NEW YORK STATE
COMMISSION ON SENTENCING REFORM

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Transcript of Meeting

Wednesday,
June 27, 2007
9:00 a.m.

Governor's Office
633 Third Avenue
38th Floor
New York, New York
IN ATTENDANCE:

Commissioners:

George Alexander
Chairman, New York State Board of Parole

Anthony Bergamo, Esq.

Michael C. Green
District Attorney, Monroe County

Joseph Lentol
NYS Assemblyman

Hon. Juanita Bing Newton
Judge, Criminal Court of the City of New York

Denise E. O'Donnell
Division of Criminal Justice Services

Eric Schneiderman
NYS Senator
IN ATTENDANCE: (continued)

Commissioners:

Tina Marie Stanford  
Chair, Crime Victims Board  
Cyrus Vance, Jr.

Also Present:

Shannon Castang  
Office of the Deputy Chief Administrative Judge  
for Justice Initiatives

Anthony Girese  
Counsel to the District Attorney  
Bronx County

Nicole Lindahl  
Assistant Director, Prisoner Reentry Institute  
John Jay College

Debbie A. Mukamal  
Director, Prisoner Reentry Institute  
John Jay College
Also Present: (continued)

Brendan Tully
Representing Commissioner Michael P. McDermott

Michael Yavinski
Chief Court Attorney
Criminal Court of the City of New York

Lillian Gordon
Court Reporter
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Hon. Judith Kluger

Closing Discussion: Next Steps
COMMISSIONER O’DONNELL: We're ready to get started. We're missing a few Commissioners, but I expect that they'll join us shortly.

So, good morning, everyone.

VOICES: Good morning.

COMMISSIONER O’DONNELL: I'm just going to ask the Commissioners who are present, starting with -- with Chairman Alexander, to -- to introduce themselves.

COMMISSIONER ALEXANDER: George Alexander, New York State Parole.

COMMISSIONER GREEN: Mike Green, Monroe County District Attorney.

COMMISSIONER O’DONNELL: Joe?

COMMISSIONER LENTOL: Joe Lentol, Assemblyman.

COMMISSIONER STANFORD: Tina Stanford, State Crime Victims Board.

UNIDENTIFIED: Confirmed.

[Applause]

COMMISSIONER O’DONNELL: Yes, welcome.

COMMISSIONER STANFORD: Thank you.

COMMISSIONER O’DONNELL: An official member
of the Commission now.

UNIDENTIFIED: Congratulations.

COMMISSIONER STANFORD: Thank you.

COMMISSIONER BERGAMO: Anthony Bergamo, representative of the people.

[Laughter]

UNIDENTIFIED: I thought I did that.

COMMISSIONER NEWTON: Good morning, everyone.

COMMISSIONER BERGAMO: Representative of the other people. I'm sorry.

COMMISSIONER NEWTON: Juanita Newton, a Judge of the Court.

And, I'd like to take this opportunity, if I can, Madame Chair, to introduce my -- the Chief Court Attorney for the Criminal Court of the City of New York, Michael Yavinski, who will be coming in my absence, and he has my proxy to vote.

And also, Shannon Castang, who is one of our research -- I mean, employees who has been working on this issue of reentry, and we just decided to let her join us. And, she's been volunteering to come, as well.

So, you'll see Mike. If you see him sitting here this afternoon, and it says "Juanita Bing
"Newton," it's not. It's Mike.

COMMISSIONER O'DONNELL: The real.

COMMISSIONER NEWTON: The real Mike. Thank you, Mike.

COMMISSIONER O'DONNELL: Okay.

MR. TULLY: I'm Brendan Tully, from O'Connell and Aronowitz in Albany. I'm playing the part of Michael McDermott this afternoon.

COMMISSIONER O'DONNELL: Great, okay.

And, I think everyone already knows Donna Hall, our researcher. And everybody -- well, we have Lai Sun Yee, who is also the -- what's your title?

MS. YEE: Assistant Deputy Secretary for Criminal Justice.

COMMISSIONER O'DONNELL: For Criminal Justice, who is joining us.

And, Tony Girese, who is joining us, and will be lecturing to us next time on proposed changes to the sentencing -- technical changes to the New York sentencing law, and hopefully be assisting us on the Sentencing Commission.

And welcome, all of our guests. We will, at 9:30, if we haven't already started, we'll be videotaping this also.

(Off the record.)
EVIDENCE-BASED CORRECTIONAL AND SENTENCING PRACTICES:

WHAT WORKS

MR. LATESSA: What I thought we'd do this morning is to kind of walk through the research on what works and what doesn't in reducing recidivism, what we call the principles of effective intervention. And, I'm really going to do this -- I want to give you some of the background into the work, and then talk about how -- show you the application of these principles across a range of correctional options, whether it be prisons, transition out of prison, people in the community. I want you to see how strong this evidence is.

And, I really believe that it's this work -- it's these principles that you have to think about inoculating into what you do. I'm not a -- I'm not a policy guy. I'm not a sentencing reform guy. I'm a programmer.

I've spent most of my career looking at correctional programs, trying to figure out, you know, which ones work and which ones don't, why they work, and why they don't work. I gave up a long time ago trying to change big systems. If I can make one little program more effective, I sleep better at night.
So, I envy you your work that you're trying to do. But, you're going to have to figure out kind of how does this work apply to what it is you're trying to do here in the -- with the Sentencing Commission.

I'm going to leave time for questions. I'll try to leave a good percentage of time, so let me get through it, and then we'll talk and you can ask me whatever you want to ask me before we end. I'll be happy to answer. And, if I don't know the answer, I won't make it up, just so you know that, in advance.

[Laughter]

UNIDENTIFIED: My kind of guy.

MR. LATESSA: The work I'm going to talk about is based on evidence, but I think it's important that people understand there are different forms of evidence.

Anecdotal evidence is the most common evidence we use in making decisions. It makes us feel good. We get a lot of it, right? We have people come in and tell us, you know, that -- that this is really helping folks, and so we ought to do it. We have folks come up and say "It helped me. It saved my life." And then, we say, "Oh, that's really great." If you ever go to Drug Court graduations or
conferences, they always trot some people up to talk about how the Drug Court changed their life, and sometimes the stories are very compelling. And, that's great stuff. It makes us feel good, and it -- and it motivates us. But, it's not empirical evidence, and don't be confused with the two.

Empirical evidence is results from controlled studies. It doesn't make us feel very good. It's just a bunch of numbers, aggregate data. And so, when we say it's statistically significant at the .05 level, all right, and peoples' eyes roll in the back of their heads, I mean, it doesn't really do much for us.

So, I want you to understand the work I'm going to talk about is empirical. I'm an empirical guy. I go where the data takes me. And so, I want to -- I want to walk you through kind of briefly the research.

I'm also going to talk about risk. And, I think it's important, especially when talking with the Sentencing Commission, that we understand -- that you understand the context of risk that I'm going to be talking about. Because, different people hear that term, all right, and it sends off different images, right?
Some people hear high-risk offenders, and they think violent offenders, sex offenders. That's what goes off, okay? Some people -- the Canadians are getting away from it. They're calling it "low probability for successful reintegration" offenders.

[Laughter]

MR. LATESSA: I'm not as polite as the Canadians, so I'm going to call it high risk, medium risk, low risk. It's associated with probability.

A low-risk offender is someone, as a group, that usually has about a ten percent chance of recidivating. So, if I have a hundred low-risk offenders, ten of them are going to recidivate. I don't know which ten. Maybe it's twelve. Maybe it's eight. But, it's going to be in that range. These are people that generally are pro-social.

Moderate risk, usually we're talking about a thirty percent rate. And, high risk would be fifty percent or higher.

There are the highest risk. I'm not going to talk much about them. But, there is a small percentage up at the type, of psychopathic kind of offenders that -- that we really have no interventions for, at least effective ones.

But, this is an important concept that
you're going to hear today, as I talk about evidence-based programs.

The problem with research is that you can find a study to support anything you want. That's part of the problem with research. There are -- there is an incredible amount of research produced in this country on -- on corrections, alone, every year. It's sifting through. It's difficult. Understanding it is difficult. Most of the time, we're not capable of -- of translating it.

I always like to say a simple way to think about it is cigarette smoking. How many people think cigarette smoking is bad for your health? How many of you have read all the research that's been published over the last fifty years? Not too many people have read all that research. You know there's some studies that say it's not that bad. Now, they were funded by the tobacco interests, but -- 

[Laughter]

MR. LATESSA: But my point is the reason most of us believe that cigarette smoking is bad for our health is not because of one or two studies that say it's not, but because over the last fifty years, there have been hundreds of studies done, all over the world, by independent researchers, who basically
concluded that if you smoke a lot, it can lead to
cancer, and emphysema, and heart disease. No one --
no one refutes that any more, because we have a body
of knowledge that has been accumulated over a long
period of time. When I was a kid, that wasn't true.
That research was just coming out. We used to think
smoking was good for you, helped digestion. That was
anecdotal evidence, though, at that point.

We have a tremendous body of knowledge about
correctional interventions, about offenders, about
what works and what doesn't. It's a myth that we
don't know anything. It's a myth that nothing works.
We know a lot.

So, the question is how do we -- how do we
plow through all that research, and how do we tease
out those important points? So, I want to kind of do
a little story, if you will, show you kind of what --
how we've gotten to the point we have, mainly by
looking at a body of research.

When we review all the research on sanctions
alone, just getting tough with offenders, we don't
find any consistent evidence of reduced recidivism.
This doesn't mean that we're not going to punish
people. It doesn't mean we shouldn't punish people.
It doesn't mean we can't punish them and provide
treatment. It doesn't mean there aren't some studies that show a positive effect from treatment. It doesn't mean there aren't some people that respond to punishment. It simply means, when we look at all that research collectively on -- on just kind of getting tough, we don't see any long-term effects on recidivism rates.

Now, if you keep people locked up long enough, they will change, all right, they will change. We changed. As you got older, you changed, right? I bet you don't -- most of us that are -- that are over forty don't go out at eleven o'clock at night to the clubs. Okay? I have children that do that. They have to wake me up to tell me they're going out.

[Laughter]

MR. LATESSA: But, when I was twenty-four, I probably did those things, too. But now, I'm older, I'm slower, I've changed. I'd like to do that, but physically I can't. So, we know people change, but that's an expensive -- that's an expensive option to keep them locked up for twenty or thirty years.

Forty to sixty percent of studies of correctional treatment services report reduced recidivism rates in controlled public studies. That's good news and that's bad news. The good news, forty
to sixty percent of studies of correctional treatment services show some effect on recidivism. The bad news, forty to sixty percent of studies don't show effects on recidivism. Opposite of that's true. That's published research. And, that's a little misleading, because what usually gets published are studies that show some effects. I think it's closer to thirty percent, myself. I think about one out of three correctional programs that are designed to reduce recidivism actually would show a result if you did a controlled study. It doesn't matter if it's thirty percent or fifty percent. You know what it means? Half the programs we have don't produce any effect. That's what -- that's what the research basically said. So, about half of our efforts, half of the programs we fund and the initiatives we have, we could have gotten the same effect by doing nothing.

My work has always focused on the programs that are working. I've always been interested in those -- those programs and studies that show effects of twenty, thirty percent or more. What are they doing that's different than the programs that aren't showing any effect? There are a lot of reasons
programs don't work. I'll talk about some of that later on.

When we look at the research, and this is what we call a meta-analysis. A meta-analysis is a study of studies. It's a useful technique, especially for policy makers, because it points us in directions. It's a blunt instrument. There's things it can't tell us. But, it's basically a way of quantifying all of the studies that have been done.

People that do meta-analysis usually have criteria to include studies or exclude studies. They throw out the bad studies. They only look at the studies that meet certain criteria. Then, they analyze that data to produce what we call "effect sizes." The stronger the effect size, the greater is the reduction in recidivism. You can have a negative effect size. You can have a positive effect size. You can have no effect size.

This is a meta-analysis, a very typical result is why I show it. The reason I say it's typical is because if you looked at meta-analysis on Drug Court studies, on half-way house studies, this is what they usually show, an average effect of about fifteen percent of treatment. That's a very modest effect size.
Slightly negative effect for sanctions only.

These are the people that appear to be resistant to punishment, by the way -- psychopathic risk-takers, those under the influence of a substance, and those with a history of being punished. Unfortunately, that's about eighty percent of the offender population that fits into those categories right there.

That's why the problem with punishment isn't that you can't change some behavior. I can change most of your behavior through punishers, at least for a while, until it wore off. The problem is, it works least with the people we want it to work most with. Most offenders fall into the -- have some of those attributes. They're substance abusers, they've been punished before, they've been in and out of the system.

I'm always amazed. I do a lot of work -- not a lot, but I do work with jails. And, everybody always wants to build a bigger jail as a solution to their crime problem. And yet, when we go into the jails, eighty-five percent of a jail population on any given day has been in jail before, which really tells you that jail hasn't really been a very effective strategy. Because, if it worked so well, they wouldn't want to go back again. Yet, the same people
just keep going back in and out of jail.

So, we think we're punishing them, and it really doesn't have the effect. We get some incapacitation effect, because they're locked up for a while, but beyond that, we don't -- we don't change any risk factors. And, that's really the heart of this work.

Most of us researchers who have studied correctional interventions have concluded that without some form of human intervention, some risk reduction, we don't see a lot of effect from punishment alone. But, the evidence also indicates that not all programs are equally effective. And, I think there is policy there, in terms of redirecting your resources toward more effective kind of interventions, and so we'll talk about that, as well.

When we take this data -- and when we take this data, right here -- the treatment effect size data -- and we divide it into type of treatment, we see a great difference in effect sizes. Non-behavioral programming for offenders produces very small effects on recidivism. Unfortunately, non-behavioral programming is the most common form of programming that we use for offenders.

It includes things like drug education
programs. You know, you take a bunch of offenders who use drugs and educate them about drug use. It's really a dumb-ass idea, when you think about it. But, we do it everywhere. We do it prisons. We do it in probation. We do it in schools. I see it over and over again.

Talk therapy. You sit around a table and talk about your problems. Insight. Why do you think you're here? What do you want to talk about tonight? Those kind of interventions produce very small effect sizes.

Behavioral programs, we see the greatest effect. Behavioral programs have some attributes:

One, they focus on current risk factors that are influencing somebody's behavior. Current risk factors are things like who you're hanging around with. You're drinking. You're not going to work. You're impulsive. Those are current risk factors, versus the past.

And unfortunately, a lot of the programs we send offenders to spend a lot of time in therapy, a lot of time talking about what they did, a lot of time talking about how they were raised, a lot of time talking about how their fathers abandoned them. You can't change it. It doesn't -- doesn't produce much
effect on current behavior, either.

This work is very here and now focused, and that's an important point, I think, to make, as well.

Behavioral programs also are action oriented. And by that, I mean that offenders engaged in behavioral programs are engaged in active learning, practicing and learning new skills. They have skills -- lies, and cheat, and steal, and drug use. Those are skills. And, they get a lot of reinforcement from that behavior.

So, what are we trying to do in these programs? We're trying to teach them new ways to behave. What do you do when your friends come over and they want to go to a party, and you know you're on parole and you shouldn't go? How do you get out of that situation? That takes a skill to get out of that, okay?

And so behavioral programs practice, reinforce, teach offenders those new pro-social skills. An important attribute.

We have less research on women, a lot less research. Probably a thousand-to-one, in terms of studies. But, the data that's out there, and -- and I'm doing a number of -- I have a number of studies coming out now, looking specifically at females.
We're looking at the risk principle. We're looking at the effects of assessment. And, I will tell you, we're seeing very consistent results with the research we see with males.

When we look at the studies -- this is a meta-analysis of treatment for females that Dowden and Andrews did, the strongest effect size is behavioral interventions. So consistently we see in the evidence we want to do these kind of programs.

So, the first two things we learn from this research, we get some -- we get some effects from treatment. We get stronger effects if we do behavioral treatment.

The second body of knowledge is the work on risk factors. Probably the most important research out there is this research, in my opinion. This is really what is guiding -- what you need to use to guide your programs, your reentry, the things that you do with offenders. And, here's where we make a lot of mistakes.

The problem is everybody has an opinion about criminal behavior. Let's be honest about that. Anybody on the street we stop would give us their opinion about why they think people are criminal, why they get into trouble, okay? We get it all the time.
I get it unsolicited. I get that advice.

I was on a flight one time. I was flying to Idaho. I was seated next to some older woman. She was one of these chatty types, you know, wouldn't take a hint. And, she asked me what I did for a living, and I made the mistake of telling her I was a criminologist. For four hours, she told me how to solve the crime problem. Didn't get off the plane in Salt Lake. Stayed right on with me to Boise.

[Laughter]

MR. LATESSA: Now, I just tell them I'm a proctologist, and they leave me alone.

[Laughter]

MR. LATESSA: Programs make mistakes for a number of reasons:

One, sometimes they don't target the right risk factors. So, if I'm targeting your self-esteem, making you feel better about yourself, or I'm getting you in better shape, I'm not going to get much effect. It's not correlated with risk.

Sometimes, programs fail because they're uni-dimensional. All they work on is getting you a job. Okay, that's a risk factor. It's not that strong of a risk factor, though, compared to some of the others. So, how much effect will I get? Oh, I
might get ten percent. So, a lot of reasons that programs fail because of this area.

I'm not going to show you the research. I'm just going to talk about what the findings are. What are the major set of risk/need factors, starting with anti-social/pro-criminal attitudes, values, beliefs, and cognitive emotional states. It starts here, with our thinking. How do we see the world? How do we see our behavior? Do we blame others? Do we accept responsibility? Do we minimize what we do?

Cognitive emotional states, things like rage, anger, defiance, criminal attitude and identity. If you identify yourself as a thug, how are you going to act? If you identify yourself as a pro-social person who made a mistake, how are you going to act?

So, attitudes, values, and beliefs. Things that you listen for. By the way, it's what people think. It's not how they think. It's the content of thought. Things you listen for. Negative expressions about the law. It's not fair. Everybody does it. I got caught. Who'd I hurt? If they didn't want drugs, they wouldn't have bought them. I'm actually providing a service.

Negative attitudes about conventional institutions, rules, authority. I interviewed an
offender the other day on parole.

I said, "Are you working?" He said, "No, I quit my job." I said, "Why?" He said, "I wasn't getting enough hours." I said, "How many are you getting now?" He said, "None." I said, "You're moving backwards." Most people don't quit our jobs until we get another job.

But, in his mind, they weren't respecting him, so he showed them. Now, he had zero hours. It's that kind of thinking that often gets them in trouble, that distorted, irrational kind of thought process.

Negative attitudes about their ability to achieve. I've never been good at that nine-to-five thing. School is not for me. It's attitude, beliefs, values.

And of course, that cold-heartedness, lack of empathy and sensitivity toward others. Who did I hurt? If I want to use drugs, it's my business. If I want to sell them, and they don't want to buy them, hey. Right? They don't think about their families, the victims, other people that they are, in fact, hurting.

Offenders often minimize their behavior, deny responsibility. I was at the wrong place at the wrong time. The "some dude" defense. Some dude told
me I could drive his car. We're looking for some
dude. We haven't caught him yet. But, if we do,
we're going to reduce crime twenty percent. He moves
around a lot.

[Laughter]

MR. LATESSA: You know why a lot of
offenders are in prison? I bet you didn't know this.
Bad lawyers.

[Laughter]

MR. LATESSA: I'll ask them, "Why are you
here?" They'll go, "I had a bad lawyer." I'll say,
"What about that armed robbery?" They'll go, "Yeah, I
should have never listened to that lawyer." If we get
better lawyers and catch "some dude," you're all going
to be out of work.

Minimize the act. I stole their car.
They'll get a new car. They've got insurance. I beat
him up. I didn't -- I've been beat up worse. So that
-- those minimizations are often there. Blame the
victim and so forth. Okay?

I was at a facility in Pennsylvania a while
back, a prison. It was a co-ed facility and they had
a drug program there. It was a typical drug program.
You know, it had the credo, and they'd walk them
through all the steps.
And, I interviewed this one young woman, a very, very bright, articulate young woman. And, I asked her, "Why do you think you're here?" And, she said, "Well, I had to pay my rent." And, I said, "Well, that's funny. I have to pay my rent, too." And she said, "Yeah, but you're better educated than I am." I said, "Well, that's true, but I wasn't always better educated." I said, "My father quit school in the eighth grade, and he didn't end up in prison." She looked at me and said, "Well, you're right. I wanted easy money. I didn't want to work for it." And, I said, "Well, we're getting closer here."

She was a drug trafficker, out of Philadelphia. And I said, "You must have hung around with a pretty rough crowd." And she said, "No, I only hung around with good people." I said, "Well, it's my experience that you can't be in the drug business unless you're buying from or selling to other people in the drug business." She said, "Well, that's true, but I didn't associate with them. I only associated with good people." I said, "Where did you learn the drug business?" She said, "My boyfriend." And then, where is he at? She said, "Prison."

Now, I wasn't there to argue with her. I was there to look at the program. But, I've learned a
lot about the program by talking with her. Because, the things they're teaching her have nothing to do with her attitudes, values, and beliefs. How long is she going to last with those kind of thoughts?

Because, what she's really thinking is "I wasn't smart enough. Next time, I'll be smarter." And, until they start to target that thinking that she has, chances are she's just going to go back to the same behavior, if the program was just an educational kind of a program.

Pro-criminal associates, isolation from pro-social others, major risk factor. We all know it. We know it if we have children. We worry about who they hang around with. But, it's not just having bad friends. It's not having pro-social people in your life. And, you're going to see this in a minute, in a study.

I put this together because oftentimes when I sit down with parole or probation departments, and I ask them, "How do you target this risk factor?" Everybody knows it's a major risk factor. How do you target it for change? I get a lot of blank looks.

And, if I push them hard, they usually give me the first three things on this list: restrict associates, set and enforce curfews, and ban hangouts.
Can't go to certain places. Have to be home by eight.
Not allowed to hang around with known felons. We got a whole list.

The problem is, that's a risk management strategy. When you take it away, what happens? Where do they go back to? Same friends, same places, same thing.

And so, what we have to think about is -- is developing strategies and training parole officers to also focus on risk reduction techniques, teaching them to recognize and avoid negative influences. That's cognitive, by the way. That's "cognitive restructuring," we call it. But, it's not enough.

Some of them get it. They understand they shouldn't go to these places. They shouldn't hang around with these people. But, they don't have the skill to get out of it. So, we have to teach them new skills, like being assertive.

Teach them how to maintain relationships.
What if it's their brother they get in trouble with? All right? They're never going to see him again? I doubt it. So, we have to teach them how to have that relationship without the trouble that comes with it.

Identifying pro-social people in their life, and enforcing those issues sometimes. I worked with a
day reporting center once, in Iowa, and they would make offenders bring a pro-social person to the day reporting center once a month, and introduce them to people, okay? Because they wanted to bond those pro-social relationships, right?

And, the reason I'm telling you this is because I really think that we have to start changing, thinking about how we train officers, how we do -- how we develop strategies. If not, the good ones will figure it out, and the rest of them will just see them and pee them, okay? And then, you'll get very little effect from -- from -- on recidivism.

Temperament and anti-social personality patterns, weak socialization, impulsivity, adventurous, aggressive, ego-centric. Most offenders are -- have inflated self-esteem. They feel pretty good about themselves.

I was in a prison once, and they had a self-esteem program for offenders. And, I interviewed this offender, and I said, "Tell me about yourself."

He had been in the self-esteem program for a couple of weeks. And, he looked at me and said, "I'm thirty-two years old. I've never been in -- I've never -- I've been in trouble my whole life. I've never owned anything I didn't steal. I've hurt everybody that
ever cared about me," he said, "but I'm starting to feel pretty good about myself."

[Laughter]

MR. LATESSA: I said, "Well, we'll get you out." All right?

And, offenders have weak problem-solving and a lack of coping and self-regulation skills. They get into situations, and they don't know how to get out. They do what they always did. Of course, they land up in trouble.

History of anti-social behavior. The younger they start, the more things they do, the higher the risk.

Family criminality, and also other problems, low levels of affection, caring, and cohesiveness. Are they involved in a good relationship? How do they get along with their -- with their significant other, or their parents, or their family? Poor parental supervision, if they're children. And, outright neglect and abuse.

But, for adults, these are less important, because they're in the past. I can't change them. I have to focus on the current relationships. Remember, this works very current focus.

Low levels of education, vocational, or
financial achievement. Low levels of involvement in pro-social leisure activities. And abuse of alcohol and/or drugs.

And, I think -- as I said, people see these aids and they say, "Okay, well, that's good. We're going to work on that substance abuse." But, most high-risk offenders have many risk factors, not just one. Okay?

So, that's where a lot of programs -- sometimes, it's our training. If we're trained in substance abuse, what are we going to focus on? If we're trained in mental health, what are we going to focus on? All right. If we get an offender in front of us, and they're depressed, anxious, bipolar, that's it. That's the problem, even though it has a very low correlation with recidivism and risk.

This study came out of Pennsylvania. They just finished it, the Department of Corrections. It's really a reentry study. They looked at parole violators, parole successes, who made it, and who didn't. Pennsylvania is a traditional parole state. People come in front of the Board, discretionary release, they make a decision.

The Pennsylvania Parole Board, I've done some videoconferences with them now. They're looking
at how they assess offenders. They use the LSI right now to assess them, assess them when they come out. They're trying to improve what they do with offenders, okay?

This is what they found. Social network and living arrangements, violators more likely to hang around with individuals with criminal backgrounds, less likely to live with a spouse, less likely to be in a stable, supportive relationship, and less likely to identify someone in their life who served in a mentoring capacity. And, not a formal mentor, but did they have somebody they could go to when they needed help, advice? The violators didn't. The ones that made it did. Even if it was a parole officer, by the way, okay? Criminogenic risk factors.

Employment and financial, and this is very interesting. Slightly more likely to have difficulty getting a job. Just slightly. Less likely to have job stability. They went from job to job. Violators were less likely to be satisfied with employment. They were less likely to take low-end jobs and work their way up. If that isn't cognitive, I don't know what is. More likely to have negative attitudes toward employment and unrealistic job expectations. Less likely to have a bank account. But
interestingly, more likely to report they were barely making it. Yet, the success group had over double the median debt. It wasn't about getting a job. It was about being willing to take a job and show you could do it and move up, be willing to work two jobs, if you had to.

And, this is an important area, because a lot of programs, that's it. It's like employment is what they focus on. And, they never work on the attitudes, the values, the beliefs. Why is work important? What do you get out of work? Instead, it's just get them a job. And, of course, you get some effect, but often you see the difference between the successes and the failures.

Alcohol use. More likely to report use of alcohol or drugs while on parole, but no difference in prior dependency. And, poor management of stress, lack of coping skills was a major -- was a major relapse factor for these folks.

Had unrealistic expectations about what life would be, poor problem-solving or coping skills, failed to utilize resources to help them, more likely to maintain anti-social attitudes. All criminogenic.

Interestingly, success and failure did not differ in difficulty in finding a place to live after
release. A lot of emphasis on housing, and housing is a basic need. We all have that basic need. But it wasn't a big criminogenic risk factor.

Neither was employment. Successes and failures reported about the same chances of getting a job. Basically, these guys said if you have a driver's license, you could get a job. That's basically what they said.

Now, keeping a job, working hard on a job, taking a job that didn't pay well, those were different issues. But, in terms of being able to get a job, it didn't make much difference.

This chart shows you the risk factors and what we call the dynamic need. So, if you have a history of anti-social behavior, earlier -- early and continued involvement in a number of anti-social acts is a risk. The younger you start, the more things you do. But, this is the need, to build non-criminal alternative behaviors in risky situations. When do they get in trouble? What precedes it? Can we teach you three ways to get out of it? Work and practice on those skills.

Personality cognitions, associates, family, school, leisure, and substance abuse. But, I want to be clear about this. I want to be crystal clear.
Most of us researchers who study risk factors believe that these factors and other minor factors -- there are other minor factors, as well. I'm not talking about them. But, most of us believe that these and others run through the big four. These are the big four, right here.

These are the ones that you have to make the focus of your programming. Because, if you can change their thinking, you can give them new skills, you can work on them -- if you take substance abuse, all right? And, think about it for a minute. What are some of the risk factors. Early and continued involvement, adventurous, pleasure seeking, weak self-control, attitudes, values, and beliefs, hanging around with other people that drink and use drugs? I mean, if you can change that, you can change those other -- those other areas.

