkers have been imprisoned for nonviolent drug offenses that has fueled this
Commission on Sentencing Reform - 11-15-2007

unprecedented rise in the state prison population.

So in between the period from 1974 to 2002, the New York State Prison population growth is five hundred percent, which is the highest incarceration rate in the State's History. But the demographic characteristics of the RDL population are distinctive and significantly different from those of the general population of New York State as a whole or even those of the rest of the New York Prison System. The drug offense population incarcerated under these laws are overwhelmingly composed of young minority males from New York City. Because of demographic characteristics of the population are skewed relative to state population as a whole, the impact as well of these drug law incarcerations are not evenly distributed over the general population of the state. The highest rates are seen in the age groups from twenty-one to forty-four for all groups, which constitutes over eighty percent of the total RDL prison population. But within that age range, black males have the highest rate, one thousand five hundred and sixteen per one hundred
Commission on Sentencing Reform - 11-15-2007

thousand population versus white males at

thirty-four per one hundred thousand. White

females are the lowest at six to one hundred

thousand of the population versus one hundred and

nine per one hundred thousand for black females.

The racial disparities are seen at every age for

males and females and most strikingly, the ration

of black to white males aged twenty-one to

forty-four is forty to one. For male Hispanics to

white, the ratio is thirty to one. While blacks

and Hispanics represent only thirty-three percent

of the New York State Population, over ninety-four

percent of the RDL inmates are from these

minorities. And based on the arrest data,

approximately seventy-eight percent come from New

York City.

As the numbers of prisoners rises

under RDL over the last three decades, the racial

mix of those incarcerated for drug offenses go

progressively more disparate, relative to the

state's population. What I found interesting was

that the New York Academy of Medicine says, on

complete of what they called an analysis of the
Commission on Sentencing Reform - 11-15-2007

drug laws with years of life lost. And what they
suggested was that thirty years of forced removal
to prison of one hundred and fifty thousand young
males from particular communities of New York
represents collective losses similar in scale to
those losses due to epidemics, wars, and terrorist
attacks with the potential for comparable effects
on the survivors and the social structure of their
families and communities. Such highways of actual
mortality are large scale years of life lost due to
imprisonment where they're concentrated in a brief
period, such as the World Trade Center attack or
spread out over many years, with the AIDS crisis,
have similar profound effects on the populations
most effective -- affected, excuse me. For
example, the impact of three hundred and
twenty-five thousand years of life lost due to RDL
incarceration includes collateral damage with it's
own set of innocent victims, meaning more than one
hundred and twenty-five thousand children have been
separated from an imprisoned parent in the past
thirty years. There are other ways in which the
effects or mass incarcerations have an adverse
Commission on Sentencing Reform - 11-15-2007

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

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

I think the striking racial and
Commission on Sentencing Reform - 11-15-2007

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

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

I'm going -- David Cole, one of
my favorite professors at Georgetown Law School
wrote that when the effects of criminal law reach
the sons and daughters of the white majority, our response is not to get tough, but rather to get lenient. Americans have been able to sustain an unremittingly harsh, tough-on-crimes, attitude precisely because the burdens of punishment fell disproportionately on minority populations. The white majority could not possibly maintain it's current attitude to crime and punishment where the burden of punishment felt by the same white majority that prescribes it.

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

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

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

And third; we must identify and develop community-based responses to crime both at
Commission on Sentencing Reform - 11-15-2007

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

Thank you.

UNIDENTIFIED SPEAKER: Thank you, very nice.

MS. O'DONNELL: Thank you very much.

MS. KWIASTEK: Thank you for coming.

MS. O'DONNELL: I notice we have Karima Amin here in the audience from Prisoners are People Too. Would you mind? We're missing a few speakers and if you would mind testifying next, that would be great. Then we might take a very short recess to grab a quick lunch and would be
Commission on Sentencing Reform - 11-15-2007

right back. Ms. Amin. Welcome.

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

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

When we consider the need for sentencing reform we must consider it as a need that impacts victims and offenders in a cycle of crime and punishment, recidivism and punishment, and continued suffering and hopelessness to all parties involved. Sentencing and the criminal justice reform must be designed to ameliorate the harmful impacts of unequal and unjust sentencing and legally and social deficient criminal justice practices. Only then will we address the problem appropriately as an issue of social responsibility and not just a problem that is limited to what some might consider to be the subclass of social
deviants. Prisoners are people too. If we accept the reality that there are systemic inequities and injustices in the criminal justice system that begins with arrest and continues into the sentencing process, then we must also accept the reality that race is a major factor in the imposition of injustice and inequity in the application of criminal justice.

Throughout the country, and for the purposes of this hearing, as you were saying, all date and statistical evidence reveal that the majority of people entrapped in the cycles of despair are people of color. Of course, non-blacks sometimes do get collaterally caught up in a system where inequity and injustice has become the so-called norm. However, in those cases, though remedies must be sought for those people, we must be clear that inequities in the application of criminal justice and the disparities in sentencing have been intentionally made systemic because it is not only well know, but even expected that the majority of people who come through the system will be people of color, primarily African American.
African Americans are the majority of those convicted and sentenced to prison terms in the State of New York. Also, the majority of the victims of those -- of these convicted offenders are either African American or other people of color.

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

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

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

In terms of legislation there needs to be a reformulation of sentencing guidelines that give judges both the discretion and instruction to actually make the punishment fit the crime. This must be based on a full consideration
Commission on Sentencing Reform - 11-15-2007

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

The purposes of sentencing must
also be stressed -- the purposes of the sentencing
must also be stressed in these new guidelines with
a focus on rehabilitation. Sentences must allow
for that aspect of sentencing because that aspect
of the sentencing intent has been neglected for the
last forty years as Blacks became the dominant
group being processed through the criminal justice
and prison systems. When whites were the majority
of the prison population during the sixties, there
was an emphasis on rehabilitation. That legal
practice must be reinstated. A sentencing review
board should be assembled, composed of legislators
and judges to review any alleged inequities that my
continue by judges who do not comply with the new
Commission on Sentencing Reform - 11-15-2007

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

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

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

That's from George ENG. Briefly from Lawrence Bartley, also at Auburn Correctional facility -- he just has several bullet points that
Commission on Sentencing Reform - 11-15-2007

he feels are important.

LAWARNCE BARTLEY: (Reading);

Regarding sentencing reform, the previous and current sentencing trends are indicative of a criminal justice system out of touch with the characteristics of each particular offender. Previous cases have shown that the characteristics of each particular offender should play a part in his or her adjudication. Youthful offenders between the ages of fourteen and twenty-one are being prosecuted and sentenced to exorbitant prison terms for crimes they committed when they were adolescents. Instances such as these cry out for change. Of course it is necessary to punish any individual who commits a crime, but the sentence must fit the individual as well as the crime. See the Human Rights Watch report entitled For the Rest of Our Lives: Life Without Parole for Child Offenders in the U.S.

This Commission should explore creating a committee in each Correctional institution to evaluate each inmate that was sentenced to a lengthy term of imprisonment due to
a crime he/she committed when they were under eighteen years old, then adjust their sentence accordingly.

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

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

Regarding the Parole board:

The parole board should be made up of the subject's peers. Said peers should be members of the community in which the crime was committed.
secondarily, but primarily be comprised of members of the community in which the subject is to be potentially -- potentially paroled to. These people are the ones who should have the ultimate say on whether or not the prisoner before them should be able to enter their communities.

Regarding Rehabilitation Programs; bring back opportunities for prisoners to get a college education behind bars. And number two, investigate the success of RTA, Rehabilitation through the Arts. Consider being instituted in all New York State Prisons. I happen to like that in particular. I have been on the stage many times before as a storyteller, a poet, even danced a little bit and talked a little bit. And it was a fact, the Arts is what got me into this kind of work in the first place. Having been invited in 1994 into Attica Prison to share stories. And that story telling is what then got me invited into other New York State Prisons. And since starting Prisoners Are People Too, two and a half years ago, I discovered that the most important thing that fuels our community meetings and I talked earlier
Commission on Sentencing Reform - 11-15-2007

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

Thank you very much for this opportunity.

MS. O'DONNELL: Thank you.

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

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

MR. ALEXANDER: Absolutely.

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

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

MS. O'DONNELL: Ms. Metz, this is a big room. So if you can kind of grab that
Commission on Sentencing Reform - 11-15-2007

microphone a little bit, that would help. Thank you.

MS. METZ: I'd like to speak today on the inequity of the Rockefeller Drug law and the need for sentencing reform. There is definite need for a program, an alternative to imprisonment for nonviolent offenders, such as with drug offenders. A wealth of evidence does support this. The possession of drugs in selling and attempting to sell does not equal violence. These punishments do not fit the crimes and they don't fit the individuals. Drug peddlers need options, opportunities, and not imprisonment. So does our society. It is not logical for these severe penalties to follow up with the drug use or sale. It is only expensive and promotes a perpetual cycle of incarceration and poverty. Thank you.

MS. O'DONNELL: Thank you very much for being here. We really appreciate it.

And Andrew Blake. Is Andrew Blake also here from the University of Buffalo.

Okay. Before lunch we will have two other people.

Michael Munoz and he's here from the Center for
Commission on Sentencing Reform - 11-15-2007

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

MR. MUNOZ: Thank you.

Hello. I'm Michael Munoz and I'm the Community Relations Manager at the Center for Employment Opportunities, or CEO. I thank you for the opportunity to address the Commission. CEO is providing comprehensive employment services for people coming home from prison and jail for over thirty years in New York City. We are now engaged by the New York Division of Parole through a feasibility study to see if CEO's model transition will work, leading to permanent employment, and fill a need for people on parole in Erie County.

I've been leading the study here in Buffalo. I talk to Parole Officers, people on parole, representative of the current Public Work Force System, staff at the State Department of Correctional Services. I've been to Orleans Prison and the County Department of Social Services.

Staff members at other nonprofits, such as the Urban League who also serve people returning from prison and their families. What I've heard over
Commission on Sentencing Reform - 11-15-2007

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

One approach to this reluctance, the Commission notes is the potential affirmative defense to the negligent hiring claim that employer complied with Article 23A of the Correction Laws and considered whether a person's crimes were directly related to the job under consideration.

We support Approach and we believe many employers would as well.
Additionally, the way to help alleviate employer's concerns, though, is to expand the approach we take to coming home from prison into the work force and that's through transitional work. At CEO people come to us within days and weeks of release. They come to CEO and they start to work on our work crews immediately doing maintenance and repair work on sites throughout the city and they get paid at the end of each day.

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

So far, employers have responded to this approach, which is why in the last ten
Commission on Sentencing Reform - 11-15-2007

years of being an independent nonprofit, we placed
over ten thousand formerly incarcerated people in
permanent jobs.

Transitional work also serves the
Commission's stated interest in evidence-based
approaches to reduce recidivism. The CEO program
is being evaluated by the National Research Group,
MDRC in order to test our long held belief that
providing immediate employment to people returning
home from prison reduces their likelihood of
re-offending. After one year from random
assignment into treatment groups and control
groups, MBRC found that a reentry group of people
who were randomly assigned three months or less
from release from prison the CEO group has
substantial, statistically significant lower rates
of felony convictions, parole revocations,
incarceration for new crimes and overall
incarcerations than control group members. The
difference between the reentry group and the
control groups for re-incarceration of any reason
are full ten percentage points. A difference
between the groups of more than fifty percentage
Commission on Sentencing Reform - 11-15-2007

points.

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

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

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

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

Thank you.

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

MR. MUNOZ: I hope we --

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

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

MS. LEVINE: And congratulations on placing ten thousands.

MR. MUNOZ: Thank you very much.

MR. ALEXANDER: Thank you very much.
MR. MUNOZ: Thank you. Thank you very much.

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

MR. BLAKE: Thank you. Good morning.

MR. ALEXANDER: Good morning.

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

However sentencing for charges as
it exists in New York State today, while greatly
improved since Governor Rockefeller installed it
thirty years ago.

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

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

MR. WALKER: My name is John
Walker.
MR. ALEXANDER: Walker.

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

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

MR. WALKER: He was falsely convicted of a murder and after serving twenty-two years of imprisonment I -- I've been out here for the last eight, nine years and I've been trying to get my case -- I've been very successful in getting all the community support. But that's not my purpose here today. My purpose here today is to talk about parole. I've -- I've been on parole the last ten years. I have no -- I have not been sent back to prison with no violations of my parole. But after ten years I can't get off parole, it seems like. I -- I asked my parole officer one day, you know I've -- I've been on parole now ten years. At the time it was about eight years and I said how can I get off parole. And she told me the only way I could get off of parole is if I die.
Commission on Sentencing Reform - 11-15-2007

That would be the only way I could get off parole.

Consider that I was incarcerated for a crime I had nothing to do with, but I do want to say that once I was convicted they actually treated me like I was -- like I was a convicted murderer. But I think that if a person came out here and displayed, you know, his conduct was that he didn't get sent back to jail in ten years. There ought to be some type of law that would relax the parole rules of me going out every month, once a month. It's like I'm frightened and scared to death I go down to Parole, I sit there for four and a half hours and I go in for five minutes and see my parole officer. And -- and this -- it has a real effect on my life. I can't do nothing. I can't do none of the normal things that most everybody else does because of my parole stipulation. And I just think that there should be some type of rule that when -- that you're willing to live like a law-abiding citizen with in ten years, at least ten years, you should allow a man, you know to -- basically, if I get into some type of trouble, I see them bringing it back up that you know I'm on lifetime parole. But
Commission on Sentencing Reform - 11-15-2007

if I -- after ten years have not gotten into any kind of trouble, then there should be some kind of regulation to be able to release me from parole. At least from, you know, constant supervision. Because I've done nothing to harm -- to show that I'm -- I'm -- I'm a criminal -- I have criminal ways. I'm doing everything in my power to try to talk to the youth so that they don't go down the same road that I went to. I'm -- I'm willing to give myself over to any type of a committee that you all might have so that I can give you all my experience of doing twenty-two years, ten years on parole and I think one of the better things that you do have, coming out of the jail is a work release facilities. I was on a work release for four and a half years, was only made for somebody being in it for six months to a year. But I found myself there for four and a half year, never doing anything to be taken away from working at the facility. And I've been best -- one of the best so at the time I had already sixteen and a half years of incarceration and allow me to come out here, I think I might have been. But by me going to a
Commission on Sentencing Reform - 11-15-2007

work -- work release, a job and a home and
everything else. I think that was one of the
better things that I had coming out of prison. My
other problem is I have a codefendant that's still
in prison right now for the same charge. Now not
only me saying he didn't commit it. We were tried
by the same judge, an actual sitting judge saying
that he knows for a fact that we did not commit
this crime, that they sent the wrong people to
jail. So my codefendant was sent to twenty-five
years to life. He was sentenced to twenty-five
years to life. Since his incarceration he has
acquired two college degrees when they were
allowing colleges to be in prison. And after
serving his twenty-five years, he went to a parole
board. Well they gave him, at the Parole board,
two years four times that's an additional eight
years on his twenty-five years. So now he's going
on his thirty-third year of incarceration for a
crime that he had nothing to do with. He didn't
know about any of these new crimes. But any time
he goes to the parole board, they keep hitting him
for the nature of his crime. There is nothing he
can do to change the nature of his crime, it is
what it is. This is -- nothing to change that.
And for him to keeping getting hit at parole board
for the nature of the crime, that's -- it's crazy.
They've actually taken his sentence of twenty-five
years to life and have changed it into a life
sentence because it seems they'll never let him go.
Each time he goes on the parole board they keep
hitting him with two years. He has a college
degree. He's not likely to be involved in those
types of drug activities or stabbings, or anything
like that. He's been -- what you would call a
model inmate, but every time he goes in front of
the parole board, they keep hitting. So again I'm
going to say my problem is when my parole -- the
nature of this crime has nothing to do. And
secondly, they -- because I was one of the last one
of the violent crimes that was allowed to go to
work release facilities. And I still haven't
figured out what they expect of me here on parole.
I have not been back to jail or prison and I have
not violated for anything. I have not committed no
crimes. I've -- I've been doing everything I could
Commission on Sentencing Reform - 11-15-2007
to talk to -- and tried to do everything I could to
help the youth. I'm willing to give myself to any
type of thing that you all might have to possibly
help me to try to help recidivism rates or to help
some of these -- because there's literally nothing
out here. I'm willing to do anything I possibly
could to help in that manner. You know I've been
asking you all to first of all consider my
codefendant that he don't go back in front of the
parole board in November of next year, he's going
back to the parole board. I'm asking you all to
take a look at his case and -- and especially in
the light of the fact that now talk about him in
the community that there's no way possible we could
have committed this crime. We have a judge and
there's no way possible we could have committed
this crime. I can't do nothing. There's no people
that are going to do nothing. I really can't do
nothing and I've demonstrated for ten years now,
I've been out, and I've demonstrated that I'm not
the type that's trying to get into no trouble and I
appreciate you all to do anything -- anything
possible for me. I would appreciate it so very
Commission on Sentencing Reform - 11-15-2007

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

Thank you all very much.

MS. O'DONNELL: Thank you very much.

UNIDENTIFIED SPEAKER: Thank you Mr. Walker.

MS. O'DONNELL: Okay, we're now going to take a twenty-minute break and we will resume at one o'clock. Thank you all for being here.

(A Lunch break was taken)

MS. O'DONNELL: We're going to reopen our meeting right now. And we have Daniel Rodriguez, who's going to speak to us today from Group Ministries?

MR. RODRIGUEZ: Yes.

MS. O'DONNELL: And welcome Mr. Rodriguez.

MR. RODRIGUEZ: Yes I've been on the Rockefeller law since 2001. I was convicted.

I came out on parole with it in 2004 and I'm still on it as of right now. My lawyer advised me not to
get it resentenced because that would be -- that
would make things -- my length of time worse than
what -- I should -- I just stay good for three
years and then maybe they'll let me off on it. I
have failed twice. You know, I've gotten caught
drinking twice and violated twice for drinking due
to the situation, due to the fact that I have a
felony. And -- and one of the workers at Cold
weren't very helpful, Mr. Higgins was not very
helpful for exceeding -- for moving forward for my
education. That's what got me back to the -- it
was part of the problem. When I was wanting to
push education so I've got to go to school, got to
go to school because that was my only way out, to
get out of this situation that I created for
myself. And when the other side doesn't help me it
created my own personal issue and I started
drinking and got in trouble again. Now today I
haven't drink in a year. December 12th, will be a
full year I've been out from the violation and I
haven't done no drinking, I'm doing very well.

MS. O'DONNELL: Congratulations.

MR. RODRIGUEZ: I'm also -- I'm
also one of the ITT student and -- and I'm working on becoming a network Administrator right now, to keep your systems going, eventually. But the main issue is -- is that the Rockefeller Law is still following me around and I know I should have been released by now, no matter what, even with violations I could have been off of anything, you know, considering it wasn't -- it wasn't no new crime. And I see it as I violated the general -- a general public -- a rule that the general public does. Alcohol is legal. That's how I -- you know I see it. In my case, it's -- it's not legal due to the fact that I -- that I am a felon. Other than that, it would be okay, as long as I don't drink and drive or anything else. But I just -- I -- I -- I don't see no leeway with it too much because you did it, that's it and, you know, which I'm seeing as that I did not -- I -- I followed the rules of the public. Now I only violated -- nothing that had to do with the public at this time, which is the main concern is the safety of the public. You know, and mainly others are involved with illegal activity, that's illegal no
Commission on Sentencing Reform - 11-15-2007

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

So I've just been trying to
figure out when you are going to work with this,
fix it up, because I'm one of the old -- one of the
older sentences under Rockefeller and it still
effects me to this day. So it's not very -- not
very helpful. And I know education is the only way
out for us. There is no other way. there is no
other way to -- to fix any of us. Damaged lives
are very difficult to fix, you know. I know we put
ourselves here, but I guess stuff that your parents
do to you, neglect, you know. There's one guy I
spoke to, he said he never -- never loved nothing
his whole entire life. That's -- that's bad, you
know, when you never loved nothing. So that also
affects a problem with you exceeding forward and
recidivism rate, that's the -- you're just part of
the pile if you can't find no hope, no love, you're
done. You ain't going to make it nowhere. So I --
so -- so for me, what's worked for me today is my
education and -- and I -- and I also have a ferret.
I own a ferret at home. So he runs around. So at
least I have something that I go home to, you know.
Yeah, I gotta take care of the ferret, I've got to
take care of the ferret. So that's kind -- you
know that keeps me a little bit thinking positive
Commission on Sentencing Reform - 11-15-2007

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

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

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

    MR. ALEXANDER: What about with your second violation?

    MR. RODRIGUEZ: The second violation. The second time, once again hopelessness kicked in due to the fact that I couldn't go again to -- to school. Because ECC
requires you to have this -- this felony paperwork
in. So I called investigators at your internal
affairs. They had both grievances filed on me.
The -- actually they spoke to me in this Library,
upstairs. That's where I met them at, in this very
building, to speak to me.

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

MR. RODRIGUEZ: Yes.

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

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

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

MR. RODRIGUEZ: Yes.

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

MR. RODRIGUEZ: Let me go to
college. That's it. That was it. Because it
started to create the old feelings back that I live
by myself, that I -- you know you start -- the
hopelessness starts to kick back in. It started to
slide right back in. And then the easiest way to
suppress this to using alcohol. That's the easiest
way that people deal with problems nowadays.
They'd rather use an outside substance.

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

MR. RODRIGUEZ: No, that's --
they should not keep them. Drug related offenses
should be just kept out for their time and make
sure everyone does something that's -- that's
positive, which would be work, with education, with
volunteer work, which I volunteer for an
organization too hoping that was going to work for
college. Now that I go to ITT and they ain't
worried about that, I still, since I made the
promise to the organization to volunteer for them
for Read to Succeed. And you know about Read to
Succeed. I'm -- I'm involved with Read to Succeed.
And I kept my promise to them so I stayed -- I
stayed with them. But the volunteer -- education
and volunteer work would be the two things that would prove that someone is actually doing something positive and forward, that they're not -- that they're not going to slide back into the old way of things.

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

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

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

MR. RODRIGUEZ: Yeah, to control your employees, make them accountable for their actions. Some -- some of it let -- they let their position go to their head because they're not
Commission on Sentencing Reform - 11-15-2007

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

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

MR. RODRIGUEZ: While -- while I was on parole I could have made it a better experience by finding something to love outside myself, which would do with volunteer work, which I have attempted to do. Also hang out in Nursing Homes. I had a handful of nursing home experience, you know, because I believe them as -- they're just locked up, almost like people in prison, you know.
Commission on Sentencing Reform - 11-15-2007

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

               MS. O'DONNELL: Thank you very
               much.