But, I think it's sometimes easier for folks to work the other way. Let's get them involved in leisure activity. Teach them how to bowl. A lot of offenders that know how to bowl. Instead of working on those other areas and -- and using, as part of the process, them understanding you can take your family out and have fun without getting in trouble. You don't always have to get high. And so, it's these big
four that we really see as the major set.

All right. This research has led to the principle. So, treatment more effective. Behavioral treatment. And, specific risk factors, especially the ones we can target for change.

The principles. Risk, need, treatment, and fidelity. Who, what, how, and how well? That's as simple as I can make it.

Who do we target with our correctional programs, with our reentry, with our prison programs, with our community programs? Everybody? Does everybody need everything? No.

Make sure we focus on criminogenic risk factors. There's a tendency, I think, because we're often dealing with a very disadvantaged group. They have a lot of needs, and we don't know where to begin. And we treat them all the same in programs. They're not all the same. Our rule of thumb is eighty/twenty. Eighty percent of your activities should be focused on criminogenic risk factors. Twenty percent non-criminogenic. The more you get away from that percentage, the lower your effects start to go.

Behavioral treatment, the how. Tough. That's a tough one. The risk and need principles aren't that tough to meet. The how is, because that
means you've got to train staff. They have to have
certain skills in order to deliver effective programs.

And the last one also, always a challenge,
is fidelity. Making sure programs are delivered the
way they're supposed to be delivered. The more we get
away from it, the lower the effects go.

So, let's look at these principles. Start
with the risk principle, one of the more important
ones, I would think, in terms of sentencing
alternatives, and reentry, and those issues.

Target offenders with a higher probability
of recidivism. Remember what I said in the beginning.
We've got -- risk is a continuum, really. So, we have
people, a group that's low risk. We have a group
moderate, high, very high. We could cut the data any
way you want to cut it. It's actuarial. That's how
we do these things. It's an actuarial table, okay,
just like insurance. You pay more for life insurance
as you get older. If you smoke, you pay more. If you
have teenage kids, you pay more for car insurance,
because there are risk factors. You're younger,
you're healthy, you don't smoke, it costs less. Okay?
Why? Because they've developed probability tables
that says your chances are less that you're going to
die young.
So, the same kind of principle with these kind of instruments. Target offender with a higher probability of recidivism. Here's a way to think about it. Let's say half the offenders in New York that come out of prison never go back again. Which half are you worried about? The half that will go back. That's the risk principle.

You want to put your energies, your efforts, your supervision, your programs on the half that are most likely to re-offend. Not the low-risk offender. And, we're not saying not -- don't do anything with low-risk offenders. We're just saying don't give them intensive programs and services. Don't overload them. Because, as you see, you make them worse.

Provide most intensive treatment to higher-risk offenders. I'll give you a little direction here, and only because we don't have a lot of research, specific research. We have research that says what? The longer they're in treatment, the better they do. I think that's a dosage issue. The problem is, we haven't done a very good job as researchers of actually measuring how much treatment someone needs or gets.

And, think about it for a minute. It's a dosage issue. Right? So, sometimes you get an
infection, and you go to the doctor, and they give you a prescription. And, what do they say? You've got to take them all. This is a low-level infection. If you don't take all of the medication, it can come back. That's what they tell you sometimes. If you're like me, you save a few pills for when you're sick again, all right.

But, the reason they're telling you that is because their clinical trials have shown that you need this dosage of antibiotic to kill that infection. If you don't take it all, it could come back. Okay?

And, by the way, can too much treatment hurt you? Too much treatment can kill you. So, we have the flip side of that.

But, this is a study I'll just show you briefly. Because, again, I think it's related to reentry. It was a prison study. These researchers -- G. Bourgon, who is a friend of mine -- wanted to operationalize this principle in a real prison set. And so, he did this study of 620 incarcerated males. He gave them three variations of cognitive behavioral treatment. Why cog? Because it's evidence based.

They gave 100, 200, and 300 hours of treatment. They assigned offenders by risk and need -- high risk, low risk, moderate -- they didn't have
low risk. Moderate, high, and so forth. Dosage of
treatment was an important factor.

What did they find? For moderate-risk
offenders with few needs -- few needs were defined as
three or less -- 100 hours was sufficient to reduce
recidivism. They got their effect with 100 hours of
treatment. That's what most meta-analysis was telling
us. If you would have asked me a couple of years ago
how much treatment should I give someone, I would have
said to you 100 hours of direct service.

But, look what they found. A hundred hours
had no effect on high-risk offenders. That's
important. That means you're wasting your time if
you're putting high risk offenders into a hundred-hour
program.

For appropriate offenders, either high risk
or multiple needs, but not both, 200 hours was
required. They had to double the treatment. And, for
high risk/high need, 300 hours wasn't enough. They
stopped at 300 hours.

Here's what I think this study means. First
of all, it's a prison setting. It wasn't the
community, all right. So, the hours could change in
the community, because in the community, you're
exposed to what? Pro-social people, school, work,
friends, family. So, you have some different dynamics going on there.

But, here's what I think this research is saying to us. First of all, you can't have one size fits all programs. You need to think about programming. At least do two tracks -- intensive and regular. And, if you're putting high-risk people in your program, you probably need to double whatever you're doing.

I was out in Oregon a while back, looking at a program they had for women. Well actually, it was girls. It was one of their juvenile facilities. And, the girls were in this facility for six months. They got about four hours a week of structured cognitive behavioral treatment. All the rest was just fluff stuff. Four hours a week, six months. Well, you do the math. Four hours a week, they're getting sixteen hours a month, times six months. The problem was, nine out of ten girls were high risk, as assessed by their risk assessment. It was a good program, but they probably were getting no effect, if they were putting high-risk girls in a program that was giving about a hundred hours of treatment. They had to figure out how to double that treatment in order to get an effect.
So, I think this study is important. We're doing some research now. We've got two big studies going on of reentry -- one in Ohio, and one in Pennsylvania. We're tracking about 40,000 offenders, looking at 120 programs, and we are measuring as precisely as we can how many hours in groups the offenders actually receive in those programs, because we really want to provide more prescription for this kind of -- for designing programs.

Because, a lot of programs may be -- they're well done programs. They just -- the dosage may not be enough. You may not be giving them enough treatment. So, keep that in mind.

The risk principle also says effects from high risk, negative effects from low risk. Stop and think about it for a minute, what I said before. Low risk, ten percent chance of recidivism. High risk, fifty percent chance of recidivism. How are you going to reduce ten percent? How much lower are you going to get? Some of it's statistical, but if I've got a group where every other guy fails, five out of ten fail, and I get it down to four out of ten, I've cut it pretty significantly then. So, that's some of what we see with the risk principle.

This is a study done a couple of years ago
out of Canada. It involved intensive rehabilitation
and supervision. The Canadians assessed offenders as
high or low risk. High-risk offenders who were in
treatment two years, that's the recidivism rate.
High-risk offenders who did not get the treatment,
that was their recidivism rate. They reduced
recidivism for high-risk offenders twenty percent.
Not bad.

Low-risk offenders, though, that were put
into this program failed at the same rate as high-risk
offenders, and low-risk offenders that were not put a
program, less than half.

They had an effect on high risk. They had
no effect on low -- they made low risk worse.

Now, I know what you're thinking. That's
Canada. There's only ten offenders in the whole
country.

[Laughter]

MR. LATESSA: All right.

COMMISSIONER NEWTON: Can I ask a question?

MR. LATESSA: Yes, you can ask a question.

COMMISSIONER NEWTON: Has anyone explained
-- I mean, that's a curious notion that intensive
treatment for low-risk offenders --

MR. LATESSA: Yeah.
COMMISSIONER NEWTON: -- increases recidivism. So, we know that's the fact.

MR. LATESSA: You want me to tell you why.

COMMISSIONER NEWTON: I -- it's speculation --

MR. LATESSA: I'm going to get there, all right?

COMMISSIONER NEWTON: You're going to get to that? Okay, then I'll wait.

MR. LATESSA: I'm going to do that, Judge, all right?

COMMISSIONER NEWTON: Okay. I will wait.

MR. LATESSA: I'm going to do that. Do I think I would do that, I'd just leave that out there?

COMMISSIONER NEWTON: I didn't know.

MR. LATESSA: All right. I want to show you this study. We did it a couple of years ago. We're replicating it now in Ohio and Pennsylvania. It should be ready in another year.

But, this was the largest study ever done of community correctional treatment facilities. At the time, I didn't consider it reentry study, but it really was. Because, these were -- half of our sample were coming out of prison.

We had 13,000 offenders in this study -- not
a small study -- 37 halfway houses, and 15
community-based correctional facilities. The halfway
houses were all serving parolees coming out of prison.
Ohio is a big halfway house state. Okay?

We kind of modeled ourselves after the
Federal Bureau of Prisons. Many of the offenders in
Ohio coming out of prison will be sent to a halfway
house for three, four, five months prior to being
released out into the community.

These facilities, we have 19 of them in
Ohio. They are secure residential treatment
facilities for felons. They are direct sentence
facilities. They are not people coming out of prison.
These are basically folks in the community who
committed a felony. The judge doesn't want to send
them to prison, wants to give them a chance at
treatment. They go to one of these facilities. And,
there are 19 of them. Cincinnati has a 200-bed
facility, 150 men, 50 women. They're there six
months, 24-hour treatment programs.

The State wanted to know if they worked or
not. Basically said "We're spending a hundred million
a year on these. Do they work?" We did the study, a
two-year follow-up.

We looked at new arrests and incarceration
and we also looked at program characteristics. I'm not going to get into the methodology, unless you have questions about it.

But basically, our comparison group were parolees, people released from prison onto parole supervision during the same time period. We did that very specifically, because if you get released to a halfway house and you're on parole, you have two ways to fail, right? You can get a new arrest, or you can get a violation. We didn't want to compare them to people that couldn't get a violation.

So, our comparison group were parolees who just got supervision. They got whatever else parole did. If there were programs, they got them, but it wasn't residential. So, these folks are getting the intensive residential programming. Our comparison group were matched on risk, race, sex, and offense. If you were a sex offender, we matched you to a sex offender. They were supervised in the same county, but they didn't go to a program -- a halfway house. So, that's our comparison group, okay?

Everybody was given a risk score based on 14 items that predicted outcome. This is important because it allowed us to compare low risk to low risk, high risk to high risk.
Here's -- here is what happens in a lot of programs, I think. Low-risk offenders -- say you have a hundred low-risk offenders. You do nothing with them. Ten percent will recidivate. You give them intensive treatment, you put them in lots of programs, twenty percent will recidivate.

You take a hundred high-risk offenders. You do nothing with them, sixty percent will recidivate. You put them in good intensive programs, forty percent recidivate. You've reduced recidivism quite a bit. But, who did better? The low risk or the high risk? The low risk. Only twenty percent of them failed.

So, here's what happens. In programs, they're always comparing their low-risk guys to their high-risk guys. They always think they're doing -- of course they're doing better. That's why they're low risk. But that doesn't give you the treatment effect. That's like saying Harvard produces good graduates. Of course they produce good graduates. They're all smart when they get there. It's a lot harder for me if I'm in a public university. I take all comers on. Right? So, Harvard doesn't have a hard time getting smart people coming out. They had smart people coming in.

So, we knew that. So, we're comparing low
risk to low risk, and high risk to high risk. Let me
tell you what we found. And, this study has directed
a lot of policy in Ohio, a lot of policy right now,
and that's why we're replicating it.

These are the treatment effects for low-risk
offenders. These are the programs -- unimportant to
you, except some of them are national programs --
Salvation Army, VOA. Some of them are national
programs. This -- these red bars is how much worse
low-risk offenders did who were placed into those
programs.

So, if you were a low-risk offender placed
in Fresh Start, they a 36 percent higher recidivism
rate than low-risk offenders in that county that got
just parole supervision. You can see here three out
of four programs had negative effects with low-risk
offenders. Only a few programs, and the effects are
small, statistically insignificant.

Low moderate, moderate, high. Same programs
at the bottom. Now, look at the chart. It's
reversed. Most of the programs reduced recidivism for
high-risk offenders. Few programs didn't work with
anyone.

Anybody know what the scientific term for
that is? Shitty program. That's the scientific term
for that.

[Laughter]

MR. LATESSA: You can laugh. It's okay. I have fun, all right?

I want to point out though -- the reason I'm pointing to these programs is because if you looked at the data, even the programs that didn't work with anyone did better with high-risk offenders than they did with low-risk offenders.

Here is where you want to be -- one, two, three, four, five, six, seven, eight programs in Ohio reduced recidivism twenty percent for high-risk offenders. Three programs, thirty percent. If you don't think thirty percent is a lot, you had 13,000 offenders in this study. You start doing -- you're bigger than we are. New York is a bigger state, so you start doing the math. If you can twenty percent effect sizes, you're talking about a lot of people.

But, here's where you see the risk principle, down here. These three programs all had thirty percent reductions for high risk. Let's see. EOCC increased recidivism seven percent for low risk. Toledo, eleven percent. And here, Mahoney County, twenty-nine percent increase for low-risk offenders.

So, that gets to the question that the Judge
asked. How can you have a program that's working with high-risk offenders having a negative effect with low-risk offenders? Why are we making low-risk offenders worse?

We think there's two basic reasons for it. One, who are we putting them in with? High-risk offenders. So, the social learning, all the pressure is to be anti-social. But, that's not the only explanation. That's more true if you're a younger offender than an older offender. If I took some of you right now and put you in a correctional treatment program for six months, you wouldn't come out and start hanging with the home boys. Okay? You'd still fall asleep in the chair at ten o'clock at night.

[Laughter]

MR. LATESSA: Because we're older. We're more mature. We're -- we're not -- we're not going to change those things, right?

But, if I put you in one of those programs for six months, how many of you would lose your jobs? How many of your families would have difficulty getting by without you for six months? How many of you would have -- how many of your neighbors would have a "Welcome Home from the Correctional Treatment" reception for you when you got out?
In other words, just putting you in that program disrupts what makes you low risk. It disrupts your pro-social networks -- your job, your family. You've got to explain to the boss why you're not going to show up for four months. Okay. That's what we think is going on with this negative effect.

Ohio now doesn't put low-risk people in these programs. The people have to be assessed within 48 hours. Low risk are not put into these programs. All these programs now have to meet minimum standards, or they're not going to get state funding any more, and that's why we're doing the next study. So, it has changed some things. All right.

The need principle. The need principle basically says target criminogenic needs. These are criminogenic -- attitudes, friends, substance abuse, lack of empathy. They're called criminogenic because they're crime producing. They're highly correlated with risk. You drink too much, you hang around with bad folks, you think what you're doing is okay, you don't go to work, you don't really care who you affect? Your risk is higher.

Anxiety, low self-esteem, creative needs, physical conditioning -- non-criminogenic. We all have those needs, but they're not related to crime.
Physical conditioning is my favorite. I've never understood why we want offenders in really good shape, all right?

[Laughter]

MR. LATESSA: I went to a boot camp the other day, and I interviewed a young man. And, he got my -- I asked him what he got out of the program. And, he leaned in my face. He said, "I'm in the best physical condition in my life, sir." Right about now, he can run me down and kick my ass even quicker.

Right?

[Laughter]

MR. LATESSA: This is an important chart, because what it's telling us -- again, it's a meta-analysis. It's not just targeting a risk factor. It's the density of risk factors. People aren't higher risk because they have a risk factor. They're higher risk because they have a number of risk factors.

Let's take a real simple one, like employment. For a parolee in New York, is being unemployed a risk factor? Chairman, do you think it's a risk factor for a parolee being unemployed in New York, not having a job?

COMMISSIONER ALEXANDER: It's a risk
factor.


COMMISSIONER LENTOL: Find another one.

MR. LATESSA: You'd go find another job. Being unemployed isn't that big of a risk factor for criminality, but it is if you say things like "I can make more money in a day than you make in a month." If you say "I'm not going to work for eight bucks an hour." If you say, "Ah, somebody will support me. My friends don't work." Now, being unemployed is a big risk factor. You know why? Because you've got 40 hours a week to do nothing but get into trouble, okay?

But, understand, just by itself being unemployed for most of us, it's not a big -- we wouldn't become criminals. So, targeting employment is important, but if you don't target those other domains, those big four, guess what? You're going to end up like Pennsylvania. Guys that fail quit their jobs, not going to work. Those kind of issues become -- the cognitive issues become important.

Most correctional programs, unfortunately,
are based on tradition, custom, and imitation, rather than scientific evidence. That's a sad reality.

I've assessed 450 correctional programs throughout the United States, and the vast majority score either unsatisfactory or need improvement. And only a small handful are programs we consider to be effective.

Most folks use what I call the Christopher Columbus style of program design. When he set out, he didn't know where he was going. And, when he got there, he didn't know where he was. And, when he got back, he didn't know where he'd been. He did it, like, four times, and he used state money.

[Laughter]

MR. LATESSA: So, these are not criminogenic needs. So, I don't want you copying these down. But, I collect quackery. So, this is some of the quackery that's out there.

Dance program gets juveniles moving on the right track. I'll read you what it says there. In a small secure concrete area, young male offenders dance their way toward a new outlook on life. So, they're dancing their way out of criminal behavior. The good news, though, is they're dancing to the music of rappers like Tupac, 50cent, and Rkelly. So, they got
some role models cooking there, as well.

[Laughter]

MR. LATESSA: Running teaches inmates the value of success. This was out of Tennessee’s Department of Corrections. I thought we didn’t want them to run, myself.

[Laughter]

MR. LATESSA: This is drum circles. And, I’ve actually seen quite a few of these. So, they hide them when I get there, but I’ll read you what they said. They’re trying to sell this to the Department of Corrections. She introduced the first drum circle in a New Zealand prison, and she describes it as “Wow.” That’s the data they have right now. Wow, okay?

[Laughter]

MR. LATESSA: The staff was amazed because most clients continued drumming for two hours without stopping to smoke. So, it doubles as a smoke cessation program. You can kill two birds with one stone. All right?

[Laughter]

MR. LATESSA: Man’s sentence was probation and yoga. That was for beating his wife, okay? But, I like what the judge says. He said, “I thought about
taking him myself, but I got a pretty bad back."

Okay? And, here they are, right outside a courtroom, fixing themselves. Okay? So, I don't know what these knuckleheads are doing. He's sleeping, probably. But, they're meditating their criminal behavior, okay?

Gardening programs. How to cut your jail recidivism rates by half -- fifty percent. And, that includes Ryker's Island here, all right? I got a call from someone once. They said they were going to do gardens for their offenders. They asked me what I thought they'd get. I said vegetables is what they'd get.

This is out of Canada. You know, I love this, because it says this is a restorative justice program. It's a dog sled. Exercising wilderness skills was seen as a way of rebuilding the perpetrator's self-esteem. They're worried about making the perpetrator feel better about himself, so they're working on their wilderness skills. So, when they escape from prison some day, they'll be able to make it in the wild for a while.

[Laughter]

MR. LATESSA: And, this is a new low here. Handwriting therapy aims to reform juveniles in Texas. It's based on the same theory as the drum beating,
that we have a neurological -- or offenders have some neurological problems, and the beating of the drum or working on -- she works on the handwriting to kind of fix the brain. All right? That's the theory. It's a horse shit theory, basically. But, that's what they have proposed.

All right. Assessment is the engine that drives effective correctional programming. Probably an area for policy. Some states mandate assessment. Some states dictate how it's going to be done. Some states don't. They'll leave it up to the counties and jurisdictions, all right? I'm a home rule state, in Ohio. Every county makes its own decision.

But, the State decided assessment was so important that they funded a large project. We are assessing 3,000 offenders at every level -- pre-trial, probation, prison, parole -- because we're going to develop for the State a Web-based assessment application that anyone in the state can use to assess offenders.

The goal is to speak with one language. So, if someone says they're supervising a high-risk offender in Cleveland, they know what that means in Delaware County, or in Cincinnati, or in Columbus. So, Ohio's made that kind of decision.
Other states? They pick an instrument, and they train everybody on it. They move everybody in that direction. So, there's different ways to skin this cat, but it is very important to do effective assessment. You need it to meet the risk and need principle. You're not going to meet those principles without doing good assessment.

Program people think they know who's high risk, and they don't, okay? They think they -- you know, when a guy's got a file this thick, you don't need a PhD to know they're high risk.

But, what about the ones that don't have that long criminal history? You don't know. You're not -- I used to study habitual drunk drivers. You probably don't have any of them in New York, right?

[Laughter]

MR. LATESSA: We've got a bunch of them in Ohio. I used to study people that had five or more DUIs. It didn't take a rocket scientist to know that somebody with five DUIs is high risk for drinking and driving. You know how you know it? He's got five DUIs. But, at one point, he only had one DUI. They were high risk the minute they walked in, but you didn't know it. You waited until they got the second, third, fourth, then we turn them into felons, then we
say, "Oh, my God, he's a high-risk drunk driver." He was a high-risk drunk driver when he got here, but there was no assessment done.

We give them a film festival program in Ohio. They watch movies for a couple of days, and that's our intervention. And, most people never do it again, because they look like you. They're pro-social. If you got caught drinking and driving, you would never -- you don't want to lose your job, your position, your insurance. But, what about the people who say things like "I was unlucky that night. The cops had one of them roadblock things. Hell, I drive better drunk. What's the big deal? I only had six or eight beers, a couple of shots, and that other stuff." Right?

In other words, it starts here. And they drink too much. We know that. My point is assessment helps us identify risk. If you don't do good assessment, you're probably not going to -- you're not going to do it.

It also reduces bias, and that's important. A lot of times when we look at the data, extra-legal factors start creeping in. Who gets pre-trial? Who gets probation? Who gets this? Based on gender, race, ethnicity, whether you have -- all these things
that may not be important in risk. And so, you really
want to move -- move toward a way to do it.

We know some things about assessment. We
know the best predictors. We know that that -- that
the best -- that you want to combine static and
dynamic in your instruments. You know that -- we know
that actuarial is the best way to do it. We've known
that for fifty-some years.

And, we want to be able to re-assess people.

Okay? We want to be able to re-assess people. I'm
going to skip through this.

I'm going to show you this, right here,
though. This is out of Indiana. Indiana uses the
LSI-R -- the Level of Service Inventory -- to assess
their offenders. They not only are re-assessing
offenders to see if their risk went down, they're
using their data to look at their correctional
program.

This data -- this is 20,000 assessments.

This is state-wide, when they came in the door,
intake. And, this is at discharge. So, this is their
initial assessment for 19,000 offenders, and this is
how they scored when they left.

But, this is the guy they put into work
release, and residential, day reporting, and home
detention. What's this tell them? It tells them the highest-risk offenders were being put in their day reporting centers. The day reporting centers also had the greatest reduction in risk.

So, Indiana uses this data now. Their day reporting centers are cheaper than their residential programs, and they're getting better bang for their buck with their day reporting centers. They got that from just by looking at reassessment data. And so, by having that standard instrument across the state, they're not only able to look across the state, they can look county-to-county, and look at effects. So, I'm sure -- I wanted you to see the importance of assessment.

This is the COMPAS. This is the instrument that I think Parole was -- is using here, or plans to use in New York.

COMMISSIONER O'DONNELL: Right.

MR. LATESSA: Are you still planning that?

COMMISSIONER O'DONNELL: They are. I think they've --

MR. LATESSA: Are they still working on that?

COMMISSIONER O'DONNELL: -- implemented -- yeah, I think they've implemented it --
COMMISSIONER ALEXANDER: We've done some experimentation with it.

COMMISSIONER O'DONNELL: -- pretty well.

MR. LATESSA: Yeah, you've done some work with it, yeah, yeah. So, this is the instrument. This is a comprehensive risk/need assessment instrument, all right? It's used in a number of jurisdictions. Georgia uses it, for one. I think -- well, I'm blanking out on it, but a bunch of folks -- a number of folks use this instrument.

This is the LSI. This instrument that's used, and some of your counties are using the LSI, some of your probation counties use the LSI. And, I want to -- I want you to just see here. This LSI gives you ten risk factors, ten domains, we call it: criminal history, education, financial, family, accommodations, leisure, companions, alcohol and drug, emotional, personal, and attitudes, and orientation.

This offender happened to be a woman. Okay? You can see she's high in criminal history. She's very high in companions. That means she has no pro-social friends or acquaintances. She has a serious drug and alcohol problem. Serious emotional problem. And personal and attitudes and orientation are anti-social.
Now, take a look at her. Let's say you put her in a substance abuse program. A 28-day program. They, by the way, don't work for anybody. But, let's just say you put her in a 28-day program. How much effect do you think you're going to get?

UNIDENTIFIED: Not very much.

MR. LATESSA: Yeah, look at her risk factors here. As long as she's only hanging around with anti-social people, you're not going to get very far. You can't change this one, by the way. This is a static one. These are the ones you're going to work on, okay? So, assessment becomes an important part of case planning, important part of reassessment, and so forth.

This is a Hare Psychopathy Checklist. If you're -- if you want to screen that very high risk of psychopathic offenders, this is the instrument you would use. You women will recognize these traits from men you've dated over the years.

[Laughter]

MR. LATESSA: If you scored high on this, 30 out of 40, you're looking at a psychopath. Okay? This is probably the -- I would never use the across the board, but if I was dealing with an offender with a violent history, I'd have a psychopathy checklist
done. Okay? Because this is the instrument that
you're going to use for that.

Things to beware of. Make sure your
assessment process covers all the major risk factors.
The COMPAS does. The LSI does. There's other
instruments out there.

But sometimes we put offenders in programs
that do very limited assessment. They assess -- they
assess substance abuse. Or, they only look at static
predictors, prior history. Well, you have a very
limited picture of that offender's risk.

Make sure it distinguishes levels. When
you're done with your assessment, you should know who
is high, medium, and low risk, and that -- those
levels should be correlated with a percentage of risk
of recidivism.

I go to programs all the time that do these
20-page intake forms. They write everything there is
to write about the offender. Then, when you read
them, they all read the same. He needs treatment, and
put him in the program. Okay?

I do one program once, a juvenile program,
and they did that. It was a pretty good program, but
they did that typical assessment, and then every kid
got everything. And, I remember sitting in with the
director, and I said this -- "Let me ask you something." I said, "You do a lot of substance abuse treatment." He said, "Oh, we do groups constantly on substance abuse."

I said, "So, if I'm a kid that never used drugs or alcohol, and you're a kid that uses everything, do we go to the same group?" And, he said, "Yeah." And then, he thought wrong answer, right?

So, he looked at me. He goes, "But, maybe the kid that doesn't use is getting some prevention." Would you put your kid in that group? Would you put your son or daughter in that group with high-risk drug users?

COMMISSIONER ALEXANDER: No.

MR. LATESSA: No. But, we do it all the time in corrections. If that -- and, that kid may have risk factors, but if substance abuse isn't one of them, why are we putting them in with a bunch of high-risk substance abusers? Which way do you think that learning is going to go? We all know that, right? So, the point is assessment can help us make those decisions.

This is the challenge. You do it, and everybody gets the same treatment. So, there has to
be a point to the assessment. If you're just assessing them and shoving it in the file, then don't assess them. Just save your money. But, the assessment needs to be tied to case planning, and treatment planning, and program placement. All right, I'm done with that.

All right, let's talk about treatment. The most effective treatment, behavioral, focus on current factors, action-oriented. These are the most effective behavioral models.

Structured social learning. New skills and behaviors are modeled. Key word, structured. Social learning is the process through which we acquire our attitudes, our values, and our beliefs. It's the strongest theory we have. Yeah?

COMMISSIONER ALEXANDER: I want to go back to what you were saying about the drug treatment --

MR. LATESSA: Yeah.

COMMISSIONER ALEXANDER: -- and how we approach treatment, putting low-risk --

MR. LATESSA: Yeah.

COMMISSIONER ALEXANDER: -- offenders in the same programs with high-risk offenders.

MR. LATESSA: Yeah.

COMMISSIONER ALEXANDER: Does the same
thing apply when we put them in different incarceration facilities?

MR. LATESSA: Probably. Yeah. We make them worse. I mean, even -- even there, some prisons do classification, so they try to, you know, separate really high guys from lower guys. But yeah, there has even been some studies that show even when they report, you shouldn't have low-risk and high-risk guys sitting in the lobby together too long. I mean, that exposure. But, I think in correctional institutions, absolutely.

Some facilities I'm working with now are having, you know, like moderate-risk guys here, and high-risk guys here. You're always going to get some low-risk people that get -- because of what they did, and not because of who they are, because of the crime they committed, put in.

What I always tell folks is, you know, the rule of thumb is don't put them in a lot of programs. They don't need a lot of programs. And, to the extent you can, keep them away from the higher-risk -- the higher-risk guys. It's not always possible to do, but they ought to at least be conscious of it. Okay? In terms of separating them from living, yeah.

In an institutional setting, we actually --
offenders in treatment need to be kept separate from offenders not in treatment. I'm going to show you that data later on.

COMMISSIONER O'DONNELL: I mean, the obvious issue is juvenile facilities, --

MR. LATESSA: Yeah.

COMMISSIONER O'DONNELL: -- because we so often hear that --

MR. LATESSA: Absolutely.

COMMISSIONER O'DONNELL: -- kids that don't have a place to go are runaways or whatever, then are put in detention facilities.

MR. LATESSA: Everybody does it.

COMMISSIONER O'DONNELL: Have there been any studies specifically about juveniles in this area?

MR. LATESSA: Oh, yeah. I didn't show the data, but --

COMMISSIONER O'DONNELL: Um hmm.

MR. LATESSA: -- we just did a big study in Ohio of 14,000 kids, and putting low-risk kids into residential programs, the difference was low-risk kids that stayed at home had a ten percent recidivism rate. If you put them in a residential program, it went up to 34 percent. You tripled their failure rates.

And, there are some specific studies that
say that the highest -- the group that's greatest
influenced are 13 to 16. Older and younger, not quite
as much. But, that age group, they say even -- even
in the best treatment programs, we can't negate the
anti-social reinforcement of the high-risk kids.

If you work with kids, you know they don't
even have to talk to each other. I mean, they're
giving off all kinds of high-risk cues. So, with
kids, I think -- I think the influence is stronger
with the kids. I think with the adults, it's the
disruption of pro-social networks that becomes
stronger. Kids can come back from that quicker, but
they're more influenced by their peers. The peer
pressure is a lot stronger for teenagers.

COMMISSIONER LENTOL: Ten or fifteen years
ago, we heard a great deal -- there was a great deal
of fanfare about "scared straight" programs.

MR. LATESSA: Yeah, yeah.

COMMISSIONER LENTOL: Do those --

MR. LATESSA: They -- almost all studies
showed they increased recidivism.

COMMISSIONER LENTOL: Well, --

MR. LATESSA: Yeah. Because what happens
is you're not really scaring the kids. First of all,
they -- they get a lot of status from that. They go
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back to school and all the kids -- they're the cool kids that went down to the prison or jail. So, they get reinforcement from it. Sometimes, they identify with it.

There's a study, in fact, thinking now -- out of Rutgers, did the study, and looked at all the studies that were out there. And, no study showed reductions in recidivism. It's not a good idea. I would never, never expose kids to those kind of settings. All right.

COMMISSIONER O'DONNELL: Did we fund them, Joe?

COMMISSIONER LENTOL: I don't think so.

[Laughter]

MR. LATESSA: Now, you can save some money, right there.

Social learning, as I said, is probably the strongest theory we have for human behavior. It is a complex process. A complex process. It's not a complex concept. Social learning is a very simple concept to understand.

How many of you have children? How many turned into your parents when you had children? Okay?

[Laughter]

MR. LATESSA: That's social learning. You
woke up one day and you're your mother, or your father. That's the last person you were going to be when you were 15. And, trust me on that. I have a 15-year-old. She said when she's a parent, she's going to let her kids do whatever they want. I said, "Fine. You just be home at ten o'clock."

[Laughter]

MR. LATESSA: But, you say things you swore you'd never say. Were you born in a barn? Do you think money grows on trees? Do I look like I work for the electric company?

[Laughter]

MR. LATESSA: And, my favorite is I'll give you something to cry about.

[Laughter]

MR. LATESSA: I said to my son the other day -- I've done them all, by the way. I said to my son the other day, "Do I look like Rockefeller?" He said, "Who the hell is Rockefeller?"

[Laughter]

MR. LATESSA: I said, "I'm sorry. Do I look like Bill Gates?" All right. That's what my father said, though. All right? That's social learning. I've turned into my dad. Okay?

The key word here is structured social
learning. We're not going to leave -- because, the problem is you don't just learn good things. You learn bad things. So, structured social learning means you're going to have to train your P.O.s, you're going to have to train your staff on how to model, how to reinforce, how to teach new skills.

Even P.O.s, we -- we actually have designed some training where we work with P.O.s, to teach them how to work with an offender one-on-one in that short time you have. Instead of just going over the conditions all the time, actually work on some skill building that offenders can do. Okay?

Cog approach is to target criminogenic risk factors and family approaches. Family approaches are mostly used with juveniles, mostly. There are some examples of using them with adults, and Jersey is doing some very nice work with transition out of prison, right across the river there. Go see.

They have a big facility where they take offenders coming out. They spend, I think, 90 days there. They get assessed. From there, they go into halfway houses. Some of them are doing a lot of family intervention, so that they've got some real nice stuff going on over there.

But, let's talk about cog, because cog is
one of the most popular. These are the principles, that thinking affects behavior, anti-social discordant thinking leads to that kind of behavior. If we can influence thinking -- we can change how we feel and behave by changing what we think.

It's based on scientific theories. It's active learning, not talk therapy. It focuses on the present. It's based on learning. Most crime is learned. It targets major criminogenic risk factors. And, it provides structure to groups. And, that's important because it manualizes treatment.

We're in a field where there's high turnover of staff. People move jobs. They -- so, what happens to programs is that's very disruptive to programs. So -- and, they don't spend a lot of money on training staff. Let's face it. So, what's that mean? You hire a new staff, what program are they delivering? The last placed they worked. They come into groups and say, "Okay, we're going to do this." No. Good programs are structured. This is our program. This is our curriculum. This is what we're trying to teach offenders.

So, if you hire a new staff, they don't bring what they did before. They follow what you want done. So, cog allows you to do some of that.
It can be done anywhere. You can train existing staff. You don't have to use psychologists. It's cheap -- relatively cheap. You can get free curriculums. The Feds have developed some. And, there's a lot of curriculums developed.

This is the latest study, the latest meta-analysis.

COMMISSIONER O'DONNELL: Could I ask you to move over to the side of the room a little more, --

MR. LATESSA: Yes, oh -- oh, so they can see me?

COMMISSIONER O'DONNELL: -- for our -- um hmm.

MR. LATESSA: All right. Is this better?

COMMISSIONER O'DONNELL: Great.

MR. LATESSA: All right. It's not my better side, though.

[Laughter]

MR. LATESSA: I'm a left-hander, so I need -- all right, anyway.

This is the latest meta-analysis, an important study not because it showed the effects, but because it showed how to double the effects. Average effects were 25 percent. But, most effective configurations found 50 percent. Okay?
Things that didn't matter. The design of the study, the setting. But look at here. It was closer to the end of sentence. They didn't do it when the guy first came in. They did it as they were getting ready to come out. And, I think that's a transition issue, as well.

Juvenile versus adult, not significant. Minorities or females, not significant. That's important. You can find different effect sizes. And, the brand name of the curriculum.

What -- what did matter? Sessions per week, at least two per week increased effects. That's a dosage issue.

Implementation was monitored. Somebody made sure the program was being delivered the way it was supposed to. They didn't put 25 people in groups. They ran small groups, to make sure everybody got a chance to practice. Make sure they followed the curriculum, and didn't just read out of the book.

Staff were trained on it. More fidelity.

More completers. They took away the barriers. A guy couldn't get there, they got him a bus token. Make sure they showed up.

Higher risk. There's the risk principle. And higher if it was combined with other services.
There's the need principle. They don't just have one area of risk. They have others.

Cognitive restructuring was included, anger control, and individual attention, all increased effects. No surprises there.

But, you see how they showed how you went from 25 to 50 percent by basically paying attention to the principles of effective intervention -- risk, need, treatment, and fidelity.

Here is some data out of Indiana. We haven't published it yet. But, we compared -- they sent us this data. These were probation and Thinking for a Change, versus just probation. So basically, they took offenders on probation. They gave them a cog curriculum -- Thinking for a Change. Then, they had probationers. We controlled for risk, age, sex, race, time at risk.

What did we find? If they completed -- got T for C and completed it, 18 percent recidivism rate. Even if they didn't complete it, versus probation. That's a 50 percent reduction in recidivism, just based on running cog, all right?

I've got to do this. This study we finished in 2005. It was a companion study to the residential program. Ohio wanted to know how well non-residential
community correction programs were performing.
Thirteen thousand offenders. This included both
misdemeanants and felons. Programs included day
reporting centers, work release, ISP, and electronic
monitoring programs.

None of the studies made a difference -- or
none of the programs made a different. It didn't
matter whether you put them in one type or the other
type in Ohio.

When we looked at the data, it came down to
four things, four factors:

The more high-risk offenders in the program,
the more effective it was.

The level of supervision for high risk, the
more effective it was. If they gave them more
supervision, more effect.

More treatment, at least 50 percent more
time, more effect.

And, more referrals for treatment, at least
three to one.

Four simple things. And, that's the
difference between if you did it and if you didn't do
it. So, if you had higher-risk offenders in your
program, you got an effect. If you didn't, you
actually increased recidivism.
We looked at 60 counties. If you met none of them, none of those factors, they increased recidivism 13 percent. If you met three of them, you reduced recidivism 15 percent. Again, there were 13,000 offenders in this study. So, 15 percent isn't bad.

Nobody met all four. No county in Ohio met all four of those conditions. We have four pilot counties now in Ohio that we're working with, to try to get them to do those four things, because the State wants to move all the counties toward those kind of practices.

And, it's not that they didn't want to do it. I mean, they didn't start out saying let's put lower-risk people in these programs. But, the State actually had funding formulas that made it financially better for them to put lower risk. Because, the State would just count who they put in a program. They didn't care who it was. Okay?

I've been trying to get the State of Ohio for years now to instead of just giving these counties checks, to actually give them money based on who they're diverting, and to give them vouchers for treatment. So, if you divert a high-risk offender, you get a voucher for treatment -- 3,000 bucks. If
you divert a low-risk guy, you get no voucher. If you divert a moderate-risk guy, you get 2,000. Because, I really think they've got to figure out how to tie the money to what they're -- to the treatment. Instead, they give everybody money based on how many names they put into the computer, and they get this -- this, right here.

This is not specifically reentry, but I wanted you to see this study. This is looking at a meta-analysis of prison and jail misconduct. When we're talking about prisons and jails, their primary concern is not recidivism. Okay? To be blunt about it, okay? A correctional officer doesn't care about that. He cares about getting through the day, not having any incidents, handling these offenders. That's the day-to-day for them, not whether this guy recidivates or not. That's -- they don't even think about that.

And so, this meta-analysis was looking at outcomes for -- including violent misconduct, non-violent misconduct, and institutional adjustment. This is what they found. If prison -- the prison -- if inmates were in behavioral programs, that's the effect on misconduct. They had a 26 percent reduction in misconducts. If they were in
non-behavioral -- if they were in education and
vocational, or unspecified. These aren't even
registering. Behavioral got the greatest reductions
in institutional behavior.

The more risk factors, the more criminogenic
needs they targeted -- if they targeted three to
eight, one to two, and none.

High-quality program, moderate-quality
program, low-quality program. What I'm trying to get
you to see is how the principles -- how strong they
are, regardless of the outcome measure, regardless of
the setting.

Adults, juveniles. Here -- your question
here. If they're kept in -- if they're -- if
treatment is kept separate, if it's not kept separate.
In other words, if the inmates in the programs were
kept separate from the general population. It almost
has no effect when you put them in together, because
it gets all undone, all the pressure is to be
anti-social.

Greater than six months, or less than six
months.

And, the good news was misconducts -- high
misconducts reductions reduced recidivism, low
misconduct reductions -- the guys that misbehaved
inside often are more likely to recidivate.

Basically, that's what it found.

Maryland. Maryland is a state -- probation and parole are combined in Maryland. So, they -- state-wide, they supervise both. They have developed something called proactive community supervision. These are the keys to it.

They use LSI-R. Good case plans around criminogenic factors. Referral to appropriate programs. Timely communication with offenders to review progress. Really focusing on desistance from lifestyle. They had four districts, and four match districts.

Three outcome measures: drug tests, new arrests, and technical violations found. This is not significant. These two, I think, were. But, what it's showing is they're starting to get reductions in all their outcome measures. They're starting to see some movement and basically these are the -- these are the PCS counties, these are the non-PCS counties.

Relapse prevention. Relapse prevention is commonly associated with substance abuse, but not always. You can do relapse -- criminal relapse prevention. Some sex offender relapse prevention. This is a meta-analysis.
Programs that include it, and programs that don't. It's at 15 percent. Having relapse prevention as part of a program gets you that kind of an effect. Most studies show that, by the way. Adding aftercare always gets you another effect.

But, here is what they found. If you met one or less of the principles, you had no effect from your relapse. If you met two of them, if you met three of them, 20 percent, and that's negative.

Juveniles, adults, males, females, whites, and minorities, all positive effect sizes across the board.

General offenders, sex, and drug. This is probably the most important slide, in my opinion. If relapse prevention was described in detail, it had twice the effect than if it was only listed as aftercare.

I go to programs all the time, and I'll say, "Do you have aftercare?" And, they'll go, "Yeah." And, I'll say, "Well, what do you do?" "Well, we meet." How often? Once a week, once a month. What do you do when you meet with them? We talk. Guess what? That's where you fall. You get some effect from that, just because you're keeping an eye on them, giving them some support, but you get twice the effect.
if you have a structure to your aftercare. They're working on skills. They're practicing the things that they learn and now they have to apply. So, this is where you want to be.

What doesn't work with offenders? I got this from my friends on Oklahoma. It says "Lakota tribal wisdom says when you discover you're riding a dead horse, the best strategy is to dismount." That means you get off the horse. However, in corrections, we try other strategies. Buy a stronger whip. Change riders. Say things like "This is the way we have always ridden this horse." Appoint a committee to study the horse.

[Laughter]

MR. LATESSA: No offense, right?

[Laughter]

MR. LATESSA: This is my favorite, this one here. Arrange to visit other sites and see how they ride dead horses. Okay? Create training session to increase our riding ability. Harness several dead horses together for increased speed. Declare that "No horse is too dead to beat." Provide additional funding to increase the horse's performance. Declare the horse is "better, faster, and cheaper" dead. Study alternative uses for dead horses. And, promote
the dead horse to a supervisory position.

[Laughter]

MR. LATESSA: Dead horses, some things we've talked about. Drug prevention classes focused on fear and other emotional appeals. Trying to scare them out of their behavior.

Shaming offenders -- not a particularly effective strategy. How many of you would like to be shamed or humiliated? So, what do you think you get when you shame and humiliate an anti-social person? You get a pissed-off anti-social person is what you get.

[Laughter]

MR. LATESSA: Drug education. Non-directive client-centered. Again, ask them what they want to do, what they think they need, like they would know. Okay? The most effective programming is directive. All right? I'm going to teach you. We're going to work on this skill. We're going to practice. We're going to go over it, and I want to make sure you understand it. That's a very directive approach, versus sit in a circle and ask them what they want to focus on.

Includes A.A. A.A. is a self-help program, never designed for offenders, by the way. All right? Never designed for offenders. It's designed for people like you and me that drink too much and start to suffer the effects of alcoholism. Started by two guys in Ohio. One was a stockbroker. One was a doctor. Okay? These weren't offenders. Most studies show if you force people to go to A.A., they actually do worse. And, who do we force? Offenders, okay?

I just did -- one of my students just did a meta-analysis of Drug Court studies. Drug Courts that mandated A.A. were less effective than ones that didn't. It's consistent. We see it in other studies, as well.

Unstructured rehab programs. Programs that say they do counseling, life skills. What's that mean? You give me five counselors, I'll give you five different approaches. Good programs are structured. And, this is where a number of states are moving. We can talk about it, you know, later. But, a number of states are really moving to ensure quality programs by assessing them, by either through contracts or other ways, to make sure that they're not just getting these vague, unstructured programs.

And, punishing smarter kind of programs,
things like "scared straight," and interventions like that. They just don't target risk factors very well, and don't produce effects.

Fidelity. Very difficult. Very difficult to achieve, because -- because of the business that corrections is. Lots of turnover, not a lot of resources, training money is not there. It's hard to maintain fidelity, and it's one of those things that really has to come, I think, at different levels, okay?

Both internal and external. Programs have to develop internal capacity but we also externally have to monitor programs.

Parole, probation. Send people to programs all the time. Don't have a clue what they're doing. Don't have an idea if they're high-quality programs or not. Okay? Some have never been to the program. So, you have to -- we have to start. I think probation and parole, it's one of the areas they really need to move on is they spend all their time worrying about supervising offenders. They never really monitor the programs they're sending them to very well. And, I think that's an area that's kind of the next frontier for them.

Assessing offenders in meeting target
behaviors. If you don't assess them coming in, you
don't know how well they do when they come out.
You've got to re-assess offenders. That's part of a
good quality assurance process.

Tracking recidivism, and having evaluators
work with programs. You have a lot of great
universities in the State of New York. And, there
have to be relationships to evaluate programs, and
that's a good place to go to do it.

Why? Because, as you see, not competent,
marginally competent staff actually make them worse.
Okay?

Meta-analysis, having a model, training
workers, supervising workers, printing manuals,
monitor change, adequate dosage, involved researchers.
All the studies show stronger effect sizes if you have
those things. That's why I talk about them, because
the research indicates you're going to get stronger
effects when you have those things present.

Every major study I've done in the last five
years has shown a strong relationship -- and I mean
.60 correlation. Not just -- just out there. But, I
mean, some of the strongest factors have been based on
program integrity and recidivism. The higher the
quality of the program, the greater the reductions in
recidivism.

This is community supervision programs.
Poor-quality programs, high-quality programs.

Our residential study. Poor-quality programs, high-quality programs. That's a 40 percent swing in recidivism.

Juveniles. Big study we did. High programs -- high quality in white, poor quality in orange. At every risk level of kid -- low-risk kids, moderate-risk kids, high-risk kids, very high-risk kids -- the higher the quality of the program, the lower the recidivism rate.

So, program integrity is a major contributing factor, in our opinion.

What's it all mean? Who you put in the program is important. You've got to pay attention to risk. So, you've got to know what the risk is. If you don't know that, you're unlikely to meet that principle.

Targets important. Criminogenic needs. How you do it. Behavioral approaches. Assessment is the engine. And, integrity makes a difference. You've got to invest in quality, in training, in supervision, and all those things that, you know, we all know are important in almost anything you do.
All right. I promised to leave time for questions. And, I think we've got a little bit of time left. So, I'll be happy to answer. Yes?

COMMISSIONER BERGAMO: Well, first of all, thank you. I'm now a believer.

MR. LATESSA: All right. I'm a believer.

COMMISSIONER BERGAMO: You can believe me. So, since it's so clear, why don't they do it? What's the lethargy in the governments?

MR. LATESSA: I think there are -- let me say this. There are pockets, there are states, there are jurisdictions that are much further ahead of the curve than others, okay? So, it's not true -- we're not doing it across the board.

I think there's a lot of reasons we don't -- we don't do it. Some are political, you know. You know, it's -- it's, you know, we fund programs because of politics, and tradition, and who's always gotten our money. Some of it's because, in some cases, we're dealing with areas that are based a lot more on tradition.

In the offender treatment business, you get a lot of programs run by people who say, "It works for me. So, if it will work for me, it will work for everyone. And, I'm not sure how it works for me, but
if you -- you know, I'm going to work with you, and
we're going to get you to change." And that's -- you
know, that's not what the research says.

The research says the best programs are run
by professionals. They're well trained to deliver
models, you know, and it's -- it's a tough business --
it's tough to change some of those businesses.

In my opinion, the weakest link -- one of
the weakest links is substance abuse counselors. The
12-step community, it doesn't want to move to
evidence-based. It's a tough one, and we use those
programs a lot for offenders.

So, there's a lot of reasons we don't get
there. But, there are states pretty far ahead.
Washington State, everything evidence-based. And,
they study everything they do.

Iowa, another state. Maine. Illinois
moving in that. NIC has given both those states a lot
of money to bring everybody like you into the table,
to talk about how to move things. So, there are
examples of places. But, it took a long time to get
where we are. We're not going to fix it, you know,
overnight.

And, the politics is a big one. You know,
people don't care if he's low risk. If he did this,
I want him locked up. Oh, I understand that. Okay.

COMMISSIONER BERGAMO: Thank you.

COMMISSIONER O'DONNELL: Professor, can you stay here for the question-and-answer?

MR. LATESSA: Oh, you want me to stay back over here?

COMMISSIONER O'DONNELL: Yeah, they haven't seen --

MR. LATESSA: Oh, there's a magnet over here.

COMMISSIONER O'DONNELL: They haven't seen that. No, really in the middle, if you can.

MR. LATESSA: All right.

COMMISSIONER O'DONNELL: Now that you don't have a screen, then they can see you better. Okay.

MR. LATESSA: Yeah.

UNIDENTIFIED: Is there any -- are there any studies which indicate whether any of this data changes whether the sentence is a determinate or an indeterminate sentence?

MR. LATESSA: I know of no data that showed that, no. I work in both kind of states. I worked in mixed-sentencing states. I work in determinate. I work in indeterminate. I don't know if that -- you know, I'd have to think more about it.
I've always -- you know, Ohio was an indeterminate state. Now, we're kind of a determinate state. So, we just changed how -- you know, we don't have discretionary parole, but we give them supervision when they come out. So, it -- and it doesn't really, you know, matter that much, as long as they're able to get them in program.

It did have some effect for a while in getting guys to go to program, because it didn't give them anything for programs. And so, a lot of the programs in our institutions were under -- under-utilized because, hey, I don't get anything for it. Why should I go? But, I think they've gotten past that now, somehow. But so, there are those issues.

But, I know of no data that says one is more effective than the other.

COMMISSIONER LENTOL: A follow-up on what Tony was asking. Is it fair to say that -- that we have, as other states do, the entrenched alternative to incarceration programs that don't work, that we continue to fund, because of their traditional value, or what we thought their traditional value is? Is that what you're talking about?

MR. LATESSA: Oh, yeah. I think everybody
does. Well, let's take probation or parole.

Intensive supervision is often the -- the kind of the backbone of some of those departments. It's not that that's all they do, but that's what they hold out.

We've got intensive supervision. We watch these guys a lot. We give them a lot of -- a lot of surveillance.

What's the research say? Much higher failure rates when you do that. Okay? It also says, though, that if you can -- if you can move that intensive program to doing as much treatment as they do surveillance, you'll get a positive effect. Okay?

So, if you use it as a tool, rather than as your program, you can get something. So, a lot of -- I think some departments have said, "Okay, now how do we do that?" Now, from then on, let's get into programs and the kind of things Ohio showed.

But, a lot of stuff we do is done for efficiency. It has nothing to do with reducing recidivism. It's, you know, it's handling our cases efficiently, not -- not necessarily having any effect on their behavior. So, a lot of the alternative stuff is, you know, done that way.

But the alternative stuff, the good news is it often keeps guys out of prison. But, it -- I'll
give you an example. In Ohio, with our intensive programs, the State subsidizes the counties. It gives them money to divert people from prison. And then, the counties take them, and they do intensive programs that increase their recidivism rate. So, I tell the State, "You're paying for them twice. You're paying to divert them. Then, you're paying to incarcerate them." Okay?

That's why I tried to get them to move away from this model where they're just funding the counties to put people in these programs. Fund the counties to put the right people in the programs. Don't give them money for low-risk people. What are you wasting your money for? You're making them worse. So, sometimes that's happened -- that happens.

COMMISSIONER ALEXANDER: You talked about risk assessment instruments.

MR. LATESSA: Yeah.

COMMISSIONER ALEXANDER: Do you have a preference?

MR. LATESSA: Do I have a preference? I wouldn't have picked the COMPAS. That's for damn sure. But --

[Laughter]
MR. LATESSA: The LSI is the most studied instrument out there. It's not perfect. They have a new version.

There is an instrument, a new instrument, called the Risk Assessment System, that -- I like what they've done with it. But, if -- my preference would -- I would have told you to go with the LSI-R, just because of the data. There is just too much -- there are studies on males, women, minorities, I mean, you just have so much more data. There's no data published on COMPAS. And, you see the implementation problems you've had.

I mean, I would have -- I wouldn't have gone -- it has all the bells and whistles, but in my opinion, it's just a lot of smoke and mirrors.

If I put this -- if I go back to it here, if I will, all right? Let me go back. And, they always get mad when I point this stuff out.

Let me go back to this instrument, here. This instrument gives you what they call an overall risk potential. They purport to give you violence, recidivism, failure to appear, and community non-compliance. Low risk, medium risk, high risk. But, you see these numbers underneath? Well, this is not probabilities of recidivism. These are
percentiles, okay?

What they do with this instrument is -- the first thing they do is they come in and they assess about three or four hundred of your offenders. They put all the data in the system. This score -- this doesn't mean that this guy has a 75 percent of being non-compliant. It means that his answers put him in the 75th percentile. In other words, of all the people that answered the questions, that's where he fell. Okay? So, it's a little bit of a misnomer.

With the LSI-R, they give you a probability of recidivism. Eight percent. That means the chances of this person failing is eight percent, based on thousands of people that look just like him.

So -- so, there's a little bit of smoke and mirrors going on with the COMPAS. I think what you're going to have to do with the COMPAS is, once you get it working, you're going to have to do those outcome studies and come up with those probabilities for your system. Because, this is not probability of recidivism. It just means if we all answered the questions, and you gave all the wrong answers, you'd be in the hundredth percentile. We'd all be at zero, okay?

So, it -- it is -- it's a little bit of --
of voodoo magic there with it. Okay?

COMMISSIONER NEWTON: I'd like -- it's very interesting that everything that we try, as you've said, are ineffective approaches. I find that fascinating, --

MR. LATESSA: Well, I --

COMMISSIONER NEWTON: -- and a little bit disappointing. So, I have two questions for you. One, while they may be ineffective approaches from a programmatic --

MR. LATESSA: Yeah.

COMMISSIONER NEWTON: -- perspective, is there any use for these models that we've -- approaches that we've used over time? That's number one.

And, number two, how long have you been studying this evidence-based approach? Is it something that's twenty years old, or --

MR. LATESSA: Good question.

COMMISSIONER NEWTON: -- or fifty years old? I mean, and -- and, I guess, how reliable do you think it is?

MR. LATESSA: Yeah.

COMMISSIONER NEWTON: Because, at some point, we thought these other things were reliable, as
MR. LATESSA: Yeah. First, the question -- the answer to the things you've been doing. There are reasons that we do almost everything.

Let's take a -- let's take one that's fairly benign. Restorative justice. Pacem, right? Victim mediation, and restitution, and those kind of things. What's the research say? It says that you get a small effect size from it -- six, seven percent reductions, all right? You don't get much effect with higher-risk offenders, because they're really not designed for higher-risk offenders, right? Do you really think a guy that's high risk is going to change because he's involved in some mediation program? He's thinking, "I'm getting out of this. This is great. I get to apologize and go out and do what the hell I want to do."

So -- but, there's a reason to do it. Restorative justice programs are pretty good -- I would advocate them for lower-risk offenders, right? Because lower-risk offenders are probably going to respond to that kind of. So, there's a place for it.

A guy stopped me the other day. He's got -- you know, he's got a telephone reporting system. Offenders actually report on the phone, you know?
And, he wanted to tell me how great it was. Well, okay, how much recidivism am I going to reduce because some guy is reporting in on the phone? Probably nothing.

But, for low-risk offenders, that may not be a bad way to handle some real low-end cases, right? It's cheap and easy. I don't have to tie up my P.O.s with that. So, there's reasons to do some of those things.

The what works research really came out of the Martinson study in the '70s. Martinson said nothing worked. And, a number of researchers said "We don't think Martinson is right." Then, they started looking closer at the data and saying, "You know what? Some things do work, but they only work when you meet these certain kind of conditions."

And from that, I'd say the last 20 years, maybe 25, the evidence has been accumulating. Many, many, many studies. And, that's why I don't rely on one study. I'm trying to show you lots of studies. Meta-analysis are hundreds of studies. The risk factor data, that's hundreds of studies that have been done. So, this evidence isn't going to change.

This evidence -- people that do this kind of work will tell you that it would be like -- take a
great big -- like Barry Bonds, all right? He'd have
to strike out ten thousand times for his average to go
down 50 points. What's the chances of that happening?
I mean, you know, we know once you're a hitter at that
level, you're going to be a hitter at that level.
You're going to regress toward the mean.

The same thing with this data. Everything
would have to collapse for years for this data to
reverse itself. So, we're very confident that what
we're seeing is accurate.