               MR. RODRIGUEZ: Yes Ma'am.
               MR. ALEXANDER: Thank you.
               MS. O'DONNELL: Okay, is anyone
               else here scheduled to testify. Could you step
               forward. I'm sorry. I have a list and --
               MR. WILLIAMS: Frank Williams.

               UNIDENTIFIED SPEAKER: Frank
               Williams.
               MS. O'DONNELL: Okay. I didn't
               hear your name.
               MR. WILLIAMS: Frank Williams.
               MS. O'DONNELL: Okay, thank you
               Mr. Williams.
               MR. WILLIAMS: Yeah, Frank
Commission on Sentencing Reform - 11-15-2007

Williams. And I'm here on behalf of Prison Ministry. And I wanted to speak about inmates helping inmates. Like, I'm assistant pastor at down the Mall Albany Center and we do job referrals and housing for people and I have a lot of guys that know me because I did twenty-eight years of incarceration. So a lot of these guys hear -- hear about me and they write me up at the church and I try to help them and like that. But as you know, my hands are tied with work and helping inmates, you know. And there's a lot -- lot of inmates that need jobs, you understand. And we do good job referrals. A couple of them I have sent jobs to.

There's a lot, you understand. I cannot help because it's inmate to inmate contact. And so what I want to speak about is if there could something change to where we could help each other and work with each other under special conditions, you know. And -- and where we can communicate with some guys that are already incarcerated, who's going through the parole board, who's trying to find a house and job where maybe they could write to myself or someone in my capacity, more or less
Commission on Sentencing Reform - 11-15-2007

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

MS. O'DONNELL: I appreciate you

bringing this issue up. And I don't know if there
are any procedures in place to certify individuals
to be mentors or whatever who have been through the
prison system. But it's certainly an important
issue for us to look into.

MR. ALEXANDER: And -- and that's

one of the things we'll look at, Mr. Williams. I
Commission on Sentencing Reform - 11-15-2007

know we had talked before.

MR. WILLIAMS: Yes.

MR. ALEXANDER: Because of, you know some our re-entry strategies is looking at everything and seeing how we might bring everybody to the table and utilize their expertise in hoping to turn around certain people's behavior and then making that re-integration process a lot more meaningful, a lot more successful. So those are some things we're looking at. We haven't gotten there yet in terms of making some firm decision, okay. And then some of it may be tied up with legislation. So it's -- it's -- it's a long process. But it's certainly something that we have considered and we are continuing to consider.

MR. WILLIAMS: Okay. Well I appreciate it very much if you will take my name and keep it in -- and keep it in file --

MR. ALEXANDER: I've got your name right here Mr. Williams.

MR. WILLIAMS: Okay, so when do you get a chance, I'd like to work on that program helping those people.
Commission on Sentencing Reform - 11-15-2007

MR. ALEXANDER: Yes sir.

MR. WILLIAMS: Okay, thank you very much.

MR. ALEXANDER: Thank you.

MS. O'DONNELL: Thank you.

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

MR. WILLIAMS: Yes sir.

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

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

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

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

MR. IRWIN: I consider myself a low-level criminal defense attorney. I won't take anything where there's a potential for severe sentences because I feel like I'm part of a process.
Commission on Sentencing Reform - 11-15-2007

that's facilitating corruption. It's based on
racism and it's based on classism.

I wanted to start today with a
question. From what I understand this is about --
this is the fifth commission appointed to study
sentencing reforms since the Draconian introduction
of the Rockefeller Drug Laws that have destroyed
lives in this state for over a generation. And I'm
just curious when -- when a committee like this
meets and -- and I am -- I'm familiar with some of
your credentials and I'm in awe and I -- and I
applaud you. I'm just wondering, realistically, is
the fix already in. Does everybody know what's
going to happen. And what I further understand,
these hearing were -- were barely publicized.
You're -- you're getting the tip of the iceberg
here as far as the parties and persons concerned.

I know that a lot of people I know personally, that
requested the right to be heard here today, were
denied that right, or they did not even hear from
the Committee with regard to the right to speak
today. I was fortunate enough, I did receive an
e-mail. I thank those responsible for that. And I
am here today and do have this opportunity. But my
first -- I would like to start again with a
question.

Is this Committee really prepared
to make significant changes in trying to go back to
re-evaluate the Draconian Drug Laws. You've all
heard the horror stories. There's people in there
in jail for life and in -- in a state, in a country
where what do we see happen time after time. The
rich get prescriptions while the poor get busted.
And by way of example, and I don't mean this, I
know he's not out of this state, Rush Limbaugh, in
1995, said in response to his why I'm seeing more
people go to jail for drugs, one of his callers,
apparently not properly screened, said well what --
what would you say to the fact that there's racial
disparity but many times more black people and
Latino go to jail for the exact same thing that
white offenders get off on. And his response in
1995, was, I want to see more white people go to
jail. That is, until it's his turn and he was
captured with white man's heroin, which most of you
probably know, is OxyContin. Because that's what
the rich do. They go -- while I'm trying to regain
my composure, is there an answer to my question?

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

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

MR. IRWIN: I -- I agree.

MS. O'DONNELL: -- pre-decided
where we're going with respect to these issues.
MR. IRWIN: Can I just take, probably less than five minutes. I just want to make a couple of points. In -- in my opinion, the state of affairs in this state and in this country is quickly becoming a joke. We don't make anything anymore so in an effort to make jobs, we make up useless laws so that we can replace the company towns with prison towns. And by way of example, I know at least forty-five thousand have been transferred from the New York City area up to here, which is a whole other problem because then the local gerrymandering is based on that population, which can't even vote. So they're not being represented by their representatives, their representatives don't give a rat's ass about them because they can't vote. And they they're using their numbers to garnish power, which in and of itself I believe is sickening. The useless laws I'm talking about are, in this particular case, Drug Laws. The one cause is going and has been basically going about as well as this alleged war on terror. Again, it's a joke. A joke used to create base jobs, create, who will willingly waiver
Commission on Sentencing Reform - 11-15-2007

their constitutional rights. In the case of the war on -- people are passionate in due process.

There's about fourteen hundred people, I believe, that are in New York locked up on drug charges, the majority of which are nonviolent and low level drug crimes. T.

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

The only cottage industry around here is selling drugs. I -- I -- there's part of me, the cynical part is against legalizing it
because somehow the pharmaceutical companies would be making all the money. But realistically, I think we need to do something about this. And is it a coincidence that not only is Buffalo one of the poor cities, it's also one of the most segregated. I submit to you it is not literally racist and classist state. There's a racist and a classist country and I think one of the first things we can do is start to look at this and maybe admit it, yes there is classism, there is racism. And let's stop labeling the poor.

What did we do. We've got somebody functionally illiterate on the inside of the state. There are -- in Buffalo in particular, they sell your house if you can't pay your water bill. There's one of the reasons to sell the house. You're not going to get -- you're not going to get a job in the city because you can't read and write, not that you can get a job if you can read and write. But then to add insult to injury, you end up with even a misdemeanor confession, forget it, you're state property. And hence the system begins, the institution. And I think it's
Commission on Sentencing Reform - 11-15-2007

self-serving. I was in court the other day with my friend and I was joking -- not my -- my friend, my client, actually I consider all my clients friends.

Maybe that was a good Freudian slip. But I jokingly said to him, crime does pay, it puts bread on my table. And then he goes, yeah as well as everybody else's in that courtroom. And I never really thought about that. Everyone in that courtroom is making money off drugs. The only one being punished is my client. And I so I ask you to seriously consider this. Consider poverty, consider racism, and do us all a favor. And I thank you very, very much, because I wouldn't want to have your job.

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

MR. ANDERSON: Sir, your coat.

Sir. Sir. Your coat.

MR. IRWIN: Thank you.

MS. O'DONNELL: I think we do have someone else. Yes.
MR. BRUCKMAN: Good afternoon.

My name is James Bruckman. I represent C.E.P.H.U.S. As a youth, at seventeen, I just turned seventeen and the drug of my choice at that time I was practicing drug of the generation this time is PCP. I got involved in that. I did a stick-up and in that stick-up a person got shot and died a few days later. And because of that, it was my first offense, first arrest made me a kid messed up on drugs, made a mistake, a person died. I was convicted, given twenty to life. The first few years of incarceration I was just trying to prove I'm all right. Prove, you know, prove I'm a man.

I was a -- I was a boy. I was a youth. Here I am an adult. I was sent to prison, had to stay in prison to survive. And that's the environment I put myself in by doing my crime.

In 1980 my mom died while I was incarcerated, in Attica. And to this day it still bothers me because they didn't let me go to the funeral. They said I was an escapist or risk or something like that. After they suited me up, had me go to -- to the hospital to see her. Then she
died on December 22nd and they said you can't go to
the funeral. And then on Christmas Day they told
me no, you can't. How do you tell a kid, all
right? You can't kiss your mother goodbye when
she's on her deathbed. I don't understand. So it
bothers me to think of it.

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

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

It took me eight years but I
finally graduated from Syracuse University in
Auburn. And as I say, I changed my ways. I
decided I wanted to work with youth. What can I do
Commission on Sentencing Reform - 11-15-2007

while I'm here because I'm not through supremacy.

Going to appeals I lost all my appeals. I went

through clemency, lost my clemency. And I decided

I want to work with kids. I want to make a

difference. So I work with, DAT with the sister

program while I was incarcerated.

And the point that I want to make

now, since I've been released, I went before the

parole board and first offense, first arrest,

college education, did everything working with the

kids for years. I go to my parole board; they hit

me with two years. Okay, I accepted that. I was

under Governor Cuomo. And then George Pataki came

in and it was '93. And they said, well you know

because he's in there you've buy me time. You're

not going home so he is in there you got to buy me

time you are not going home. I'm a first offense

person. I was a kid who made a mistake. I came

from a big, loving family, I know, I just made a

mistake.

So they hit me with that two

years. And the next time I wrote to the judge in

my case. He wrote me a letter saying this
Commission on Sentencing Reform - 11-15-2007

gentleman has rehabilitated himself, paid his debt to society, and I recommend he be released to parole -- on parole. I -- and it took me three tries to get that letter in to the Commissioner to read it. Finally I found one who actually read the letter. But he said I have a letter from a judge and he read the letter. And I said excuse me sir, it ain't a judge, it's the sentencing judge in my case. If anybody knows particulars of my case, it's the sentencing judge. They said okay Mr. Bruckman, we'll take that into, you know, consideration. We'll give him another two years. Come back in two years, again, they hit me with another two years. Two years after that I came back again and they hit me with another two years. Four times, deuce, deuce, deuce. I mean you know, what am I going to do. This last time, the fifth board, I finally made it. You know, God or whatever, I'm an agnostic, as I lost my faith after that happened with my mom so I gave up my faith, even though I was a born catholic. First communication, confirmation, all that. Went to church every week. I lost my faith. I went astray
Commission on Sentencing Reform - 11-15-2007

there. But my thing is working with the kids,
working with the youth. And I want to say, because
this thing about the college, interesting.

Education is the key. Education is the key. It's
the true fact. Anybody gets educated in prison,
the recidivism rate is minute compared to I just
hung out in the yard and played basketball, lifted
weights, or whatever. So I say bring back, please
reinstate education into the prison system because
that is your key. And that's -- and the whole
thing is to rehabilitate people and make them
productive members of society. I think that's the
understanding of the parole, you know, that you
want. I mean that's what we're trying to
accomplish here. I mean that's how you will
accomplish it, with the education, if you educate
people.

And second; another point I want
to make that Mr. Walker talked about is being on
parole. March 5th, I'll be out on parole for five
years. And I've been -- when I was in 2599 called
the Executive law. After three years, if didn't --
if no violation, you could be considered for
Commission on Sentencing Reform - 11-15-2007

release. And then you say, well give us two more.

Because Governor Pataki changed that law. What you
got to fight, you got live, you got it, you're on
parole. I -- like. Mr. Waterson, I asked my
parole officer, when can I get off parole. He said
you're never getting off parole. And in spite I
can live in fear. I can live in fear. Because
like I said, I was stabbed in prison, had stabbed
in prison. Maybe I did somebody or somebody says
you to runs on me. I had to defend myself and if I
hurt him I've got to go back now for a violation
for five years for defending myself. I mean
anything could happen. Anything could happen.
You -- you live in that fear. He said you knew,
what can you do. You've got a curfew. I never
violated my curfew and I won't violate it.
Anything that -- the stipulation that parole has, I
abide by it. Because I am a law abiding citizen.
I'm a laborer for local 210. I got injured so I
got out on comp. Now I'm going to try to get into
the reading enrichment program that Mr. Alexander
has implemented at Orleans. That is simply
achieved. If -- if I had come out to
C.E.P.H.U.S. -- I had my family -- after
twenty-eight year my family basically were
strangers to me. And I didn't want to impose
myself upon my family. I mean they got their
lives. They're all married and have kids. I been
away twenty-eight years who knows, they don't know
me.

And I know I needed that -- that
setting there, the restrictions there that
C.E.P.H.U.S. offered. And their motto is we don't
get you out of jail, we keep you out of jail. They
teach you how to live out of jail. And we
offered -- I know I talked to Mr. Alexander before
that when he has that program in Orleans I'll
definitely go in there and do seminars whether it's
with kids or working with other parolees. Because
if I can make out here institutionalized. That's a
mindset. It's up to the individual. They're
making their own choices and decisions and you come
out here. I come out of here and make it, I was a
kid who made a mistake. I was a kid who made a
mistake. And if I can make it out here, anybody
can make it out here. It's the choice you make.
The choice and decision that we have to do to stay out here. We know what the law is. Everybody knows what the law is and that's what we have to do. And I'm sure its -- education is the key and we're here to improve on that and that definitely is a good program. I don't know about Medicaid. I don't know about, you know, getting houses or nothing like that. If it wasn't for those people there that cared about me and showed me love, I probably, you know move with my family, it wouldn't work out there and what did I do. I go and stick up. I know I take off a drug dealer. But maybe whatever crime I need, whatever I think -- crime is easy, that's the easy way. Staying out there working and being in the streets, doing the right thing, that's the hard thing. But you can do it. Anybody can do it if they want to; it's a mindset. And that's what we have to tell people right there and and that's what we need to do, if you come out you've got a home -- you've got, your help your health. There's a lot of mentally ill people in New York City. And then -- and you talk about disadvantaged when they come out, it's
unbelievable. They've got those, what do they call it, Salesman they call them. Because when I was in there you had a -- a -- Marcy was for -- for criminally insane, or Matterhorn. They ended that program they just put them all in the prison population. You talk about chaos -- chaos, it was unbelievable the chaos with, you know, with these people. Because if they stabbed me, what they do is up their medication Thorazine 500 mg, give them a thousand. Meanwhile, I stab them, you want to take me outside and give me and throw away the key.

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

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

MR. ALEXANDER: Thank you sir.

MR. BRUCKMAN: Thank you.

MS. O'DONNELL: -- coming and speaking to us. And we have your contact
information, I hope, if we are able to reach out to you. Thank you. We have Craig Schlanger from the New York State Association of Criminal Defense Lawyers.

MR. SCHLANGER: Yes.

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

MR. SCHLANGER: Thank you for having me. Let me just introduce myself briefly. My name is Craig Schlanger. I'm -- I'm an attorney in private practice in Syracuse. I've been a criminal defense lawyer since 1978 and I'm representing clients in State and Federal court, mostly in Central New York and sometimes outside of that area. I'm currently on the board of the New York State Association of Criminal Defense Lawyers. I'm here on behalf of that organization, which represents upwards of nine hundred members, Criminal Defense Lawyers throughout New York State. I can't speak for every one of those lawyers, I don't think anybody can, but I think there's something that -- that we can share
just from the point of view of the Criminal Defense
Bar and our experience in dealing with our cases.
And I did submit a written testimony here. I'm
deviating a little bit from this script though. I
think that makes it more interesting.

It's -- many people seem to agree
that the so-called Rockefeller Drug Laws were a
disaster. And -- and it's not just because of the
Draconian results of the laws themselves but
they -- they played a significant role in setting
a -- a national trend, a very dangerous national
trend toward divesting judges to people who really
know the case and know the defendant from -- from
their traditional discretion in setting sentences,
and really transferring that discretion to
prosecutors. Because when it comes down to it,
it's all about how -- how a case was charged and
plea bargaining. And -- and what we've done, I
think, with our Sentencing Law, well it's not just
in New York State, but in the federal system and
I'm sure other state systems as well, it's really
advocated that that responsibility to prosecutors,
which is really not the way the system is supposed
Commission on Sentencing Reform - 11-15-2007

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

One of the things I'd like to say, and this is very simple, that since -- since -- since I've been practicing, one thing I've noticed is that New York's sentencing laws have become something like the Tax Code. And it became one of the reasons I became a criminal lawyer is because I couldn't understand the Tax Code. And it's gotten to the point where I think judges don't understand the sentencing law anymore. Lawyers don't, prosecutors don't, Probation officers don't. Just because we have this hodgepodge of different kinds of sentences and specialized sentences. And
Commission on Sentencing Reform - 11-15-2007

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

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

If you look at the federal model
where the sentencing commission has been in place
as long as the guidelines have been in place. I'm not a big, big fan of the sentencing guidelines. You know there are a lot of opinions about that, but one thing that's come out of it is an attempt, as I just alluded to to create some kind of a master plan for sentencing so that every time there is a change in a sentencing law, penal law creating new statutes, new penalties, amending penalties, that it's done on the basis of study and due consideration and not just something that results from a politician taking -- taking the daily news and the latest murder or rape that's on the front page and creating a new law out of it.

One of the big controversies seems to be over determinate or indeterminate sentencing. Ideally, and that's very revealing with the traditional indeterminate sentencing, which really was the sentencing in New York State for many, many years. People who were serving time were given incentives to rehabilitate themselves on parole. And -- and I think the previous speaker's comments really addressed that in a very big way. And I would say that there are a lot of things that
he said that I couldn't possibly say the way that
he said it.

But parole, in a way -- in many
ways has become kind of a cruel joke for those
people who think that I'll just -- I'll -- I'll do
the programs, I'll do everything I'm supposed to do
and then there is this administrative body that has
unfettered discretion to just simply deny release
and -- and it's counterproductive. It -- it looks
like determinate sentencing is -- is the way of the
future. It looks like it's here to stay. And
that's not necessarily a bad thing but there have
to be incentives. There has to be some way out.
Otherwise people would just simply do their time.
They have no incentive whatsoever to get an
education, get training, get rehabilitative
services. They say I'm going to do my five years
anyway, I'm going to do my seven years anyway,
what's the point. We have some systems in place
for merit release, and early release, and work
release, and things of that nature. And those
really should be expanded. And there's a danger
that under the current political climate that those
are shrinking because more and more groups of offenders are being denied access to those programs. And it really should be going the other way around. As a practical matter, most people, unless they're serving life sentences, are going to be out -- back out on the street some day. And like it or not, we want them to be able to stay out on the street. And I think you can all agree to that.

So there should be some -- some very major incentives for earning eligibility for early release, such as merit release, an incentive to complete educational requirements and program requirements. Perhaps an incentive to reduce the security designation so that somebody who's serving a long sentence could move down from let's say maximum security to medium security, to minimum security on their way out and perhaps even halfway houses.

And on top of everything else we're talking about incarceration. And this all begs the question of whether it's necessary or desirable to lock more people up than we have been
locking up. It's -- it's counterproductive. And I think many people out there agree that nonviolent offenders can function to do better in the community with community based programs that provide education. As the previous speaker said, education is everything. And if it can help you get a job, get training and be productive and those people could be with their families, they could be working, they could be supporting families, they could be keeping people off welfare, and they could be learning how to be law-abiding citizens rather than just being warehoused for some definite period of time.

And the next issue, whether -- whether people have been incarcerated or on probation, re-entry into the community is paramount. As the New York times recently commented that newly released inmates are often driven right back to prison by difficulty in obtaining jobs, education, and housing as well as by the social stigma that comes from having been in prison. In addition, many of these people suffered from mental illnesses, but have no access to
treatment. Re-entry is -- is -- is everything. As
I said, people are going to be getting back out and
going to go back into the community. They have to
be able to -- to actually not only rehabilitate
themselves but rejoin the community.

And one of the things that we
believe that the commission should seriously
consider in order to overhauling sentencing laws in
particular is to look into expungement; many states
have that. A lot of people call me and they're
surprised to hear that -- that like a -- you get
a -- a traffic offense that goes on your driving
record and after a certain number of years comes
off. You get a new start in life, second chance.
And people are very surprised to hear that in this
state that never happens. When I tell clients, I
don't care what it is, that misdemeanor, that
felony, that's going to be on your record for the
rest of your life. Sometimes they think, oh after
ten years? No. We could understand the situation
with violent offenders, sex offenders, there may be
some distinction, and that's the distinction that
most states have made. But we feel very strongly
Commission on Sentencing Reform - 11-15-2007

that expungement is a major -- major part of any --

of any goal to serve the overall purposes of

sentencing.

MS. O'DONNELL: You've traveled

two and a half hours to get here, so you --

MR. SCHLANGER: Okay.

MS. O'DONNELL: -- can take your

time to finish up.

MR. SCHLANGER: All right. Thank

you very much. I -- I've been -- I -- as I said,

shortening the testimony, because I've submitted it

in writing. And I appreciate the time that -- that

you've given us. And on behalf of myself and

behalf of the New York State Association of

Criminal Defense Lawyers I -- we'd just like to say

in closing that this is really only the beginning

of opening the lines of communication between the

Commission and the Criminal Defense Bar. And we

understand that the Commission is hearing from all

people from all walks of life, from prosecutors,

law enforcement, prisoners, people who have served

time, people in the Victim Advocacy Community and

we think that the Criminal Defense Bar is -- is
Commission on Sentencing Reform - 11-15-2007

also an essential component of the voices that
should be heard.

Our organization, as I said,
represents over nine hundred criminal defense
lawyers throughout New York State. There are other
criminal bar associations as well; New York State
Defender's Association and various local
organizations, particularly in New York City. And
we really hope and -- and ask that the Commission
maintain these lines of communication and request
the input of the organized criminal defense bar as
it continues to fulfill it's mission.