COMMISSIONER NEWTON: And lastly, do you
have a specific curricula, or several that you could
show us? Because, it would be interesting to see what
it looks like, when you are changing this behavior of
a --

MR. LATESSA: I don't have a -- there's a
number of curriculums out there from -- remember what
the research said, though. The brand name doesn't
matter that much.

COMMISSIONER NEWTON: Um hmm, um hmm.

MR. LATESSA: But -- can I get a marker?
No, no, to write on this here? Have we got a marker
somewhere? All right. I've got -- you know what?
I've got one. I've robbed one. Let me just get them
up there.
MR. LATESSA: It's a good thing I come prepared. All right.

There are a number of curriculums. Let me give you an example of what we're -- what we're talking about. It might help with the cog, all right? Because cog interventions are really where you're trying to head. Well, what -- well, not New York City, because you can only go six miles an hour. But, when you go out here, and you leave New York, and you to up the thoroughfare, what's the speed limit? 65?

So, let's say you're heading back to Albany. The speed limit is 65. You're doing 75. What are some of the thoughts that get you to go ten miles over the limit?

COMMISSIONER NEWTON: It's acceptable.

MR. LATESSA: Everybody does it. Right?

COMMISSIONER O'DONNELL: You're not going to get caught.

MR. LATESSA: Not getting caught. Why are you going to get caught? You're in the ten-mile limit, right? Everybody thinks they're in the ten-mile limit.

Why else do you drive ten miles over? What other thoughts do you have that let you do that?

COMMISSIONER BERGAMO: The punishment is
not so bad if you do get caught.

MR. LATESSA: Huh?

COMMISSIONER BERGAMO: The punishment is not so bad if you do get caught.

MR. LATESSA: Ah, what's the big deal? Right? It's not like I'm doing a hundred. And, what else?

COMMISSIONER ALEXANDER: I can usually badge my way out of it.

MR. LATESSA: I can work -- I can talk my way out of it? Yeah.

COMMISSIONER O'DONNELL: Yeah, if you're a chairman of the --

[Laughter]

MR. LATESSA: We're all thinking everybody's doing it, what's the big deal? I'm safe. I'm a good driver. The weather conditions are good. Hell, if I slow down, they'll run over me, right? We got all these sort of thinking, though, that's driving that behavior. Clearly our thinking. All right.

So, there you go. You're doing 75, and you go by. Right in the median is the New York State Highway Patrol. What's your first thought, as you go by him at 75?

COMMISSIONER O'DONNELL: Put on the brakes.
MR. LATESSA: No, that's a behavior. What's your first thought? Oh, shit. That's your first thought.

[Laughter]

MR. LATESSA: Right? By the way, nobody is thinking "I'm in the ten-mile limit." All right? You're not so sure about the limit any more, are you?

[Laughter]

MR. LATESSA: All right? Uh-oh. You're thinking uh-oh. What are you hoping, now?

UNIDENTIFIED: Mercy.

MR. LATESSA: No, what are you -- he didn't do anything yet. So, what are you hoping?

COMMISSIONER O'DONNELL: You weren't speeding.

MR. LATESSA: You're hoping he didn't see you, yeah. Hoping he didn't see me. Okay. We're thinking of what? Excuses. How do I get out of this? Have I got my badge? Right. We're thinking of that, right? We're thinking we hope he what? Gets the other guy, right? Didn't he see the other guy?

COMMISSIONER NEWTON: I'm not the only one.

MR. LATESSA: That's right. I'm not the only one. All right. He pulls out. He pulls behind you. He don't care about no stinking badge. In fact,
he don't even like Parole, all right?

[Laughter]

MR. LATESSA: He gives you a ticket.

COMMISSIONER ALEXANDER: That's been the case, lately.

MR. LATESSA: He gives you a ticket.

COMMISSIONER O'DONNELL: Two tickets.

MR. LATESSA: Now, be honest. What's our first thought when he gives us a ticket? Sure, yeah, he's a jerk. You know what? How come you're not getting real criminals? All right? What's he doing picking on me? Didn't he see the other guy? Right? We're all -- we're thinking this.

What else are we thinking? What's it going to cost me?

COMMISSIONER ALEXANDER: Um hmm. How can I get out of it?

MR. LATESSA: I'm going to fight this. I'm going to get out of it. Who's the judge in this county, right? I'm going to fight it.

We're the what? What are we? Victim. We're the victim. We're unlucky. It's our unlucky day. We got cut out of the herd.

By the way, you think offenders think like that?
COMMISSIONER NEWTON: Yeah.

COMMISSIONER O'DONNELL: Yeah.

MR. LATESSA: They think just like that. What's the big deal? Everybody does it. So, I'm selling a little weed, or a little drugs, right? See, the cops, they're thinking, oh, how can I get out of this? How can I get out? Maybe they won't catch me, and when they do get caught, right? Damn, it's the cops that are out to get me.

So, this kind of thinking. All right. Now, you've got your ticket. Got your ticket. Thirty miles up the freeway, you look down at your speedometer. You're doing 75 again. What are some of the thoughts that allow you to start speeding again?

MS. HALL: It can't happen twice.

MR. LATESSA: Can't happen twice.

[Laughter]

MR. LATESSA: That's one thought. What's another thought?

COMMISSIONER NEWTON: It doesn't matter.

I've already --

MR. LATESSA: It doesn't matter. We call that fatalistic thinking. What the hell are they going to do to me now? I'm already going back to jail. I might as well go out with a bang, right?
Fatalistic thinking, right? That's another thing.

You might have -- you might think I'll be more careful this time. I'll get behind some trucks. I won't daydream, right? So, I'll be more careful.

Another think you're thinking is "I'm really late now. Now, I've got time to make up." Right? By the way, if it's not 30 miles down the road, it's the next day. So, how long did that deterrence punishment? You didn't even get punished yet, and you're going back to the behavior. You didn't even get your fine.

All right. Simple question. How would your thinking have to change for you to go the speed limit? And, by the way, this is the -- this is what we call, Judge, a cognitive restructuring problem. I don't have to teach any skills here. Some problems, I have to teach a skill. All right? This isn't one of them. Anybody can slow down. It doesn't take a skill to back off the pedal. But, I've got to change your thinking.

So, what's a thought that could get you to slow down? What's a thought?

COMMISSIONER LENTOL: I might hurt somebody.

COMMISSIONER NEWTON: Might hurt somebody.
MR. LATESSA: It's safer, right? Safer to go the speed limit. Right? That's one thought.

What's another thought?

COMMISSIONER LENTOL: Obey the law.

MR. LATESSA: It's the law.

COMMISSIONER LENTOL: Yeah.

MR. LATESSA: How about that one? There's a killer for you, right?

COMMISSIONER NEWTON: It is a curious idea.

MR. LATESSA: It's the law. How about it's cheaper? Less gas, less stress? I don't have to worry about it? How about I don't want my kids to drive this way? They see me driving this way, they'll do it.

So, in other words, if I can change one or two of your thoughts, I might get you to slow down. Okay? But, you see how your thinking has led to your behavior? And, that's an easy one, because we all speed, and we all minimize, we all justify it. We all say "Well, I'm only doing 75. I'm not doing 90. Look at that guy. He did 90." Right? That's minimization. Okay? And, we all make excuses.

So, a good cognitive program would start with the thinking. It would start walking through the thinking, getting you to think about what's behind
your behavior. And, they do things like thinking reports.

Then, a good curriculum would move into skills. So, let's say I was trying to teach you -- combine this. Let's say the problem was you go out with your friends when they come up to you, and you're always getting in trouble with them. You know that. I've gotten you to understand now that you shouldn't go out with them. Now, we're going to work on the skill. All right?

So, what we would do in that group is I would give you role play. I might say, "Okay. Your buddies come over. They want to go to this party. You know you've got to get up for work in the morning. You know the Parole Officer is checking up on you. How do you get out of that?" I'd just tell them no. Well, that's not easy. All right. Let's play it out. Let's practice it, right?

And then, we're going to make it harder. Now, they go, "Hey, there'll be some women there, too." So, it's going to get harder, right? We're going to practice role play. I'm going to -- we're going to do it three different ways. And what I'm trying to do in this -- in the program, the program, that is, is teach you that skill. Then, I'll give you
a homework assignment. And, when the group come back next week, maybe you'll have to be the first to talk about how you used the skill, right? And then, we move on to the next skill.

So, there's a lot of curriculums. Thinking for a Change is -- is one that's widely used, because it's free. It has a problem-solving component. It has a cognitive restructuring component. It has a social skills component. It's a 26-unit curriculum. But, there are a lot of curriculums out there. They're all pretty similar.

The difference is some of them are generic, and some of them target specific areas. So, some of them work on anger. Or, work on substance abuse. Some of them are more generic to the thinking.

And, for example, if I can give you some problem-solving skills -- most of us have problem-solving skills. And, we use the skills in a variety of settings. It's the skill we have.

But, with an offender, you sometimes have to teach him the skill, but then you have to teach them how to apply it in different settings. So, if you're in a bar or restaurant and you spill -- somebody spills a beer on you, or a drink on you, or you spill a drink on someone, what do you do? You hit him on
the head with a beer bottle, right?

[Laughter]

MR. LATESSA: Well, of course you don't. You apologize. You buy him another drink. You make a joke. You talk, you know? You have a lot of ways to handle that. Offenders, somebody's getting an ass whooping.

And, even if they don't -- even if they don't, they get in your face because they're going to have a story to tell, they're going to get reinforcement. Even if they go to jail, they've got a story to tell. They showed you, right?

So, what we have to do is teach them how you would handle it, the three other ways you would handle it. Right? So, this is what a cog program -- but good cog programs, I tell folks you really focus on the skill. They've really got to have the skills. If all you do is the thinking, you're not -- you don't know how to do it.

I always say it's like -- it's like employment. You take somebody who's never worked a day in their life, thinks work is for somebody else, and they have no job skills. And, you spend all your time teaching them which end of the shovel to use. How far are they going to get? Not very far, because
they don't understand why you would want to work. So, if I spend all my time working on the thinking, right? Now, they're ready to work, but they still don't know which end of the shovel to use. I'm more effective when I put both of them together. I work on your thinking and I give you the skill you need to be able to go out and do the job.

So, that's what good curriculums do. But, there's a lot of good curriculums out there. It's more important how well they're done than which one you use.

COMMISSIONER NEWTON: And, the cost of all of this?

MR. LATESSA: Well, it varies. Some of them cost a lot of money. Some of them are free. And, you go --

COMMISSIONER NEWTON: I mean cost of the system of doing this --

MR. LATESSA: Well, you've got training costs. You've got -- I always tell people -- the first thing I tell people is quit doing the things that don't work. That's number one, all right?

But, cog groups can be relatively cheap to introduce. You just have to train the staff, and you have to have a place to do it. And, the materials.
So, they can be relatively cheap to do. Or, you can spend a lot of money, but I'm not a spend a lot of money kind of guy. That's my wife's job, all right? I'm a not spend a lot of money kind of guy.

So, I prefer to go with the public domain. For example, if I were New York, or any state, I would -- I would go with something like Thinking for a Change, that the National Institute of Corrections developed. I would ask them for technical assistance, to get trainers trained. I'd have a core of trainers in the state that could go to any jurisdiction and train. Because, that's a way not only to cut costs, but to build capacity -- to build capacity.

Just like assessment. If you pick -- when they're done with COMPAS, they're going to have trainers and people that can use that instrument. They're going to train their other people. They don't want to be calling them in all the time and spending all that money to get folks. So, you have to start thinking strategically about training. I don't know if that has to do with the sentencing, though.

COMMISSIONER GREEN: When you've seen these programs work most effectively, is it Parole or Probation Officers that are actually doing the programs? Or are they referring people to other
MR. LATESSA: Both.

COMMISSIONER GREEN: And, I think the second part of it is are there any studies relating to case load, and what are manageable case loads, in terms of making these things work?

MR. LATESSA: Yeah, for the first question is I -- I've seen both. I've seen programs where P.O.s actually do some of the groups and work. But, let me say this. I don't think probation or parole is ever going to deliver all the services that are needed for an offender. Okay?

Some -- some departments, they're doing cog groups and they're doing -- but they still have to refer people out for substance abuse, and mental health, and other programs. So, you're never going to get there just from your Parole or Probation Officers. You know, they don't have enough -- you don't have enough time or resources to do that.

Case load size research has been going on for about forty years. There is no clear evidence that there is a magic number with case load. There is some evidence that technical violations go up when you lower case loads, because they're seeing them more. It's like having teenage kids. You know, the more you
watch them, the more you catch them.

I always tell my wife -- I have four kids.

So, we have a case load of two.

[Laughter]

MR. LATESSA: And, they still do things we can't -- we don't find out about. All right?

So, what are the chances that you're ever going to lower your case load enough that you're going to be able to be effective?

That said, there seems to be a number at which you lose any effect. So, when they get too large, now you can't do the things that you need to do. You can't do good assessment. You can't do good case planning. And so, there's no magic number for the low end, but there's probably a limit to how many they can supervise, depending on their risk level, all right, and other things the P.O.s have to do.

So, for example, in probation, if I've also got to write PSIs, that case load -- that's a duty I have to do. If parole -- if all I'm doing is supervising, and they're all high risk, that's a lower -- I need a lower caseload than if I've got low-risk guys in there and so forth.

So, there's no -- there's no magic number, no. Just lowering your caseloads isn't going to make
you more effective.

COMMISSIONER GREEN: Are there studies out there that --

UNIDENTIFIED: Tons of studies --

COMMISSIONER GREEN: -- would give you ranges for different --

MR. LATESSA: At the high end, again, it's based more on a work load model -- how many high-risk guys you have, how many -- I think the guy that did some of that was Todd Clear, when he was at John Jay, years ago, that looked at, you know, how many could you actually handle. There is a formula they use. I don't remember it off hand.

But, in terms of reducing it, if the P.O. says to you "If I only had twenty, I'd be more effective than if I had thirty," there's no evidence of that.

COMMISSIONER GREEN: My concern is when they get to 110 --

MR. LATESSA: Yeah, when they get to 100, that's what I mean. They get too high, they can't do anything, all right? But again, if they're all low-risk guys, I can supervise a lot more than if they're high-risk guys. The low-risk guys, I can -- they can call in most of the time, you know. They're
not as -- I'm only going to -- I don't have to worry
about them as much as I do the high risk, or sex
offenders, I mean.

So, it becomes an issue of who you're
supervising.

COMMISSIONER ALEXANDER: We look at it from
the standpoint of not only the risk but the length of
time that they've been on parole.

MR. LATESSA: Yeah, because you can reduce
it if they've done well.

COMMISSIONER ALEXANDER: Right.

MR. LATESSA: And that's, I think, where
parole probably -- we know -- there are some studies
that say that once they've gone out a couple of years
and been successful, the chances of them failing go
way, way down. Way, way down. If the guy's been
successful for three years on parole, the chances of
him re-offending are very low. Very low. So, you can
save some money by shortening-up parole times. That's
where you can get some effect. Keeping guys on parole
for twenty years, it makes no sense, if the guy's
doing well. I mean, it's a good indicator he's going
to continue to do well.

UNIDENTIFIED: This is somewhat related,
actually, to the earlier question. Have there been
any studies as far as timing of these programs?

So, for example, if these programs are more effective with earlier interventions, such as within the correctional facilities themselves, or perhaps a couple of weeks after the offender is released, or for example, six months down the road, after the offender is released?

MR. LATESSA: I have not seen anything that looks -- you know, a study that looked at timing, specifically. But, I think what the research is telling us is that -- first of all, you should know, we get -- if you just do institutional treatment, your effects are about half of what you're going to get if they continue in the community.

The problem with institutional treatment, even under the best circumstances, all right? IN other words, I've got the guys all separated. I've got them in a unit, say a TC, or whatever, teaching them what they need to know. The problem is they can't really apply it until they get out. So, there's a limit of where you can take that treatment. All right?

We can work on the skill. We can go over the skill. But, let's face it, somebody is telling you when to get up, when to go to work, when to go to
bed. You don't get to apply what you've learned in a real setting until you hit the streets.

So, I think most researchers would say you start the treatment before they get out, but it's got to continue. It's got to continue. If you want that effect, you've got to have that going on.

COMMISSIONER ALEXANDER: And even then, once they are released, it may not even be applicable, because it's for that particular setting in which they're providing that. It has nothing to do with outside.

MR. LATESSA: A whole different set of risk factors start to kick in when they're out, right?

In the Ohio study, which was guys coming out of prison, one of the things we -- and we didn't code it in the data and we're doing it this time. But the data -- the people that were doing the record checks came to me later and said, you know, for a lot of those guys, their first new contact with the police was a domestic violence call. And, I got thinking about that.

And, I thought that makes a lot of sense. They come out, right? They've been in the joint three, four years. They come out. Now, they're the king of the castle again. Kids aren't kids any more.
The little wife now making all the decisions. And, there's going to be friction.

And so, I think one of the big areas to target in transition is family reunification. I think three or four months before those guys come out, they ought to be working on problem-solving skills with family, communication skills with family. Let's face it. They all think everything is going to be honky-dory when they get out, right? You talk to these guys and it's, like, "Oh, I love my family. I miss them." And then they get out, and the same problems that -- more problems are there.

So, if I were designing a transition program for inmates, I'd work on the cog, I'd work on the employment, I'd work on the family reunification. You know what I wouldn't work on a lot inside? I wouldn't work a lot on substance abuse, to be honest with you. They don't have access to all the drugs and alcohol. What are they going to do? All they're going to do is talk about it, okay? That wouldn't be a big focus of mine. It would be when they come out.

But, I'd be working on their coping skills, their problem-solving skills, how to reduce stress, how to work on triggers. I wouldn't be talking about substances. I'd just -- I'd be working on those skill
sets they need, so that when they come out, they can resist drugs and they can resist depression.

But, we put them in these groups, and they sing "Kumbayah" every day, and talk about drugs, you know? A waste of time.

UNIDENTIFIED: For -- have you had sex offenders, and their rate of recidivism, --

MR. LATESSA: Yeah.

UNIDENTIFIED: -- and what programs would be effective in --

MR. LATESSA: Yeah. I -- yeah, I've done some research, not a lot. We actually had quite a few sex offenders in our Ohio study. By the way, the risk principle held up. Putting low-risk sex offenders with high-risk sex offenders, not a good idea.

Sex offender research indicates there you have a more limited option of treatment. You've got cognitive behavioral treatment. That's it. You don't have behavioral treatment. You don't have family treatment. You have cognitive behavioral treatment. All right?

So, that's what the research says. You have to give them a very structured, high dosages, longer periods of treatment than other offenders. Most offenders, effective treatment can occur between three
and twelve months. Sex offenders, probably double
that, maybe triple that.

Most research basically says you want good
supervision and good treatment. If you combine those
two things, you'll get an effect with sex offenders.
Recidivism rates tend to be lower than other types of
offenders because they're not caught often. That's
one of the reasons. But, they become -- they can be
very compliant if you have a good supervision program
and treatment.

But, I would not be putting them in a
behavioral program. I certainly don't put them in any
of these psychoeducational programs. We see no effect
from that. Even the strictly behavioral program.

For example, if you were working with a
group of mentally-challenged offenders, you wouldn't
use a cognitive behavioral. You would use a
behavioral approach, right? Because they don't get
it. They don't get the cog. So there, it would be
root learning. I'm going to teach you this. We're
going to practice. I'm going to teach -- you know,
we're not getting into the thinking, as much as that
they learn the skill.

But, with sex offenders, it's cog
behavioral. You want to do them both together. And,
those effect sizes are 20 percent. I mean, they're -- they're not bad.

You know, I'm always amazed at the folks that don't want to do treatment for sex offenders. And so, I say, "Do you want untreated sex offenders? Is that really what you want?" I mean, I definitely would be running programs for sex offenders.

I'd look at the Canadians. They're probably doing the best sex offender treatment. Very intensive sex offender treatment.

UNIDENTIFIED: Thank you.

UNIDENTIFIED: Do any of the studies look at the effectiveness of either separate programs targeting the different needs, versus like a therapeutic community that addresses multiple needs at one program?

MR. LATESSA: Yeah. Well, most -- again, I think most research says it's multiple. Multiple modality program. Programs that are too narrow get smaller effects.

But, TCs are a unique animal. That -- they're popular, because the Feds were funding them. But, I think you can have a lot of things go wrong with TCs. I'm not a big, big TC fan.

If I were going to do that kind of a model,
I'd replicate what the Federal Bureau of Prisons is doing, which is not a TC. It's a residential substance abuse treatment program. They use some elements of the TC. They do the community and the reinforcement, but they do not have inmates writing up each other. They do not -- you know, they don't do -- the shaming is never done. They use curriculums, all right?

So, if I were going to run that kind of model, and I'm sure you are. Everybody has them, because the Feds gave all that RSAT money out. I would definitely use what the Federal -- I'd use the Federal Bureau of Prisons model, not the traditional TC model.

And, they have a curriculum they developed, called the Substance Abuse -- I think it's Substance Abuse Treatment in the Fed, and I don't know if -- it was developed with Federal money. I don't know if it's free or not. But, that's the curriculum I would recommend for a residential or institutional substance abuse program.

COMMISSIONER O'DONNELL: Are there any states that are using risk/needs assessment, where the judges are using risk/needs assessments --

MR. LATESSA: Oh, yeah, absolutely.
COMMISSIONER O’DONNELL: -- in making sentencing determinations?

MR. LATESSA: Oh, yeah. Usually, the first -- the first place it's implemented is at the PSI level. Many, many jurisdictions do that. Illinois, who just moved in that direction.

Indiana, there's a great judge in Indiana, Chris Monroe, who I've actually taken with me to speak to judges, because judges, you know, like to hear other judges. And, he talks a lot about how they use it, how they overcame some of the plea bargaining issues, and some -- some of the things that you have to deal with at that level. And, he's very effective at talking about that.

But, I would say that's probably a very common use.

COMMISSIONER O’DONNELL: And, are they making -- are they having success at not sentencing these low-risk offenders to supervision, --

MR. LATESSA: That, I don't know.

COMMISSIONER O’DONNELL: -- or to jails, or --

MR. LATESSA: That -- I assume that, you know, they would talk to you about that. I would assume that some of them, you know, have developed
some prescriptive options for lower-risk people.

But again, with low risk, you have to distinguish -- for example, in Ohio data we looked at, we know that about 20 percent of the low-risk offenders are not there because of their risk. They're there because of the felony they committed.

COMMISSIONER O'DONNELL: Right.

MR. LATESSA: So, it has nothing to do with their risk. I commit a felony -- an A -- I don't know what your class is. We have "ones," and ones are the high. I don't care if you're low risk or not. You're probably going to prison. But, I don't need to do a lot of things with you in there. Okay?

But, about 80 percent probably didn't need to be put into that -- you know, given that sentence, because they were a lower-class felony, they were low-risk offenders. We certainly can supervise them in the community.

COMMISSIONER O'DONNELL: And my second question is have you done any other work about technical parole violations and, you know, --

MR. LATESSA: Yeah.

COMMISSIONER O'DONNELL: -- how -- how, basically, you can use this --

MR. LATESSA: Yeah, a big issue --
COMMISSIONER O'DONNELL: -- model?

MR. LATESSA: Yeah, a big issue. A couple of states -- Indiana has developed revocation centers.

I didn't show you the data because of time. But in Ohio, in our study, we looked at parole violators separately. And, we found that putting them in halfway house reduced their recidivism rate at every risk level.

So, Ohio's policy now is if they're low risk -- I'm sorry. If they're a violator, and there's a bed available, put them in a residential program before you send them back to prison, because that was effective.

COMMISSIONER O'DONNELL: Um hmm.

MR. LATESSA: Because, putting them back in prison incurred a big cost of intake. We don't keep them that long, anyway.

COMMISSIONER O'DONNELL: Right.

MR. LATESSA: It didn't fix them the first time, so why do we think it's going to fix them --

COMMISSIONER O'DONNELL: Revolving door.

MR. LATESSA: -- this time? So, Ohio's strategy is to use the existing halfway houses.

Indiana created a parole revocation center in Indianapolis, that's run by a provider who does
cognitive behavioral interventions for parole violators. So, they've gone a little bit different direction. We used the existing programs. They created and funded a program specifically for that.

But, it's a big -- it's a big, big issue across every state, because of the number of people coming back on violations.

COMMISSIONER ALEXANDER: A lot of the thing has to do with the orientation of the parole department, in terms of whether they're leaning more towards law enforcement, --

MR. LATESSA: Yeah.

COMMISSIONER ALEXANDER: -- or more towards treatment.

MR. LATESSA: Yeah, yeah. Well, the option is -- the other thing some states have -- some -- Iowa, for example, which has judicial districts, rather than parole, parolees are dealt with in the district. What they did was develop a matrix system based on risk and need, and guidelines for officers.

So, if the guy is -- if the guy has a technical violation, and he's scored as a lower-risk, lower-need offender, they get a list of options that opens up on the matrix that doesn't include locking them back up again. You only have these options. If
the guy is higher risk, then the option may include prison.

But, what they're trying to do is the -- and, they developed the guidelines from the officers. So, they built a matrix system. That's in Cedar Rapids. That's the judicial district. A guy named Gary Hinzman, who's now the president --

COMMISSIONER ALEXANDER: Oh, yeah.

MR. LATESSA: You know Gary, of Probation and Parole Association. He loves to show it off.

But, their idea was to structure those guidelines so that a P.O. who -- who isn't just hammering a guy. He's got to go to the guidelines that says, you know what? This guy is not that high risk. Put him in this program, or drug test him more, or do this, but don't lock him up.

So, that's another way to do it without, you know, being hard and fast on it. You're giving them some guidelines to work with.

Well, listen -- oh, yeah, I'm sorry. One more.

COMMISSIONER STANFORD: I'm sorry. Hopefully, it won't be too long.

MR. LATESSA: I'm cutting into Jeremy's time here, and --
[Laughter]

COMMISSIONER STANFORD: It seems like the sooner we do the risk assessment, the better. And now, I'm thinking even before you get to the sentencing, it probably should be part of what's considered in terms of the pleas that are offered. Because, if we're limited because of the pleas that were offered, to the sentencing --

MR. LATESSA: The earlier, the better.

COMMISSIONER STANFORD: -- ramifications -- so then, that's something that prosecutors may --

MR. LATESSA: The earlier, the better.

COMMISSIONER STANFORD: -- need to be involved with, --

MR. LATESSA: Yeah.

COMMISSIONER STANFORD: -- to some extent.

MR. LATESSA: And, that's what Monroe talks about, because so many deals are plea bargain, and he doesn't want a plea bargain that locks him in when, in fact, this is a guy that X, and Y, and Z should be done with. So -- and, by the way, that's why Ohio has decided we're doing this system-wide, starting at pre-trial --

COMMISSIONER STANFORD: Yes.

MR. LATESSA: -- and not even starting at
the courts. It's starting at pre-trial, when we do
some assessment. That assessment won't be as
comprehensive as -- it builds, as it goes along.

COMMISSIONER STANFORD: Yes.

MR. LATESSA: But yeah, the first thing you
look at is how are you assessing offenders in this
state? And, where is it occurring at? And who is
doing it?

If you're just going to do it on the back
end, okay? They have no choice who they get. Right?
The Department of Corrections doesn't get a vote in
who gets sent to them. That has to be -- you have to
start backing it up earlier if you want to really have
an effect, right, when they start coming in the door.

COMMISSIONER O'DONNELL: You're right. We
are going to have to end.

Thank you, so much.

MR. LATESSA: Okay. All right.

COMMISSIONER O'DONNELL: It was really
great.

[Applause]

COMMISSIONER O'DONNELL: And, we'll take a
ten-minute break, even though we're a little bit
behind schedule, I think we need to stretch.

(Off the record.)
COMMISSIONER O'DONNELL: We are very pleased that Jeremy Travis has joined us.

Jeremy is, as all of you I believe know, the President of John Jay College of Criminal Justice here in New York City. I had the privilege of working with Jeremy in the Justice Department when he was head of the National Institute of Justice under Attorney General Janet Reno, and brought just a wealth of experience and progressive thinking to the Justice Department. And I worked with Jeremy on some very creative programs that we're trying to bring here in New York State.

But, Jeremy is probably best known as, I think, the guru of reentry or transition back to the community, one of the people who really started the focus on what are we going to do with all of these people that are released every day into our communities, into our state, into all across our country.

So Jeremy, we're delighted to have you here. I know, from reading your materials, that you've focused both on kind of the front end and the back end of people going back to prison after they're released, and that's something of critical concern to us here in the Sentencing Commission.
So, without further ado, Jeremy Travis.