Thank you very much.

MS. O'DONNELL: Well thank you
very much --

MR. ANDERSON: Thank you sir,

thank you.

MS. O'DONNELL: -- for traveling
here. We -- we have heard from some members with
the Criminal Defense Bar and some members served on
our various subcommittees previously. But please
make sure John Modio (phonetic spelling) gives you
contact information. We're working very hard on
Commission on Sentencing Reform - 11-15-2007

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

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

MR. SCHLANGER: Thank you very
much.

MS. LEVINE: Uh-huh.

MS. O'DONNELL: Rafkin Salim.

MR. SALIM: That would be me.

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

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

MS. O'DONNELL: Sorry.

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

My name is Rafik Salim and I am an
ex-felon. I was released from prison in April of
this year. I was incarcerated in May of 1975 and that's thirty-two years that I sent in prison. My crime of conviction was felony murder. My sentence was twenty years to life. There’s a couple of things that I would like to say to the Commission. A good friend of mine said that for some of your diatribes, this is probably a most appropriate forum. At least the people who hear you will be in a position to maybe address some of the issues that concern you. The first thing I want to say is that when we incarcerate people, what do we really -- when you incarcerate a defendant, what do we want. What do we want them to do? And at the end of everything, when they leave, what -- what -- what kind of a result do we want? I think that we want someone to reform -- not reform, I'll take -- take it apart, re form. We're -- we're -- we -- we do what we do because -- people break laws because their values are distorted, they want things that don't belong to them, they commit crimes. They break our rules. And it's almost as if it's a knee jerk reaction -- reaction to immediately thereafter put them in cages. And -- and however a euphemism
Commission on Sentencing Reform - 11-15-2007

for having lived in a cage for a long time. It's a
cage. That's our response to crime, social
deviates, is to place people in cages. We will
cringe in horror if we do that to our pet, but we
do that to each other. And we -- we feel good
about it. We -- I mean sometimes we -- we delight
in it. I mean we just hope, we throw the book at
them. Throw them in jail and throw away the key.

Throw them in jail and throw away the cell. And --
and that's our attitude. And I say that if --
if -- the -- if we really -- if what we want
through incarceration is to make the person suffer,
be humiliated, degraded physical, sexual, and
emotional violence. I won't say abuse, because
some would construe whatever happens to them after
he gets inside is deserved so not abuse. Or just
to feel our own vengeance or anger because a person
violates in a really serious way. And taking life
is the ultimate. There is nothing worse that a
person can do even though we've chosen to separate
sex offenders and treat them as if they're worse.

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

So there was a time when that's
all we really wanted. So I think we really have to
ask the question is, are the things that we want,
are they being served by our -- by our system, by
our knee jerk reaction of incarceration. And I say
no. And I -- and I say that and I-- I'll give you an analogy. There came a time in all history that I identify with as an African American where an institution that existed so long, people -- they stood up and they said this institution in and of itself is inhumane. This is not something that people should do to people. And we said that -- at least some people said it. And the first people to say it, as is inevitable, they get steam roll by just -- just the inertia of an institution that's lived since the beginning of human history, and I speak of slavery. They got rolled over. Well ultimately, whereas society came to the conclusion that what we were doing, and that had been sanctioned by scripture, and we find it in the bible, in the Koran, everywhere. The institution itself, it didn't serve our purposes any more.

And I really believe that with the professionals now, putting this attention on re-entry because of the damage that incarceration must cause -- it must, it's inevitable that when we send someone to prison, they're going to suffer emotional depravation, they're going to suffer.
Commission on Sentencing Reform - 11-15-2007

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

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

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

When you send someone to prison,

if we're going to do that, and clearly we're going
Commission on Sentencing Reform - 11-15-2007

to do that, we should never put an open-ended sentence on their back. Give someone a definite sentence and then create incentives for them to shorten that sentence. I will name a prisoner, his name is Ty G. B. Hussin (phonetic spelling). He's in Collin's Correctional Facility right now. I worked side by side in an office with him. He's an HIV AIDS educator. He's gone to a few parole boards. He plead guilty to murder in the second degree. He pled guilty because he struck his wife in the throat with his hand and he was a -- he knows martial arts. And he said -- whatever, he said he didn't really mean it, it was just instinct. The parole board does not accept his explanation that I really didn't want to kill my wife. And that's the reason they will not let him out of prison. They don't question whether he's a changed man or whether he's a good man. They don't question it. And I tell you, Ty G. B. Hussin has no idea that I would say this about him today. I tell you this because his case is typical of so many cases. It's that the rehearing when there's an open-ended sentence and the Parole Board has the
Commission on Sentencing Reform - 11-15-2007

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

Now there are people, that I'll be the first to say are incorrigible; that when you look into their eyes, it's like looking into a black hole. No matter what you pour in, whatever light you try -- you try to shine and bestow upon them, they just absorb it and they give nothing back they're takers, they're predators. We've met people like that, haven't we? I hope not. But I have. And I've looked into eyes like that and it's frightened me and I don't frighten easily. But it's frightened me.

So of course there are going to be provisions to deal with these kind of individuals. But that's not what's going on in that system right now. What we have going on there now are men who are hopeless because they've been given this kind of attitude that I received. It doesn't matter, you're never going home.

The last thing that I want to say about re-entry is that life sentence, it doesn't even end when you leave prison. Having served thirty-two years and having been out here six
Commission on Sentencing Reform - 11-15-2007

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

Now, if -- if the intent is just
to punish, to humiliate, to keep people on a
string, to jerk their strings whenever you feel
like if that's the purpose then I say don't touch
that provision that's fine. Don't touch it leave
it alone. But if you really want people to
reintegrate and have some freedom to become
productive members of society, those things don't help. I can not read that far, so sir. My eyes suffered from a lot of reading inside cells.

UNIDENTIFIED SPEAKER: You're -- you're time's up sir.

MS. STANFORD: If I could have a question.

MR. SCHLANGER: Thank you very much. My pleasure. I appreciate it.

MR. BERGONO: I -- I have a question.

MS. O'DONNELL: Okay. We have two questions for you though --

MR. SALIM: Please.

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

MR. SALIM: Please.


MS. STANFORD: Mr. Salim you talked about the offender who you looked at and realized there was no light in their soul. Have you given any thought to what future should hold
Commission on Sentencing Reform - 11-15-2007

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

MR. SALIM: Well, I had a

collection with -- I have given it some thought,
with a psychologist inside. Before having parole
with you, an individual has to go before a
psychologist. And I found the professionals in
that field to be a bit more -- no offense
intended -- ethical than the political appointees
that sit on parole boards, a bit more ethical. So
I -- I think those kinds of decisions where the
person is dangerous to society and will always be
that way, I think those decisions are best made by
mental health professionals not by politicians and
not by political appointees. And that's where the
decision is being made now when they're made by
Parole Commissions.

So that's -- that's -- that's the
direction that I think those decisions should be
made. And I -- I -- I can -- I can think of one
more. I can think of an individual. I won't name
the -- the individual because that is beyond me and
I'm not that professional who could make that
decision. But there is an individual who was convicted of beating his mother to death with a baseball bat. That's what he did he beat his mother to death with a baseball bat. This case has got to been raise -- he's going to stay. Somebody's going to do something. And he was sentenced to five to fifteen as manslaughter. He was -- his sentence was reduced by the appellate division to one and a half to three. He got out I was incarcerated with him. I thought he was a psychopath -- a sociopath, brilliant guy. Not a moral fiber anywhere in his body. Brilliant the way a sociopath can be. He got out and went to Canada he enrolled in a university and began to rape women. When he was finally apprehended by Canadian Authorities the professionals the psychologists their judgment of him was that he's a sociopath and he should never be let out of prison.

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

MS. STANFORD: Thank you.
Commission on Sentencing Reform - 11-15-2007

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

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

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

MR. SALIM: I'm sorry?

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

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

MR. SALIM: Well --

MR. BERGONO: Will it ever make a difference.

MR. SALIM: -- the first thing I would do is -- is try to think outside the box.

Get just -- just -- we have to stop of thinking of prison as a knee jerk reaction. If a person robs someone, you suffer financially, you suffer
emotionally, you maybe live in fear in your home.

When that individual goes to prison, the only thing
that happens is number one, he doesn't have to deal
with what he did any more it's gone he doesn't deal
with that. In the case of murder he doesn't deal
with that any more. I see personally I killed. I
go to prison, the family suffers, my family
suffers, the spouse suffers, the children suffer,
but I don't not that way because I don't have to
see that I'm separated. I go somewhere else for a
long time so I never see the community suffer. I
never experience any of that. A person who commits
a crime should not be separated from the emotional
impact of his crimes he should not be he should
have to see that. If -- if I robbed you I should
pay you back. I should work to replace what I've
taken from you. If that means wearing a bracelet
until I've -- until I've completed that, then
that's what I should do. But I just don't see
anything that -- that comes -- that's good that
comes of placing someone in a cell when you can
accomplish those same ends another way without
creating more damage. Then we have to create
Commission on Sentencing Reform - 11-15-2007

programs and -- and -- and designate fifteen

million dollars. And fifty million dollars to

designate programs to correct the damage that our own

institutions have created. And -- and we created

designate this damage in an attempt to solve the problem?

We've created a another one.

No, so I don't have the answer.

I wish I did have it though, a very easy answer to

say that but hey, who had an answer in the 1850s.

they didn't have an answer who had answers.

But they struggled, they

struggled -- they struggled with the issue. And

that's all I ask that we as a society, as people

struggle with the -- with the -- with the problem.

Because it is a contradiction. And we can't ignore

it. We can try, but we can't ignore it.

MS. O'DONNELL: Okay, thank you

very much.

MR. SALIM: Thank you.

MS. O'DONNELL: We really

appreciate.

MS. STANFORD: Your words are

extremely eloquent, thank you Mr. Salim.
MR. SALIM: Thank you.

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

UNIDENTIFIED SPEAKER: Bob, how are you.

MR. LONSKI: Good, thank you.

Thank you for giving me this opportunity to spend a few moments with you.

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

MS. O'DONNELL: Bob, we -- we have a bit of a hard time with the sound system.

So as close as you can get.

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

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

MR. LONSKI: Okay, right.

MS. O'DONNELL: Thank you.

MR. LONSKI: I support the
Commission on Sentencing Reform - 11-15-2007

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

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

I also support generally the, as a general point, the Commissions principle that sentencing reform and sentencing legislation must be driven by empirical data. It must be evidence-based. And I think that -- that -- if that would happen, that would be a dramatic
changing force from what generally, although not always tends to happen. You know we -- we do live in the real world and the real world is that many times sentencing perhaps other types of legislation is driven by political considerations rather than by considerations of what's effective and what will meet the goals of the state and of society best.

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

I have basically three main points that I would like to give to you today. I realize that my time is limited. I understand that the Commission is looking to continue to move more
Commission on Sentencing Reform - 11-15-2007
toward a determinate sentencing structure while at
the same time probably recommending maintaining
some indeterminate sentencing for certain types
of -- certain types of crimes. To the extent
that -- that indeterminate sentencing survives, and
even if it doesn't survive in terms of -- of going
forward, sentencing reform, there certainly are
thousands and thousands of people who remain in
prison for many years having sentenced. Going
forward with surviving indeterminate sentencing and
even if we don't, dealing with people who are in
there.

One specific recommendation that
I would make would be to modify the law to prevent
the -- the division of parole from denying release
solely on the basis of the nature of the underlying
offense. There are many, many people in prison who
are coming before the Board and are denied release
for no reason and by their own terms for no reason
other than the nature of the underlying offense.
And these can be people who have good or -- good
institutional records or institutional records that
started out not being good, but they never proved
Commission on Sentencing Reform - 11-15-2007

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

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

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

But in terms of the nature of the
crime and the detail of that crime, no one is in a
better position to assess that than the judge at
the time of sentencing. Certainly, more so than --
than Department of Corrections or the division of
parole. In many cases that Judge has just sat
Commission on Sentencing Reform - 11-15-2007

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

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

Secondly, Rockefeller reform --
Drug Law Reform, I believe was a good first step.
I think it needs to be expanded downward and it
needs to be expanded backward. Downward in the
sense of taking the A1 and A2 kind of reform and
moving it down so that we don't have situations
Commission on Sentencing Reform - 11-15-2007

where it expanded into -- into lower level felonies, so that we don't have situations where someone who was convicted in 2004, on a B drug felony may doing an eight and a third to twenty-five and someone who's convicted today of an A1 or an A2 would be able to get no more than a twenty-year determinate or a ten-year determinate respectfully. With what we have done, by stopping where we stopped at the A1 and A2 has created a situation where people who -- obviously had -- who were convicted of less serious drug offenses can and are in prison sentences than people who -- who are convicted, who happen to be convicted today.

In terms of expanding backward, one of the provisions of the reform legislation was that the individual needed to be removed in time from his eligibility for -- for parole. And the way the statute was written was a little bit vague. Most people felt that it meant that you had to be more than three years from your parole eligibility, there was a way to read the statute that you -- you could be up to but not closer than one year from parole eligibility, eligibility to appear before
the court. If you were too close to your board eligibility you weren't even eligible to apply to be resentenced under the A1 and A2 reform laws.

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

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

And the one thing that I would like to -- to leave you with, the one point is that we need to recognize over, and over, and over again that New York is primarily a rural state. And
many, many, many of our clients who live in rural areas do not have access to treatment. And we need to do one of two things, we need to either get more treatment facilities in those areas where people can -- can get to and mind you, you know, my clients tend not to have access to private transportation. Or if we can't put -- bring the -- the treatment who need it in rural areas, we need to settle down and create a transportation mechanism to bring the people to and from where the treatment is.

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

MS. LEVINE: I actually have a question. Thank you first of all for coming. You had mentioned the -- as a suggestion you had mentioned a permanent sentencing commission and I just wondered if you had any concrete suggestions as to what that permanent sentencing commission would look like, for example would it be elected, would it be not -- would it be unelected, would it be appointed staff, would it be revolving staff?
Commission on Sentencing Reform - 11-15-2007

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

MR. LONSKI: Well you know I --
I -- specific to this -- to -- to -- to this
Commission I haven't given it a great deal of
thought. But generally speaking, I believe that
those types of bodies are best created and
maintained by drawing from the expertise of
existing entities that -- that are well respected
within the criminal justice committee. I would
suggest generally, without having focused, you
know, on -- on that particular aspect of a
permanent sentencing commission, that -- that there
be a -- a structure set up whereby there would be
so many appointments from so many private, so many
appointments from -- from a pool that was
recommended by say the State Bar Association. And
I think that that tends to, you know, and -- and
you can build in important things like diversity.
You know you can build in things like women's bar
associations and AACP, Legal Aide and --. You
can -- you can institutionally diversify that kind
of commission so that it's drawing from important
Commission on Sentencing Reform - 11-15-2007

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

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

MR. LONSKI: Sure.

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

MR. LONSKI: I -- I'll -- I'll
make myself available to do that on that subject
and there are other subjects that are related that
Commission on Sentencing Reform - 11-15-2007

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

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

MR. LONSKI: Thank you.

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

Thank you for joining us today.

MS. WRIGHT: Good afternoon.

MR. ALEXANDER: Good afternoon.

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

My name is Susan Wright and I'm probably different from most of the people who
Commission on Sentencing Reform - 11-15-2007

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

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

Following each appearance he -- except for the first one he was -- had acquired addition of eighteen months. With the nature of the crime being the primary reason each time.

although the legislative commission on expenditure
Commission on Sentencing Reform - 11-15-2007
review published in the nineteen -- in it's
nineteen eighty-three findings that and I quote, an
applicant held for twenty-three months or less has
a contract or tentative release date and implied
and the inmate is generally released upon the
appearance that he has maintained good behavior in
prison and followed the board of recommendations.
The board has never made any
recommendation and Jerome still remains
incarcerated. Together we have raised four
children, one of whom recently graduated from the
University of Buffalo Law School and just last week
passed the Bar Exam. Through the years I've
watched Jerome from a teenager, head down a path of
destruction, into a man, who I'm proud to call my
husband. A man who is eager to help anyone who
crosses his path. The major part of the change
that I've seen in him comes from his feelings with
the impact of his crime on his family and the
community.
Currently located in Collin's
Correction Facility, he is the lead facilitator in
the youth assistance program, a program designed to
work with at risk youth in Erie and the surrounding counties. On any given Wednesday you can find him working with adolescents, many of whom were referred by the court in an effort to prevent them from spiraling out of control. Due to his work at Collins, he has solid job offers in both Erie and Chautauqua counties.

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

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

The District Attorney in this case had appeared concerned and compassionate throughout the process, only to turn into someone who sees their only concern was disposition of the
Commission on Sentencing Reform - 11-15-2007

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

This young man was offered and accepted a deal. After the initial shock I realized that no matter what we wanted I'm sorry, no matter what happened the thing that we wanted most would never be returned to us, that no matter how much time this young man spent in prison, Christopher would still be dead. I advised the DA
that the impact statement would be written at a
more appropriate time. We still had fourteen years
until his admission would end and that we would
deal with it then. It is my prayer that in the
time, given the opportunity he will no longer be
the person who took so much away from us, but
rather someone who has learned to give. In
November 1999, I became of a group of family
members and attorneys who called a meeting at the
Legal Aide Society in New York City. What was
supposed to be a meeting of thirty people to
brainstorm about the state of parole turned into a
rowdy attended by between three and four hundred
people, mostly family members hopeless over
repeated parole denials received by their loved
ones and desperate for information and answers.

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

BPR travels across the state
Commission on Sentencing Reform - 11-15-2007

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

By this -- by this time I was well versed in the workings of the system and I was able to prepare my family for what was to come. We were left out of the plea negotiations and the final outcome was that Jamie's murderess received a seventeen determinate sentence. Jamie's murder had the potential to be released in fourteen years.
That would be 2019, and the ironic part of this is her release date, her conditional release date is six days before what would have been his sixteenth birthday.

I stand before you today with a wish list. As someone personally affected by every aspect of the system's structure that you have been appointed to evaluated. As a wife, I would like to see a revision of parole and the Department of Correction that is as good as it's promise.

Returning to community -- to wounded communities, men and women who are truly and not just parole eligible. People fortified with rehabilitative program and enhanced education, therapeutic treatment and successful transitional planning and opportunities for smooth reintegration. As a family member of two murder victims, I would like to see a judicious system, specifically a prosecutorial system that is built on honesty, fairness, and that promotes healing, and not just the acquisition of a victim's impact statement.

What we need is a state and inclusive in the disposition of the case and not
Commission on Sentencing Reform - 11-15-2007

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

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

I'm also here today to endorse, but I don't know, you've gotten probably twenty-five times, which is the parole reform that was put together by an ad hoc of committee which I am a member. And I wish that you would take a look at that and consider any changes that you make.
Commission on Sentencing Reform - 11-15-2007

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

Thank you.

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

MR. ALEXANDER: Thank you.

MR. BERGONO: Ma'am.

MS. WRIGHT: Yes.

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

MS. WRIGHT: Thank you.

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

MR. ALEXANDER: Oh, very good.

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

MR. ALEXANDER: Yeah, that's the
Commission on Sentencing Reform - 11-15-2007

only person that hasn't spoken.

MS. O'DONNELL: Okay. And, yeah

we did have some earlier. Dawn McKinley, Ric

Mills, and Paul Fallon. Are any of them here?

Okay. We are going to take a

very brief break until three o'clock in case Abu

Rahman can make it. We don't want to cut off

anyone who is scheduled to testify today. In the

meantime is there anyone who is not scheduled that

would like to speak. I know we -- we tried to

reach out and fill our day. Okay, we'll take a

five-minute break and we'll return in case Mr.

Rahman shows up.

MS. O'DONNELL: Okay. I

understand Mr. Rahman is here. We appreciate your

coming. We were ahead of you, you're not late.

But if you could come down here and approach the

podium. You are our last speaker of the day and we

appreciate very much that you agreed to come and

address us.

MR. RAHMAN: Good afternoon sir.

MR. ALEXANDER: How are you sir:

MR. RAHMAN: Good thank you.
MS. O'DONNELL: Please start.

MR. RAHMAN: Oh, okay. Well basically my name is Abu Barack Rahman and I am here on basically a consortium. An organization called Reducing Recidivism, Back to Basics Outreach Ministry, and Prisoner's are People Too. Primarily there's actually three things I want to give testimony about.

A) as a person formerly incarcerated and a successful re-entry candidate, I feel it is imperative that the Department of Correction somehow establish employment rights because they have trained us, they have rehabilitated us, so a position such as Commissary, Laundry, Ground civilian any position that don't require security that they hire normal civilians for that people formerly incarcerated can fill these positions. History shows that people formerly incarcerated that were employed as Chaplains for the Department of Corrections twenty, twenty-five years ago have never recidivated. They never re-serve. Making a State Civil Service wage is a good initiative to or incentive rather to stay
Commission on Sentencing Reform - 11-15-2007

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

VESID has in their hand out we will supply you with your initial inventory.

That's not true. I personally submitted for a business plan, I was turned down, sorry. So my first thing at that Department of Correction System was a some sort of hiring process for people formerly incarcerated. The other one is that if I were to take either one of you up there and incarcerate you pick your records up and release you with forty dollars ten years later you would stand just a minimal chance of turning your life around as well. What we are proposing is that an individual, at the time of his court sentencing, he be given preparing educational plan, writing a business plan, and be submitted with a micro loan or some sort of grant to help them get restarted. Statistics and financial records show that it costs a minimum of fifty thousand a year to keep an individual incarcerated. And individual that goes
Commission on Sentencing Reform - 11-15-2007

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

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

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

We took pop bottles last week to get gas to go pick up an individual from jail to
Commission on Sentencing Reform - 11-15-2007

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

And so that was my third -- third piece that the programs and organizations that say they are actively involved in reentry somehow had to share that money with organizations such as
Commission on Sentencing Reform - 11-15-2007

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

MS. O'DONNELL: Well thank you

very much for being here. I think we saved the

best for last.

MR. RAHMAN: Are you supposed to

ask me questions at this time or is that -- that --

MS. O'DONNELL: Any questions?

MR. ANDERSON: I did have one

question for you. And one of the questions, and it

isn't directly related to the things that you said

here, but one of the things that have come up over

the last couple of hearings that I've sit in on, is

this whole idea of -- of peer mentoring type of

relationship.

MR. RAHMAN: Yes.

MR. ANDERSON: And you know the

parole rule is that whole condition against

association. Does the benefit from mentoring out

weight the dangers of -- of -- of association?

MR. RAHMAN: Yes sir and to
Commission on Sentencing Reform - 11-15-2007

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

MR. ANDERSON: Uh-huh.

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

MR. ANDERSON: Thank you.

MR. RAHMAN: You're most welcome.

MS. O'DONNELL: Thank you very

much.
MR. RAHMAN: Thank you.

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

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

MR. ANDERSON: Thank you.

(The hearing concluded at 3:08 p.m.)
Commission on Sentencing Reform - 11-15-2007

STATE OF NEW YORK

I, G. Michael France, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, and in the presence of counsel, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription, consisting of pages number 1 through 226, inclusive, was prepared under my supervision and is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 13th day of December, 2007.

____________________
G. Michael France, Reporter
accountable 70:16 148:22 215:5
accounts 102:18
acculturated 187:3
accumulate 33:11
accumulative 215:15
achieve 76:5 83:13 85:21 103:6 104:2
achieved 87:23 167:24
acknowledge 18:3 80:9,16 86:23 106:8 114:15 217:9
acknowledges 81:3
acquired 137:14 210:21
acquisition 216:22
action 25:15 88:20 215:5
actions 70:17 148:23 185:7
active 52:17
actively 223:23
Activists 222:9
activities 138:12
activity 18:12 142:24
advised 140:24 213:24
advise 61:5 157:12
affairs 146:4 158:5
affidavit 47:17
affirmative 127:18
afford 47:5 53:21 122:6
affordable 25:21
afforded 42:5
additional liabilities 97:12,14 97:21 185:9
absence 52:5
absolute 48:16
absorb 190:8
Abu 218:23 219:7 220:4 223:11
abused 120:7
Academy 110:23
accentuated 32:18
accept 25:13 117:2,6 188:9 189:15
acceptable 72:12
accepted 72:15 164:13 213:19
access 88:13 177:3 178:24 206:3,7
accessible 25:12
accommodation 25:8 32:12
accomplish 81:18 166:16 166:17 196:23
account 78:18 87:23 102:19 103:5,9,16 112:21
accountability 120:3 215:5
addressing 37:13 115:7
adds 59:13
adequate 94:23 95:14
adequately 71:10
adjudication 29:21 34:4 121:10
adjust 122:3
administration 42:9 217:13 223:17
administrative 176:8 209:2
administrator 142:3 198:13
admission 214:4
admit 160:11
admitting 48:21
adolescent 33:10
adolescents 121:14 212:4
adopted 19:16 28:24 122:20
adopting 114:21
adult 28:16 162:16
advance 23:23 209:20
advantage 19:14 120:9 163:18
adverse 111:24
advise 174:12
advised 140:24 213:24
advising 30:14
advisors 49:4
advisory 106:2
advocated 172:23
advocates 61:5 157:12
affairs 146:4 158:5
affidavit 47:17
affirmative 127:18
afford 47:5 53:21 122:6
affordable 25:21
afforded 42:5
| African | afternoon | agency | age | aged | agencies | agency | ages | agnostic | ago | agreeable | agreed | agreeing | ahead | Africa | Aide | AIDS | ain't | Alan | Albany | alcohol | Alcoholicism | Alexander | African American

<p>| appeals 101:2,3,6 164:3,3 | April 59:15 182:24 |
| appear 204:24 | arbitrary 45:23 |
| appearance 210:20 211:7 | arduous 36:24 |
| appearances 212:17 | area 28:9 69:20 131:18 |
| appeared 210:2,19 212:22 | 158:11 171:17 |
| appears 130:15,21 | areas 89:9 206:3,5,9 |
| appellate 46:16 47:5 101:3 | argue 101:18 |
| 101:15 194:9 | argued 46:14 |
| appear 204:24 | argument 60:9 |
| appearances 212:17 | arguments 58:5 |
| appeared 210:2,19 212:22 | arraignment 65:13 |
| appears 130:15,21 | arrest 77:18 81:8 110:15 |
| аппеллире 46:16 47:5 101:3 | 117:5 130:14 162:10 |
| 101:15 194:9 | 164:10 215:11 |
| appear 204:24 | arrives 87:19 |
| appearances 212:17 | arrogantly 159:17 |
| appeared 210:2,19 212:22 | Arthur 90:11 |
| appears 130:15,21 | article 51:9 127:20 |
| appeal 204:24 | articles 10:10 |
| appearance 210:20 211:7 | articulate 30:5 |
| appearances 212:17 | articulated 81:13 |
| appeared 210:2,19 212:22 | articulating 81:23 |
| appears 130:15,21 | arts 123:12,17 189:13 |
| appeal 204:24 | ASAT 90:7 222:2,3 |
| appearance 210:20 211:7 | asked 5:3 108:7 134:20 |
| appearances 212:17 | 167:5 182:16 187:9 |
| appeared 210:2,19 212:22 | asking 91:3 128:17 139:9 |
| appears 130:15,21 | 139:12 |
| appeal 204:24 | aspect 119:14,14 207:13 |
| appearance 210:20 211:7 | 216:8 |
| appearances 212:17 | ass 158:16 |
| appeared 210:2,19 212:22 | assembled 119:22 |
| appears 130:15,21 | Assembly 4:8 174:17 |
| appeal 204:24 | Assemblyman 4:9 |
| appearance 210:20 211:7 | Assemblymember 2:5 |
| appearances 212:17 | assess 87:2,12 88:22 |
| appeared 210:2,19 212:22 | 202:21 |
| appears 130:15,21 | assessed 86:21 203:7 |
| appeal 204:24 | assessment 59:19 86:3,18 |
| appearance 210:20 211:7 | 102:8 |
| appearances 212:17 | assessments 67:15 |
| appeared 210:2,19 212:22 | assets 8:14 |
| appears 130:15,21 | assigned 129:15 198:13 |
| appeal 204:24 | 225:8 |
| appearance 210:20 211:7 | assignment 68:22 105:2 |
| appearances 212:17 | 129:13 130:4 |
| appeared 210:2,19 212:22 | assist 68:19 |
| appears 130:15,21 | assistance 20:9 23:21 69:6 |
| appeal 204:24 | 73:18 92:13 95:17 96:9 |
| appearances 212:17 | 98:15 211:24 |
| appeared 210:2,19 212:22 | assistant 73:14 151:4 |
| appears 130:15,21 | assisting 94:3 124:13 |
| appeal 204:24 | Associate 108:2 |
| appearances 212:17 | associated 113:13 |
| appeared 210:2,19 212:22 | association 15:11 46:8 80:3 |
| appears 130:15,21 | 83:5 91:24 171:4,18 |
| appeal 204:24 | 180:15 181:8 198:5 |
| appearance 210:20 211:7 | 207:18 224:22,23 |
| appearances 212:17 | associations 181:7 207:22 |
| appeared 210:2,19 212:22 | assured 45:15 |
| appears 130:15,21 | atray 165:24 |
| appeal 204:24 | ATI 78:13 79:11 |
| appearance 210:20 211:7 | ATIs 78:9 79:21 |
| appearances 212:17 | attached 47:3 |
| appeared 210:2,19 212:22 | attack 111:13 |
| appears 130:15,21 | attacks 111:8 113:10 |
| appeal 204:24 | attempt 22:12 41:20 175:5 |
| appearance 210:20 211:7 | 197:6 |
| appearances 212:17 | attempted 149:21 |
| appeared 210:2,19 212:22 | attempting 103:6 125:11 |
| appears 130:15,21 | attended 214:14 |
| appeal 204:24 | attending 226:4 |
| appearance 210:20 211:7 | attention 34:11 40:5 |
| appearances 212:17 | 186:20 202:12 |
| appeared 210:2,19 212:22 | Attica 123:19 162:20 |
| appears 130:15,21 | attitude 114:5,9 184:11 |
| appeal 204:24 | 190:19 |
| appearance 210:20 211:7 | attitudes 34:2,9 185:6 |
| appearances 212:17 | attorney 4:12,18 35:10 |
| appeared 210:2,19 212:22 | 40:18,24 41:8,12 43:19 |
| appears 130:15,21 | 43:20 45:3,3 49:2,4,7,11 |
| appeal 204:24 | 49:16,17 50:13 58:20 |
| appearances 212:17 | 171:12 199:5 212:21 |
| appeared 210:2,19 212:22 | attorneys 3:20 42:22 |
| appears 130:15,21 | 104:24 214:10 |
| appeal 204:24 | Attorney's 67:12 215:12 |
| appearance 210:20 211:7 | attract 96:16 97:13,15 |
| auditorium 70:4 | 224:2 | 113:16 175:10 201:17 |
| August 5:14 | backed 10:19 | 205:8 |
| Aunt 213:4,11 | background 67:14 223:16 | basketball 166:8 |
| aunt's 212:9 | backlash 24:15 | bat 194:4,5 |
| Authorities 194:17 | backward 203:22 204:15 | Bayview 90:11 |
| authority 120:2,7 | bad 9:9,9 10:19 33:11 34:2 | bear 35:23 |
| automatically 199:14 | 34:9 144:12 149:11 | beat 194:4 |
| 79:18 90:3 208:15,21,23 | bailed 53:24 | becoming 95:19 97:6 142:3 |
| average 24:4 221:4 | balanced 150:6 | 158:6 |
| averted 32:22 | Balone 5:4,6,7,11,13 10:9 | beds 90:3 |
| avoid 10:18 32:2 33:11 | 13:3,11,13 14:8,11,14 | bedside 45:16 |
| a.m 1:11 3:3 | 211:14 | beginnings 30:10 |
| 205:4 210:11 | barbers 112:17 | begs 177:23 |
| A2s 62:21,21 | barely 155:16 | behalf 4:9 7:14 151:2 |
|  | bargain 42:3,7,23 44:23 | 171:19 180:14,15 198:4 |
|  | 53:12 105:2 215:17 | 118:18 122:5,9,15 153:8 |
|  | bargaining 58:10 104:6,7,8 | 211:7 |
|  | 104:13 172:19 | behaviors 34:3 |
|  | bargains 51:16 | beings 44:9 80:18 83:6 |
|  | Barrett 4:5 | 185:15 187:11 |
|  | barriers 94:18,22 127:12 | belief 129:9 |
|  | bars 123:10 | beliefs 185:6 |
|  | Bartley 120:23 121:3 | believe 7:21 8:17,18 10:21 |
|  | base 158:24 | 10:22 16:15 51:8 81:16 |
|  | baseball 194:4,5 | 84:11 87:6 95:8,23 99:18 |
|  | 68:17 69:11,12,14 72:2 | 159:4 170:16 174:13 |
|  | 75:9 77:24 79:20 84:9 | 179:8 186:19 202:9 |
|  | 110:15 118:24 155:2,3 | believes 82:6 |
|  | 158:13 178:5 | Bell 54:3 |
|  | basically 93:22 107:14 | belong 16:19 20:16 183:21 |
|  | 135:22 158:22 168:3 | beneficial 107:17 |</p>
<table>
<thead>
<tr>
<th>bypassed</th>
<th>38:9</th>
<th>byproduct</th>
<th>199:10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caffeteria</td>
<td>26:22</td>
<td>cage</td>
<td>184:2,3 185:8</td>
</tr>
<tr>
<td>cages</td>
<td>183:24 184:4 185:17</td>
<td>California</td>
<td>47:13 53:20 54:3</td>
</tr>
<tr>
<td>callers</td>
<td>156:15</td>
<td>campus</td>
<td>145:18</td>
</tr>
<tr>
<td>Canada</td>
<td>194:15</td>
<td>Canadian</td>
<td>194:17</td>
</tr>
<tr>
<td>cancer</td>
<td>44:19</td>
<td>candidate</td>
<td>220:11</td>
</tr>
<tr>
<td>capacity</td>
<td>151:24</td>
<td>caption</td>
<td>227:6</td>
</tr>
<tr>
<td>careful</td>
<td>143:21</td>
<td>carefully</td>
<td>65:15 76:2 80:4</td>
</tr>
<tr>
<td>carried</td>
<td>29:2</td>
<td>carry</td>
<td>113:17 200:19</td>
</tr>
<tr>
<td>CASAC-T</td>
<td>94:13</td>
<td>CASAT</td>
<td>90:12,21,23</td>
</tr>
<tr>
<td>catastrophe</td>
<td>32:23</td>
<td>catastrophic</td>
<td>104:6</td>
</tr>
<tr>
<td>catch</td>
<td>57:12</td>
<td>category</td>
<td>23:9 51:12 185:3</td>
</tr>
<tr>
<td>caveat</td>
<td>199:7</td>
<td>Cayer</td>
<td>51:9</td>
</tr>
<tr>
<td>CCA</td>
<td>72:6,15</td>
<td>cell</td>
<td>184:10 196:22</td>
</tr>
<tr>
<td>cells</td>
<td>192:4</td>
<td>census</td>
<td>36:7</td>
</tr>
<tr>
<td>censuses</td>
<td>8:19</td>
<td>Center</td>
<td>14:18 54:11,22 66:8,16 111:13 125:24 126:6 151:5</td>
</tr>
<tr>
<td>centerpiece</td>
<td>58:19,21 60:9</td>
<td>centers</td>
<td>41:6</td>
</tr>
<tr>
<td>Central</td>
<td>171:16</td>
<td>CEO</td>
<td>126:7,8 128:6,7 129:7 129:16 130:5 131:10</td>
</tr>
<tr>
<td>CEO's</td>
<td>126:13 130:17</td>
<td>Cephus</td>
<td>5:20 7:2 13:9,11 13:12,22 14:3</td>
</tr>
<tr>
<td>certainty</td>
<td>58:6,19,21 59:8 60:8 81:20 82:7</td>
<td>certified</td>
<td>73:14</td>
</tr>
<tr>
<td>certify</td>
<td>152:19 227:3</td>
<td>Chairman</td>
<td>4:15 35:17 131:8</td>
</tr>
<tr>
<td>Chairwoman</td>
<td>4:21</td>
<td>challenge</td>
<td>103:13</td>
</tr>
<tr>
<td>changing</td>
<td>200:2</td>
<td>channel</td>
<td>94:9</td>
</tr>
<tr>
<td>chaos</td>
<td>170:7,7,8</td>
<td>Chaplains</td>
<td>220:21</td>
</tr>
<tr>
<td>charitable</td>
<td>103:4</td>
<td>charted</td>
<td>56:11 61:20 62:18</td>
</tr>
<tr>
<td>Chautauqua</td>
<td>212:8</td>
<td>cheaper</td>
<td>22:3</td>
</tr>
<tr>
<td>Cheryl</td>
<td>40:18</td>
<td>chest</td>
<td>185:19</td>
</tr>
<tr>
<td>child</td>
<td>80:7 121:19</td>
<td>childhood</td>
<td>210:15</td>
</tr>
<tr>
<td>choices</td>
<td>168:20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>chosen 184:21</td>
<td>color 117:14,24 118:7</td>
<td>120:8</td>
<td></td>
</tr>
<tr>
<td>circumstance 31:22 103:24</td>
<td>211:19 215:6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>circumstances 33:5 67:18</td>
<td>comfortable 32:20 149:10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>74:10 101:16 119:2</td>
<td>coming 4:10 13:2 14:6,17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>191:10</td>
<td>25:16 40:14 55:7 64:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>circumvent 105:8</td>
<td>93:21 100:16 108:12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>circumvented 104:15</td>
<td>115:17 126:10 128:4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>105:5</td>
<td>131:19 136:15 137:4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cities 160:6</td>
<td>201:19 206:17 219:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citigay 225:11</td>
<td>commenced 3:2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>citizen 94:6 135:20 167:19</td>
<td>commend 35:18 41:18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>citizens 100:4 178:12</td>
<td>131:8 206:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>citizenship 106:18</td>
<td>commendable 11:21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>126:11 127:8 128:10</td>
<td>commented 178:19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>158:11 159:16,16,19</td>
<td>comments 55:13 77:21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>160:19 169:23 181:9</td>
<td>175:23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>210:3 214:11</td>
<td>Commisary 220:15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>civil 16:12 55:4 220:23</td>
<td>commission 1:3 2:1,2 3:1,7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>civilian 220:16</td>
<td>3:7,24 4:1,5 5:1 6:1 7:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>civilians 220:17</td>
<td>7:15 8:1 9:1,7 10:1,15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>claim 127:19</td>
<td>11:1 12:1 13:1 14:1 15:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>claimed 32:16</td>
<td>16:1 17:1 18:1 19:1 20:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clark 35:14,15,16 58:20</td>
<td>26:1 27:1,14 28:1,23 29:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>classification 68:22</td>
<td>29:22 30:1,12,22 31:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>classified 63:4</td>
<td>32:1 33:1 34:1 35:1 36:1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>classism 155:3 160:11</td>
<td>37:1 38:1 39:1 40:1,13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>classist 160:8,9</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
comprised 123:2
compromising 71:18
concentrated 111:12
concept 75:14 88:15 95:9 200:19
concerned 32:7 78:21 155:18 208:17 212:22
concerns 56:14 128:3
concise 26:14
concluded 226:18
conclusion 186:14
conclusions 31:4
concrete 26:14 65:2 89:8 206:20
condition 32:16 71:17 224:21
conditional 59:5,9 216:3
conditions 8:6 30:23 103:2 103:2 151:19
conducive 94:7
conduct 52:11 135:8
conducting 131:4
conducts 67:14
Conference's 15:12 16:10
confession 160:22
confidential 46:23
confinement 71:22 86:15
confirmation 165:23
confront 17:13 50:12
congratulate 217:10
congratulations 28:20 131:20 141:23
conjunction 29:18 32:14
connect 90:18
connected 74:4
connectedness 34:22
connections 78:10
conning 33:12
consciousness 56:6
consecutively 215:16
consider 7:16 11:23 19:7
considered 75:21 127:21 153:16 166:24
considering 75:7 142:9
considers 84:16
consideration 52:4 64:21
considerations 200:6,7
consistent 136:5
constantly 44:13
constitutes 109:21
constitution 53:5 106:3,5
cornstitutionality 106:24
constraint 30:24,24
construction 12:11
construe 184:16
contact 96:19 151:16 170:24 181:24 191:11
contacted 87:6
contacts 81:9
continually 45:6 51:7
continued 45:22 73:18 95:18 97:3 116:16 124:8
continues 45:13 50:24
continuing 22:8 72:5 153:16
Continuum 94:22
contract 8:5 211:5
contradiction 197:16
contradictory 41:23
contribute 34:16 46:7 74:11 120:19
to controversies 175:15
conversation 193:5
convictions 25:14 101:4 112:12 120:10 129:18
convince 9:7 12:16
cooperate 30:2
cooperative 23:22
coordination 34:21
coordinator 15:10 30:6,12 69:7
copy 46:23
core 113:20
corner 191:8
correct 17:12 30:2,22 33:2 62:19 197:4
corresponding 106:22
corruption 155:2
cost 21:19 84:17 102:14
costs 22:2 80:5 106:22 221:22
cottage 159:22
coughing 209:21
Council 223:10
counsel 28:14 38:8 42:11 53:2,8 104:8,10 198:13 227:6
counseling 18:14 170:14
counselor 94:14 225:12
counter 38:24
counterproductive 37:4 105:10 176:10 178:2
counties 23:7,8 212:3,8
countless 68:2
countries 159:17
country 42:4 95:23 113:8 117:10 118:5 159:8 160:9
country's 80:4
courage 22:14 218:13
courtroom 161:8,10
cousin 212:9
Co-chair 2:3
co-founding 210:5
co-occurring 97:22
Co-president 15:10
CPO 4:15
CPR 214:19
crack 143:18
Craig 171:3,12
crazy 30:21 138:5,24,24 196:15
created 3:8 72:13 141:16 141:18 197:5,5,7 204:10 207:8
creates 37:19
creating 121:22 174:11 175:8,14 196:24
credentials 6:9 155:12
credibility 203:6
credulous 61:5
crews 128:8
creates 37:19
creating 121:22 174:11 175:8,14 196:24
criminalized 113:19
criminality 170:5
crimnogenic 78:6,12,18 79:6,22
cringe 184:5
crisis 31:18 32:8 94:4 111:14
critical 19:3 40:3 77:15 79:7 84:4,18
criticism 58:8 60:23 61:2 132:14
criticize 64:12
crosses 211:18
cross-examine 50:13
Crow 115:5 159:14
crucial 133:17
cruel 176:5 187:24
cry 121:14 199:3
cSP 67:24
culminating 55:17
culpability 38:16
cultural 187:6
degree 24:11 64:19 96:16
120:11 138:11 152:5
189:11 210:17
degrees 5:18 8:11 137:14
dehumanization 188:8
dehumanizing 195:13
delight 184:7
delinquency 118:17
deliver 208:16 223:2
delivered 80:3
demanded 132:15
demands 128:22
democracy 133:17
demographic 109:6,14
demonstrated 139:20,21
denials 214:16
denied 44:13,24 45:6 46:13
155:21 177:3 201:19
Denise 2:3 3:24
deny 176:9 225:8
denying 201:16
department 12:21 16:23
20:8 21:18 46:16 47:3
68:21 70:22 86:9 119:6
126:19,21 202:23 216:10
220:12,21 221:10
departments 70:11
departures 106:16
dependence 59:3 103:3
deployment 65:11
deprivation 186:24
depression 32:14
Deputy 85:14
describes 80:20
deserve 36:13 45:6 51:4,5
deserved 184:17
deserves 28:23
designate 19:20 197:2
designation 177:16
designed 34:6 57:21 77:24
116:18 211:24
desirable 58:19 177:24
desire 62:14 102:9
despair 117:14
desperate 214:17
desperately 17:4
despite 47:13
destroyed 155:8
destroying 51:17
destruction 211:16
detail 43:15 202:20
detailed 72:7 203:2
detailing 67:16
detention 41:6
determinacy 64:9
determinant 36:7
determinate 8:18 55:11
56:18,24 57:3,18 58:6,21
58:22 59:7,10,15,23 60:2
60:9,12,14,15 61:18,23
62:4,4,7 63:2,6,21 81:17
82:2,7,12 83:3,15 175:16
176:11 199:12,14 201:2
204:8,8 215:23
determinations 119:8
determine 57:20 105:3
determined 30:9 70:18
203:12
determining 37:16 102:8
107:4 203:10
deterrence 75:22
deterrents 57:2
deuce 165:17,17,17
develop 18:21 74:10 86:13
114:24 120:18 200:20
202:10
developers 128:15
developing 120:16
development 55:4,9
developmentally 21:2
deviants 117:2
deviates 184:4
deviating 172:5
device 198:19
devious 221:3
diagnosed 90:4
diagnosis 89:17
dialogue 182:6
diatribes 183:8
dicey 24:3
dictates 88:10
die 134:24
died 162:9,11,19 163:2
213:11
difference 37:18 53:20
113:7 129:21,23 164:6
195:19
different 8:12 38:10,18
46:10 58:15 109:8 113:8
143:17 150:2,2 157:19
173:23 188:15,16,17
209:24
differentiate 59:11
difficult 33:23 36:24 37:13
37:16 144:8 157:21
difficulty 178:20
dignity 195:7,10
direct 55:6
direction 61:19 94:9
173:11 188:17 193:20
194:23
directly 86:15 127:22
224:14
Director 23:4 66:18 85:14
93:7 94:14 116:5 124:18
disabilities 96:6
disability 6:23 7:3
disabled 21:3 103:20
disadvantaged 169:24
disappointed 80:24 84:5
disaster 113:10 172:9
discharge 97:8
discharged 60:24
disciplinary 89:23
discourage 34:15,16
discovered 123:23
discretion 41:18 44:6 45:7
45:17 48:2 51:20 101:11
102:2 107:16 118:22
172:15,16 176:9
discretionary 217:4
discuss 78:4 79:10
| 174:5 197:9 | either 63:10,14 70:21  
104:15 113:14 118:6  
159:13 174:9 206:4 210:2  
221:13 |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>eat 26:24</td>
<td>elderly 44:17</td>
</tr>
<tr>
<td>ECC 145:24</td>
<td>elected 206:22</td>
</tr>
<tr>
<td>economy 105:17 107:2</td>
<td>element 50:7,21 113:20</td>
</tr>
<tr>
<td>educate 22:3 80:6 166:17</td>
<td>elements 208:2,2</td>
</tr>
<tr>
<td>210:7 215:2</td>
<td>seven 4:23 216:21</td>
</tr>
<tr>
<td>educated 152:4 166:6</td>
<td>educating 214:21</td>
</tr>
<tr>
<td>93:14 95:10 97:3 102:24</td>
<td>123:10 141:12,14 144:5</td>
</tr>
<tr>
<td>144:19 145:2 147:15,24</td>
<td>150:7 152:11 164:11</td>
</tr>
<tr>
<td>166:5,10,17 169:5</td>
<td>176:17 178:6,21 216:15</td>
</tr>
<tr>
<td>educational 8:23 67:22</td>
<td>86:24</td>
</tr>
<tr>
<td>86:11 88:4 89:7 90:23</td>
<td>94:12 95:3 177:14 221:19</td>
</tr>
<tr>
<td>educations 6:15</td>
<td>113:20</td>
</tr>
<tr>
<td>educator 189:9</td>
<td>effective 23:16 87:3 89:4</td>
</tr>
<tr>
<td>effect 42:3,23 78:6,18</td>
<td>96:18 98:5 111:16 200:7</td>
</tr>
<tr>
<td>effective 23:16 87:3 89:4</td>
<td>71:23 72:4</td>
</tr>
<tr>
<td>96:18 98:5 111:16 200:7</td>
<td>140:11 143:16 144:4</td>
</tr>
<tr>
<td>200:13</td>
<td>effectuating 103:9</td>
</tr>
<tr>
<td>efficacy 55:3</td>
<td>engaging 36:15 38:18 42:7</td>
</tr>
<tr>
<td>efficiently 42:21 51:4</td>
<td>68:17 126:11 126:22</td>
</tr>
<tr>
<td>effort 122:16 158:7 212:5</td>
<td>129:3 129:10 130:22</td>
</tr>
<tr>
<td>efforts 77:17 80:12,13,20</td>
<td>131:10 138:7 139:12</td>
</tr>
<tr>
<td>96:14 97:5 98:24</td>
<td>146:24 149:12 150:16</td>
</tr>
<tr>
<td>eight 32:17 134:12,22</td>
<td>153:7 154:16 155:19</td>
</tr>
<tr>
<td>137:18 163:21 204:5</td>
<td>156:12 157:15 158:22</td>
</tr>
<tr>
<td>eighteen 38:2 122:3 210:16</td>
<td>158:23 159:12 160:18</td>
</tr>
<tr>
<td>210:22</td>
<td>161:15 162:18 163:23</td>
</tr>
<tr>
<td>eighty 68:4 109:21</td>
<td>eight 224:2 225:9 226:14</td>
</tr>
<tr>
<td>eighty-three 211:3</td>
<td>eight 228:12 229:17 230:22</td>
</tr>
<tr>
<td>eight 231:17</td>
<td>eight 232:17 233:17 234:22</td>
</tr>
<tr>
<td>eighty 235:9 236:12</td>
<td>eighty 237:9 238:15 239:22</td>
</tr>
<tr>
<td>eighty-three 240:12</td>
<td>eighty-three 241:12 242:19 243:23</td>
</tr>
</tbody>
</table>