[Applause]

OVERVIEW OF NATIONAL AND NEW YORK STATE REENTRY TRENDS AND RECOMMENDATIONS FOR REFORM

MR. TRAVIS: Good morning, everybody. And, I'm delighted to be here, honored to be here.

I want to thank Commissioner O'Donnell first for referring to me as the guru, not because I like the phrase, but at an event last night, I was referred to as the "grandfather."

[Laughter]

MR. TRAVIS: That made me feel a little older than I wanted to feel, so it was anything rather than grandfather.

It's just wonderful as a New Yorker to see sentencing being put at the center of the criminal justice policy table, through the establishment of this Commission by the Governor. I served on his transition committee.

It's also nice to see these things becoming reality this quickly. I don't envy you your timetable for producing a report back to him, but these are really important issues for the State. And so, it's an honor to be here.

And, before talking about the sentencing and
reentry that I've been invited to talk about, I just wanted to say to Ms. O'Donnell and the members of the Commission that I put the resources of John Jay College at your disposal. We have faculty members, and we have students, and we have an expertise that might be of value to you, and if you want ever to take advantage of something that we have to offer, please don't hesitate to call.

I'm joined this morning by Debbie Mukamal, who many of you know is the Director of Prisoner Reentry Institute. She is one of those resources. And, Anna Crayton and Nicole Lindahl from the Institute are here, as well.

I want to make a presentation of some data. I would like to think that policy should be informed by new data, wrapped in a -- sort of larger conceptual framework that we're going to talk a bit about. The data that I'll present are some national data and some New York State data. And so, I should quickly thank Paul Korotkin, who is -- there he is -- for making the data available to us. That was on a short time line. And also, to acknowledge that some of this work was done by Michael -- Michael Hayes, who is your policy analyst, who is a John Jay graduate.

[Laughter]
MR. TRAVIS: Okay. So, what I want to add to the deliberations of the Sentencing Commission is this concept of reentry. So, we'll define that in a second, but let me just talk first about why thinking about reentry is part of your work. Because, my guess is that's not a natural sort of instinct, to say, "Oh, we're also talking about release at the back end of the system."

So, let me just put it very bluntly. Any Sentencing Commission, anywhere in the country -- including every one -- if it doesn't think about how people are released from prison and how people are returned to prison for parole violations, it is not doing its job. So, the fact that you have put this on your agenda is really commendable.

Because, those two other decisions -- how people get released from prison, often by parole boards, in our case -- and how they get returned to prison for parole violations and revocations -- both of those are liberty questions. Both of those are part of the sanctioning process that we use, that our system of justice engages in. And, thinking about sentencing as only what happens in the court room, this is a very important reality. And the New York data that I'll present, I hope make that case
particularly strongly that if you don't pay attention
to those other liberty questions -- how people get
released and how do they get put back -- which links
into the supervision question, then we're not thinking
about sentencing in its full context.

So, any Commission that focuses only on what
happens in the court room, and the guidelines, and the
grids, and all that sort of stuff, all of which is
important, that doesn't focus on these other things,
is, to put it bluntly, not doing its job. So, you're
doing your job, which I really think is important,
naturally.

So, the next sort of set up thing I want to
do is just to define "reentry." It is this sort of
buzz word that's got lots of people sort of activated,
which is wonderful, but I just want to make sure you
know how I'm using it. For me, reentry is the process
of leaving custody, leaving incarceration. It could
reentry from jail. It could be reentry from Federal
prison. It could be reentry from an immigration
detention center. Any -- any form of custody, you get
out at some point. So, the reentry is how people
leave that form of custody and return home, and how is
that process managed, and managed to the benefit of
the individual, his or her family, the community, and
society at large.

So, reentry is the -- is the -- except for people who die in custody, who die in prison -- everybody gets released. Right? So, you have to remember that 95 percent of the people put in prison get out. Those who don't are only those people who die either by natural causes or by execution. So, that's why I like this catch phrase -- reentry is not an option. Reentry always happens.

You could be in prison for a long time. We have a study under way at John Jay of long-term prisoners. They will all, at some time, get out, unless they die in prison. So, even though we put more people in prison, and they're in prison for longer times, reentry is still the reality for all of them, and it's a reality for many more of them.

Reentry is not a program. It's not a -- it's not something that happens to somebody that we make happen. It's the consequence of sentencing. And, it's not a form a supervision. So, reentry is not an option. So, that's the way in which I use the phrase.

So, the first thing we want to do is try to capture what's happened both nationally -- and I'll use the comparisons here for New York State. In New
York State, in terms of the overall phenomena of incarceration. This is a very experienced Commission that's been convened here, so everybody knows what's happening nationally. And, the basic bottom line is that we have significantly, substantially increased the use of incarceration as our response to crime. That's just a national phenomenon.

It has quadrupled. We're getting close to the point where the rate has quintupled since 1972. For the previous 50 years, the rate was constant. It was 110 per 100,000. Starting in 1972, the rate at which we put people in prison in this country started to climb. It's climbed in good times and bad times. It's climbed when the economy is strong and when it's weak. It's climbed when crime has gone up. It's climbed when crime has gone down. It's climbed during the times of war, times of peace. We are always putting more people in prison.

That is this trend here. This is the -- this is not the number. This is the per capita. So, as the population goes up, the number -- we're now at two million plus -- 2.1 million or so in prison, in jail nationally. So, that's -- the red line is the increase in incarceration rates -- rate -- not numbers -- rate in the U.S.
So, it's important to recognize that something else is happening in New York State. We have had a flattening of the incarceration rate since, let's say, '95 or so. It's one of the few states where we can say that. And certainly, if you look at the Federal system, the Federal system is just going through the roof.

And that's -- we have to try a little bit to understand why that's happening, and if you think that's a good policy outcome -- I would argue it is -- and that we should actually bring the rate down, you want to understand what could make the rate go down even more.

But, part of the reentry conversation starts with the reality that we have now quadrupled the percentage or the rate of people that are in custody. So, we have a lot more people, 90 percent of them men, coming in and out prison and experiencing reentry than ever before in our country. So, we're releasing 650,000 people from prisons each year.

So, let's do the next slide, speaking of which. So, when you -- when you think about reentry and sort of how do we -- how do people get out of prison, it's a natural consequence, as I said, of people going into prison. So, as we -- again, this is
national data. Because we put more people in prison -- this is an admissions to prison line, the white one. Guess what? More people come out. That's the title of my book -- But, They All Come Back. If you put them in, maybe they're in longer, but they all come back.

So, the release rate -- the release numbers in the U.S. have tracked the admissions numbers. You'll see in a second that this is not true in New York. So, we're now releasing about 650,000 people from state and federal prison each year.

So, in 1980, we were releasing 150,000 people from state and federal prisons each year. So, we have many, many, many more people where the prison experience is part of their life history.

And, we know this phenomenon -- and we can talk about this later -- is not spread evenly across the U.S.. So, we're talking about poor communities, communities of color, where the incarceration machinery is affecting many, many more people.

So, admissions typically track releases, but let's look at New York State. New York State is a little bit different. Admissions are not tracking releases in New York. For a period up until we saw that flattening in the overall prison population, the
rate. We were putting many more people in than letting them out. That's a sentencing phenomenon. But, it's not sentencing alone. It's partly a parole release phenomenon, which I argue is part of sentencing. And then, somewhere in the late '90s, these two lines sort of came together. So, we're getting close to a steady state, so DOCS is probably saying, "Well, we don't know what our projections are in the future." But note this little, I would say troubling -- they probably at least want to understand what's happening -- a little uptick in admissions in New York State.

But, we are basically at a flat level. That's not -- also not true anywhere else. I won't say anywhere else. It's not true generally around the country.

So, these two phenomena of putting people in -- how long they stay in, when they're released -- is a sentencing decision. And, when they come out is particularly the reentry phenomenon. So, just look at the number here. I mean, there are 25,000 people coming out of DOCS each year, returning to communities. And 20 years ago, in '87, it was 15,000 people. And, if you go back further, it would be fewer people.
So again, we are experiencing not as acute a version, but some version of what's happening nationally, as many more people are cycling in and out of prison. Okay.

The next slide. So, who's coming out? This is important to know, just to look at the mix of people coming out. The top line, the red line, you've been before. That was in the previous slide. What we've done is to dis-aggregate that, to break it up into the conviction charges of the people coming out.

And, you'll see this is not terribly interesting. There's not a lot happening here because what happened happened in the late '80s, after the crack epidemic and sentencing policy was changed, and we started putting a lot more people in on drug offenses, and as they all come back, they came out on drug offenses, having been convicted of drug offenses. So, we've had pretty uneventful trends here for the last 20 years or so, and the last 10 years or so, but the split is more people coming out on drug offenses than violent felonies and property offenses, or others. Okay.

How do they get released? So, this becomes the sentencing question. I argue that parole release is part of sentencing. So, how do they get released?
So, there's a lot of change here, in New York State, as all of you know. Again, you've seen this red line here before. This is the number released. We're dis-aggregating it, not by charge, but by how they were released. And, we see a decline in the number of people released by Parole Board action.

So, the discretionary release that we give to the Parole Board has been, for a variety of reasons, constrained -- some of them legislative, and some of them by the exercise of that discretion by the people serving in those positions.

This is a pretty sharp decline, from 20,000 a year in '96, to it looks like 13,000 a year in 2006. So, that's over ten years, the number of people released by the Parole Board has gone way down. And, we'll talk in a second about how we understand that change.

Conditional release is -- conditional release is people released --

COMMISSIONER ALEXANDER: By mandate of law.

MR. TRAVIS: By mandate of law, and placed on supervision.

COMMISSIONER ALEXANDER: Right.

MR. TRAVIS: Thank you, Mr. Chairman. I'm
always willing to be educated by you.

[Laughter]

MR. TRAVIS: Okay. It's -- it's used differently.

So, a phenomenon to understand here is what's happened with the Parole Board. Why are we -- why are we -- is it because the State release was so far -- I'm not placing a value judgment on that. That's a -- that's a separate policy matter. So, we need to understand that.

The next one? So, Parole Boards make decisions based on who comes before them, and who's -- and, that's -- the first question is who is eligible to come before them, and at what point. So, these are the number of interviews granted by the New York State Parole Board. Again, we see a decline. So, that says something about eligibility. That's a statutory framework, principally, as to who is eligible to come before a Parole Board.

Again, this is all sentencing. We may not think of it as sentencing, but it's sentencing. Eligibility for parole release.

And, what we track here is the number of people -- right, the number of people released on their initial appearance. So first is who comes
before -- before the Parole Board for interviews, who is eligible, and what happens. What -- what is the rate at which people are released the first come they come.

And, speaking of which, this actually goes -- zeroes in on that phenomenon. So, your Parole Board. You see a certain number of cases that come before you. That number is determined by statutory eligibility, basically, right?

COMMISSIONER ALEXANDER: Okay.

MR. TRAVIS: And then, the question is do you release -- do you grant release when somebody comes up the first time, or do you hold them over? Is it two years before --

COMMISSIONER ALEXANDER: Two -- two years is the maximum at any one time, yes.

MR. TRAVIS: Yeah. So, there's a sort of internal guidelines there. And, what we see is that the number who are granted release has been tracking downward, as has the number of those who come for an initial interview.

So, we want to unpack this a little bit more, just to understand how is this release mechanism working in New York State? Did I make a mistake in that?
So, this is the -- okay. Let me -- this is the rate at which people are released, based on their -- when they appear for their first time. The rate of initial releases by the Parole Board. So, we're looking now at the Parole Board's functioning.

Again, my view is the Parole Board is a part of the sentencing system, because they decide the release questions. So, the question here is are they releasing people when they first come up for eligibility. And, we see this sharp decline, very sharp decline since '91 in the percent in which people are released on first eligibility.

So, who cares about this? Obviously, the person who is denied. Who cares about it next? DOCS, right? It's increasing their population. Families who they're expecting people.

But, there's also a justice question, a really deep justice question. Why is that we change liberty eligibility over the space of ten years without legislative or judicial oversight? Why is it that we change sentencing the way we do, the way we have, without legislative, or judicial, or public oversight?

So, one of my recommendations would be for this Commission to think about the legislation, or
guidelines for the exercise of this very important
discretion, the liberty discretion.

And we see, from 60-something percent, to
30, and we're projecting for this year 29 percent rate
of release. So, if Sentencing Commissions are
supposed to think about are like cases treated alike?
Do you, as Johnny Jones, coming forward to a decision
maker, have the same case as somebody else who's just
like you? The Johnny Joneses of the world had their
-- had their odds changed significantly over ten
years, without legislative or judicial review. Okay.

I'm not saying you can't change -- you can't
challenge the Parole Board's decision, but we know
that there's a very narrow avenue for challenge. And,
that's -- so, I think, so you know where I'm headed?
You've got to look at this stuff and see is this the
exercise of discretion that we want to see happen.
Okay.

So, we're going to go through quickly sort
of who is coming out of prison. It's not young kids.
Average age is 34. It's mostly about men. So, we
have to think about fatherhood and family
consequences, 93 percent are men. It's mostly people
of color, 46 percent black, 31 percent Hispanic.

Next, what do we know about their likelihood
of returning home? Fifty-five percent of people in prison now will return to the communities within four years. So, we have a lot of churning, in and out.

Where do they go back to? About six in ten go back to the City. Another ten percent suburban New York. And then, thirty percent upstate.

I want to focus in on some maps, because I think it's important to understand the community consequences of these policy choices we've made about sentencing. Many more people in prison, mostly men, churning in and out at a fairly, when we consider it, an average of three years in prison or so to be short or long, but it's -- it would be for a lot of communities a fair amount of time. And, we know that there's an enormous concentration of these effects of incarceration and sentencing, and reentry, and failed reentry, and parole supervision by communities.

So, we're using some New York City maps here. I want to give credit to our colleague, Eric Cadora, who is the map -- the mapping guru on this stuff, who allowed us to borrow these. He runs the -- what's called the Justice Mapping Center.

And, you may not be able to read it, but the districts here -- basically East New York, Upper Manhattan, and going over to the South Bronx, those
districts are home to 17 percent of the adult males in the New York, but they're home to 50 percent of the men who go to prison. So, if you think about community consequences in policy decisions, there is very concentrated, a small number of communities in New York. And, you could do those same maps for any -- any -- they've done them all around the country. The same phenomenon in every jurisdiction.

The next slide. What this -- a spatial analysis. This geo-coded data allows us to do that. Is to assign costs to those blocks. So, we can now say that the cost of incarcerating somebody upstate, Dannemora, or wherever, which is whatever it is -- 30,000 a year. We can assign those costs to the block where that man lived before he went to prison, to try to understand the policy ramifications of the expenditure of taxpayers' money in a lot more prisons, by looking at it at a block level. Are you with me?

So, we're trying to sort of take the State costs, whether we talk about the -- whatever it is, the budget of DOCS, as whatever it is, it gets bigger, gets bigger, bigger. What we're trying to do is understand those costs as policy choices, by looking at the expenditures on the basis of the blocks where the people lived.
Again, the map is perhaps not readable from where you are. But we've -- the reddest of these blocks, we -- the taxpayers of New York -- are spending two and a half million dollars and up to incarcerate the individuals arrested who live on those blocks. Do you understand what I'm saying?

So, we have -- and this is just prison. We're not adding jails to this cost, are we?

UNIDENTIFIED: No.

MR. TRAVIS: This is just prison expenditures?

UNIDENTIFIED: Right.

MR. TRAVIS: So, if you add jail, and pre-trial detention, and all that, so you add a whole bunch to the costs.

But, the -- the geographic designation of costs allows you to ask yourself this question: If we now spend for those in the reddest two and a half million dollars and up, and if you add jail costs, you get to three and four million dollars easily, per block for incarceration only, not for police, not for courts, not for prosecutors, and whatever, to respond to the crime situations caused by those people we put in prison, the policy question becomes how could we spend those millions of dollars differently to respond
to those same crime conditions -- right -- without
causing some of the damage that incarceration causes?
That's the question that the country is, I think, now
starting to ask, as part of the reentry discussions.

So, we spend 1.4 billion dollars in New York
State -- New York City -- or New York State. Okay.

If you want to zero in on Brooklyn. I'm not
picking Brooklyn for any particular reason. We just
have some good data that allows us to look at the jail
and -- this is both jail and prison admissions by
block. So we have, in the darkest blocks here, we
have 400-plus individuals who -- who enter jail or
prison each year, from those blocks. So, it's another
way of thinking about the flow, the churning in and
out of communities, of this policy choice we made to
ramp up the use of prisons.

The next slide. This is one that the
Chairman of the Parole Board would be interested in.
This looks at supervision, by neighborhood. One of my
recommendations, by the way, would be that the
Commission recommend neighborhood-based supervision as
a way to respond to this reality.

So, we have again, in the darkest blocks, we
have up to 326 to 250 people on that block under
supervision, parole or probation.
Meeting

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Now, Brooklyn headquarters are at Adams Street, or something like that? Or --

UNIDENTIFIED: Downtown somewhere, right.

MR. TRAVIS: So typically -- and again, this again is not a knock on New York. We do this all around the country. We assign the offices of people who need supervision at some downtown location, whereas we have all of the concentration of the action, the risks that we want people to avoid, the opportunities we want people to take advantage of, and the people and the families, themselves, concentrated in a small number of communities. So, it seems to me that we should think about supervision as a neighborhood function, rather than a centralized function.

And, we should think -- I'm going to take a big leap here -- we should think of supervision as a unitary function, and why we divide parole as a State function, and probation as a County or a City function, and then we have juvenile on top. I mean, these are all the same families, the same circumstances, same neighborhood conditions. I've written about and given a speech elsewhere that argues for community-based supervision as a unitary function, so we don't have Johnny being supervised by one
agency, and he's 18, and his brother, Jimmy, being supervised by another agency, when you really want to understand that same family, what's going on in the family.

We just have a very -- I've given -- my Parole friends know this. I've given the speech that started with "It's time for us to end parole as we know it." You know, take that line from welfare reform. And, I think we just have to start fresh on how we think about supervision overall.

The next one? Quickly, Ed Latessa, who you're very lucky to have had in here, a national expert on these things, he probably talked about all this, the risks. We want to talk now about the success on reentry.

If everybody comes out, you want them to be successful. What do we know about the issues they face? Substance abuse, unemployment, health, and housing. All of these have a high prevalence of problem. Not enough done on the inside. Not enough done on the outside. But, the linkages are really what -- what -- where we -- where we fail to do what we should do.

I can't talk about incarceration and reentry without talking about community consequences. And,
first and foremost is the children who are affected, who are not intended to be punished by any legislature, but who are punished when their parent is sent to prison. It's not always a bad thing for dad to be sent to prison, but it usually is a bad thing for dad to be sent to prison.

And again, there are racial consequences here. There are race dimensions to all of this, that are part of it. We now have seven percent in the country of African/American minor children who have a parent in prison, today. It's just because we put so many people in prison. And, they leave children -- children behind.

If you look at all of the criminal justice system -- prison, and parole, and jail, and probation -- now in America, ten percent of all minor children -- one in ten -- if you walk down the street, go to any elementary school, one in ten have a parent under supervision. That's just a snapshot of today. And again, it's skewed by -- by race. Okay.

The next one. Then, we -- as if it's not difficult enough, we impose a number of legal barriers. So, another thing for the Commission to think about are some of these legal restrictions on where people can live, what they can do. We make it
difficult.

Now, there's some good reasons for some of those restrictions, but have we gone too far? And, have we -- have we painted too broad a brush? And, one of them that's of particular interest to me is the right to vote. In my view, when people get out of prison, they should be given an opportunity to vote, reminded of their right to vote right then, and not wait until they enroll.

The next one. So, now let's talk about failure, and what I heard at the end of your discussion with Doctor Latessa. One thing that I hope the Commission focuses on, and it came through, if you remember, Denise, with our presentation to the Governor-elect at the time -- his only question, not his only question -- his main discussion point when we made that presentation was what's the metric of success for -- for reentry. And so, this is what we have to focus on. This is -- the public is concerned about this, is are we getting value for our -- for our dollar.

So, this is a New York State graph. It's not national. But, the re-incarceration rate -- and be very careful when anybody talks to you about recidivism, as you always want to ask them to define
the term, and it could mean lots of different things.

So, I'm focusing here on the rate at which people are put back into prison for failures on the outside.

We know there are two kinds of failures. It could be a technical violation, or it could be a new arrest.

So, the re-incarceration rate in New York State has been fairly constant for the last 20 years, at about 40 percent, which is about the national average. So, in that, we're like the rest of the country.

Can we do better? We can do a lot better. In part, we can -- we can do better by focusing on the -- the way that people are sent back to prison. So, there's this -- again, we've dis-aggregated this data to help you understand that there are two ways that people end up back in prison, and they're very different ways, and they are very different ways that we deprive people of liberty.

One is the -- if they get re-arrested, and they're committed on a parole violation on that new event. I'm calling that a new commitment.

And, the other is they're violated for -- for parole. Is that --

UNIDENTIFIED: Right.
MR. TRAVIS: So, the question is how can we get a better handle on the parole violation process. So, I think it was the Chairman who was asking the question of Doctor Latessa, at the end, and he said exactly that question. How do we think about the technical violations? Okay.

And so, here are some thoughts from me to you. And then, I'd be happy to answer any -- any questions.

My first thought is that New York should follow the lead of other states that have a permanent Sentencing Commission. That may or may not be within your purview. I hope it is.

Other -- so, what's the benefit of a permanent, ongoing Sentencing Commission? It brings together people from the criminal justice systems, from -- some Sentencing Commissions have business people on them, have academics on them. But, what that does is it gives the State a way to sort of continually look at the influence of the -- and the impact of legislative decisions, judicial decisions on this important reality in the State.

It always has a strong data component to it, a strong analytical component to it. If you'll look at them, you'll -- Pennsylvania has a very good one.
North Carolina has a very good one. Minnesota has one. Permanent Sentencing Commissions, I think, are the way to go here. So, that would be my number one recommendation.

The second is, and I've alluded to this a number of times, is to place the reentry conversation in the context of sentencing. You've already done that by setting up this agenda. It's already -- recently, as you know, now that added to the penal law purposes of sentencing. There is now a -- a -- it's now a function of sentencing. So, you can refer to that statutory language.

I don't know if, Mr. Chairman, you had anything to do with that, but that -- it's a -- it's to be celebrated. That was a great moment when we saw that reentry and reintegration was added as a purpose of sentencing. So in that, New York State leads the country now. We embrace that as a legislated purpose of sentencing.

You want to think, as you did with Doctor Latessa, about the connection of programming in prison. A full look at this would ask the really important operational questions. How are people being prepared for release? What are the programs available? At what point do they get that program in
their prison time? What are the quality of those programs? Are they certified to be effective, in terms of the latest research? A lot of work to be done there.

At the back end, we -- it's time for New York to think again, as other states have done, about how do you manage the reentry process. And, what are the best ways to manage reentry? Is it halfway houses, or work/release, or -- or educational release, study release? Again, it's a -- it's a -- it's connected to sentencing. It's also very much connected to reentry, but it's a question of how does this -- how does this release process get managed? And finally, addressing the legal barriers to reintegration.

And just a little segue here. Before I left Washington, one of the things I was involved with was the creation of the Second Chance Act, now moving fitfully through Congress. It was called for by President Bush in his 2003 State of the Union address. But, one of the things that we put into that legislation was a requirement that there be a sort of zero-based review of all barriers to reintegration, so that from time to time, administrative agencies and legislatures should have to justify why they propose
these deprivations of liberty or -- or what kind. So, that's something that we recommend, too, as well. Okay?

Very important is to provide guidance to the exercise of discretion of the Parole Board. This is something where, if you look at these swings back and forth, they are basically following the composition of the Parole Board, which is a gubernatorial appointment in this state and every other state.

And, we have -- we have sentencing policy frozen in place. There's been no big changes. But, these swings back and forth about when people get out of prison. And, it's like this -- it's like the legislature, and the Sentencing Commission, if there is one, and the judiciary are -- are silent actors in the ultimate decision of how long someone stays in prison.

And, we can -- we can talk about other state's experiences, in trying to guide the exercise of discretion. But, we've made so much progress as a country in thinking about how to guide the exercise of judicial discretion and, to some extent, prosecutorial discretion, but certainly judicial discretion, so that like cases and treated alike, so that people get what they deserve, they don't get less. And, it's not
arbitrary. It's not perceived as arbitrary. But, we left this big gap, which is the exercise of discretion to release people.

We've managed a lot of exercise of discretion to put people in, but not to release them. So, this is something that, again, I think it -- if I could be so bold as to say that to do the job on sentencing reform, you have to look at the role of the release from prison.

And then, finally, parole supervision, which is the back end of the back end. And, my recommendations here are first, to have sort of -- to have some control. This may be more administrative than legislative. But, over the conditions of supervision. It's very easy to load people up and say, "You can't do this, you can't do this, you have to be there, you have to be there." At some point, someone is running around with their head spinning, saying, "I can't see my -- get this job interview, which would be really great, because I have to be here for a drug test." Right? Or, "I have to -- I can't -- my job lets me out at ten, but I have a curfew until nine."

So, some of this is administrative, but I think the general philosophy has to lead to, to not
load people down with conditions. I'd argue here and elsewhere for the policy benefits of neighborhood supervision.

So, let me say one thing about supervision, and Chairman Alexander can shake -- shake his head in disagreement, perhaps, but there is recent research done by former colleagues of mine that comes to the very stark finding that supervision, by itself, does not reduce recidivism rates. This is stunning, because this is what we do with people when we release them. This is the basic, sort of product that we offer, is we're going to supervise you. We're going to place you on parole -- parole and probation supervision.

So, these colleagues at the Urban Institute, where I was before I came back to New York, did this study. When they compared a big data set, those people placed on supervision with those people -- with other people just like them, who were released without supervision. And, no difference in the recidivism rate.

So, we have to go back to very fundamental questions here, about what is supervision, and how is it supposed to work, how is it organized, if we want to produce the value that the Governor-elect, then,
asked us, which is a reduction in this indicator of
failure.

We can't do more of -- and, we also know
that more intensive supervision doesn't work. All it
does is put people back in prison for -- for the
technical stuff.

So, if a product called supervision doesn't
reduce recidivism, more of that ineffective product,
guess what? It doesn't work, either. So, increasing
the dosage doesn't help. So, we have to go back to
some basics.

And, the final point is -- again, this is a
-- a recommendation I have offered in a number of
contexts and written about, and some states have
followed, which is to think about the role of the
judiciary in the back end of the criminal justice
system. We have a lot of success with Drug Courts,
Mental Health Courts, and Domestic Violence Courts,
and the like.

And, I have argued and initially proposed
the idea of reentry courts, of judicially-supervised
back end reentry, sort of create a relationship
between parole and the courts at the back end. We
would use the mechanisms that have been so successful
in Drug Courts and other places to supervise this --
this end of the criminal justice system. There is some research that's now coming out of those pilot reentry courts that's very exciting, that shows reductions, you know, in failures.

So, this is a different relationship between the branches of government. It requires legislation, because it's basically the judiciary and the executive branch working together. And, I've talked to Chief Judge Kaye and others about it, so I think there's some -- some interest here in this.

So, there's some thoughts for you, and some observations about what's happening in New York. And, I'd be happy to take any questions.

Madame Chair?

COMMISSIONER O'DONNELL: Okay. I just want to follow up on the reentry court. When we looked -- and maybe, George, you know the answer, or Jeremy, you may have looked at it -- we have the Harlem Reentry Court that we fund -- provide funding for, and as I -- I would like to look into it more, but -- but that reentry model is really run with a Parole Officer instead of a --

COMMISSIONER ALEXANDER: It's an ALJ that's sitting --

COMMISSIONER O'DONNELL: -- yeah, an ALJ,
sitting as an ALJ. So, it's not a true reentry court.

I just wonder what the experience, you know, if
anybody knows how successful it's been, or whether,
you know, it --

COMMISSIONER ALEXANDER: It's had some
limited successes. In fact, what we're trying to do
is to take some of our funding and try to help it
along for another year or so, while we try to study
what it -- the real impact it really has.

It has some value. Like you say, it isn't a
real reentry court. It's a good facsimile, I think,
but I think that there's some things that could be
done with it, to tweak it to make it a little bit more
responsive, until we can get it to the level of the
judiciary. And so, that's why we're willing to try to
help it along, at least to give us an opportunity to
take a real in depth look at it and see what, if
anything, that it does, what it's providing us.