| either 63:10,14 70:21 | either 63:10,14 70:21  
104:15 113:14 118:6  
159:13 174:9 206:4 210:2  
221:13 |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>126:2,7,9,14 127:12</td>
<td>129:10 220:13</td>
</tr>
<tr>
<td>empowered 188:21</td>
<td>enable 31:21 90:20</td>
</tr>
<tr>
<td>encounter 86:24</td>
<td>encountered 31:11</td>
</tr>
<tr>
<td>encountered 34:3</td>
<td>encouraging 34:10 84:3,12</td>
</tr>
<tr>
<td>encouraged 86:19,21 87:10</td>
<td>94:3</td>
</tr>
<tr>
<td>encouragement 34:10 84:3,12</td>
<td>94:3</td>
</tr>
<tr>
<td>eight 225:9 226:14</td>
<td>eight 228:12 229:17 226:6</td>
</tr>
<tr>
<td>eight 231:17</td>
<td>eight 232:17 233:17 234:22</td>
</tr>
<tr>
<td>eight 235:9 236:12</td>
<td>eight 237:9 238:15 239:22</td>
</tr>
<tr>
<td>eight 240:12</td>
<td>eight 241:12 242:19 243:23</td>
</tr>
<tr>
<td>eighty 244:2</td>
<td>eighty 245:2 246:17 247:22</td>
</tr>
<tr>
<td>eighty-three 248:12</td>
<td>eighty-three 249:12 250:17 251:22</td>
</tr>
<tr>
<td>Word</td>
<td>Page Numbers</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------</td>
</tr>
<tr>
<td>entrepreneur</td>
<td>221:4</td>
</tr>
<tr>
<td>entrepreneurs</td>
<td>222:12</td>
</tr>
<tr>
<td>entry</td>
<td>90:18</td>
</tr>
<tr>
<td>environment</td>
<td>94:7,10</td>
</tr>
<tr>
<td>equal</td>
<td>38:15, 114:17155:3, 125:11</td>
</tr>
<tr>
<td>equally</td>
<td>37:15, 96:20</td>
</tr>
<tr>
<td>equip</td>
<td>95:11</td>
</tr>
<tr>
<td>equipped</td>
<td>21:7, 56:5, 71:9</td>
</tr>
<tr>
<td>equitable</td>
<td>39:20</td>
</tr>
<tr>
<td>Erie</td>
<td>24:9, 35:10, 101:4</td>
</tr>
<tr>
<td>126:15, 127:2,7, 131:5</td>
<td></td>
</tr>
<tr>
<td>198:4,14, 212:2,7</td>
<td></td>
</tr>
<tr>
<td>errors</td>
<td>87:4,7,9</td>
</tr>
<tr>
<td>escalating</td>
<td>202:16</td>
</tr>
<tr>
<td>escaped</td>
<td>46:21</td>
</tr>
<tr>
<td>escapist</td>
<td>162:22</td>
</tr>
<tr>
<td>especially</td>
<td>12:3, 20:4, 21:2</td>
</tr>
<tr>
<td>33:8, 64:22, 92:3, 139:13</td>
<td></td>
</tr>
<tr>
<td>Esq</td>
<td>2:4,5,6,6</td>
</tr>
<tr>
<td>essential</td>
<td>181:2</td>
</tr>
<tr>
<td>establish</td>
<td>220:13</td>
</tr>
<tr>
<td>established</td>
<td>23:9, 200:17</td>
</tr>
<tr>
<td>establishing</td>
<td>9:15</td>
</tr>
<tr>
<td>estimated</td>
<td>112:9</td>
</tr>
<tr>
<td>ethical</td>
<td>193:10,11</td>
</tr>
<tr>
<td>ethnic</td>
<td>108:20, 113:2,8</td>
</tr>
<tr>
<td>ethnicity</td>
<td>106:18</td>
</tr>
<tr>
<td>euphemism</td>
<td>183:24</td>
</tr>
<tr>
<td>evaluate</td>
<td>121:23</td>
</tr>
<tr>
<td>evaluated</td>
<td>129:8, 216:9</td>
</tr>
<tr>
<td>evaluating</td>
<td>43:10</td>
</tr>
<tr>
<td>evaluation</td>
<td>45:9</td>
</tr>
<tr>
<td>evaluations</td>
<td>119:4</td>
</tr>
<tr>
<td>evenly</td>
<td>109:18</td>
</tr>
<tr>
<td>event</td>
<td>32:19</td>
</tr>
<tr>
<td>events</td>
<td>113:15</td>
</tr>
<tr>
<td>eventually</td>
<td>22:7, 71:16</td>
</tr>
<tr>
<td>142:4, 199:11</td>
<td></td>
</tr>
<tr>
<td>everybody</td>
<td>10:5,18, 14:3</td>
</tr>
<tr>
<td>135:17, 153:6, 155:14</td>
<td></td>
</tr>
<tr>
<td>everybody's</td>
<td>161:8, 169:3</td>
</tr>
<tr>
<td>174:5,7,8, 86:10, 102:9, 128:3</td>
<td></td>
</tr>
<tr>
<td>everyone's</td>
<td>226:10</td>
</tr>
<tr>
<td>ever-increasing</td>
<td>97:24</td>
</tr>
<tr>
<td>evidence</td>
<td>19:14, 49:8,9</td>
</tr>
<tr>
<td>79:6, 84:8, 102:17, 106:9, 113:6</td>
<td></td>
</tr>
<tr>
<td>117:12, 125:9</td>
<td></td>
</tr>
<tr>
<td>evidenced</td>
<td>42:11</td>
</tr>
<tr>
<td>evidence-based</td>
<td>31:3, 78:16</td>
</tr>
<tr>
<td>78:17,20,23, 79:2,5, 87:12</td>
<td></td>
</tr>
<tr>
<td>102:15,20, 103:17, 104:5</td>
<td></td>
</tr>
<tr>
<td>104:14, 105:8,23, 106:6,11</td>
<td></td>
</tr>
<tr>
<td>106:21, 107:3, 129:6</td>
<td></td>
</tr>
<tr>
<td>199:23</td>
<td></td>
</tr>
<tr>
<td>evolving</td>
<td>75:14</td>
</tr>
<tr>
<td>exact</td>
<td>156:19</td>
</tr>
<tr>
<td>exactly</td>
<td>30:22, 36:16, 55:21</td>
</tr>
<tr>
<td>exaggeration</td>
<td>37:10</td>
</tr>
<tr>
<td>Exam</td>
<td>211:14</td>
</tr>
<tr>
<td>examination</td>
<td>182:5</td>
</tr>
<tr>
<td>example</td>
<td>25:8, 46:5, 61:24</td>
</tr>
<tr>
<td>87:18, 103:7, 106:14</td>
<td></td>
</tr>
<tr>
<td>111:17, 156:12, 158:9</td>
<td></td>
</tr>
<tr>
<td>199:10, 206:22</td>
<td></td>
</tr>
<tr>
<td>exceeding</td>
<td>141:11, 144:14</td>
</tr>
<tr>
<td>excellent</td>
<td>30:13, 31:8</td>
</tr>
<tr>
<td>exception</td>
<td>38:7</td>
</tr>
<tr>
<td>exceptional</td>
<td>188:6</td>
</tr>
<tr>
<td>excited</td>
<td>16:13, 101:8</td>
</tr>
<tr>
<td>exclusively</td>
<td>89:13</td>
</tr>
<tr>
<td>excuse</td>
<td>67:13, 74:15, 111:16</td>
</tr>
<tr>
<td>165:8</td>
<td></td>
</tr>
<tr>
<td>executive</td>
<td>3:8, 45:21,23</td>
</tr>
<tr>
<td>166:23, 217:5</td>
<td></td>
</tr>
<tr>
<td>exercise</td>
<td>148:16</td>
</tr>
<tr>
<td>exercising</td>
<td>102:2</td>
</tr>
<tr>
<td>exhaustive</td>
<td>102:17</td>
</tr>
<tr>
<td>exhibiting</td>
<td>122:15</td>
</tr>
<tr>
<td>exist</td>
<td>94:22</td>
</tr>
<tr>
<td>existed</td>
<td>31:8, 93:23, 186:5</td>
</tr>
<tr>
<td>existence</td>
<td>93:10</td>
</tr>
<tr>
<td>existing</td>
<td>207:10</td>
</tr>
<tr>
<td>exists</td>
<td>95:6, 133:2</td>
</tr>
<tr>
<td>exorbitant</td>
<td>121:12</td>
</tr>
<tr>
<td>expand</td>
<td>21:8, 75:12, 79:17</td>
</tr>
<tr>
<td>86:10, 102:9, 128:3</td>
<td></td>
</tr>
<tr>
<td>expanded</td>
<td>89:23, 90:20</td>
</tr>
<tr>
<td>91:16, 176:23, 203:21,22, 204:2</td>
<td></td>
</tr>
<tr>
<td>expanding</td>
<td>38:12, 130:24, 204:15</td>
</tr>
<tr>
<td>expansion</td>
<td>3:15, 101:11</td>
</tr>
<tr>
<td>expect</td>
<td>17:15, 138:21</td>
</tr>
<tr>
<td>expectation</td>
<td>11:6</td>
</tr>
<tr>
<td>expectations</td>
<td>31:6, 14, 19</td>
</tr>
<tr>
<td>32:3, 5, 9</td>
<td></td>
</tr>
<tr>
<td>expected</td>
<td>96:14, 117:22</td>
</tr>
<tr>
<td>expedite</td>
<td>39:21, 42:20</td>
</tr>
<tr>
<td>expeditious</td>
<td>39:5</td>
</tr>
<tr>
<td>expenditure</td>
<td>210:24</td>
</tr>
<tr>
<td>expense</td>
<td>21:16</td>
</tr>
<tr>
<td>expensive</td>
<td>17:21, 22:10, 24:6</td>
</tr>
<tr>
<td>125:17</td>
<td></td>
</tr>
<tr>
<td>experience</td>
<td>18:9, 31:23</td>
</tr>
<tr>
<td>33:19, 42:7, 69:10, 13 75:9</td>
<td></td>
</tr>
<tr>
<td>127:11, 136:13, 148:8,20</td>
<td></td>
</tr>
<tr>
<td>149:14,16,19,22, 172:3</td>
<td></td>
</tr>
<tr>
<td>184:24, 188:2, 196:13</td>
<td></td>
</tr>
<tr>
<td>experienced</td>
<td>32:8, 41:8</td>
</tr>
<tr>
<td>212:13</td>
<td></td>
</tr>
<tr>
<td>experiment</td>
<td>173:3</td>
</tr>
<tr>
<td>expert</td>
<td>22:15</td>
</tr>
<tr>
<td>expertise</td>
<td>77:8, 153:7, 207:9</td>
</tr>
<tr>
<td>explain</td>
<td>104:19</td>
</tr>
<tr>
<td>explained</td>
<td>122:18</td>
</tr>
<tr>
<td>explains</td>
<td>92:2</td>
</tr>
<tr>
<td>explanation</td>
<td>189:16</td>
</tr>
<tr>
<td>explore</td>
<td>121:21</td>
</tr>
<tr>
<td>express</td>
<td>66:13</td>
</tr>
<tr>
<td>expungement</td>
<td>179:10</td>
</tr>
<tr>
<td>180:2</td>
<td></td>
</tr>
<tr>
<td>extend</td>
<td>85:2, 112:2, 114:21</td>
</tr>
<tr>
<td>extensions</td>
<td>112:19</td>
</tr>
<tr>
<td>extent</td>
<td>201:5</td>
</tr>
<tr>
<td>extradited</td>
<td>47:9</td>
</tr>
<tr>
<td>extremely</td>
<td>24:6, 71:14</td>
</tr>
<tr>
<td>197:24</td>
<td></td>
</tr>
<tr>
<td>ex-felon</td>
<td>182:24</td>
</tr>
</tbody>
</table>
financial 127:13 221:22
financially 195:24
finding 127:4 149:19
findings 130:5 211:3
fine 191:22
finish 55:12 62:20 180:9
finished 80:11
ired 149:2
firm 153:12
Fisher 217:10
fits 68:21
five-minute 219:13
fix 83:16,16 144:2,7,8 155:14
fixing 148:13
flows 102:10 113:11
fluid 87:14,15
focused 89:22 97:23 207:12 208:17
focuses 40:24
focusing 3:16
folks 33:5
following 55:12 62:20 180:9
followed 142:19 211:8
follows 68:20 104:21
food 27:2
forced 7:8 13:19 105:12
forces 19:17 23:7 35:2
fore 203:13
forego 31:12
foregoing 227:4,7
forever 25:11
forgotten 114:21
forget 160:22
form 19:22 183:18
formal 70:12
formative 33:10
formed 210:6
former 17:15
formally 3:19 33:3 124:2 129:3 182:2 220:10,18,20 221:2,12 224:5 225:9
forming 131:9
forth 33:16 222:9
fortified 216:14
fortitude 31:15
fortunate 7:11 155:23
fortune 5:17 217:11
forty 41:14 110:10 112:3 119:16 221:15
forty-five 23:23 93:11
forty-for 110:10
forty-four 109:20 112:5
forum 183:9
foster 34:17,20
fought 188:11,11
Foundation 4:13
founded 217:15
founder 116:4
fourth 86:13
four-step 85:24
France 227:3,17
Francisco 47:9
Frank 35:14 150:16,17,21 150:24
frankly 39:20
fraught 87:4
free 10:11 103:7 212:20
freedom 191:24
frequently 72:11 96:7
Freudian 161:5
friend 161:3,3 183:7 210:16
friends 49:4 161:4
frighten 190:12
frightened 135:12 190:12 190:13
front-end 55:9
frustrated 82:16
frustrating 20:12,24
frustration 82:14
fueled 108:24
fuels 123:24
fulfill 181:13
full 79:19, 118:24, 119:2, 3
129:23, 141:21
function 42:21, 64:11, 12
178:4
functionally 159:19, 160:14
fund 20:2
funding 13:14, 21, 91:4, 6, 16
95:13, 14, 223:6
funds 57:23
funeral 162:22, 163:3
furloughs 20:2
further 36:19, 37:4, 78:2
155:15
furthering 78:12
furthering 83:21
future 73:9, 176:12, 192:24

G
G 189:6, 20, 227:3, 17
gain 106:20
gaining 120:9
game 8:20
gap 80:14, 20
gaps 94:23
garnish 158:18
gas 222:24
gate 64:11
GEDs 6:20
general 18:10, 89:24, 109:9
109:18, 142:10, 11, 11
199:20
generally 43:19, 101:24
199:19, 200:2, 207:7, 12
211:6
generate 32:11
generation 155:9, 162:6
generosity 27:21
gentleman 165:2
gentlemen 93:6
genuine 82:22
George 2:4, 4:15, 44:21
45:19, 116:10, 120:22
164:14
Georgetown 113:23
Gerald 5:4
GERGONO 100:10
geriatric 22:9
Gerry 9:23, 10:9, 11:3, 12:11
Gerrymandering 158:13
getting 6:19, 13:18, 28:2
53:14, 88:13, 130:17
134:13, 138:4, 155:17
167:7, 169:8, 179:3, 209:20
223:7
gifted 7:24
give 9:2, 19, 10:9, 11:3, 14
26:13, 43:20, 51:6, 89:8
118:22, 136:11, 12, 139:3
158:16, 165:13, 167:2
170:10, 12, 186:2, 189:3
190:8, 200:22, 214:8, 220:8
given 7:10, 23, 44:23
49:15, 51:16, 58:5, 61:23
83:18, 84:4, 91:20, 103:7
103:21, 112:6, 120:18
162:12, 175:21, 180:14
187:8, 190:19, 192:24
193:5, 207:6, 212:3, 213:17
214:6, 221:19, 222:6
gives 181:23
giving 41:14, 48:5, 20, 51:2
51:10, 76:19, 108:14
198:10, 199:13
good 189:6, 20, 227:3, 17
goals 55:20, 24, 56:14, 57:15
58:3, 18, 75:18, 22, 81:23
82:3, 85:21, 103:10, 200:8
God 14:13, 120:18, 165:19
goal 55:23, 57:2, 3, 5, 8, 10, 11
57:21, 63:9, 75:17, 80:22
81:18, 106:11, 180:3
goals 55:20, 24, 56:14, 57:15
58:3, 18, 75:18, 22, 81:23
82:3, 85:21, 103:10, 200:8
God 14:13, 120:18, 165:19
goes 39:10, 13, 43:15, 54:5
62:24, 137:23, 138:9, 14
143:14, 161:7, 179:13
182:6, 196:3, 209:4, 5, 221:24, 225:4
going 3:5, 6, 7, 12, 14, 10:8, 13
11:7, 22, 17:16, 18, 22:20, 23:
25:11, 27:5, 10, 41:15, 43:5
44:3, 45:13, 18, 48:8, 59:20
76:16, 77:8, 113:22, 133:22
135:11, 136:24, 137:19
138:16, 139:11, 19, 140:9
140:14, 16, 142:4, 143:3, 24
144:17, 147:17, 148:5
150:8, 151:22, 155:15
157:24, 158:21, 22, 160:18
160:18, 164:3, 17, 18
165:18, 167:21, 176:18, 19
177:4, 6, 179:3, 4, 19
186:23, 24, 187:2, 3, 188:24
188:24, 190:14, 16, 17, 20
194:6, 7, 23, 201:7, 10
209:21, 219:6
good 3:4, 4:11, 14, 17, 19
5:11, 12, 17, 9:8, 12:17, 17

G
G 189:6, 20, 227:3, 17
gain 106:20
gaining 120:9
game 8:20
gap 80:14, 20
gaps 94:23
garnish 158:18
gas 222:24
gate 64:11
GEDs 6:20
general 18:10, 89:24, 109:9
109:18, 142:10, 11, 11
199:20
generally 43:19, 101:24
199:19, 200:2, 207:7, 12
211:6
generate 32:11
generation 155:9, 162:6
generosity 27:21
gentleman 165:2
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>23:10 27:16,17 30:8,8,8</td>
<td>greater 18:6 59:7 106:3 120:19 130:13 80:24 133:2</td>
</tr>
<tr>
<td>40:20,21 46:5 65:8 66:8</td>
<td>grievances 146:4</td>
</tr>
<tr>
<td>66:11 76:12,13 84:12</td>
<td>grossly 38:18</td>
</tr>
<tr>
<td>85:10 87:2 92:23,23 93:2</td>
<td>ground 191:5 220:16</td>
</tr>
<tr>
<td>93:4,5 100:6,19 116:3</td>
<td>grounds 106:7</td>
</tr>
<tr>
<td>162:2 169:7 174:8,13,20</td>
<td>growing 22:9</td>
</tr>
<tr>
<td>185:3 189:19 196:21</td>
<td>growth-directed 32:5</td>
</tr>
<tr>
<td>198:9 200:18,18 201:22</td>
<td>guess 40:15 144:9 148:16</td>
</tr>
<tr>
<td>201:22,24 203:20 206:14</td>
<td>guidance 103:4</td>
</tr>
<tr>
<td>209:17,18 211:7 216:11</td>
<td>guide 78:21</td>
</tr>
<tr>
<td>goods 212:16</td>
<td>guiding 94:6</td>
</tr>
<tr>
<td>gotta 144:22</td>
<td>guilt 120:11</td>
</tr>
<tr>
<td>gotten 8:11 27:3 136:2</td>
<td>guilty 48:18 104:18,22 105:7,16 189:10,11</td>
</tr>
<tr>
<td>209:3 217:20</td>
<td>Harvard 21:24</td>
</tr>
<tr>
<td>graduated 21:12 163:22 211:12</td>
<td>healing 120:17 216:21</td>
</tr>
<tr>
<td>graduates 30:20</td>
<td>health 18:9 20:24 34:2</td>
</tr>
<tr>
<td>grand 39:4,10,14</td>
<td>healthy 68:6 94:6</td>
</tr>
<tr>
<td>grant 91:2 99:8,13,18 100:12 221:21 222:6,14 222:15</td>
<td>half 5:15 14:10 33:2 42:18</td>
</tr>
<tr>
<td>granting 52:5</td>
<td>harms 29:7</td>
</tr>
<tr>
<td>grants 91:2</td>
<td>harsh 101:19 114:5</td>
</tr>
<tr>
<td>grass 210:6 222:19</td>
<td>Harvard 21:24</td>
</tr>
<tr>
<td>grateful 16:23</td>
<td>head 30:7 42:11 53:2,8</td>
</tr>
<tr>
<td>grave 33:4</td>
<td>health 18:9 20:24 34:2</td>
</tr>
</tbody>
</table>

H

habits 33:5,11 34:2
half 5:15 14:10 33:2 42:18

halflife 21:6 177:19
hammer 17:19,22
hand 80:15 189:12 221:6
handful 149:22
handicap 25:12
handicapping 30:23
handle 31:21 101:2
handling 33:14 39:21
hands 151:11 188:10
hang 149:21

happen 12:18 123:13
155:15 156:10 167:14,14 199:24 200:3 204:14
happened 143:15 145:9 165:21 213:21

happening 11:17,24 29:19 43:7 223:20

happy 31:8 187:14,16

harm 17:7 136:6
harmful 116:19
harms 29:7

H
hundred 24:6 90:3,4 99:7
110:3,4,5,6 111:4,17,21
159:4 171:20 181:5 182:3
214:14 222:5
hundreds 157:9,9
hung 166:8
hurt 167:12 213:7
husband 211:17 213:9
Hussin 189:6,20

I

iceberg 155:17
idea 22:20 38:12,13,19,23
174:13 189:21 200:18
224:17
Ideally 175:17
ideas 89:8 221:5
Identification 20:8
identified 70:16 72:11 74:4
88:21
identify 90:14 114:23
186:4
identifying 86:6
ignore 37:22 43:18,24
45:13,23 48:11 51:6
197:16,17
ignored 46:20
ignoring 51:18
ill 20:15 34:2 71:12 89:24
169:22 205:19
illegal 113:5 132:23 142:24
142:24 143:3
illiterate 159:19 160:14
illness 70:21 90:5 97:16
113:9
illnesses 96:4 178:24
imagine 132:17
imbecile 163:16
immediate 129:10
immediately 21:5 86:3,6
128:8 183:23 215:11
impact 46:24 79:7 109:16
111:17 112:2,18 196:15
211:20 213:4 214:2 215:7
216:22
impacted 105:18
impacts 103:19 116:14,19
130:3
impasse 46:17
imperative 113:5 220:12
implemented 167:23
implied 211:5
importance 30:23 84:4
important 30:13,18 31:24
34:19 35:23 37:20 77:4
78:10 79:3 90:22 92:2,5
96:20 121:2 123:23
152:21 207:20,24 215:4
importantly 68:4 71:24
128:12
impose 168:4
imposed 38:11 68:17:21
imposition 117:8
impossible 27:6 102:16
187:9,20
impressed 72:24
imprisoned 108:23 111:22
imprisonment 32:17 73:6
84:17 111:12 121:24
125:8,14 134:11
improper 80:16
improve 74:9 89:9 95:12
169:6
improved 133:3 148:19
incapable 133:16
incarcerate 22:2,4,8 80:6
183:12,13 221:14
incarcerated 3:20 5:17
17:3 26:12 30:14 33:3
47:11 54:2 71:18 79:4
89:16 109:12 110:20
116:10 124:3 129:3 135:3
151:21 162:20 164:7
178:16 183:2 188:6,7
194:11 203:14 211:11
220:11,18,20 221:2,12,24
224:5 225:10
incarcerates 133:8
incarcerating 80:8
incarceration 3:11,16 6:6
17:5 18:19 21:10,17
22:18 25:10 29:13,21
31:2,21 34:4 38:4 55:3
56:15,16 60:20 68:18
69:18,22 70:6 72:13
74:15 77:19,22 78:9,18
79:7,16,21,22 84:10,20
87:16 98:22 109:5 111:19
112:19 113:3,13,17
125:18 129:19 136:23
137:13,20 151:8 157:11
162:13 177:22 184:13
185:24 186:21 205:18
208:20
incarcerations 109:17
111:24 129:20
incentive 9:2,3,4 37:23
38:4 39:12 176:16 177:13
177:15 220:24
incentives 175:21 176:14
177:12 189:4
inception 108:22
incidence 130:13
include 67:20 70:9 75:18
80:21
included 33:20 103:15
122:7
includes 88:4 111:19 112:7
118:9
including 41:15 74:5 79:19
226:15
inclusive 216:24 227:9
income 23:19 29:11 128:11
inconsistency 58:17
incorporate 19:24 97:9
incorporates 81:13
incorrigible 190:4
increase 57:24 78:15 92:7
95:15,18 174:17 208:18
increased 26:8,8 91:16
| increases 78:7 |
| increasing 71:19 95:16 |
| increasingly 97:6 |
| incredibly 92:5 |
| incur 21:16 85:17 |
| Inc's 93:7 |
| indefinite 36:9 |
| independent 129:2 |
| indeterminacy 61:13 64:5 |
| indeterminate 57:6,13 |
| 58:23 59:16,24 61:7 62:3 |
| 62:7 63:2,7,20 82:20,21 |
| 122:7 175:16,18 182:3 |
| 187:23 199:13,16 201:4,6 |
| 201:11 203:11 217:2 |
| indicate 30:22 89:17 |
| indicated 57:22 58:20 |
| 70:23 85:16 |
| indicating 43:22 |
| indicative 121:5 |
| indictment 39:4,8,11 48:18 |
| 49:13 50:2 107:9 |
| individual 33:18 72:9 74:9 |
| 113:16 121:16,17 132:20 |
| 168:19 193:7,22,23 194:2 |
| 196:3 202:6 203:14 |
| 204:17 221:18,24,24 |
| 222:6,24 225:4 |
| individualized 75:8 86:18 |
| individually 86:20 |
| individuals 3:20 29:5,15 |
| 70:7,14,19 71:9,15 73:2,8 |
| 74:3 77:13,15 91:11 |
| 152:19 190:16 208:16 |
| 218:18 222:16,21 223:3 |
| individual's 67:17 75:4 |
| 202:11 |
| Industries 93:9 |
| industry 159:22 |
| ineffective 17:22 |
| inequality 114:12 |
| inequities 117:3,19 119:23 |
| inequity 117:8,16 120:14 |
| interposed | 38:17 |
| interventional | 200:12 |
| interview | 52:11,13 |
| interviews | 53:16 |
| intimately | 28:18 |
| intimidated | 223:11 |
| intimidation | 93:20 |
| intolerable | 97:16 |
| intra | 34:20 |
| introduce | 4:6 171:11 |
| introducing | 3:23 |
| introduction | 132:13 155:7 |
| inventory | 221:7 |
| invested | 19:8 88:17 |
| investigate | 123:11 |
| investigations | 67:14 |
| investigators | 146:3 |
| investment | 87:13 |
| invitations | 157:9 |
| invite | 98:23 99:5 |
| invited | 88:15 123:18,20 |
| inviting | 103:12 |
| involve | 53:2 |
| involved | 10:22 16:15 21:16 |
| 34:8 35:24 43:3 55:6,8 |
| 64:23,24 69:5 72:15 75:3 |
| 102:14 116:17 138:11 |
| 142:24 147:22 162:7 |
| 223:23 |
| involvement | 5:15 |
| involves | 118:12,16 |
| in-prison | 85:18 |
| ironclad | 216:2 |
| Irwin | 154:13,14,16,17,21 |
| 157:22 158:2 161:21 |
| issue | 24:21 25:3 29:13 |
| 34:12 42:8 47:24 77:16 |
| 91:23 116:22 141:18 |
| 142:5 152:18,22 178:15 |
| 197:13 |
| issued | 3:12 45:19,23 |
| 122:17 157:16 |
| issues | 3:11 14:19 18:10 |
| 71:2 77:5,9 99:6,12 |
| 183:10 218:4 |
| ITT | 142:2 147:18 |
| it'll | 226:11 |
| jail | 13:18 112:6 126:10 |
| 133:7 135:9 136:15 |
| 137:11 138:22 146:10 |
| 156:9,15,19,22 168:12,12 |
| 168:13 184:9,10 213:7 |
| 221:3 222:12,24 |
| jailhouse | 163:13 |
| James | 92:20 100:13 162:3 |
| Jamie | 215:9 |
| Jamie's | 8215:22,23 |
| January | 41:19 45:14 |
| Jason | 40:12,12 |
| jerk | 183:23 185:24 191:20 |
| 195:23 |
| Jerome | 210:15,18 211:10 |
| 211:15 |
| Jim | 155:5 159:14 |
| job | 6:10 12:11 16:24 20:9 |
| 21:18 24:8,10,13 56:21 |
| 73:21 74:7 91:22 92:11 |
| 95:3 97:2,8 102:2 112:13 |
| 127:22 128:13,14,14,19 |
| 130:19 131:5 137:2 151:5 |
| 151:13,23 157:21 160:19 |
| 160:20 161:15 178:8 |
| 212:7 213:16,17 |
| jobs | 24:16 30:18,19 91:20 |
| 91:21 127:4,10 129:4 |
| 151:13,14 152:3 158:7,24 |
| 170:14 178:21 |
| Joe | 225:11 |
| Joel | 46:3,11 |
| John | 51:9 108:4 133:21,23 |
| 181:23 |
| join | 98:24 132:7 157:15 |
| joining | 5:9 126:3 171:8 |
| 209:16 |
| joke | 158:6,23,23 176:5 |
| joking | 161:3 |
| jokingly | 161:6 |
| Joseph | 2:5 4:9 |
| JPC | 30:13 |
| Jr | 2:6 |
| judge | 43:20 45:12 75:23 |
| 103:6,7,22 104:9,11 |
| 137:8,8 139:16 164:23 |
| 165:7,9,9,11 191:2,2 |
| 202:21,24 203:3,11,17 |
| 205:11 |
| judged | 202:4 |
| judges | 19:7 67:12 101:11 |
| 101:14,24 102:12,19 |
| 104:24 107:15 118:22 |
| 119:8,23,24 120:2 172:13 |
| 173:20 |
| judging | 130:16 |
| judgment | 32:24 102:11,22 |
| 194:18 |
| judicial | 27:14 28:7 30:12 |
| 40:13 51:3 102:5,10 |
| 105:17 107:2 212:15 |
| Judiciary | 3:20 |
| judicious | 216:19 |
| jumped | 19:4 |
| junctures | 65:9 |
| jurisdiction | 54:4 74:15,20 |
| jurisdictions | 74:16 75:12 |
| jury | 39:4,10,14 49:23,24 |
| 51:3 101:5 |
| justice | 1:2 4:3 15:12 16:11 |
| 16:15 19:6 35:13 36:2 |
| 38:9 55:2 57:24 69:14 |
| 70:20,22 75:3 80:2 81:10 |
| 83:4 94:19 96:3 98:17 |
| 99:4 107:18 112:5 114:13 |
| 116:18,20 117:4,9,20 |
| 118:9 119:17 121:6 |
| 122:13 130:4 207:11 |
| 210:8 213:14 |
| justification | 63:22 64:3 |
| 82:5 |
| justifications 58:4 81:19 |
| justify 58:5 |
| juvenile 41:6 |

---

*K*

| Karen 76:8,14,15 77:2 |
| 85:14 |
| Karima 115:20 116:4 |
| 124:7 |
| Kate 124:18 |
| Kates 40:18,20,22,23 51:22 |
| 52:22 54:8 |
| keep 5:3 11:15 33:22 34:8 |
| 34:14 35:6 63:11 76:20 |
| 137:23 138:9,15 142:4 |
| 147:12 153:19,19 168:12 |
| 191:19 213:7 221:23 |
| 225:15 |
| keeping 4:24 83:21 138:4 |
| 170:17 178:11 |
| keeps 53:10 144:24 |
| Kennedy 80:2 83:4 |
| kept 147:9,13,23 |
| key 128:16 166:5,5,11 |
| 169:5 170:12,16 174:20 |
| 184:9 |
| kick 12:10 147:2 |
| kicked 145:23 222:3 |
| kicker 59:13 |
| kid 162:10 163:4 164:19 |
| 168:22,22 |
| kids 27:4 164:5,12 166:2 |
| 168:6,17 |
| kill 90:11 189:16 |
| killed 5:16 196:7 |
| kind 25:22 76:2 123:17 |
| 124:24 136:3,3 144:23 |
| 175:6 176:5 183:16 185:9 |
| 190:15,19 199:17 203:23 |
| 207:23 |
| kinds 7:3 163:11 173:24 |
| 193:12 200:12 202:17 |
| kiss 163:5 |
| knee 183:22 185:24 195:23 |

---

| knew 148:15 149:10 |
| 163:16 167:15 |
| know 6:14,19 8:4 10:6,16 |
| 12:7,22 13:21,23 15:21 |
| 16:23 17:16 22:13 24:21 |
| 25:16,20 26:20 32:19,23 |
| 33:17,21,24,24 36:16 |
| 40:14 42:4 46:6 47:15 |
| 48:8 49:5 53:17 54:16,18 |
| 70:17 84:14,19 98:16 |
| 117:22 134:21 135:8,22 |
| 135:24 136:5 137:22 |
| 139:8 141:6 142:6,9,12 |
| 142:18,23 143:6 144:5,8 |
| 144:8,10,13,21,24 145:18 |
| 146:24 147:21 149:7,23 |
| 149:24 151:7,10,12,20 |
| 152:5,18 153:2,5 155:14 |
| 155:19,19 156:13,24 |
| 158:10 159:18 162:14 |
| 164:15,20 165:12,17,19 |
| 166:14 168:7,9,14 169:3 |
| 169:7,8,8,11,13 170:8 |
| 172:14,14 175:4 185:9 |
| 187:17,19,19 191:6 200:3 |
| 203:5 205:8,17,18 206:6 |
| 207:4,13,19,21 209:6 |
| 213:10,11 217:20 219:11 |
| 224:20 225:14 |
| knowledge 56:5 148:12 |
| knowledgeable 35:12 |
| known 45:5 |
| knows 14:3 41:2 137:9 |
| 165:10 168:7 169:4 |
| 189:13 203:17 |
| Koran 186:17 |
| Kwiatek 108:10,13 115:16 |