COMMISSIONER O'DONNELL: Um hmm. And so --

MR. TRAVIS: Here's the -- here's the way
-- and I haven't looked at these for a while. What I
was about to say, though, the most -- the reentry
court that was sort of truest to the model was one in
Ohio.

And, the way it worked was Johnny Jones
comes before the judge for sentencing. And, it's pretty clear that Johnny is going to go away to prison. So, the judge has asked the probation department that does the pre-sentencing report to recommend the reentry plan for Johnny at the time of sentencing.

So, you don't wait until he gets in. You don't wait. And so, the -- the work done in the community about Johnny, and his needs, and the family also, it gets sort of translated into the reentry plan.

The judge then says to Johnny, "Okay, you're going to do three years. While you're in, here are the three things you have to work on, some big things. And, I have a commitment from the Department of Corrections" -- in this case, in Ohio -- "that you're going to be eligible to participate in those services. It's anger management. It's drug addition. It's whatever. While you're in. And because we know you're going to come back" -- they all come back -- "we're going to sort of stay in touch with you, Johnny, while you're away."

And the court, then, has a reentry liaison who, in this court, actually goes to visit Johnny in prison. But, they -- he reports back to the judge,
from time to time, saying "Johnny is doing well or not." It helps keep the Corrections folks accountable, which I like, which the Corrections folks don't -- don't always like, but it keeps them accountable for their results, in terms of public safety.

And, the statute in Ohio is written in a way that the judge can grant early release. It's almost like a parole release, if Johnny is doing well, and Johnny knows that. So, there's an incentive for him to do well.

And, the judge has up to date information. And, when the release time comes, either -- either it's an early release or the original release, Johnny is brought back to the judge's court room. And, the judge says, "Good to see you again. Glad that you were doing what you were doing." So, there's a system accountability here. "Now, you're now in a reentry court. Here's your Parole Officer." And, the Parole, of course, has done what it does anyhow, to get ready a reentry plan. "And, you're going to come before me every month, to see how you're doing. And, I have the ability -- I have the statutory power to modify your conditions, within reason, to make sure that you're doing well."
So, it takes the -- the benefit of the Drug Court, which is this relationship to the judge, and the openness of a Drug Court, which I like a lot, because I -- parole tends to sort of operate out of public view. But, it makes this a very public process.

And, as with Drug Courts, they have graduation ceremonies. When Johnny is done with his one year of parole supervision, his family is brought in, a little round of applause, he gets a certificate, and he's on his way, and maybe he get his -- his voter I.D..

But, it establishes system accountability, openness, transparency, a different relationship between supervision and the courts. And ultimately, and this is what the Ohio Sentencing Commission was doing, last time I checked, they were recommending legislation -- that's why I used the word "authorize" -- that authorized jurisdictions to establish reentry courts, if that's what they wanted to do, rather than requiring it.

And, I think we need a period of experimentation here, and some resources. Obviously, this is a new function for the judges. Parole would have to be on board to say let's try it in three
jurisdictions throughout the state, or something like that. But, it's an authorizing legislation, rather than -- you know, I think you have to recognize that this is a new way of doing business, and we want to learn from it.

But there is -- certainly the now 15-year experience with Drug Courts is a very positive indicator that you can change behavior, which is what you -- what you want to do. You want to reduce drug use, and reduce crime, and the like.

COMMISSIONER ALEXANDER: I'd like to go to your first recommendation, of a sentencing department creating guidelines for parole and release decisions. And I'm assuming for that, that you continue to see a need for a Parole Board. And, if there's a need for a Parole Board, then there is certainly then a need for indeterminate sentencing.

MR. TRAVIS: So, you want to ask what I think about indeterminate sentences?

[Laughter]

MR. TRAVIS: The -- the slightly disingenuous answer is as long as there is a patrol [sic] board -- a Parole Board, they should have guidelines. And, they shouldn't -- they should either be required to establish them themselves and adhere to
them, and if they don't adhere to them, you -- as we would with the Federal system -- upward or downward departures have to be justified, subject to judicial review and all that sort of stuff. Or, they can be established legislatively. Either way. You can get to it either way.

I have a lot of difficulties, as a criminal justice matter, with indeterminate sentencing. That's my -- my personal belief. But, what I'd like to make sure we always retain in any system is the incentive to get ready for release, so that the inmate sitting wherever he is sitting, or she is sitting, has incentives to do the things necessary to have a successful return home. And that either has to be through Parole Board discretion, which it can be if -- if the Parole Board means it.

COMMISSIONER ALEXANDER: Um hmm.

MR. TRAVIS: My -- my fear is they don't mean it, right? So theory, but not practice. Or, through some -- some sort of -- some sort of early release credit while -- while in. Again, that has -- that's another form of discretion. That can't be exercised arbitrarily.

But, I think the important thing -- the baby we don't want to throw out with the bath water here,
which is what California did -- they just gave away all incentives to do -- to do the right thing while you're in prison.

So, I think we have to give the ability -- give the inmate the ability to sort of earn his way out, by doing the things that are expected of him, and show that he has a reentry plan. That can be done either through Parole Board discretion or through some sort of -- it's more than good time.

It's really an earned release kind of thing, which is the -- so, there has to be some -- and then, that -- that discretion has to be overseen, because all of this discretion, as we saw with the judicial discretion, can be really seriously abused.

COMMISSIONER O'DONNELL: Tony?

MR. TRAVIS: Yes?

COMMISSIONER GREEN: Just a few questions. One is to follow up on what you just said. What are the issues you have with the indeterminate sentences? And, I guess there's another part of that. What are your thoughts on parole versus post-release supervision, as it relates to reentry?

And then, a second question, at least in my county, right now, reentry seems to be a combination of a lot of different -- you know, Parole is involved,
community groups, not-for-profits that are involved, Government is involved, you know, the County is involved in some form. You know, what are your thoughts on how an ideal reentry program would be structured?

MR. TRAVIS: Okay. Let's go to the first one. On determinate versus indeterminate sentencing. I think we have seen a lot of abuses of indeterminate sentencing in the systems. And, those abuses are typically at the parole release part of it. And these sort of swings, I think, back and forth, I think I -- I consider them to be abusive of -- of that -- of that discretion.

So, when I say I favor determinate sentencing with an earned release mechanism, why do I do that? The earned release I just talked about. Very important to have incentives for people to do the right thing, and to be honest in -- in giving the reward at the end when -- when they've done the right thing.

There's nothing worse than sort of having done all the things you think you have to do, and then when you get up to the decision makers, and they say, "Oh, another two years." Just -- it's corrosive.

But, I also think that the -- that these --
there's also levels of public confidence that a system
of determinate sentencing, to me, is something
that the public understands better. What is 18 to 25,
right? Or 8 -- 8 to 25?

But, the important caveat here is that
choosing -- making this choice between determinate and
indeterminate sentencing says nothing about how long
people should serve or stay in prison. That's a
separate policy choice. And, you won't be surprised
to know that I think we're putting too many people in
prison for too long.

So, the determinate sentencing system could
put people in prison for a long time or a short time.
And, indeterminate sentencing could put people in
prison for a long time or a short time. That's a
legislative choice.

And so, if I were arguing for it, it would
be a more determinate sentencing, with this earned
release idea. I would also be arguing for sending
fewer people to prison, and to put people in prison
for shorter periods of time, and with the idea of
geriatric prisons just boggles my mind. Why do we put
people in prisons who are on dialysis machines, when
they're 80? You know, I just don't -- I just don't
get it. What's the public -- the public policy
benefit?

So, I would -- I would argue for a -- a reduced prison system.

Now, remember the first slide, when we talked about the growth in prisoners. There's an irony here. More than an irony, it's an important policy question, which is that we are continuing to see the growth nationally at the time we have the lowest crime rate in the country. There's, in essence, no easing of it. We haven't seen the -- New York is an exception to that. We haven't seen the prison population coming down.

And, some people would say we have low crime rates because we have so many people in prison, and that's got a little bit of truth to it, but not a lot, not enough to justify this expenditure.

So, when a Sentencing Commission thinks about sentencing policy, in addition to the fairness questions, they have to think about, I think, sort of why people get sent to prison as our response to crime. Why is that the sentencing option that we exercise so frequently? What are the other options that might be available?

So, that's a long way of saying that this -- it's an important policy choice, but it's a policy
choice of determinate or indeterminate, in basically this larger policy frame of who gets sent to prison, and why, and for how long.

COMMISSIONER GREEN: What about the second piece of it, in terms of how you see reentry?

MR. TRAVIS: Reentry, if successful, does involve lots of people at the table. And, I think what's exciting about the reentry conversations happening now nationally is many other sectors of society are coming to the table. You have public health people there. You have the people worried about child welfare. You have the public safety, and the police folks at the table.

So, the heavy involvement at the table is more -- is both a good thing and a bad thing. Much more a good thing than a bad thing.

The bad thing is you lose accountability. And, the results that we have to keep -- the results I think the public wants us to deliver on are -- is the public safety result. That's first and foremost.

And, in order to deliver on that -- on that -- again, this is what I said to the Governor. In order to deliver on that promise, that commitment to the public, your -- the failure -- the reentry failure that is a new crime -- because we have lots of reentry
failures -- but the reentry failure that is a new crime, if we're going to reduce that over time, you have to ask yourselves a series of questions about where does that risk come from.

And, the first thing that you learn when you look at this carefully, is that the failure rate -- i.e., the new crime rate -- is much higher in the month that somebody gets out of prison than it is a year later. Right? This is where the failure happens. People relapse to drugs. They have conflict with their family. They hang out with the same old gang again. They -- they get involved in some retaliation things. The failure rates are highest right after someone gets out of prison. It's a line that goes like this, the failure rates are very dramatic lines.

When we think about supervision, we don't put our resources where the risk is. We don't align resources against failure. So, if I were designing -- now, I'm an academic, and I can do this sort of stuff. When I worked with the police department, it would be, okay, go do it tomorrow.

[Laughter]

MR. TRAVIS: But, if I were designing a -- a -- an accountability system on reentry? I would
give that team of people that you've got around the
table that you just described the challenge of
reducing the failure rate over the next thirty days
for the next people coming out of prison.

That would be the COMSTAT question today:
What have we done for the next group of people coming
out of prison to reduce their failure in the first 30
days, or 60 days, or 90 days? Now, we think about
recidivism as a three-year measure. Well, that is so
-- you can't operationalize that. It's very hard to
operationalize that.

So, we want to operationalize the public
safety part of reentry. We have to operationalize it
where the risk is. And, if you do that, you'll be --
you'll be assigning very different resources to that
first month. You'll be assigning transitional
housing. You'll be assigning -- thank goodness for
the legislature, now we have Medicaid eligibility
about to be restored. You'll be assigning mental
health treatment in the first month. You won't -- you
won't say to somebody "Come back next week to see your
Parole Officer, and we'll start to talk about your
services."

We'd be -- if we were focused laser-like on
failure in that first month, we'd be doing things a
lot differently. Then, we'd call upon those resources that you described to be a coalition to produce that result. And we'd, every month, say "Are we doing it?"

This -- we're having this wonderful discussion with our colleague, Janet DiFiore, in Westchester County, because she's got this Reentry Task Force, and our former colleague, Liz Glazer, at the center of it. And, we're talking now with them, and Debbie is doing the staff work, about a set of accountability measures to produce the public safety results that the public, I think, should expect.

So, having everybody at the table, that's good. Having everybody at the table to produce results is what, I think, we want to see happening.

COMMISSIONER O'DONNELL: Was there another question? We're going to -- Tony?

COMMISSIONER BERGAMO: The questions were answered. Thank you, Mr. Travis.

MR. TRAVIS: Okay, good.

COMMISSIONER O'DONNELL: George?

COMMISSIONER ALEXANDER: Could you please speak to the issue of post-release supervision, regardless if the person is released by discretion, or conditional release, or by maxing out?

MR. TRAVIS: Yeah. So -- so, if somebody
is released and place on supervision, the supervision
should be the same, no matter how they were released.
Let's start with that.

I think if we don't do good discharge
planning for everybody -- those released by
discretion, or those released mandatorily -- we've
failed in our job. And, the discharge planning starts
on the inside and continues to your folks.

In my writing, I have argued that everybody
should be placed on supervision when they're released,
because there's a Government responsibility to help
them make that transition. As you know, not everybody
is supervised all the time. That's a legislative
determination.

And, I think that's particularly true for
people who max out. People who max out, who are
otherwise parole eligible, usually max out because
they did something bad in prison, or because they're
somehow dangerous in some way. I'm not saying always.
And to me, the idea that somebody can determine that
their release date is -- can to some extent be
determined by their own behavior, and then they get
out and there's no supervision, is a -- is a real sort
of policy failure.

The worst case is somebody who's in -- in
lockdown, is in, you know, 23-hour solitary confinement one day, and is released to nothing the next day. If the public, if they knew how often that happened, they would be really upset.

So, there should be some sort of transition planning, and I think there should be supervision, ultimately, for everybody, for some period of time.

But, the question is what are the conditions of that -- of that release and the point of the question that you might have talked about, which is the revocation process. Or how do people get both? So, Latessa's idea of a halfway house, or revocation center for at least for a technical, maybe for more people is the right way to handle it.

COMMISSIONER O’DONNELL: Eric, did you have a question?

MR. SCHNEIDERMAN: Just that I'm interested in the finding of these communities that the prisoners return to, --

MR. TRAVIS: Right.

MR. SCHNEIDERMAN: -- since my district has a lot of red in it.

MR. TRAVIS: Yep.

MR. SCHNEIDERMAN: And, I'm wondering if you have any -- has there any further work been done
on thinking about other ways to spend money, or other factors that should be incorporated?

Obviously, if 77 percent of prisoners go back to their -- I assume, when you say "community," you mean where they came from -- are there -- are there other ways to do things in those communities that -- that you think could be helpful? Or is it something that still should be targeted at the individual thing?

MR. TRAVIS: Well, thank you, Senator, for raising that point. And, I'm not surprised that you did.

So, there's in -- in our world, in the reentry world, there is a concept that's gotten a lot of people talking, and it's also got some policy movement on it -- called "justice reinvestment." So, the way the justice reinvestment concept goes is something like this.

It starts with the maps. It says, look, we are -- we, the taxpayers, are spending a lot of money to house people from communities that are struggling, in upstate communities, so they get the benefit, you know, near the Canadian border, of that expenditure. It doesn't go to this community that is struggling.

And the question, the policy question then
is could we structure sentencing and -- and criminal justice policy, generally, in a way that would reduce the expenditure that's done for those people in that community that we're housing somewhere else and -- this is the reinvestment part of it -- reinvest the money back into that community?

So, the -- Connecticut, for example, is -- is on a justice reinvestment track right now. And, what it's doing is it's saying we want to establish some incentives so that we can reduce the level of expenditures from, let's say, Washington Heights, and the incentive is that the money that's saved, let's say half of it goes back to Washington Heights, and half of it goes to those taxpayers. I'm not sure how they're structuring it in Connecticut.

It -- it's like the conversation we just had on the metrics for public safety. So, the question is what are the metrics here that matter? And, the metrics ultimately are public safety metrics, but there's also this expenditure metric.

And, the -- Denise alluded, at the outset, to work we've done in the past. And that's been really -- this colleague we've worked with, David Kennedy, who is a professor at John Jay, one of my first hires in my beginning at John Jay -- and my
second was -- was Debbie.

So, Professor Kennedy is now working on ways -- he was the architect, when he was at Harvard, of the -- what we have called the "Boston miracle" that Janet Reno had asked us to replicate in five other jurisdictions. Sharp reductions in violence in that community.

He has now applied the same thinking to reductions in -- in the drug markets, open-air drug markets. So, this gets a little bit closer to the Washington Heights story. And basically, what he does is he brings together community leaders, law enforcement officials, service providers, and drug dealers and their families into a meeting, in a room like this. It's what he did with gang members and non-violence.

And, he basically says to them -- he doesn't say it to them. The law enforcement folks say to him -- say to them, "If you -- we could -- we could tomorrow make all these cases against you." So, there's a lot of prep work. "We could -- we have this search warrant. We have these arrests we can make. We have -- we have you on tape. We could do it, but we don't want to arrest you. We'd rather you get out of the drug -- the drug business. Because we know, if
we arrest you, you'll go away for two years, and come
back and be in the drug business again, and then
somebody else will have replaced you in the meantime.
Maybe it's your younger brother. He gets caught up.
Who is that good for? We want you to get out of the
drug business."

He then -- the community groups that offer
various ways to get out -- meaning employment
opportunities, and social services, and the like --
and, very importantly, the influentials, is what
Professor Kennedy called them -- the mothers, the
girlfriends, the wives, the kids in there saying "What
you're doing is harming our community. Stop it."

So, he's now done this sort of work in a
number of jurisdictions. And, we are in conversation
now with the Police Chief of Providence, and the
Corrections Commissioner of Rhode Island, to say if we
did this in -- it's not we. If they did this work in
all of Providence, and significantly reduced the use
of arrests and imprisonment as a response to drug
markets, which is the effect that he's having -- it's
close to miraculous, what happens -- what would be the
long-term effect on the prison population?

Now, that's an interesting conversation,
because the biggest increase, and it -- I don't know
the figure -- but, the biggest increase in our prison population is for drug offenses. So, if you had a different way of responding to drug markets and, you know, they go inside, they're not totally -- that's okay. You know, we want improvement from the community point of view. And, he had a big response to drug markets. And, the police were part of the strategy. And, they saw the results. Safer streets. You had, you know, people working and rather than dealing drugs. One of the effects of that is to reduce the demand for the prison part of it.

So, that's the sort of thing that you start thinking about when you say how would we reinvest the money back in the community. So, you reinvest the money to keep that sort of thing going, and provide the jobs, and hire the police, and do the, you know, what we need to -- we need to reverse the flow of money.

It's not -- it's not money from Washington Heights that's going to DOCS. It's money from the taxpayers, it's mostly from Wall Street, going to DOCS, but we need to reverse that public expenditure. And, that's where a long-term strategy that says we want to reduce our prison population intentionally, purposefully, consistent with public safety, allows
you to think about things like what Professor Kennedy is doing.

COMMISSIONER O'DONNELL: Okay.

MR. VANCE: One more?

COMMISSIONER O'DONNELL: Pardon?

MR. VANCE: I'm sorry. Can I have one more question?

COMMISSIONER O'DONNELL: One more question.

MR. TRAVIS: Okay.

COMMISSIONER O'DONNELL: The final question.

MR. VANCE: Jeremy, you talk in your article about the community justice corporations, or you propose that as a concept. And, --

MR. TRAVIS: Thank you for reading the article.

MR. VANCE: -- does that --

[Laughter]

MR. VANCE: Yeah. Does that -- does such a concept exist in practice anywhere else? And, if it does, can you share that with us? And, if it doesn't, how -- does this replace parole and probation? And -- and who sits on the corporation, to direct its opportunity -- its work?

MR. TRAVIS: So, the basic idea here that I
alluded to in my presentation is to find ways to do two things simultaneously. One is to localize supervision. And the second is to bring all kinds of supervision under one organizational umbrella.

The reason for localizing it, I think I've made that argument. But, if you're managing risk and opportunity to change behavior, you have to do that where the risks and the opportunities are presented. Those are at the community level, at the street level. And so, the supervision function should be at that level.

It's very analogous to -- you know, I was associated with another program I created, which is the transition to community policing. It's actually very similar to that one. You want to -- want to get the community involved in very different ways, and so, the function of the officer -- in this case, the Parole Officer -- has to change to manage those resources, and risks, and opportunities at the community level.

The reason for the second part of the recommendation, which is to bring everything under one roof, is other than the legal distinctions, I see little functional distinctions between parole and probation. And the legal distinctions are a function
of the way we've created our justice system. People
go to State prison, and parole is a State function.
People are placed on county probation because they
don't go to State prison. And, on the street -- on
the street level, in the lived experience, it doesn't
make all that much of a difference, and it's a way to
game those agencies against each other. So, that's
sort of the radical idea is localize and unify
supervision.

Then, the question is how would you actually
organize that? And hence, I did the community justice
corporation as a way to test that -- that pilot out.
That could be an organization -- a governmental
organization. It could be a non-profit, that does
this on a contract basis. There are different ways to
-- to manage it.

Debbie, just -- what date?

MS. MUKAMAL:    July 5th.

MR. TRAVIS:    July 5th, the Mayor's Office
will be releasing -- or we'll release, actually. I
should say John Jay will be releasing an RFP to create
the New York City Justice Corps, which is a -- it's an
employment-focused idea that came out of the Mayor's
Poverty Commission. But, that will be a step in this
direction of organizing the provision of services at
the three pilot communities in New York City. The City is putting four and a half million dollars into that. We hope to raise an equivalent amount of private money.

If all goes well, the MacArthur Foundation, this month, will be awarding about six million dollars to the Safer Foundation in Chicago, and the Urban Institute, to launch something called the Safer Return program, which is a community-based justice corps idea.

The work I did in Baltimore, with the empire -- I'm sorry, the Enterprise Foundation. They created a community justice -- didn't actually do the supervision in the legal sense, but they did sort of a community-wide thing.

So, there are a number of interesting models that give me optimism to think that this way of moving forward would produce the results of reduced crime and improved reintegration, access to jobs, and the like.

COMMISSIONER O'DONNELL: Thank you, very much, Jeremy. You were terrific.

MR. TRAVIS: Thank you.

[Applause.]

COMMISSIONER O'DONNELL: We're going to take a break. We have a working lunch, so we'll take
a ten-minute break and get your lunch, and come back, and we'll move to our next presentation.

(Off the record.)

COMMISSIONER O'DONNELL: You know, we really do have two of the best social science researchers in the area of corrections and -- and reentry, and that is Paul Korotkin and Donna Hall.

So, we'll be hearing from them a lot. They are overseeing our research on the Commission. And, they're going to speak to us for about an hour on the research that is available in New York State on correctional programming and corrections, et cetera.

So, Donna and Paul?

PRELIMINARY RESEARCH AND SENTENCING STATISTICS,
INCLUDING THE COSTS OF VARIOUS CORRECTIONAL PROGRAMMING

MS. HALL: We're just going to take a couple of minutes here to -- to talk a little bit about some of the work we've done around reentry for a couple of years, and done a regression. We'll talk a little bit more about this. But, for a couple of years, we had a -- we've had a Reentry Task Force that's done some -- a variety of things around reentry, one of which is we've had a research group -- an inter-agency research group that's looked at a lot
of the issues that have come up around reentry. So, I'm going to just really quickly cover a bit of the work that we've done. And, I have to stand here, because I don't have a flipper to help.

Real quickly, I'm just going to go through some of the DOCS data. These are the 2006 release calculations. And this essentially just breaks down the age of folks being released from DOCS in 2006. And, these are -- the reason I'm covering the data I do cover in this is because it feeds into what Doctor Latessa was talking about regarding risk.

One of the key risk factors is age. And so, the younger you are, the higher risk you're going to be. So, this shows a description of age coming -- coming out of DOCS.

And gender, again. And, actually, we had the exact same data the last five -- or the last verification -- 7 percent of the population coming out is female, 93 percent male.

This shows the distribution of the prior conviction records, and this is prior to the offense for which they were admitted to -- to DOCS. So, we have people with no prior felony convictions, but it also shows you that, you know, 20 percent had three or more prior convictions, felony convictions in their
history; 37 percent had two or more. So, you've got a fair amount -- and, these are felony convictions. If you look at the arrest numbers, it's got to be, you know, in terms of the norm, I think it's going to be probably around four prior felony arrests, something like that. So, we've got people with fairly significant histories in -- in the State prison system.

This looks just a the type of release, whether this was the first time they were released on that sentence, or whether they have been released previously, meaning there was a parole revocation that went through.

And, this is the time served, how much time they spent locally. Important to reentry because, you know, it gives you a sense of how long they've been out of the community, and how long they've been away from families, and those kinds of factors. They average around -- what is it, Paul? Forty months, or something like that?

MR. KOROTKIN: The average? Forty-three.

MS. HALL: Yeah. And, this shows the distribution. It's heavily weighted at the lower end, so you've got a large portion of the population is actually 36 months or less. And, your average gets
dragged up a bit, because you've got a smaller number of long-term commitments.

And, that's really -- that's all I'm going to say about the DOCS population. DOCS puts -- you know, they put together a release, all sorts of publications on release cohorts, admission cohorts, under custodies, more data than you'll ever want to see. It's published and available through DOCS. And, they're great pieces that they do.

All right. So, now we're looking at recidivism. And, in this particular presentation, we're looking at whether they were re-arrested for a felony within two years of release. And, we break it down by gender and age.

These are 2003 releases. We have to go back a few years, to give them a couple of years to recidivate -- to recidivate or not. And, what we see in just this presentation, there are a couple of different things.

One is that recidivism declines with age. And, I think we all have a sense of that. We've heard it probably dozens of times. But, you know, we can see -- and these are felony recidivisms -- declining significantly with age, particularly as they get beyond their 40s, and the highest being under 20.
But, it's notable, by the way, there are a couple of other things you can see in this, is that women recidivate less than men. And, that's, you know, and that's just what we see in data bases across the country.

And also, the age doesn't work for women the way it does men. And that is that we see, actually, the higher rates of recidivism are with women who are slightly older. And, in part, that is related to who they are, what their histories are, and probably interconnected with drug -- you know, drug abuse.

In this one, we're looking at the percent of releases re-arrested for a VFO within two years of release. And again, we do it by gender and age.

And, we see a very fairly strong pattern by age for males. And then, it declines significantly over time. Young males are at the highest risk of violence and for being arrested for a violent felony offense.

Women, again, don't show that kind of -- that kind of pattern. It goes up and down. Probably more notable here is that -- the low rates at which women are re-arrested for violence. So, being female is virtually a protective factor coming out of prison.

And here, we're looking at the percent
arrested on a VFO within two years of DOCS release, by
the number of prior VFO arrests. Higher history is
another very strong predictor of what's going to
happen in the future.

And particularly, if we're looking at VFOs,
prior violent histories are a strong predictor. And,
arrest histories are much better predict -- you know,
are better predictors than convictions, because of
multiple reasons, but they -- they tend to be strong
predictors for what happens.

So, we can see it climbs, when we have zero
-- folks with zero prior VFOs re-arrested in two years
on a new VFO arrest, at a rate of five percent, going
up to 23 percent.

Here we're looking at percent arrested
within two years from DOC -- from release by DOCS, by
the release status at the time they left DOCS. And,
that is whether they were first-time released or
whether they had been released previously on that
term. Those are going to be the parole violators.

And, what you see across our measurements is
that those who have had prior violation on that
sentence are much more likely to get re-arrested.
That's -- you know, it's another predictor of
re-arrest. That is, past failure predicts future
failure. You haven't been able to succeed in that -- that trend. And, we see it across the groups, however we measure it -- any arrests, drug arrests, violent arrests. You see the same patterns.

One of the things we've done in conjunction with the Reentry Task Force is to develop statistical models to predict who is likely to become re-arrested while subsequent to release. And, these would include not just parolees, but folks who are ME'g out, of which I think about 10 percent of DOCS population now goes out through maximum expiration. Eighty percent of those folks go out because they've been -- as an ME, because they have had prior parole failures. So, they fail, they go back. They fail, they go back. Eventually, there's no more time left on that sentence. The other 20 percent are the folks who have just either misbehaved in DOCS, or perhaps their sentences were short, maybe a small misbehavior, maybe there --

UNIDENTIFIED: Or reduce programs.

MS. HALL: Or reduce programs.

And so, in any event, so we -- what we have done is trying to, you know, following Doctor Latessa's risk and needs models -- model, we developed risk scores to see how well we can predict who is
going to fail in the future simply by knowing their
criminal history and a few demographics.

The demographics that we used are gender --
because we know it makes a big difference -- age --
and, age in two places. Age at the time that they --
that they're released and age at the time we first see
them in the system, or age at the first adult arrest.
If we had the age at juvenile, first juvenile arrest,
or first juvenile contact, it would be an enormous
asset to this, I'm sure, but we don't have that. So,
if anybody wants to change sealing laws or --

[Laughter]

MS. HALL: So, those are the kinds of
things that -- that make a difference.

And, criminal history prior to the current
release. And that is the number, and the timing, and
the variety of arrests and convictions. And, this is
an important point. Variety is important.

That is, the more -- the greater number of
different kinds of acts they're involved in, the more
likely they're going to come back with a new offense.
So, you know, if they had had burglaries, and
robberies, and drugs, you know, if they've had
multiple kinds. It's not just the number of priors,
but the variety of priors.
Failure while on parole. Again, that's -- that's another -- as before, that's another predictor. And, the type of release -- parole, CR -- that's conditional release -- ME -- each of those make a difference.