---

<p>| Lafayette 1:12 |
| lane 85:10 |
| language 43:22 |
| large 30:4 35:18 46:7 |
| 111:11 113:13 133:15 |
| largely 113:14 |
| larger 39:15 |
| largest 90:8 |
| late 219:17 |
| latest 175:13 |
| Latino 133:7 156:19 |
| 159:13 |
| laudable 106:10 |
| Laundry 220:16 |
| law 4:12 42:15 45:4,21,23 |
| 46:9 59:13 62:2 70:7,9 |
| 75:23 77:23 80:21 81:2,3 |
| 81:14,24 84:11,15 106:2 |
| 108:10 109:17 113:23,24 |
| 114:18 115:3 120:6 125:5 |
| 132:13,18 133:12 135:10 |
| 140:22 142:5 147:9 |
| 166:23 167:3,19 169:3,4 |
| 171:20 173:21 174:18 |
| 175:8,8,14 180:22 201:15 |
| 203:20 211:13 217:5 |
| LAWARNCE 121:3 |
| Lawrence 120:23 |
| laws 3:10,14,22 8:17 24:24 |
| 25:6,7 36:22 43:8 51:24 |
| 77:23 80:5 84:8 85:2 |
| 108:18,21 109:12 111:2 |
| 113:2,14 115:10 118:13 |
| 124:21 127:20 154:15 |
| 155:8 156:7 158:8,19,21 |
| 172:8,10 173:3,16 179:9 |
| 182:5 183:19 205:4 |
| lawsuit 10:18 43:4 |
| lawyer 140:24 171:14 |
| 173:18 |
| lawyers 171:5,18,21,23 |
| 173:21 180:16 181:6 |
| law-abiding 18:23 19:12 |
| 135:20 178:12 |</p>
<table>
<thead>
<tr>
<th>term</th>
<th>page(s)</th>
<th>term</th>
<th>page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>laying</td>
<td>56:22</td>
<td>literally</td>
<td>20:20</td>
</tr>
<tr>
<td>lead</td>
<td>74:11</td>
<td>21:24</td>
<td>139:6</td>
</tr>
<tr>
<td>leaders</td>
<td>132:20</td>
<td>160:7</td>
<td></td>
</tr>
<tr>
<td>leading</td>
<td>126:14,16</td>
<td>21:24</td>
<td></td>
</tr>
<tr>
<td>League</td>
<td>126:23</td>
<td>21:24</td>
<td></td>
</tr>
<tr>
<td>learned</td>
<td>32:24</td>
<td>21:24</td>
<td></td>
</tr>
<tr>
<td>learning</td>
<td>178:12</td>
<td>21:24</td>
<td></td>
</tr>
<tr>
<td>leave</td>
<td>183:15</td>
<td>213:10</td>
<td></td>
</tr>
<tr>
<td>leaving</td>
<td>28:15</td>
<td>213:10</td>
<td></td>
</tr>
<tr>
<td>leeway</td>
<td>142:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>left</td>
<td>9:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>legacy</td>
<td>217:15</td>
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<tr>
<td>legal</td>
<td>116:20</td>
<td></td>
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</tr>
<tr>
<td>legislation</td>
<td>118:12,20</td>
<td></td>
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</tr>
<tr>
<td>legislative</td>
<td>25:5,15</td>
<td></td>
<td></td>
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<tr>
<td>legislators</td>
<td>119:22</td>
<td></td>
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<tr>
<td>legislature</td>
<td>55:21</td>
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<td>legitimacy</td>
<td>114:20</td>
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<td>legitimate</td>
<td>61:5</td>
<td></td>
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<tr>
<td>Lehman</td>
<td>2:6</td>
<td></td>
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<tr>
<td>Leigh</td>
<td>108:10</td>
<td></td>
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</tr>
<tr>
<td>lends</td>
<td>130:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>length</td>
<td>68:19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lengthy</td>
<td>84:10,20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lenient</td>
<td>114:4</td>
<td></td>
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</tr>
<tr>
<td>Lental</td>
<td>4:9</td>
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<td>Lentol</td>
<td>2:5</td>
<td></td>
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</tr>
<tr>
<td>lesser</td>
<td>38:3</td>
<td></td>
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</tr>
<tr>
<td>letter</td>
<td>53:3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>letters</td>
<td>45:11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>letting</td>
<td>7:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>let's</td>
<td>60:17</td>
<td></td>
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</tr>
<tr>
<td>level</td>
<td>72:23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Levine</td>
<td>4:7,8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Library</td>
<td>146:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>licenses</td>
<td>112:13,16</td>
<td></td>
<td></td>
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<tr>
<td>life</td>
<td>7:22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lifetime</td>
<td>134:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lifted</td>
<td>166:8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>light</td>
<td>139:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>lightly</td>
<td>35:24</td>
<td></td>
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<tr>
<td>likelihood</td>
<td>88:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>likewise</td>
<td>86:21</td>
<td></td>
<td></td>
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<tr>
<td>Limbaugh</td>
<td>156:13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>limit</td>
<td>81:5</td>
<td></td>
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<tr>
<td>limited</td>
<td>71:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>limits</td>
<td>33:22</td>
<td></td>
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</tr>
<tr>
<td>line</td>
<td>10:7</td>
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<tr>
<td>lines</td>
<td>180:18</td>
<td></td>
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<tr>
<td>linked</td>
<td>56:7</td>
<td></td>
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</tr>
<tr>
<td>list</td>
<td>150:15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>listen</td>
<td>53:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>listening</td>
<td>27:21</td>
<td></td>
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</tr>
<tr>
<td>lists</td>
<td>90:6</td>
<td></td>
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</tr>
<tr>
<td>literacy</td>
<td>159:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Page 253</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td></td>
</tr>
<tr>
<td>longstanding 55:22</td>
<td>lunch 115:24 125:23</td>
<td>139:8</td>
<td></td>
</tr>
<tr>
<td>long-term 22:19 90:19</td>
<td>140:12</td>
<td>manslaughter 51:13 194:8</td>
<td></td>
</tr>
<tr>
<td>Lonski 198:3,5,9,18,22,24</td>
<td></td>
<td>man's 32:12 48:3 156:23</td>
<td></td>
</tr>
<tr>
<td>207:4 208:11,22 209:12</td>
<td></td>
<td>March 166:21 215:8</td>
<td></td>
</tr>
<tr>
<td>look 3:9 17:20 43:9,9,14</td>
<td></td>
<td>Marcy 170:4</td>
<td></td>
</tr>
<tr>
<td>61:8 63:22 79:6 87:17,17</td>
<td></td>
<td>market 128:15</td>
<td></td>
</tr>
<tr>
<td>91:24 108:16 139:13</td>
<td></td>
<td>marketable 18:18 91:21</td>
<td></td>
</tr>
<tr>
<td>147:8 152:22,24 160:10</td>
<td></td>
<td>marriage 217:8</td>
<td></td>
</tr>
<tr>
<td>174:3,23 179:10 190:5</td>
<td></td>
<td>married 168:6 210:15</td>
<td></td>
</tr>
<tr>
<td>191:5 206:22 217:23</td>
<td></td>
<td>martial 189:13</td>
<td></td>
</tr>
<tr>
<td>looked 51:12 152:10</td>
<td></td>
<td>mass 56:15 111:24</td>
<td></td>
</tr>
<tr>
<td>190:11 192:22</td>
<td></td>
<td>Massachusetts 69:4</td>
<td></td>
</tr>
<tr>
<td>looking 17:23,24 39:22</td>
<td></td>
<td>master 175:7</td>
<td></td>
</tr>
<tr>
<td>65:4 96:2 153:5,11 190:5</td>
<td></td>
<td>Master's 152:5</td>
<td></td>
</tr>
<tr>
<td>looks 131:17,18 150:2</td>
<td></td>
<td>49:15,20 62:4 64:9</td>
<td></td>
</tr>
<tr>
<td>174:20 176:10,12</td>
<td></td>
<td>120:11 142:7 143:2 177:5</td>
<td></td>
</tr>
<tr>
<td>Lopez 218:19</td>
<td></td>
<td>190:6,20 191:10 200:20</td>
<td></td>
</tr>
<tr>
<td>losing 21:18 89:3</td>
<td></td>
<td>213:20,21 22 18:5</td>
<td></td>
</tr>
<tr>
<td>loss 18:8 112:8,12,14</td>
<td></td>
<td>Matterhorn 170:5</td>
<td></td>
</tr>
<tr>
<td>113:18 212:13</td>
<td></td>
<td>maximal 59:5</td>
<td></td>
</tr>
<tr>
<td>losses 111:6,7 113:13,15</td>
<td></td>
<td>maximum 59:9,10 92:6</td>
<td></td>
</tr>
<tr>
<td>lost 111:2,11,18 112:11</td>
<td></td>
<td>177:18</td>
<td></td>
</tr>
<tr>
<td>133:10 145:15 164:3,4 165:20,24</td>
<td></td>
<td>Ma'am 150:11 218:10</td>
<td></td>
</tr>
<tr>
<td>43:22 84:14 115:8 132:17</td>
<td></td>
<td>McDermott 2:5</td>
<td></td>
</tr>
<tr>
<td>150:5 151:6,8,12,12,15</td>
<td></td>
<td>McKinley 219:4</td>
<td></td>
</tr>
<tr>
<td>152:7 153:9,10 155:19</td>
<td></td>
<td>MDRC 129:9</td>
<td></td>
</tr>
<tr>
<td>179:11 192:4 194:21</td>
<td></td>
<td>87:15 88:2 93:17 112:12</td>
<td></td>
</tr>
<tr>
<td>203:5 217:17</td>
<td></td>
<td>156:12 165:17 166:15,16</td>
<td></td>
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<tr>
<td>louder 26:23 67:3</td>
<td></td>
<td>167:13 168:5 184:7,8</td>
<td></td>
</tr>
<tr>
<td>love 144:16 149:19 150:5</td>
<td></td>
<td>185:15 189:14 223:16</td>
<td></td>
</tr>
<tr>
<td>169:10 182:4 210:15</td>
<td></td>
<td>225:12</td>
<td></td>
</tr>
<tr>
<td>loved 34:17 144:11,13</td>
<td></td>
<td>meaning 78:7 81:4 111:20</td>
<td></td>
</tr>
<tr>
<td>214:16 215:4</td>
<td></td>
<td>meaningful 81:7,15 83:17</td>
<td></td>
</tr>
<tr>
<td>loving 164:20</td>
<td></td>
<td>118:8 153:10</td>
<td></td>
</tr>
<tr>
<td>lower 129:17 130:7 204:2</td>
<td></td>
<td>60:16,18 64:9 85:19</td>
<td></td>
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<td></td>
<td>196:18</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>meant 204:20</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>measure 75:6</td>
<td></td>
</tr>
<tr>
<td>119:12,24 122:5,12</td>
<td>notes 33:14 61:9 127:16,18</td>
<td></td>
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<td>------------------</td>
<td>-----------------------------</td>
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<tr>
<td>123:13,21 126:11,12</td>
<td>notice 115:19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>127:7 129:19 130:15</td>
<td>noticed 173:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>131:11 133:2,6,13 137:22</td>
<td>noting 80:11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>142:9 158:11 159:5</td>
<td>notion 102:6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>169:23 171:4,16,17,21</td>
<td>notions 64:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>175:9,14,19 178:18</td>
<td>Nova's 53:11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>179:15 180:15 181:6,7,9</td>
<td>November 1:10 139:11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>187:8 202:17 205:24</td>
<td>214:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>210:2,13 214:11 217:11</td>
<td>nowadays 147:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>223:10 227:2</td>
<td>number 3:17 5:2 44:9</td>
<td></td>
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</tr>
<tr>
<td>newfound 217:11</td>
<td>59:12 95:16,17 104:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>newly 178:19</td>
<td>123:10 133:8 143:20</td>
<td></td>
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</tr>
<tr>
<td>news 175:12</td>
<td>159:15 179:14 196:4</td>
<td></td>
<td></td>
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<tr>
<td>Nicholas 100:23</td>
<td>numbers 22:6 29:5 90:18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nicolas 100:17</td>
<td>110:18 158:18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nine 44:24 110:6 134:12</td>
<td>numerous 5:18 87:5</td>
<td></td>
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</tr>
<tr>
<td>171:20 181:5 215:13</td>
<td>212:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nineteen 38:16 211:2,3</td>
<td>nurse's 73:14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ninety 42:19 146:17</td>
<td>nursing 149:21,22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ninety-eight 18:4</td>
<td>nurturing 33:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ninety-four 110:13</td>
<td>NYCLU 108:5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ninety-three 93:11</td>
<td>O</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ninety-two 159:12</td>
<td>OASIS 98:18 208:15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nobody's 64:10</td>
<td>objectify 33:23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nod 105:12</td>
<td>objective 225:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>noise 67:6</td>
<td>observations 35:21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non 143:2</td>
<td>observer 101:24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nonexistent 22:5</td>
<td>obstacles 23:15 73:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nonprofit 129:2</td>
<td>obtain 5:18 41:20 46:23</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nonprofits 25:21 126:22</td>
<td>50:8 88:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>nonviolent 63:3,4,5 84:24</td>
<td>obtaining 120:10 178:21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>143:22 159:6 178:3</td>
<td>199:17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>non-jury 101:5</td>
<td>202:15 204:11 209:3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>non-uniformity 106:13</td>
<td>occasion 208:12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>norm 113:12 117:17</td>
<td>occasions 31:12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>135:16 220:17</td>
<td>occurs 31:19 37:7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>note 113:5</td>
<td>October 3:12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>noted 79:9 130:3</td>
<td>odds 17:6 39:3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>offenders 17:15 20:5 22:14</td>
<td>24:3 25:3 37:15,22 38:13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>118:5 120:17 121:10,20</td>
<td>122:6 125:8,9 156:20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>177:3 178:4 179:22,22</td>
<td>184:22,23 195:16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>offender's 103:9</td>
<td>off</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
800.523.7887  11/19/2007, Buffalo, NY, Public Hearing  Associated Reporters Int'l., Inc.

| 150:22 153:13,17,22 | order 3:8 6:3 8:5 26:12 |
| 154:3 164:13 165:11 | 35:3 42:6,20 50:8 85:21 |
| 197:18 198:22 218:22 | 179:9 |
| 219:3,6,12,15 220:3 | orders 90:22 |
| old 36:22 41:7 122:3 144:2 | organization 6:24 34:21 |
| one 7:7 42:24 52:17 57:10 | 210:6 220:5 |
| 88:21 91:14,24 99:19 | organizations 30:3 68:3 |
| ones 34:17 58:12 123:5 | 223:5,7,9,19,22,24 |
| 149:7,11 214:17 226:15 | organized 181:12 208:4 |
| oneself 33:15 | organizers 30:3 |
| one's 19:14 34:3 149:9 | orientated 96:13 |
| ongoing 205:8 | original 87:22 |
| ONH 89:11,14,20 | originally 73:7 |
| open 20:9 23:24 64:11 | Orlean 98:19 |
| 143:18 | Orleans 99:21 126:20 |
| opening 180:18 | 167:23 168:15 |
| openings 157:8 | ought 135:9 |
| open-ended 189:2,24 | outcome 146:9 215:22 |
| 194:21 | outcomes 22:13 74:23 |
| operate 217:13 | outlined 106:23 |
| opinion 41:14 43:5 158:4 | outline 185:14 |
| Opponents 58:22 | outside 18:11 91:21 147:6 |
| opportunities 17:14 19:24 | 149:19 170:12 171:16 |
| 90:24 95:4 112:13 123:9 | 195:21 |
| 125:14 126:2,7 216:17 | overall 122:16 129:19 |
| opportunity 3:18 6:7,9 8:3 | 180:3 |
| 8:13 10:3 20:6 40:5 54:15 | overcome 33:6 |
| 55:19 66:14 74:9 77:3 | overcrowding 97:17 |
| 83:18 91:5 94:4 99:14 | overdue 16:17 |
| 100:2,23 108:14 116:8 | overdue 16:17 |
| 122:8 124:5 126:8 156:2 | overhauling 179:9 |
| 163:19 198:10 214:6 | overlooks 78:24 |
| 217:9 218:3 | overriding 63:9 |
| opposed 8:19 38:3 84:17 | overrule 34:11 |
| 157:20 | overseeing 118:14 |
| opposite 82:10 | oversight 120:4 |
| opted 43:23 | overwhelming 82:11 93:22 |
| optimism 185:11 | overwhelmingly 101:20 |
| ownership 88:18 | OxyContin 156:24 |
| O'clock 27:3 140:10 218:17 | 219:7 |
| O'Donnell 2:3 3:4 4:2,23 | 5:8,12 12:24 13:4,8,12 |
| 14:16 15:2,6,14,18 23:3 | 23:12 25:23 26:4 27:9,23 |
| 28:21 35:8 40:6,11,21 | 54:6,10 65:22 66:6,10 |
| 67:5,8 68:8,11,15 69:23 | 70:3 76:7,13,18,23 85:7 |
| 85:11 92:14,18 93:4 98:9 | 100:8,13,21 107:10,20,24 |
| 124:23 125:19 131:7,14 | 140:8,14,19 141:23 145:8 |
| 150:9,13,19,22 152:17 | 154:6,13,19 157:4,23 |
| 161:16,23 170:19,23 | 171:7 180:5,8 181:15,19 |
| 182:13,15,20 192:13,16 | 192:19 195:4 197:18,21 |
| 219:3,15 220:2 224:6,11 | 225:23 226:3 |

P

packed 212:17
pages 41:14 227:8
paid 128:10 165:2
pain 218:13
pandering 217:18
panel 10:18 209:5 217:4
paperwork 33:15 146:2
paramount 178:18
parent 29:12 111:22
Parenthetically 29:7
parents 144:9
<table>
<thead>
<tr>
<th>parole 4/16:742.0 8/4.9 21</th>
<th>185:20.160:15 8/17.10</th>
</tr>
</thead>
<tbody>
<tr>
<td>particularly</td>
<td>particularly</td>
</tr>
<tr>
<td>224:17</td>
<td>223:17</td>
</tr>
<tr>
<td>221:18</td>
<td>220:17</td>
</tr>
<tr>
<td>219:20</td>
<td>218:20</td>
</tr>
<tr>
<td>217:20</td>
<td>216:20</td>
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<tr>
<td>215:20</td>
<td>214:20</td>
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<td>213:20</td>
<td>212:20</td>
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<td>211:20</td>
<td>210:20</td>
</tr>
<tr>
<td>209:20</td>
<td>208:20</td>
</tr>
<tr>
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</table>
permanent 58:17 94:24
95:2,11 126:14 128:14
129:4 130:19 174:3,11
200:16 206:19,21 207:14
permanently 112:11
permit 35:20 74:22
permitted 39:17 73:8
permitting 70:10
perpetual 19:13 125:17
persistence 112:22
Persistently 20:15
persists 106:14
person 10:8,24 19:17,22
30:11 33:20 41:4 43:21
44:22 52:10,13,14,18,21
63:9 68:20 79:4 89:4
93:16,18 135:7 143:10
149:8 162:8,11 164:19
184:13,18,21 188:15
191:3,4,5 193:13 195:23
196:13 203:4,16 214:7
219:2 220:10 221:4
223:14 225:9
personal 31:17 43:5 67:17
141:18 148:11 184:24
personally 155:19 196:7
216:7 221:8
persons 30:24 155:18
205:20
person's 52:3 72:4 81:9
127:21
perspective 40:2 69:15
82:19 83:20
pet 145:2 184:5
Peter 93:9
pfsst 143:16
pharmaceutical 160:2
phenomenon 32:2,3
phonetic 44:16 46:4 51:9
143:7 181:23 189:6
225:11
physical 6:23 7:2 52:20
96:5 103:2 184:14
physically 103:20
pick 65:18 221:14 222:24
picked 191:8
picture 72:8 97:6 174:4
piece 223:22
pile 144:16
pills 163:13
pilot 98:18
place 21:4 34:6 94:8
103:13 105:8 115:9
123:18 127:10 128:22
152:19 174:24 175:2
176:20 184:4 198:18
227:5
placed 37:5 61:3 129:2
placement 130:20
places 7:9 13:19 53:19
65:19 93:24
placing 131:21 196:22
plan 175:7 214:23 221:9,19
221:20 222:10 224:4
planning 66:21 67:13 97:8
216:16
plans 14:2
platform 57:20
play 78:11 121:9
played 166:8 172:11
plea 38:22,23 39:9,12,13
39:14,16,17 42:3,7,12,18
42:23 43:11,14,16,18,23
44:23 48:9,10,11,19 49:6
51:5,16 53:6,10,12,14
58:10 72:13,19 73:8,20
104:5,7,13,18 105:7
107:9 172:19 212:18
215:17,21
plead 48:18 104:22 189:10
pleas 39:12 101:4
please 3:5 9:18 41:10 52:23
67:2 92:13 105:16 166:9
181:22 192:15,18 220:2
pleased 101:8 115:6
pleasure 35:11 192:10
plea-bargain 104:21
plea-bargained 51:14
pled 189:11
plethora 223:16
plight 96:15
PLS 83:8
plus 59:10 133:6
podium 219:19
poet 123:15
point 27:20 41:11 46:17
55:22 58:22,24 63:18
81:8 82:19 105:17 127:15
163:8 164:8 166:19 172:2
173:20 176:20 187:21
199:17,20 205:22
pointed 61:10
points 51:23 105:2 120:24
129:23 130:2 158:4
200:22
poke 185:17
police 46:8,12 65:11
191:11
policy 28:7 55:4,9 77:23
79:12 200:20
political 132:15 176:24
193:10,16 200:6 217:18
politician 175:12
politicians 193:15
polities 28:19
pool 207:17
poor 156:11 159:9 160:6
160:12
poors 159:15
pop 222:23
population 20:22 22:9
24:15 25:8 71:12 95:11
96:17 98:16 109:2,4,7,9
109:12,15,16,18,22 110:2
110:5,13,22 119:19
158:13 170:7
populations 90:2 111:15
114:7
Porter 30:11 40:13
portfolio 11:18
position 33:4 37:5 41:23
procedure 70:9 106:6,11
procedures 152:19
proceed 49:5,20
proceedings 218:17 227:11
processed 119:17
processes 65:2
processing 65:10
produce 29:3 100:3
produced 32:17
professional 112:15 193:24
professionally 28:14 34:6
professionals 19:21 28:10
186:20 193:8,15 194:17
professor 108:2,3
professors 113:23
profit 223:6
profited 148:9
profound 28:24,24 111:15
programming 67:20 68:23 77:24 88:9,11
Program's 54:24 55:24
progress 21:12 73:2 132:18 progressively 110:21
Prohibition 173:3
Project 66:18
projects 209:8
promise 9:5 147:20,23 216:11
promises 113:12
promote 76:3 120:17
promotes 125:17 216:21
promoting 106:12
promotion 54:24 55:24 75:19
prong 88:19
proof 50:7,17,17,21
proper 74:2 80:14 102:8
properly 156:16
property 160:23
prophylactic 65:20
proposal 55:12
Propose 22:16
proposed 61:19
proposing 221:17 223:4
prosecuted 121:12
prosecuting 120:8 133:14
prosecutor 38:8 39:7 104:9 104:10
prosecutorial 74:13 216:20
prosecutors 36:9,13 37:3 104:24 107:15 120:5,6 172:17,23 173:22 180:21
prospect 59:20
prospects 30:8
protect 71:22
protection 106:3 115:4
protections 114:22
proud 150:8 211:16
prove 9:24 50:7,19,20 148:3 162:13,14,14 185:10
proved 7:17,18 201:24
proven 106:12 128:19 133:12
proves 122:14 185:12
provided 59:13 86:11 91:19 223:6
provider 98:23 198:14
providers 28:10 95:14 97:7 97:19
provides 122:13 128:11
providing 23:15 94:6,18 98:5 126:9 129:10
provision 191:22
provisions 118:10 190:15 204:16
<table>
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<tr>
<th>PSI 88:14</th>
<th>quality 71:15 95:12</th>
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<td>psychological 45:9 119:3</td>
<td>quantify 33:24</td>
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<td>psychologist 193:6,8</td>
<td>quantity 71:15</td>
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<td>psychologists 194:18</td>
<td>question 13:5,9 26:5 36:23</td>
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<td>psychopath 194:12</td>
<td>58:15 61:23 62:24 64:16</td>
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<td>PTSD 32:18</td>
<td>64:22 65:6 79:11 84:9</td>
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<td>17:9,23 19:8 20:9 22:5,10</td>
<td>157:3,5 177:23 185:22</td>
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<td>questionnaire 99:20</td>
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<td>questions 12:22 40:7 92:12</td>
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<td>126:18 142:11,11,20,21</td>
<td>192:14 206:15 224:10,11</td>
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<td>142:23 174:19,21 217:17</td>
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<td>quickly 24:19 158:6 205:16</td>
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<td>punish 64:6 121:15 191:19</td>
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<td>quote 211:3</td>
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<td>reach 44:12 112:19 113:24</td>
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<tr>
<td>171:2 219:12</td>
<td></td>
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<tr>
<td>reached 80:18 83:7,9</td>
<td></td>
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<tr>
<td>reaching 131:9 145:5</td>
<td></td>
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<tr>
<td>reaction 183:23,23 185:24</td>
<td></td>
</tr>
<tr>
<td>195:23</td>
<td></td>
</tr>
<tr>
<td>read 16:13 48:9 147:21,21</td>
<td></td>
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<tr>
<td>147:22 160:19,20 165:6,6</td>
<td></td>
</tr>
<tr>
<td>165:8 192:3 204:22</td>
<td></td>
</tr>
<tr>
<td>readiness 72:4 95:3 97:2,9</td>
<td></td>
</tr>
<tr>
<td>reading 101:7 102:5 116:6</td>
<td></td>
</tr>
<tr>
<td>121:3 167:22 192:4 203:8</td>
<td></td>
</tr>
<tr>
<td>readmitted 222:4</td>
<td></td>
</tr>
<tr>
<td>ready 9:24 15:7 63:9,10</td>
<td></td>
</tr>
<tr>
<td>64:7,10 83:19,22,24</td>
<td></td>
</tr>
<tr>
<td>88:24 122:14 128:13</td>
<td></td>
</tr>
<tr>
<td>real 33:8 35:4 44:5,7,10</td>
<td></td>
</tr>
<tr>
<td>135:15 143:4 187:12</td>
<td></td>
</tr>
<tr>
<td>200:4,4</td>
<td></td>
</tr>
<tr>
<td>realistic 80:12,12 91:18</td>
<td></td>
</tr>
<tr>
<td>realistically 155:13 160:3</td>
<td></td>
</tr>
<tr>
<td>reality 17:6 22:17 31:23</td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Page 267</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------</td>
</tr>
<tr>
<td>second</td>
<td>36:19</td>
</tr>
<tr>
<td>seminars</td>
<td>168:16</td>
</tr>
<tr>
<td>Senate</td>
<td>174:16</td>
</tr>
<tr>
<td>Senator</td>
<td>27:11,12</td>
</tr>
<tr>
<td>send</td>
<td>21:24</td>
</tr>
<tr>
<td>sense</td>
<td>12:19</td>
</tr>
<tr>
<td>sent</td>
<td>48:14</td>
</tr>
<tr>
<td>sentence</td>
<td>19:9,10</td>
</tr>
<tr>
<td>sentenced</td>
<td>11:2</td>
</tr>
<tr>
<td>sentences</td>
<td>36:3,10</td>
</tr>
<tr>
<td>Seidel</td>
<td>27:14</td>
</tr>
<tr>
<td>self-advocacy</td>
<td>33:16</td>
</tr>
<tr>
<td>self-development</td>
<td>85:19</td>
</tr>
<tr>
<td>self-help</td>
<td>28:9</td>
</tr>
<tr>
<td>self-reporting</td>
<td>89:21</td>
</tr>
<tr>
<td>self-serving</td>
<td>161:2</td>
</tr>
<tr>
<td>sell</td>
<td>125:11</td>
</tr>
<tr>
<td>selling</td>
<td>125:10</td>
</tr>
<tr>
<td>semester</td>
<td>145:16</td>
</tr>
<tr>
<td>44:1</td>
<td>45:1,12</td>
</tr>
<tr>
<td>46:1</td>
<td>47:1</td>
</tr>
<tr>
<td>48:1</td>
<td>49:1,50</td>
</tr>
<tr>
<td>50:1</td>
<td>51:1</td>
</tr>
<tr>
<td>52:1</td>
<td>53:1,2,3</td>
</tr>
<tr>
<td>54:1</td>
<td>55:1,8,11,20,23</td>
</tr>
<tr>
<td>56:1</td>
<td>57:4,7,13,18</td>
</tr>
<tr>
<td>58:1</td>
<td>59:1,7,24</td>
</tr>
<tr>
<td>60:1</td>
<td>61:2,10,12,15,22</td>
</tr>
<tr>
<td>61:1</td>
<td>62:1,63:1,64:1,2</td>
</tr>
<tr>
<td>64:23</td>
<td>65:1,4,66:1,2</td>
</tr>
<tr>
<td>67:1</td>
<td>68:1,69:1,6</td>
</tr>
<tr>
<td>70:1</td>
<td>71:1,72:1,73:1,74:1</td>
</tr>
<tr>
<td>75:1</td>
<td>78:4,76:1,77:1</td>
</tr>
<tr>
<td>77:1</td>
<td>77:18,22,78:1,79:1,82:3</td>
</tr>
<tr>
<td>80:1</td>
<td>82:1,8,11,12</td>
</tr>
<tr>
<td>81:1,14,17,23</td>
<td>82:1,12,20</td>
</tr>
<tr>
<td>82:22</td>
<td>83:1,16,84:1,2</td>
</tr>
<tr>
<td>85:1</td>
<td>86:1,87:1,88:1,89:1</td>
</tr>
<tr>
<td>90:1</td>
<td>91:1,92:1,93:1,94:1</td>
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<tr>
<td>95:1</td>
<td>96:1,97:1,98:1,99:1</td>
</tr>
<tr>
<td>100:1</td>
<td>101:1,9,12,13</td>
</tr>
<tr>
<td>102:1,7,15,20,22</td>
<td>103:1,94:1</td>
</tr>
<tr>
<td>104:1,12,105:1</td>
<td>106:1,10,10,13</td>
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<tr>
<td>107:1</td>
<td>108:1,109:1,110:1,111:1</td>
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<tr>
<td>112:1</td>
<td>113:1,113:1,114:1,115:1</td>
</tr>
<tr>
<td>116:1,13,17,19</td>
<td>117:1,6,118:1,10,13,21</td>
</tr>
<tr>
<td>119:1,10,11,14,15,21</td>
<td>120:1,121:1,4,5,122:1</td>
</tr>
<tr>
<td>123:1</td>
<td>124:1,22,125:1,6</td>
</tr>
<tr>
<td>126:1</td>
<td>127:1,128:1,129:1</td>
</tr>
<tr>
<td>130:1</td>
<td>131:1,132:1,24</td>
</tr>
<tr>
<td>133:1</td>
<td>134:1,135:1,136:1</td>
</tr>
<tr>
<td>137:1</td>
<td>138:1,139:1,140:1,141:1,142:1,143:1,144:1</td>
</tr>
<tr>
<td>145:1</td>
<td>146:1,147:1,148:1</td>
</tr>
<tr>
<td>149:1</td>
<td>150:1,151:1,152:1</td>
</tr>
<tr>
<td>153:1</td>
<td>154:1,155:1,7</td>
</tr>
<tr>
<td>156:1</td>
<td>157:1,158:1,159:1</td>
</tr>
<tr>
<td>160:1</td>
<td>161:1,162:1,163:1</td>
</tr>
<tr>
<td>164:1,165:1,9,11,166:1</td>
<td></td>
</tr>
<tr>
<td>167:1</td>
<td>168:1,169:1,170:1</td>
</tr>
<tr>
<td>171:1</td>
<td>172:1,20,173:1,16</td>
</tr>
</tbody>
</table>

Associated Reporters Int'l., Inc.  11/19/2007, Buffalo, NY, Public Hearing  800.523.7887
<table>
<thead>
<tr>
<th>sister</th>
<th>57:6 164:6</th>
</tr>
</thead>
<tbody>
<tr>
<td>site</td>
<td>157:10 226:13</td>
</tr>
<tr>
<td>sitting</td>
<td>26:23 49:23 137:8 203:8 226:5</td>
</tr>
<tr>
<td>situations</td>
<td>39:2 203:24 204:3</td>
</tr>
<tr>
<td>sixteen</td>
<td>109:24 136:22</td>
</tr>
<tr>
<td>sixteenth</td>
<td>216:4</td>
</tr>
<tr>
<td>sixties</td>
<td>119:19</td>
</tr>
<tr>
<td>sixty</td>
<td>39:2</td>
</tr>
<tr>
<td>sixty-eight</td>
<td>71:5</td>
</tr>
<tr>
<td>sixty-five</td>
<td>159:20</td>
</tr>
<tr>
<td>sixty-six</td>
<td>24:4</td>
</tr>
<tr>
<td>six-month</td>
<td>59:12</td>
</tr>
<tr>
<td>size</td>
<td>130:4</td>
</tr>
<tr>
<td>skepticism</td>
<td>80:15</td>
</tr>
<tr>
<td>skewed</td>
<td>109:15</td>
</tr>
<tr>
<td>skill</td>
<td>18:18 127:11</td>
</tr>
<tr>
<td>skilled</td>
<td>24:12</td>
</tr>
<tr>
<td>skills</td>
<td>18:9 74:10 96:12,12 97:9 102:24</td>
</tr>
<tr>
<td>slavery</td>
<td>186:13</td>
</tr>
<tr>
<td>slice</td>
<td>17:2</td>
</tr>
<tr>
<td>slide</td>
<td>147:3 148:5</td>
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<td>slip</td>
<td>161:5</td>
</tr>
<tr>
<td>slot</td>
<td>21:18</td>
</tr>
<tr>
<td>small</td>
<td>17:2 30:4 173:4 223:18</td>
</tr>
<tr>
<td>smooth</td>
<td>216:17</td>
</tr>
<tr>
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<td>30:20</td>
</tr>
<tr>
<td>sneezing</td>
<td>209:21</td>
</tr>
<tr>
<td>sober</td>
<td>94:5 100:4</td>
</tr>
<tr>
<td>sobriety</td>
<td>97:14</td>
</tr>
<tr>
<td>sociological</td>
<td>119:3</td>
</tr>
<tr>
<td>sociopath</td>
<td>194:12,14,19</td>
</tr>
<tr>
<td>sociopaths</td>
<td>16:22</td>
</tr>
<tr>
<td>sold</td>
<td>212:16</td>
</tr>
<tr>
<td>solely</td>
<td>201:17</td>
</tr>
<tr>
<td>solid</td>
<td>24:2 212:7</td>
</tr>
<tr>
<td>solitary</td>
<td>86:15</td>
</tr>
<tr>
<td>solution</td>
<td>96:24 97:4,11</td>
</tr>
<tr>
<td>solutions</td>
<td>20:22 22:16 98:6</td>
</tr>
<tr>
<td>solve</td>
<td>197:6</td>
</tr>
<tr>
<td>somebody</td>
<td>10:8 39:13 64:7 136:17 160:14 167:10,10 177:16</td>
</tr>
<tr>
<td>Somebody's</td>
<td>194:7</td>
</tr>
<tr>
<td>someone's</td>
<td>143:18</td>
</tr>
<tr>
<td>son</td>
<td>212:10</td>
</tr>
<tr>
<td>sons</td>
<td>46:18 114:2</td>
</tr>
<tr>
<td>soon</td>
<td>7:12 19:18 64:10 90:17 143:13</td>
</tr>
<tr>
<td>sort</td>
<td>26:22 32:21 199:8 221:11,21 222:7</td>
</tr>
<tr>
<td>sought</td>
<td>117:18</td>
</tr>
<tr>
<td>soul</td>
<td>192:23</td>
</tr>
<tr>
<td>sound</td>
<td>79:12 102:11 198:16</td>
</tr>
<tr>
<td>sounds</td>
<td>185:9</td>
</tr>
<tr>
<td>source</td>
<td>23:19 43:17</td>
</tr>
<tr>
<td>south</td>
<td>46:18</td>
</tr>
<tr>
<td>so-called</td>
<td>35:4 62:2 117:17 172:8</td>
</tr>
<tr>
<td>speakers</td>
<td>5:2,2 40:12 115:22</td>
</tr>
<tr>
<td>speaker's</td>
<td>175:22</td>
</tr>
<tr>
<td>speaking</td>
<td>5:5 41:7 170:24 198:4 207:7</td>
</tr>
<tr>
<td>special</td>
<td>80:7 92:2 151:19</td>
</tr>
<tr>
<td>Specialist</td>
<td>66:19</td>
</tr>
<tr>
<td>specialized</td>
<td>173:24</td>
</tr>
<tr>
<td>specifically</td>
<td>69:17 205:19 210:8 216:19</td>
</tr>
<tr>
<td>specifications</td>
<td>81:22</td>
</tr>
<tr>
<td>spectrum</td>
<td>132:15</td>
</tr>
<tr>
<td>spend</td>
<td>8:7 24:4 27:5 55:10 198:10</td>
</tr>
<tr>
<td>spending</td>
<td>7:22</td>
</tr>
<tr>
<td>spiraling</td>
<td>212:6</td>
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<td>26:23 99:2 153:7 161:7</td>
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<tr>
<td>tactics</td>
<td>213:6</td>
</tr>
<tr>
<td>takers</td>
<td>190:9</td>
</tr>
<tr>
<td>tame</td>
<td>41:20</td>
</tr>
<tr>
<td>tangible</td>
<td>31:5</td>
</tr>
<tr>
<td>TAP</td>
<td>91:2:7</td>
</tr>
<tr>
<td>targeted</td>
<td>96:16</td>
</tr>
<tr>
<td>task</td>
<td>19:16 23:5 7 28:8 30:5 34:24 35:19</td>
</tr>
<tr>
<td>tax</td>
<td>94:5 173:17 19</td>
</tr>
<tr>
<td>taxes</td>
<td>6:16</td>
</tr>
<tr>
<td>taxpayer</td>
<td>29:6</td>
</tr>
<tr>
<td>taxing</td>
<td>100:4</td>
</tr>
<tr>
<td>teach</td>
<td>33:13 168:13</td>
</tr>
<tr>
<td>teaches</td>
<td>18:17</td>
</tr>
<tr>
<td>teaching</td>
<td>5:24</td>
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<tr>
<td>Team</td>
<td>28:9</td>
</tr>
<tr>
<td>technical</td>
<td>21:9:10</td>
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<tr>
<td>teenager</td>
<td>211:15</td>
</tr>
<tr>
<td>telecommunications</td>
<td>53:17</td>
</tr>
<tr>
<td>telling</td>
<td>12:11 53:9 82:10 123:20</td>
</tr>
<tr>
<td>temporarily</td>
<td>112:11</td>
</tr>
<tr>
<td>tens</td>
<td>133:9</td>
</tr>
<tr>
<td>tentative</td>
<td>211:5</td>
</tr>
<tr>
<td>tenth</td>
<td>45:14</td>
</tr>
<tr>
<td>ten-year</td>
<td>204:8</td>
</tr>
<tr>
<td>terminate</td>
<td>145:4</td>
</tr>
<tr>
<td>Terrance</td>
<td>42:12</td>
</tr>
<tr>
<td>terrifying</td>
<td>7:4</td>
</tr>
<tr>
<td>terror</td>
<td>158:23</td>
</tr>
<tr>
<td>terrorism</td>
<td>120:15</td>
</tr>
<tr>
<td>terrorist</td>
<td>111:7 113:10</td>
</tr>
<tr>
<td>test</td>
<td>72:4 129:9:10</td>
</tr>
<tr>
<td>tested</td>
<td>45:10</td>
</tr>
<tr>
<td>testify</td>
<td>23:2 76:16 24 77:2 150:14 219:9</td>
</tr>
<tr>
<td>testifying</td>
<td>115:22</td>
</tr>
<tr>
<td>testimony</td>
<td>31:9:15 78:8</td>
</tr>
<tr>
<td>Texido</td>
<td>100:17,19,22 24 107:12</td>
</tr>
<tr>
<td>23:10 25:23 26:2 27:8 21</td>
<td></td>
</tr>
<tr>
<td>115:11 12,14 16 116:3 124:4,6:8,11,12,17,20</td>
<td></td>
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<tr>
<td>125:12,18,19 126:2 4:7</td>
<td></td>
</tr>
<tr>
<td>131:6,7,22,23 132:2,2,9 133:19 140:2:3,4,6,10</td>
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</tr>
<tr>
<td>150:9,12,22 154:3,5:6,7:8 154:10,11,11 155:24</td>
<td></td>
</tr>
<tr>
<td>161:14,16,21 170:18,19 170:21,22 171:3:7,10</td>
<td></td>
</tr>
<tr>
<td>180:10 181:14,15,17,18 182:9,10,18 192:9:19 194:24 195:11 197:18,20,24</td>
<td></td>
</tr>
<tr>
<td>198:2,9,10,23 206:13,17 209:10,12,16 218:2,6,7,9</td>
<td></td>
</tr>
<tr>
<td>218:12,15 219:24 224:6 225:21,23 226:2,3,16,17</td>
<td></td>
</tr>
<tr>
<td>thanking</td>
<td>77:3</td>
</tr>
<tr>
<td>Thanks</td>
<td>23:12 28:21 154:20</td>
</tr>
<tr>
<td>therapeutic</td>
<td>8:22 94:7</td>
</tr>
<tr>
<td>They'd</td>
<td>147:6</td>
</tr>
<tr>
<td>thing</td>
<td>6:2,5,17 9:9 12:17</td>
</tr>
<tr>
<td>think</td>
<td>15:2,4 22:22 28:23</td>
</tr>
<tr>
<td>thought</td>
<td>40:14 65:15 81:9</td>
</tr>
<tr>
<td>thousand</td>
<td>110:24 123:24 234:10 234:13</td>
</tr>
<tr>
<td>threat</td>
<td>51:19 93:14 94:11 207:7</td>
</tr>
<tr>
<td>threat</td>
<td>51:19 93:14 94:11 207:7</td>
</tr>
<tr>
<td>three</td>
<td>56:19 106:21 107:13 107:19</td>
</tr>
<tr>
<td>time</td>
<td>1:11 5:2 6:20 11:4</td>
</tr>
<tr>
<td>thinks</td>
<td>6:2,5,17 9:9 12:17</td>
</tr>
<tr>
<td>thirty</td>
<td>57:5 106:21 107:13 107:19</td>
</tr>
<tr>
<td>three-fold</td>
<td>114:14</td>
</tr>
<tr>
<td>three-legged</td>
<td>95:9</td>
</tr>
<tr>
<td>threat</td>
<td>51:19 93:14 94:11 207:7</td>
</tr>
<tr>
<td>time</td>
<td>1:11 5:2 6:20 11:4</td>
</tr>
<tr>
<td>three</td>
<td>56:19 106:21 107:13 107:19</td>
</tr>
<tr>
<td>time's</td>
<td>192:6</td>
</tr>
<tr>
<td>tip</td>
<td>155:17</td>
</tr>
<tr>
<td>Page 276</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>188:16 Vance 2:6</td>
<td>141:21 145:20,22 146:9</td>
</tr>
<tr>
<td>Vanouse 107:24 108:3</td>
<td>166:24 167:12</td>
</tr>
<tr>
<td>varied 68:3</td>
<td>violations 21:10,11,13</td>
</tr>
<tr>
<td>variety 83:14</td>
<td>134:18 142:8</td>
</tr>
<tr>
<td>vast 83:9 104:17</td>
<td>112:22 125:11 184:15</td>
</tr>
<tr>
<td>vehicle 20:8 200:19</td>
<td>187:2</td>
</tr>
<tr>
<td>vending 27:2</td>
<td>violent 20:4 51:11 57:19</td>
</tr>
<tr>
<td>veritable 29:3,3</td>
<td>179:22 210:11</td>
</tr>
<tr>
<td>versed 215:19</td>
<td>vision 94:3,5 217:14</td>
</tr>
<tr>
<td>version 115:5</td>
<td>visit 27:7</td>
</tr>
<tr>
<td>versus 63:2 110:2,5</td>
<td>visitation 92:5</td>
</tr>
<tr>
<td>VESID 221:6</td>
<td>visited 26:21</td>
</tr>
<tr>
<td>vested 87:5</td>
<td>visiting 27:5 92:8,9</td>
</tr>
<tr>
<td>Veterans 94:16</td>
<td>visits 26:19 27:6</td>
</tr>
<tr>
<td>viability 106:5</td>
<td>vital 72:7 112:11</td>
</tr>
<tr>
<td>viable 97:10 98:6</td>
<td>vitally 37:20</td>
</tr>
<tr>
<td>Vicosid 163:12</td>
<td>vocational 18:14 31:18</td>
</tr>
<tr>
<td>victim 3:11 41:9,10 46:17</td>
<td>86:11 88:4 89:7 91:13,16</td>
</tr>
<tr>
<td>103:20 180:23 185:2</td>
<td>91:19 93:14 95:3 102:24</td>
</tr>
<tr>
<td>188:19,20 215:8</td>
<td>voice 66:2 101:10</td>
</tr>
<tr>
<td>victimized 212:14</td>
<td>voices 181:2</td>
</tr>
<tr>
<td>victims 3:16 4:21 9:12,13</td>
<td>voluntary 28:9</td>
</tr>
<tr>
<td>216:18</td>
<td>149:20</td>
</tr>
<tr>
<td>victim's 3:16 12:5 213:4</td>
<td>vote 112:8 158:14,17</td>
</tr>
<tr>
<td>215:8 216:22</td>
<td>voters 133:10</td>
</tr>
<tr>
<td>view 74:13 78:22 91:18</td>
<td>vulnerability 97:17</td>
</tr>
<tr>
<td>103:23 172:2</td>
<td>W</td>
</tr>
<tr>
<td>viewed 55:18</td>
<td>wage 220:23</td>
</tr>
<tr>
<td>viewpoint 199:5</td>
<td>wait 88:24 90:9</td>
</tr>
<tr>
<td>157:15</td>
<td>waive 42:6</td>
</tr>
<tr>
<td>violate 8:6 167:17</td>
<td>waived 42:17</td>
</tr>
<tr>
<td>violated 59:17,18 138:23</td>
<td>waiver 158:24</td>
</tr>
<tr>
<td>141:7 142:10,20 145:9</td>
<td>waiving 48:20</td>
</tr>
<tr>
<td>167:17</td>
<td>walk 24:12 33:21</td>
</tr>
<tr>
<td>violates 184:19</td>
<td>Walker 133:21,21,23,24</td>
</tr>
<tr>
<td>violating 146:20</td>
<td>134:2,3,9 140:7 166:20</td>
</tr>
<tr>
<td>violation 21:15 73:5,9,20</td>
<td>walks 180:21</td>
</tr>
<tr>
<td>9:8 10:12 112:2</td>
<td>walls 180:21</td>
</tr>
</tbody>
</table>

**W**

| Page 276 |
|------------------|------------------|
| want 8:14,24 9:24 10:13 | 11:11,13 12:6,7,8,9,13 |
| 14:5 16:2 17:4 19:3 23:10 | 27:10 29:21 30:10 44:4 |
| 131:8 135:4 147:8 151:17 | 152:8 156:21 158:3 |
| 161:14 164:5,8 166:3 | 166:15,19 168:4 169:18 |
| 170:11 177:8 183:11,13 | 183:14,16,16,20 184:12 |
| 157:7 163:24 185:21 | 213:16,20,21 |
| war 158:22 159:3 | warehoused 178:13 |
| warehousing 178:13 | warm 34:18 |
| warrant 103:20 | wars 111:7 |
| Warth 76:10,12,14,22,24 | wasn't 11:7 142:9,9 145:16 |
| wasn't 11:7 | 163:9 169:9 |
| watch 121:18 143:12,13 | watch 121:18 143:12,13 |
| watched 211:15 | watched 211:15 |
| water 160:16 | water 160:16 |
| Waterson 167:5 | waving 68:12 |
| waving 68:12 | way 20:19 24:13,19 28:20 |
| 139:15,17 141:15 144:5,6 | 144:7 147:3,5 148:6 |
| 176:2,4,11,14 177:5,19 | 176:2,4,11,14 177:5,19 |
153:1 154:1 155:1 156:1
157:1 158:1 159:1 160:1
161:1 162:1 163:1 164:1
165:1 166:1 167:1 168:1
169:1 170:1 171:1 172:1
173:1 174:1 175:1 176:1
177:1 178:1 179:1 180:1
181:1 182:1 183:1 184:1
185:1 186:1 187:1 188:1
189:1 190:1 191:1 192:1
193:1 194:1 195:1 196:1
197:1 198:1 199:1 200:1
201:1 202:1 203:1 204:1
205:1 206:1 207:1 208:1
209:1 210:1 211:1 212:1
213:1 214:1 215:1 216:1
217:1 218:1 219:1 220:1
221:1 222:1 223:1 224:1
225:1 226:1 227:1

12th 141:20
13th 59:15 227:13
14th 5:14
15th 3:12
1796 56:23
1850s 197:10
1877 57:3
19 1:10
1970 57:4
1971 46:11 47:10
1974 109:3
1975 183:2
1976 134:6
1978 171:14
1980 162:19 210:14
1980s 95:18
1990s 95:19
1994 123:19
1995 6:10 57:17 156:14,21
188:4
1996 212:9
1998 70:8
1999 214:9

2

2000 95:21
2001 140:22
2002 94:16 109:3
2003 79:24
2004 46:16 84:12 85:2 90:2
140:23 145:5 204:4
2005 51:11 84:12 85:3
215:8
2006 47:8 55:20 70:23
75:17 80:19
2007 1:10 3:13 227:14
2008 145:5
2019 216:2
210 167:20
22nd 163:2
226 227:9
23A 127:20
2599 166:22

3

3:08 1:11 226:18
390.30 70:8

5

5th 166:21
500 170:10

7

70 57:8
70.45 59:13

9

9:40 1:11 3:2
93 164:15