Now, that doesn't mean that -- it doesn't mean that if they -- if CRs are higher than parole, that somehow it's -- it's the nature of the release that's causing the recidivism. It just means that it's a risk factor. That is, it will help us predict who is going to recidivate.

These two lines show the prediction model, or the effectiveness of the prediction model. And, you can almost not see the distinction between them, which is a good thing. What this is, is the blue line shows the rate at which we expected people to return. And, let me explain that.

What we did was we developed a statistical model that essentially assigns everybody, at the time they're released, a risk score. Okay? What we think your risk of re-arrest is going to be. And, we then take those risk scores, and we aligned them, and then we cut the population into ten -- essentially, ten even groups.

And so, our risk -- our lowest group has a
risk score of one. And, down at the -- our highest group has a risk score of ten. And, we -- we developed -- we developed and assigned those risks at the time they're released. We don't know what's going to happen to them. That's what we think will happen to them.

What you see in the red line is what actually did happen. And so, you can see that these lines almost lay on top of each other. That is, the model predicts pretty well, in the aggregate, when we're looking at risk levels, what the rate of recidivism is going to be for that population.

This the same type of analysis, only instead of predicting any re-arrest within two years, we're predicting a VFO re-arrest. And, what you see here is that at our lowest risk level, people we assigned to the lowest risk group, have a two or three percent chance, we assign, as coming back for a VFO. In fact, they come -- not coming back, but they'd be re-arrested within two years. And, in fact, that's essentially what happened.

At the high -- the highest risk, we're estimating around a 30 percent chance of coming back. This population we tested it on actually, I think, came back around 27 percent.
If you look, the first one -- the slide before was looking at any re-arrest. This is VFO re-arrest. If we did felony re-arrest, we're going to see the exact, same pattern. The lowest rate is going to be about ten percent. The highest rate is going to be a little above 60. And it goes pretty much -- you know, it goes up in the same gradation, and the lines line up pretty well.

MR. SCHNEIDERMAN: Donna, the static risk level is the same analysis. The same people are in the one, two, three, four, five, in all of these analyses?

MS. HALL: That's -- that's a great question. When somebody is released, they're assigned to multiple risk scores -- one for violence, one for felony. Those are the two critical ones. Because, somebody might be at high risk for the felony, but not at high risk for violence.

And, I think the woman drug user is probably a good example of that. She's likely to come back, not necessarily like to come back for violence. So, they -- they do have different -- different risk scores.

And, what we -- just to sort of sum up that, we used it for multiple purposes, but the Sentencing
Commission, I think, will probably be using some of 
that, and Paul will talk about this a bit, to -- as 
we're studying the effects of programs.

We can use risk scores as -- as one of --
one of many things that we're going to use to control 
and try to match populations. So, I think that will 
work nicely. DOCS has talked about using them to 
prioritize their programming and develop some 
programming around it.

This is actually -- there was some 
discussion earlier about COMPAS, and about the LSI-R. 
This is a piece of that kind of assessment. That -- 
those kinds of assessment have two components in them.
One is risk, which is often run off of very static 
data like we have, like criminal history, 
demographics. The other piece of it is what we call 
the criminogenic needs, and that is measurements of 
criminal attitudes, criminal personality, associates, 
drug use, those kinds of things that Doctor Latessa 
was speaking about.

So, while the State is trying to implement 
and develop these two kinds of measures, we went ahead 
and did an interim risk score, just so that we had at 
least a piece of this kind of system in place to work 
with for multiple reasons.
COMMISSIONER O'DONNELL: Donna, could you -- how many cases did you use to validate the instrument, when you did it?

MS. HALL: We -- we validated a couple of different times, and each time we've done about 26,000 cases we're validating on.

COMMISSIONER O'DONNELL: So, it's very significant data.

MS. HALL: Yes. And, we validate by -- by age. We validate by gender. We split all different kinds of ways. So, it's been validated through different populations, different age, different genders, all kinds of offenses. We cut it. It's very solid risk prediction.

But, of course, it doesn't tell you what to do with them. It only --

COMMISSIONER O'DONNELL: It doesn't.

MS. HALL: -- tells you who you need to -- you know, who you probably want to focus on.

COMMISSIONER O'DONNELL: But, it's almost a hundred percent accurate in prediction.

MS. HALL: It's -- it's a good prediction. Now, the hundred percent, I guess, would be we can tell you with a hundred percent certainty that these are going to be the failures and these are going to be
the successes, and we're a hundred percent correct. What we're providing is probabilities.

So, what we like to suggest is that to the extent we're focusing on programming, that we look at that upper end, we look at, perhaps, level five and above, or level six and above. You know, somewhere in that. And -- and we try to do, perhaps think about doing different things with the level ones, and twos, and threes. For two reasons.

One is, you know, we probably can't do much better than we want to do with them. That is, that rate is fairly low, and it's probably not going to get much better. And, to the extent it gets better, it's not going to make much of a difference, because they're so low to begin with.

The other thing is, of course, what's been mentioned a number of times, and that is if we put too much attention on low-risk offenders, instead of controlling them in ways that could be dysfunctional to their normal routine, we can make them worse. And so, we encourage intervention at the higher levels.

I just want to -- you know, the president was talking about -- a little bit about the first month out, and what happens during that early release period. And one of the wonderful things in New York
is, with the help of the Federal Government, is that we have developed an inter-agency reentry effort and, in addition, we have an inter-agency research team. And so, we've matched data bases. And so, when people ask questions about, well, what does happen in the early time period, what kinds of services do people get, we can answer some of those questions now. And, we're certainly structured to answer many questions, as they arise.

Here, what we did -- we did that same release group from DOCS, and we matched them with OASAS data, substance abuse data, to look at the proportion who enter chemical dependence treatment within one year of release from DOCS. And, what we found in doing that was that about 32 percent actually entered treatment during that first year of release, during that first three or four months.

The further breakdown shows you what the primary substance was when they entered treatment. And, I think what -- one of the things I would say about this here is the relatively large number coming in for marijuana and alcohol, compared, you know -- I mean, it's -- it's dark -- compared to the cocaine and others, it's pretty significant. Now, that doesn't mean that they might not have multiple treatment
needs. This is what they identified -- what the drug
treatment provider identified as the primary treatment
they received.

And here, this looks a little bit at that
group who did go into treatment, what kind of
treatment did they get. I apologize for the coloring.
I don't know -- it's not the color I chose. But, it
shows what kinds of treatment that they did get, and
77 percent entered outpatient treatment, another -- be
it all men -- 14 percent had crisis detox, and 9
percent had residential. So, the outpatient
treatment, and I think that's probably expected, is
the norm, in part probably because that's what is most
available.

This is time from release to the first -- to
the -- to the chemical dependency admission during
that first year. And, I think this is an important
slide. It shows that most of the admissions occurred
during those first couple of months. The first month,
by the way, is broken into those three segments. So,
it sort of lined up that way. We had to kind of put
them on top of each other, to get the whole first
month.

The first couple of months is when they're
going the admissions. I suspect that a fair number
of these are referrals from parole. We didn't look
at, in this analysis, whether the MEs are
self-referring. I think that that's probably
something that is an important issue, that wasn't
here.

But, they are entering treatment fairly
early, when they do enter it.

Just kind of a piece of information, for
those interested in the mental health population.
That 16 percent of these folks that were released in
2003 had been admitted to an OMH facility while under
custody of DOCS. So, you know, whether you see it as
high or low, to me it seemed high. And, it shows that
DOCS has a very challenging population that they're
trying to deal with.

And, almost five percent were admitted to an
OMH facility in that first year subsequent to release.

A big issue, and we've heard it a thousand
times, and that's Medicaid. And, what we looked at
here, we matched, in this same process, with the
Medicaid data bases. We determined that Medicaid
eligibility state-wide for all releases was
established for 50 percent of these folks. So, 50
percent of them received the Medicaid eligible -- were
determined to be Medicaid eligible during that first
year's period. Whether they actually received services, I'm not sure, but they -- I presume that if they were determined to be not eligible, they probably got some kind of service in conjunction with that. That's about 14,000, by the way.

Another big issue, and that is how quickly do they get Medicaid. I think that there's been a lot of concern, and mentioning that there had been a delay in getting Medicaid, and so the treatment gets delayed. And again, --

COMMISSIONER O'DONNELL: Joe, do you want to just comment on the legislation, that they really -- it really is --

COMMISSIONER LENTOL: Yeah, I think it --

COMMISSIONER O'DONNELL: -- is wonderful?

COMMISSIONER LENTOL: -- and I know it wasn't mine. It was Mr. Aubrey's legislation. I think this would require Medicaid eligibility as soon as the prisoners are discharged.

MS. HALL: Oh, okay.

COMMISSIONER O'DONNELL: Well, they passed a bill that -- that said that your Medicaid would be suspended when you went into the prison system, which is the way it used to be. And so then, when you get out, it would be reactivated right away.
COMMISSIONER ALEXANDER: And we can start that process prior to them actually being released.

COMMISSIONER O'DONNELL: So, it only --

it's only helpful if you were on Medicaid before, but it's enormously helpful to that population.

MS. HALL: And this research actually did look at that issue, and I didn't have it here, but we did look at who was on Medicaid prior to being released -- or prior to going into prison.

What this showed was that Medicaid was established fairly early. I mean, again, it depends, you know, half cup -- or cup half-full or half-empty. I'm not sure how you see it. But, it was established fairly early in the post-release period, usually within that first month. It tails off at -- in the next, you know, next time period. And then, you know, once we get beyond two months, we've got another substantial peak there, as well.

Now, this doesn't control for when they applied for Medicaid. So, it might have been two, three, four months out before they identified a treatment need and applied at that time.

COMMISSIONER O'DONNELL: But the significance is if they're not on Medicaid --

MS. HALL: Yeah.
COMMISSIONER O’DONNELL: -- and they don't have the resources, they can't really have drug treatment, mental health treatment, get medications for illnesses, et cetera.

MS. HALL: Right, exactly.

COMMISSIONER O’DONNELL: So, the possibility of -- of re-offending in that situation would be much higher.

MS. HALL: It would be higher, yeah. And -- and so I suspect, you know, having -- having it for multiple purposes, simplifying the process if they are, indeed, eligible for it, that they would just be re-activated. That's going to -- that should make a significant difference. Because, a lot of these guys were found eligible prior to going into prison.

And the last thing we pulled out from the interpretation that we, you know, had done -- or pulled data together for is what -- you know, how is the money spent around -- if you look at Medicaid utilization for mental health and chemical abuse services, how much money is spent on this population during the first year out. And, it turned out to be about -- and I don't want to get this wrong. I think it was, like, about 55 million. And, that was over -- a little over 8,000 people.
So, there is a -- and, that's just for chemical dependence and mental health services. Significant, in terms of money going for services. You know, perhaps not unusual, given the population that were doing something during that first year.

So, that's all the data I pulled together. But, if you have other reentry questions, or particularly as the reentry subgroup becomes established, we can answer, you know, many cross-agency questions for this process.

COMMISSIONER BERGAMO: I have a question.

COMMISSIONER O'DONNELL: Thanks.

COMMISSIONER BERGAMO: And, kind of -- kind of give me a little -- be patient with me. Most people coming out of prison, I mean, have trouble making a living. And sometimes they're probably also associating with people who are also broke or have been in trouble. And, it may have been tried around the country, my -- forgive me -- an incentive. Where, if you make ten dollars a week, I'll give you two dollars a week. If you make two hundred dollars a week, we'll give you fifty dollars a week. For the first six months, the first -- some transition incentive if you earn money, if you work. Has that been done anywhere? Do you know?
COMMISSIONER O'DONNELL: Not that I know of. I know that there is proposals. I think Assemblyman Aubrey had a bill to pay, you know, like tax credits and things to employers, to get them to employ people. But, I haven't -- I don't know if there's any programs that, you know, --

COMMISSIONER BERGAMO: I mean, I was curious about this --

COMMISSIONER O'DONNELL: -- reward or increase someone's --

COMMISSIONER BERGAMO: Only when someone makes six dollars an hour, they can't make it, so they're going to revert to what they did before. I'm just curious about that. Thank you.

COMMISSIONER O'DONNELL: That -- hm? And, Paul Korotkin?

MR. KOROTKIN: Let me start by saying that I'm very honored to have a chance to speak to this group, and very humbled. I get to call Doctor Latessa, Doctor Travis, Doctor Hall. I am not a doctor. I play one at work, but I'm not a doctor.

[Laughter]

MR. KOROTKIN: I have twelve staff members. Everybody has their Master's. Only one from John Jay. Four PhDs that work for me. I have worked with DOCS
for 19 years now, 4,000 business days, for 30,000 hours. I've had a chance to study what happens to DOCS, with the help of my staff.

I get to reinforce a little bit of what's been said today. I also get to answer questions that were asked of me two weeks ago. And that fits, really, my -- my major style is rather than being up in front of a group, just responding to questions that come up. And, that's what's going to be my job while working with you folks. I'm here as support for you. I'm not a policy maker. I am somebody who is going to help you shape the questions, to put it into a context.

Now, you've heard lots of people give lots of data, lots of DOCS data. And now, I get my chance to show you a little bit of data.

(Pause)

MR. KOROTKIN: Now, very early on, we heard Marty Horn talk about the fact that State-ready inmates pile up in the jails, and Marty's got his reasons. So, we go back -- I started cranking it. This is weekly data, going back to 1990, on the number of people State-ready, sitting in local jails. It topped out at about 4,300 back in 1999.

And, one would think, with my economist
training, that I can't just when I'm doing population projections and doing impacts of legislative changes, I can't just look at who is in prison, because that's capped by the capacity. So, I have to change, and instead we look at the demand for DOCS bed space.

The demand for DOCS bed space was the number of inmates in DOCS custody, plus the number of people who are State-ready. If I track that, then I can have the Legislature and my bosses worry about the supply of beds while I look at what's the demand for beds.

COMMISSIONER O'DONNELL: Would you just define "State-ready"? I think most people know, but --

MR. KOROTKIN: State-ready are people who have been identified on the New York State Police Identification Network as ready to come back to DOCS because they have either been a new commitment who has been sentenced to come to DOCS, or a parole violator who has gone through the entire process. So, it's a combination of those two numbers.

COMMISSIONER O'DONNELL: And so, when they get ready, usually they've been sentenced or whatever.

MR. KOROTKIN: They -- not usually. They have absolutely --

COMMISSIONER O'DONNELL: They have --
MR. KOROTKIN: -- been sentenced, and the County, and Parole, and the courts have all told us this guy is yours. Take him. And, you've got ten days to get him in, or you're out of compliance, and you owe the County money.

At the last -- the last session, Terry Saylo [phonetic] came, and she showed you data that was ten years old, and tracked for ten years, and showed you how crime has gone down, the people coming to DOCS has gone down, and New York City is going down. And, ten years is an interesting period, but is it the right period for us to be looking at?

Here's three years. We've been apparently flat. We were 65,000. We're now just over 64,000. And, that initial drop was primarily because the Legislature -- I'm sorry that Assemblyman Lentol is not here -- the Legislature passed supplemental merit. A thousand people got out of prison early because this new law -- supplemental merit -- part of Marty Horn's crazy-quilt of things that we do to get people out early -- supplemental merit and the A-I drug re-sentencing all happened, so we saw this -- this drop. Artificial or real, it happened.

Now, as President Travis mentioned this morning, we've got a little bit of an uptick going on
here. Is this real, and we want to look at it? Let's see the next one.

We're now looking at seven years. This is the -- let's congratulate ourselves, how we came from 75,000. Now, this is the last three years. Is this what we want to look at? Or, is this what we want to look at?

The next one. 1995. We did a lot of depicting what has happened in the system in the twelve years. We've done a lot of work showing everything back to 1995. 1995 was a slight line up.

Now, we go to the Korotkin level, since 1990, not a slight rise up. We climbed the mountain. And then, here's the last three years. So, what are we going to look at? Everything is perspective. I'm going to help shape, with you, the questions that need to be asked, and hopefully get you the answers, and tell you what we can answer and what we can't answer.

The early release programs that happened. Going back, again, to 1995, just compared to 1996. Seven thousand people a year were either diverted from DOCS or got out early, compared to what the courts set.

Shock incarceration program. Notice the numbers have been sliding down. They're sliding down
further since we put in determinate sentencing for drugs. Does this make sense? Sure.

One of the things that we held out for Shock was you go to Shock, you do six months, you get out 95 percent of the time, compared to, you know, you're shoot -- you're rolling the dice. Maybe you'll get out 60 percent or 70. No, you're getting out 100 percent of the time now, with determinate sentences. So, we've taken away that little incentive for people to go into Shock program.

Merit program. Again, this tick up was supplemental merit. Willard, I've broken it out -- and, you should all have a packet of this, hopefully. It just arrived at 10:30 this morning.

I've broken out Willard for the courts and the PBs. ECPDO is the early conditional parole for deportation only. And then, the A-Is.

Looking at a larger perspective. 1950. In 1972, we were at 12,000 inmates in New York State, 27 years of being the growth industry in the State. Predicting where it was going to change was not an easy task.

Last time I was asked about VFOs under custody, and whether we match up with what the rest of the country is. Just like with recidivism, it's tough
for us to compare crimes. We do the legislatively
defined VFOs. In other states, robbery crimes are not
a VFO, burglary is not a VFO, robbery third is a VFO,
but not in New York State. So, comparing them of one
against the other sometimes can get difficult.

But it appears that during this period is
where the rest of the country is. And, we're starting
to tick up again, keeping our bed space for the
violent felons.

Crime is not where I start doing my
population projections. Crime is how many victims
said that they had a crime committed against them.
Drug offenses are not part of crime. Arrests are what
starts the process of getting somebody to DOCS.

The arrests have dropped except for the last
three years, and they're up again another two percent
this year.

Felony arrests lead to new indictments. The
number of felony cases filed by county. The dark
solid line is a 12-month moving average, trying to get
the seasonality out of what you're looking at. The
light lines are term by term, how many cases were
filed, new felony cases were filed. So again, slight
turndown, going up in the last year plus.

Indictments then lead to dispositions, cases
getting closed. The same line. Tick up again.

But, what's even more troubling for me is that over the years, the courts have been disposing more cases than the new indictments. Therefore, the backlog sitting on judges' desks has dropped from 21,000 in 1995, down to under 14,000 in 2002. It started to get out of hand, they controlled, now it's starting to get out of hand again.

Arrests are going up. Indictments are going up. The productivity of the courts has not yet started to attack it, and the backlog is starting to come. What's that mean to DOCS? A disposition. These we'll commit. Back, back, back, back, back, starting to work.

All right. We're talking about that phantom line. Whatever comes in. Marty made it simple. He said it's how many people come in, and how long will they stay. I make it even simpler. How many people come in, and how many people go out? And, Jeremy showed the admissions and releases earlier.

I'm sorry. Thank you. The next one.

Another piece, besides new commitments at the front door, we get people who are returned as technical violators.

I started looking at the number of parole
violators, but not only the parole violators. People removed from the community. From 1992, less than 4,500 technical violators came back to DOCS. The number climbed. We opened Willard.

Willard is a -- I'm only looking here at the diversions from DOCS, as opposed to the new court commitments. By 2006, over 12,000 individuals were removed from the community, to either come back to DOCS or go to Willard. And so, that's the other half, besides new commitments at our front door.

On the back door, we release people to parole supervision. This does not include the maximum expiration, which as you saw on Jeremy's slide, has held fairly constant -- 2,000 to 2,500 over the fifteen years that he looked at.

And, the Parole Board -- well, we also saw that not only does the Parole Board release people, but you reach mandatory release, so that you can be conditionally released sometimes without seeing the Parole Board. The determinate sentences that were passed in 1995 and 1998, for the second felony violent offenders, and then all violent offenders in '98, don't see the Parole Board. They get out as a conditional release. They're included in here.

But, what drives this more than anything is
the parole release rate. This is a monthly chart of parole release rates, going back to the start of the earned eligibility program in 1987.

Earned eligibility program is anyone who has a minimum sentence of six years or less, they increased it to eight years or less about three years ago -- but, primarily six years or less on this chart, has to go -- has the ability to earn an earned eligibility certificate to enhance their possibility of being released from the Board -- by the Board.

When the program started, the release rate was up in the 70 percent. By the way, this removes the Shock cases. The Shock incarceration program gets out at about a 95 percent release rate, as I said. So, we took that out of the analysis, to watch to see how the Board was doing on any given month, and to give them feedback.

So, we saw the release rate dropping, dropping, dropping. The Governor did a state of the State in 1999, saying that he is for the removal of parole. Let's get rid of it. The Board interpreted that as he doesn't want us to release anybody. It took a couple or three months to convince them that that wasn't what he meant.

[Laughter]
MR. KOROTKIN: But, it never came back up to a real good level, as far as we were concerned. And remember, in 1995, and again in 1998, we started to remove the violent felons from seeing the Board. You would expect that this group which was never getting out at a high rate, if you take them out, you would watch the rate go up. It didn't happen.

Here, we started doing determinate drug sentences. Drug offenders get out at a very high rate. If we take them out, we expect a drop. We found that it didn't.

But, then came the election. And, the Board really didn't have any direction. This is a real good sign to DOCS, to me. I'm seeing that the parole release rate for the last three months has increased markedly. And, we're hoping that that is going to stay in place to offset what's happened in the increase in arrests and what may happen with the courts.

COMMISSIONER ALEXANDER: That certainly coincides with when I came on board, right?

COMMISSIONER O'DONNELL: Yes.

[Laughter]

MR. KOROTKIN: I threatened no one in this room.
I was asked the question how long do offenders stay? 43.3 months, average time. Not with DOCS -- average time out of the community, the state and jail time.

If I look at another measure, the median length of time served in DOCS. Median takes out those long-term offenders. You've got half the guys serving longer than this, half the guys serving less than this. Drug offenders and property offenders, 17 months. YOs and JOs, 9 months.

It -- our goal -- at least I'm told by John Nuttall, my Deputy Commissioner -- is to make sure that we identify the programs that they need, provide them the programs, return them to the community a better citizen, in 17 months.

Another look at this. We are at 43.3 months, the total time that they stay out of the community. Up from 34.7, 35 months in 1997. That's declined here. So, the Board has pulled this line up slightly, but the violent felons went from 52 months, their average length of stay, to 75 months. Everything else has stayed fairly constant.

The drugs, in particular, started at 30 months, ended at 31 months. But, there was a little bit of a blip up here, to 36 months, as the Board was
not permitting them to be released at their initial appearance. Then, determinate sentencing came into this release cohort, and it dropped it back down to 31 months, where we think it will continue to drop slightly, but it's too soon to tell yet.

Questions about specific programs and recidivism rates are thrown into your packet. The CASAT Program -- which is Comprehensive Alcohol and Substance Abuse Treatment Program, which is a six-month annex phase, followed by work release. Since 1995, the numbers of people in here have been diminished markedly. The Executive Order that was put in place in '95, not allowing violent felons to participate in the work release program, has limited the number of people that have gone into the CASAT program.

But, overall, if I break out DOCS-run males -- and, by the way, this is one page of a report that we put out annually -- DOCS-run males versus Marcy, the reason for that, Marcy was run by the Phoenix House, and we were required by the Legislature to report separately on the two programs. And, there are different philosophies, as well.

Ours, you complete the annex phase, and you go out into the community, and while out in the
community, you are in the battle. You're facing what's happening in work release.

Marcy ran a residential treatment for phase two. The people were not out in the community. Instead, what happened was they got out into the community -- and this part here is the people who completed everything -- all of a sudden now they have the war to fight, and it was a bit of a shock, so their successful completers had a return rate of 27 percent, versus the DOCS-run programs were at 23 percent, because they had already fought the war.

Other programs that I was asked to look at, and I should say by my Commissioner, knowing that the Commission was going to be asking these questions, we have done this very, very recently. We looked at the work release program. We looked at it back in 1994, the people who were released from the Department back when VFOs were still permitted to be participating, and we've looked at it again in a 2001 through 2003, so we would have a robust enough sample to have it meaningful.

The people who completed CASAT and then went on to work release, their return to custody after completing CASAT successfully, 25 percent. Other people who went to work release without doing CASAT,
37 percent. The people who were released from DOCS who didn't do any of these programs came back at 48 percent. Similar findings in 2001 through 2003.

The next slide --

COMMISSIONER O'DONNELL: Wait. Could you just wait, though, one second?

Are the people that don't have -- go in the programs, do we now, if they are drug offenders or alcohol, do they have drug and alcohol problems?

MR. KOROTKIN: Non-work release doesn't -- work release does not have to have drug and alcohol problems, so we did not look at a comparison that would match that, no.

COMMISSIONER O'DONNELL: Okay.

MR. KOROTKIN: The next page does show you the size of the groups that we played with, so you have the data that backs up what was on the previous slide. We've done the same sort of thing with the next four.

For Willard, both the parole violators being diverted, as well as the judicially sanctioned cases. We're looking at, again, a three-year group of people that were released. The Willard parole violators come back -- 53 percent come back to DOCS within three years. A comparison group, people who went to DOCS,
who could have been sent to Willard instead, they
returned at a 15 percent rate.

Again, this is what Donna showed, that the
subsequent releases, the people who have already been
identified as failures, fail at a fairly high rate --
this 53 to 58 percent.

On the other hand, we've also looked at the
cases that came directly to us from the courts, the
Willard judicially sanctioned, as well as the Willard
extended program, which was followed by a -- which is
Willard followed by a three-month -- six-month --
six-month residential treatment in the community -- in
fact, on this, we had to lag and do a three and a half
year follow-up, since they weren't really available
for returning. The judicially sanctioned come back at
43 percent, the extended 41 percent.

And the comparison group of people who came
to DOCS, who looked like, in terms of their crimes,
and their criminal history, and their drug problems,
coming -- came to DOCS instead of the judge and the
D.A. saying why don't we look at Willard as an
alternative. And again, we've showed you some numbers
that worked out successfully.

COMMISSIONER GREEN: Can we go back to that
point, just a minute, on Willard?
MR. KOROTKIN: Yes, sir.

COMMISSIONER GREEN: Is that saying that the people who went to Willard in the judicial sanction group actually had a higher recidivism rate?

MR. KOROTKIN: Let's see that again.

COMMISSIONER O'DONNELL: I thought it was lower. Let's see.

MR. KOROTKIN: Than the --

COMMISSIONER GREEN: Than the comparable group --

MR. KOROTKIN: -- people who were at DOCS. Yes, it does say that. I -- I wasn't asked to --

COMMISSIONER O'DONNELL: Is it --

MR. KOROTKIN: -- but, you could be right.

COMMISSIONER O'DONNELL: -- put a gloss on it.

MR. KOROTKIN: I'm just reporting the data. But yes, that's what it says.

COMMISSIONER GREEN: So, we're better off not sending them to Willard.

COMMISSIONER O'DONNELL: If --

MR. KOROTKIN: I'm not a policy maker.

COMMISSIONER O'DONNELL: But, a little better if they're parole violators, right? This -- the first two columns, are they --
MR. KOROTKIN: These are people who were diverted -- who were on parole, who were either diverted to Willard or came back to DOCS. These are people who were coming from the courts, either as a judicially sanctioned, or were an extended case, or went to DOCS, even though it looked like they could have gone to Willard.

COMMISSIONER GREEN: I guess one -- another question, then. In terms of statistical significance for those differences, when you look at them, is there anything --

MR. KOROTKIN: The sample size is fairly robust. We did not look at that, but chances are real good that it's there.

And again, I think that back at the Willard extended, you only had 153 cases, but the others were well into the thousands.

On the --

COMMISSIONER GREEN: And, once the -- I'm sorry. The Willard JS, those are -- are those parole violators or no?

MR. KOROTKIN: No, judicially sanctioned cases that --

COMMISSIONER GREEN: Okay.

MR. KOROTKIN: -- came through the courts.
COMMISSIONER GREEN: Those are the D and E felonies, where --

MR. KOROTKIN: Second felony offenders, D and E felons, with no prior felony worse than a C, and nobody violent.

COMMISSIONER GREEN: No violence.

MR. KOROTKIN: No violence.

I've ruined your packets, because I couldn't figure out how to get it up here. I was asked about Shock recidivism. There's three pages in there, charts on Page 49, showing the overall comparison to Shock, 28,555 graduates are compared to other groups, the people who failed to complete Shock, the people who refused Shock, the people who looked like they were eligible for Shock but didn't go.

Then, Page 53 shows that by age -- at which age Shock seems to do better than non-Shock people. It was insignificant.

As mentioned, in DOCS programming, we look at five areas. We look at substance abuse, academic education, vocational education, sex offender treatment, and aggression replacement treatment. And, we decide how many of those five areas. A guidance counselor sits down with the person as soon as they walk in the door, quarterly. Every three months, sit
down with your guidance counselor. Where are you in your program? How are you doing on it?

Now, for five areas, we have only 17 months for the typical non-violent felony offender. We've got to get them substance abuse or academic education to make them merit eligible, and they can then cut off one-sixth of their sentence for indeterminate, one-seventh of their sentence, so we've got to get them into the programming. And, 63,000 inmates, limited resources, how do we do on that?

Well, we looked at a study, the first ten months of 2002. It's old data, but fortunately, in my game, the outcome measure is did you come back to DOCS in a certain period of time. We're not measuring the speed of the system, so we've got to give it time.

So, the last one that we looked at was the first ten months of 2002, and we tracked them for two years. Did they come back?

The first thing we did was identify how many of the 13,000 people had identified needs -- 11,000 had a need for substance abuse; almost 12,000 had a need for vocational training. The threshold for academic is that they didn't have their GED or high school diploma -- 9,000 of the 13,000 got out of prison after coming to us without that level. Number
completing the program. We've improved these numbers. But, back in 2002, 60 percent of the people left us having their substance abuse treatment being met, six months of substance abuse treatment, 59 percent with aggression, lower numbers. Essentially, this -- this one is a little bit -- only 37 percent of the sex offenders finished successfully, completed their treatment program before being released in 2002.

What we found is that --

COMMISSIONER LENTOL: Excuse me, Paul?

MR. KOROTKIN: Yes, sir?

COMMISSIONER LENTOL: I guess Mr. Latessa would say there is no behavioral modification?

MR. KOROTKIN: That is correct. There is no --

COMMISSIONER O'DONNELL: What's the aggression part of it? Is that --

MR. KOROTKIN: Well, --

COMMISSIONER O'DONNELL: -- possibly in --

MR. KOROTKIN: -- but if it's --

COMMISSIONER O'DONNELL: -- your management, but it's not --

MR. KOROTKIN: -- it's not a cognitive program, --

COMMISSIONER O'DONNELL: Um hmm.
MR. KOROTKIN: -- and it's something that John Nuttall, ever since being involved with the Reentry Task Force that Donna will be talking about, has realized that this is a shortcoming. We've now put it into our transitional piece at the end. But, it's something that we are working on developing.

We're still trying to find is there a program out there. The questions that you folks asked. It there a curriculum that works? Is there a training program that works? And, it's something that's being looked at. Especially in 2002, there was none.

But, what we found was that if you completed the program, your chance of success -- and this is a -- my Commissioners really like to talk about success, rather than failure, so this is upside-down from recidivism rate -- 73 percent succeeded, 27 percent recidivated if you completed the program. But, only 63 percent succeeded if you had an identified need but did not complete the program, 37 percent recidivism rate. And, you find that for each and every program.

But again, these people have multiple needs. So, what we look at was if you complete -- what percent of the programs that you had identified for you did you complete? And, if you completed one out
of the four -- again, we have five criteria. If you completed one out of the four, your chance for success was worse than if you completed three out of the four. In fact, we see an overall increase.

The overall group had a 70 percent success rate, 30 percent recidivism. But, the more -- the higher proportion of the programs that you had identified that you completed increased your chance for succeeding out in the community.

Now, let me end with the four markings.

There are three types of lies -- lies, damned lies, and statistics.

[Laughter]

MR. KOROTKIN: I'm here as your support, to help you overcome what everybody believes. We're going to work on getting the questions right, getting the time frames right, and getting the whole package right. And, I appreciate that you're going to work with me.

COMMISSIONER O'DONNELL: Thank you.

[Applause]

COMMISSIONER O'DONNELL: Thank you, very much, Paul. And, we're going to move right ahead, to hear from Donna Reback.

Donna Reback is a very talented and gifted
social policy consultant who, under a Federal Department of Corrections grant, and an NIJ grant, is providing technical assistance to New York.

First, in the sex offender management front, with a group which has pretty much completed its work and is now moving toward becoming a policy group for sex offender management in New York.

And, probably more significantly for our purposes here, Donna is the consultant to the New York State Reentry Task Force, as part of the transition from prison to community initiative in New York State. That's a working group that we've recently revived under the new administration. It also the spearheaded -- the group that spearheaded local reentry task forces that we currently have operating in nine counties throughout the State. We also have an RFP in progress for more counties, to expand the local reentry task forces.

So, Donna knows New York, and she knows the players, and our history of dealing with reentry.

FEDERAL TPC:

TRANSITION FROM PRISON TO THE COMMUNITY

MS. REBACK: Well, I do know New York, and I want to say that I feel very honored to be here and to meet all of you. I'm listening to what you're all
I have to apologize. I assumed that my PowerPoint presentation was going to be loaded onto this, and it wasn't. You all have handouts with you, so I'm just going to have to walk you through this. And, it was just a mis-communication. I assumed if I sent in --

COMMISSIONER O'DONNELL: Sorry.

MS. REBACK: -- my materials, that was going to be loaded, and I realize it wasn't.

Let me just tell you that I wanted to -- everybody's got the presentation, and I --

COMMISSIONER O'DONNELL: Can you just hold it up, so we'll --

MS. REBACK: Okay.

COMMISSIONER O'DONNELL: -- know what you're -- okay, that's that one.

MS. REBACK: Yes. It's the one in turquoise, yes. It had originally been in brown, and I thought that turquoise would work better.

But, I wanted to just start off by saying my presentation, as Denise told you, is basically to describe an existing technical assistance project
that's been going on nationally, and New York State has been one of the states that's been involved in the -- do you need a handout?

UNIDENTIFIED: No.

MS. REBACK: Okay.

So, New York State has been one -- one of the states that's been involved in a national model that is focused on helping offenders reenter successfully, so that ultimately we have better public safety outcomes.

The model -- and I want you to all really think about this -- is really focused on large system change. You've been hearing a lot about programs. You've been hearing a lot about what works and what doesn't work.

And, what our model does is really take a lot of that information and try to put it into a context of what a system would look like. It involves culture change. It involves re-thinking the way all of us who are involved with offenders in any way work together.

But, before I talk about that, I just wanted to let you know that New York has a pretty long history of working in technical assistance projects with the National Institute of Corrections, which is
the Federal technical assistance arm of the Justice
Department that sponsors the project that we're
working with right now.

New York State has many of its counties and
the Parole Board, the State Parole Board had been
involved on a technical assistance project focused on
violations, probation and parole violations. And the
focus of that work that was done over the year was
really to get both probation agencies in different
counties and the State Parole Board, when it
participated, thinking about how to build policies
that were more effective, so we weren't just having
technical violations and non-compliance violations
that end a lot of people up in prison who might have
been able to stay in the community if there had been
some intermediate road.

So, up here, you see that from 1988 to 1999,
a number of counties -- Ulster, Suffolk, Nassau, and
Dutchess County -- the City of New York Departments of
Probation, and the State Parole Board were involved in
that.

Following that, the National Institute of
Corrections, for a number of years, from '97 to 2000,
had a national project that was focused on helping
jurisdictions really get a sense of how to build
cost-effective ways of managing offenders. And, Dutchess County and Saint Lawrence County in New York were two of the participants in that national program.

The comprehensive approaches to sex offender management is a project that's been going on. It's funded by the Department of Justice, Bureau of Justice Assistance, and it was run through the Center for Effective Public Policy. And, that was a grant program. It's still going on. And, that grant program was really focused on teaching jurisdictions that got these grants what the evidence-based practice base was for dealing with sex offenders. Because, dealing with sex offenders is a somewhat different business from dealing with non-sex offenders.

In any case, if you look at this, you will see that Westchester County, Ulster, Oswego, New York City, Saint Lawrence, Saint Regis, Mohawk Nation, Rensselaer County. The Capital District had five counties. Dutchess County was involved. Catskill region had five counties. Nassau and Suffolk were all grantees. And, in 2004, the State of New York was a grantee.

And, what happened in 2004 and is still going on is that a very large collaborative steering committee of players from across the system came
together and actually learned about what
evidence-based practice is with sex offenders, learned
what works in managing sex offenders, because they
will come back into your communities.

They're in the process of issuing a report.

There is now an Office of Sex Offender Management.
And, that is a very discrete area of expertise that
you now have in your state, that you should be aware
of as you're thinking about reentry issues.

And then finally, the issue that I'm now
representing, the transition from prison to community
initiative. New York State, as I said, is one of
eight states across the country that is involved with
this technical assistance effort. The other states
include Georgia, Indiana, Michigan, Missouri, North
Dakota, Oregon, and Rhode Island.

And, this is -- so, my involvement here is
I'm -- I'm involved with this project. I am the site
coordinator for this project. I have also been
involved in all of the other projects in New York
State. And although I live in Vermont, I love New
York.

[Laughter]

MS. REBACK: I know a lot about you. And,
the reason that I'm giving you this history is that
it's important for you to know that there are pockets of expertise and competence around the state, around these different issues. So, as you begin to look, if you're interested in probation and parole violations and how they can look to improve offender reentry, if you begin to think about sex offenders and what works and what doesn't with sex offenders, when you begin to think about offender reentry, you've got in front of you some of the particular counties and the state entities that have done this work and know about it.

The common characteristics of a lot of these projects are they all have a public safety focus. What we're doing is working on making these communities safer by figuring out how to help offenders be successful.

They're multi-disciplinary. And, I think this is the driving point that you're going to hear from me again, and again, and again. You've got to have all of your stakeholders involved in this work. Traditionally, we have given the criminal justice agencies -- corrections, probation, and parole -- the entire responsibility for taking care of offenders. Obviously, prosecutors and the courts coming into the system. But, on the way out, it's those agencies. What we know is that human service agencies
own the people that we work with as much as criminal justice agencies do. Our offenders have mental health issues, they have substance abuse issues, they have low education scores, they have housing needs across the board. There is no reason for all of these agencies to be working separately. We need to be working in concert together.

So, let's see. We have a Web site. The National -- the Transition From Prison to Community Initiative Project has a Web site, and there is a whole piece on New York State. And, you can go to the Web site if you want to. It's on there.

So, let me just give you a little bit of the overview of this project, the Transition From Prison to Community Initiative. We haven't called ourselves a reentry initiative, but everybody else calls us reentry. So, that's what we're talking about.

We're here, of course, to help you -- to help states enhance your transition process by taking evidence-based practice into account. And obviously, providing mutual ownership, really promoting that agencies work together, helping corrections, the releasing authorities, supervision, and human service agencies form strategic approaches and partnerships to helping offenders be successful, and assisting
agencies in figuring out how to effectively target the existing scarce resources to high-risk offenders. So, what you're hearing from Doctor Latessa, what you're hearing from Jeremy Travis, what we know from the information that DCJS has provided, we are reiterating, as well. You really, really need to think about targeting your scarce resources first, and in particular ways, to high-risk offenders.

The goal of the Transition From Prison to Community Initiative -- there are a couple of them. One is, of course, to promote public safety by reducing the threat of harm to persons and property by released offenders in the community. And, to return -- to increase the success rates of the offenders who transition from prison, by fostering effective risk management, treatment programming, and accountability, both for the offender and for the agencies that work for them in the community, and victim participation.

Now, on offender reentry -- and I think Jeremy Travis talked about it first -- we -- traditionally, we have just talked about and thought about reentry as being that point when the offender walks out of prison and comes back into the community. But, the new vision of offender reentry is that, one, it is not a program. It is not a point in time. It
is a process.

And, from our perspective, the process begins the day the offender enters the system. Because that is the first opportunity to assess. You've heard that from Doctor Latessa. You've heard that from Jeremy Travis. You're hearing this from DCJS and DOCS. To assess who that offender is, based on his or her risk, and what kinds of needs they have, and to gather that information and begin to use it with your partner agencies in a way that works.

We base the principles of our program on collaboration. You're going to hear me say it again and again. Working together, getting more than our criminal justice agencies. Getting our partner human service agencies, our community non-profit agencies working together. Evidence-based practice, which Doctor Latessa covered very well this morning.

And, organizational development. And, that's a huge piece of this. There are a lot of things that have to happen within the agencies and within the structure at large in order to make successful offender transition work.

Okay. You have this chart here, and it looks like a battleship. Some people have described it as a battleship. Some people have described it as
But, what I will tell you is that at the top of the chart, it talks about the partners that we believe all need to be involved, because they all have some ownership and responsibility for offenders.

And, those partners include all of the correctional agencies, the human service agencies, and the community agencies.

The next tier that you've got going across here shows all of the different decision points, from the moment that an offender walks into the system. There is a decision made at all of these different points. And, what we're saying is you've got to have good information, number one, about that offender, from the moment that he or she walks in. Information about their risk level, and information about their criminogenic needs.

But, not only do you have to have that information at each point, you've got to share it. You've got to figure out -- your system has to figure out how to develop a body of information about an offender and take it forward from the pre-sentence investigation, to sentencing, to initial classification in the prison, to programming, re-assessment, transition planning, community release,
and then release from supervision.

What we've got now in most states -- and New York State is not an exception -- what we have now is a lot of agencies that are gathering a lot of information about an individual offender, but they are not able to -- sometimes they're not willing to, but I would not say that's the case in New York -- but they are not able to, for technical reasons, for legal reasons, to share their vital information that helps us do the planning, that helps offenders be successful. So, that's going to be one of the key themes that we talk about.

I'm going to skip some of this. We talked about collaboration. Doctor Latessa talked about evidence-based principles of effective intervention. I will repeat them.

Our model says that you use validated actuarial risk and needs assessments. And, you're beginning to do that. The probation agency, VPCA, has embraced COMPAS, is actually operationalizing it. Parole is making its decision. We know that DOCS wants to have a risk assessment instrument. And, as Donna Hall showed you, DCJS has developed a very good risk prediction model in lieu of something unified.
York State is going to be how will we gather usable
information amongst all of our agencies, so that we'll
all have a common understanding of what risk is. And,
that's one -- one issue that we have been talking
about.

Intrinsic motivation, cognitive based
therapies, positive reinforcement, gathering support
from the natural communities, and quality control,
which is evaluating, is what we're doing, actually
working. Those are the principles of the work that we
are promoting through the systemic approach.

You know why we focus on high risk. Doctor
Latessa has talked about that. I just want to say one
little thing about why we often don't focus on high
risk, and why we often focus on low risk at the
operational level.

There is something kind of counterintuitive
for those of us who have worked directly with
offenders. We get a good person who is really
invested in programs, who hasn't committed such a
terrible crime. They're coming out of prison. They
may have housing needs. And, from just an intuitive
perspective, you want to help that person, right?
They're deserving. They've done all the right things
as they've gone through their program.
You've got other people who may be coming out of prison, who have been in prison for a long time. They committed a violent act. They've got a long recidivism history. And, all you want to do is watch them really closely. And, once they screw up, send them back to jail.

And, as we've been talking with some folks out in the counties who are actually responsible for supervising offenders, and have the burden of doing that, it's -- it's difficult for them to understand that I should put most of my time into this bad guy, this high-risk offender, when this other person is more deserving, they have tried so hard? So, that's a very -- on the one hand, a very personal response, but it has become very system-wide, okay?

It's kind of -- and so, just grasping the notion that we're going to move towards investing more of our time, and energy, and resources in high-risk offenders is a -- is a huge culture change for our entire criminal justice system.

From the perspective of thinking about transition as a process, we think about it, encourage everybody in our project to think about it in terms of phases. The first phase is the institutional phase, where you're admitted to prison. There's a
classification done both for your risk of recidivism, but also your security risk.

Prison is an ideal time, when you gather information from your pre-sentence information, when you get your programmers in the prison and other agencies who come in to begin to work with an offender and understand what that offender is going to need. To create an assessment, and create a plan for helping that offender move forward. And, working on that prison -- vital prison programming.

The next phase is actually the moving out of prison, the planning for transition phase. And, that's when the offender and all of the program providers begin to think about what's needed when I get in the community. And building a plan is very goal oriented. It's focused on the risk level and the criminogenic need level.

That usually takes place somewhere six months prior to release, and goes out six months after release, because as you've all heard, the first few months -- yes, the first month, especially -- but the first few months after release is when an offender is at the highest risk for recidivating. So, having a very solid assessment plan and case management plan for that offender, that includes supervision, but also
includes the kinds of treatment that offender needs, is really critical. If you just have supervision, you aren't going to be addressing criminogenic needs. If you just have treatment, you're not going to be addressing risk. When you marry them together, that's when you have a greater chance for reducing recidivism.

The way that the project is set up here in New York is fairly classic. And, if you go a couple of pages down, you'll see the TPC structure here. The State has put together a policy group, and that group is made up of the Commissioners of our criminal justice agencies and our human service agencies, and there are fourteen agencies here represented. And, if I could read my own small print, you would see Health, Labor, Housing and Community Renewal. OASAS is part of this. OMH, Child and Family Services, Temporary and Disability Assistance, Mental Retardation. VCPA is at the table. The Budget is at the table.

So, the Commissioners came together around this project and said they wanted to work. And, they appointed the Steering Committee. And, that Committee is being reconvened. There was a little lag between the transition in governments.

And, the Steering Committee had assigned
itself three work groups: a group to deal with the institutional phase; a group to deal with the reentry phase, the transitional phase; and a group to deal with the community phase.

So, staff are being appointed from those different agencies to come back together, take a look at the work that's been done, and begin to say where do our policies, our current policies, actually match up with a model that is going to ensure that we have a collaborative approach to offender reentry that assesses offenders, shares information, and moves things forward.

There have been a lot of accomplishments in the work that's been done. There has been a lot of studies that you have heard around Medicaid eligibility, housing. I think that one of the large accomplishments in this project has been that the State, through the Burn grants the first year, funded county reentry task forces in nine jurisdictions. Do you all know about those, right now? I know that you know --

COMMISSIONER O’DONNELL: You could talk just very briefly about them, --

MS. REBACK: Okay.

COMMISSIONER O’DONNELL: -- if you would.
MS. REBACK: Okay. And, those county reentry task forces were set up to actually mimic the state system that we're describing here. So, there were collaborative partners.

Each task force that applied for funding had to have, of course, all of its criminal justice partners. It also had local law enforcement. And, the same range of human service partners on there.

And, the task of those reentry task forces is to be prepared to help offenders, high-risk offenders who are coming out of prison and back into these counties, prepare to be ready to help them meet their programmatic treatment needs, their supervision responsibilities, so that they can successfully re-enter. So, that's really operationalizing the state model at a county level.

And this, the state project has been really useful to the counties. And our project -- our project worked with the State, to actually give them four days of training. We trained the chairs and the county coordinators in the whole piece on evidence-based practice, and on team-building, and then we brought the entire teams together for three days in Albany, and that was a year ago in May, in fact. And, we did a lot more work on what reentry is,
and how you -- how you can operationalize it.

Those -- when then also -- DCJS and DOCS, I believe, provided each of the teams, and has been providing the teams with lists of offenders who present the highest risk, and said, "Here are the folks who are coming back into your county you should really be paying special attention to."

COMMISSIONER O'DONNELL: It's really Parole that's earmarking people, for the most part.

MS. REBACK: Okay. But the --

UNIDENTIFIED: It goes through Parole.

MS. REBACK: It goes through Parole, right.

COMMISSIONER O'DONNELL: Um hmm.

MS. REBACK: And, Parole has -- you now have two coordinators -- an upstate and a downstate.

COMMISSIONER ALEXANDER: Upstate coordinator, a state-wide coordinator, and we've yet to retain a downstate coordinator.

MS. REBACK: Okay.

COMMISSIONER ALEXANDER: Our state-wide coordinator is here, Lynn Goodman.

MS. REBACK: Hi there. Sorry.

So, this has been the way that New York has been trying to step forward and take this conceptual and systems work down to the ground. And, I think
that you're trying to expand the counties. You're offering your grants, a wider range of grants. Do you have a sense of how many more you're going to --

COMMISSIONER O'DONNELL: Our RFP is out. Six? About six, we hope.

You know, I think that there are some missing links here that we're discussing. Maybe we're going to talk about that. New York City being one.

Although, New York City was given an opportunity to participate in the beginning, but a lot is going on about reentry here in New York City. It's more making the link and having -- having both initiatives kind of work together.

And, the other is the service providers. And we, the criminal justice Commissioners, DOCS, Parole, and DCJS, and Probation did an open meeting about a month -- a month ago, now, to service providers all across the state, having them come and basically address all of the Commissioners. It was very widely -- well received by the provider community, who really hadn't had an opportunity to do that before. We're preparing a transcript, and it will give us an opportunity to make those links that haven't been made before.

MS. REBACK: Right. And, one of the ways
to pull in your non-profit community and your service provider community is through the county reentry task forces. It's a perfect -- perfect place to use them. One of the things that -- this is going back to what Ed Latessa said this morning, and what we know is that -- and, somebody asked -- I think someone here asked the question do we know that our current service providers, our non-profits, our treatment providers -- do we know the what they're doing, in terms of their programs, are effective?

And, it's going to be very important for any successful reentry effort, whether it's a state effort or a county effort, to be giving out contracts to programs based on efficacy. You know, we have a lot of folks who we know and we like, and they've been in our pool for a long time, but are they giving us the outcomes that we're looking for, in terms of public safety, and in terms of offenders being successful, in terms of families being unified?

So, those are things that a lot of states and the counties are beginning to grapple with in their own minds, as to how are we going to make all of ourselves accountable for effective outcomes?

COMMISSIONER BERGAMO: Could I ask a question?
MS. REBACK: Yes.

COMMISSIONER BERGAMO: Has any contracts been set up where they're incentive-based? A minimum plus an incentive, based upon their figures?

MS. REBACK: I don't know. That's a good question.

COMMISSIONER BERGAMO: And, why not?

MS. REBACK: You mean here in New York?

COMMISSIONER BERGAMO: And -- and why -- and why not? What is this for free stuff? I mean, it gets me -- I'm not being aggressive with you. Forgive me.

MS. REBACK: I'm in absolute agreement. I mean, I know that there are other jurisdictions where there are definitely incentive-based contracts, or -- or the contracts say "this is what we will accomplish," and if we don't, then they have to be held accountable.

But, there is a difference between saying "this is what we would do." Okay? Here are the activities that we'll provide. Versus these are the outcomes that we will effect. And, those are two different things. And, you have to really think about are you looking for outcomes or are you looking for activities. You're looking for activities that lead
to the right outcomes. So, it's a great question.

So, one of the things that I just wanted to stress, as I'm looking at my PowerPoint, you know, I had to do a real shift in my own mind, just to get my head around this.

It's this whole notion, in terms of system change, of case management. We -- we are talking about -- every state that is -- that is being successful at helping offenders being successful has an integrated way of doing case management and supervision.

And what we mean by "integrated," once again, is that as a system, and as a group of agencies, we develop information that we all need to assess the offender, what his or her risks are, to determine what their criminogenic needs are, what we have to do through programming.

And, that we have a way of sharing that information, number one. That we have a way -- that we have created a way of working together, you know, a very structured, formal way. In other words, we have folks who -- who need mental health treatment. Do we have a particular way in which we know that our mental health people, agency, can work with us, can actually contribute information that is -- that is recorded
somewhere where we can commonly look at that
information, where we can track what has happened for
the offender, what resources and treatment he or she
has participated in, how that possibly adds to his or
her goals and potential for being successful?

It's -- it's something that just is not
commonly found in the criminal justice world, and
maybe in other parts of the human service world. But,
it is the only way, we believe, that we're going to
really effect meaningful change. We've got to have
case management and supervision systems that include
an integrate the meaningful information from all
agencies.

And, we have to develop both technological
ways, and legal ways, and policy ways for agencies to
share the needed information. And, that really just
doesn't happen, and it's not happening across the
board here in New York. In pockets, it is, but not
across the board.

The other thing that I think you really need
to do, and you've begun to do it here, is to have
system-wide training on evidence-based practice, not
just training for the Commission -- and you're experts
now -- not just training for DOCS case management
staff, not just training for Parole supervision staff,
but training for your entire human service sector. 
Training for your service providers, so that they'll
know what they're supposed to be doing, so that 
they'll have a sense.

And, the other thing is there is good
evidence-based research that comes -- that exists in 
the substance abuse world, and in the mental health 
world, and it's important for criminal justice people
 to know what effective interventions are that folks in 
those worlds are using.

So, the training piece, and the sharing -- 
the building the case management, and the sharing 
information piece, from our perspective, are really 
critical.

What we offer, as a national technical 
assistance project, is me. Somebody talking to you 
all the time and kind of pounding away at you. We 
offer cross-training. We're willing to take folks 
from other states that have been kind of ahead of 
where New York is right now, and bring New York's 
correctional staff and your service staff there. 
We're willing to bring folks in here. We do 
cross-site trainings, where we bring folks together.

We are out there looking for resources. So, 
you know, a technical assistance project is kind of a
prodding, pushing, pulling project, but you're part of a family here. You're part of a national family that is trying to think about reentry and transition in a systemic way, not just in a piecemeal programmatic way.

So, that's what the Transition From Prison to Community Initiative is. New York is definitely well on its way. And, thanks for listening.

COMMISIONER O'DONNELL: Well, thank you.

[Applause]

COMMISIONER O'DONNELL: And, I apologize, Donna, that we didn't have your PowerPoint here.

I don't know if anyone is here from OASAS or -- in the Blue Room, but hello. I know Karen Carpenter Palumbo, the Commissioner of OASAS, is very interested in participating in the reentry part of what we're doing on the Sentencing Commission, and has also offered to partner much more aggressively with the local reentry task forces going forward, to make programs available for drug treatment, and evidence-based programs available, as well. So, thank you, very much, for participating.

We can't take a break right now. If you do have to get up, we'll understand. But, we are behind schedule, so I do want to keep moving forward.
Bruce Western is joining us. Thank you, very, very much. We appreciate you being here.

Bruce is a professor of sociology at Princeton. On July 1st, he'll take up a new appointment at Harvard, as the chair of the program of inequality and social policy.

He has written a book, Punishment and Inequality in America, that has won a very significant award for his perceptive look at the racial inequality within our corrections and criminal justice system. So, we're very lucky to have him join us today.

Again, one of the national experts in this area that is so kindly sharing his time with our Sentencing Commission.

So, thank you, very much, Bruce.

INCARCERATION AND ITS COLLATERAL CONSEQUENCES

MR. WESTERN: Thank you, very much, for the invitation, too. I'm really very honored to be here, and very grateful for the opportunity to share my research with you with my PowerPoint.

What I thought I would do today, and what I was asked to do, was to talk about the collateral consequences of incarceration. And, a lot of the work that I've been doing over the last eight or nine years has focused on the social impact of the growth in
incarceration rates in the United States over the last three decades.

So, what I wanted to do was to try and put this story of the collateral consequences of incarceration in the broader context of national trends in imprisonment rates and demographic variation in imprisonment rates, too, which has been a very big part of -- a very big part of my -- my research interest.

So, all of my -- my entire presentation will consist of putting up lots and lots of statistics, and I've seen you've already had a great deal of statistics today, so I apologize in advance, but I do hope that this can provide a slightly different perspective on the social impact of incarceration. And, all of my focus is on the national level, with one exception, of an employment discrimination study in New York City, that we conducted a year ago, and I'll talk a little bit about those results. But, most of my discussion will be at the national level.

This is, essentially, the case that I'm going to make to you, that the current levels of U.S. imprisonment are comparatively and historically extraordinary. I'll briefly provide evidence of that, which is probably well known to people in this room.
These extraordinary rates of incarceration nationally, and New York, as we well know, is about at the national average, although the imprisonment rate has ticked down over the last few years, and so it varies from the national average just slightly.

But, these very high rates of incarceration have really been concentrated among young African men -- African/American men with very low levels of schooling. And, I'm going to -- we don't often look at that kind of demographic variation in imprisonment rates, but I think it's important to focus on that in the context of a discussion about collateral consequences. And so, I'm going to report to you some statistics about -- about that.

And then, the final piece is the collateral consequences. What's the effects of going to prison on peoples' economic opportunities and family life? It's not -- the answer is not necessarily obvious, because the people most at risk of being incarcerated, of course, have very poor economic opportunities, and very disruptive family lives to begin with, even before they are -- even before they are incarcerated.

So, just to preface this story about the growth in the incarceration rates over the last thirty years, we of course know that there have been very
profound changes in the structure of criminal sentencing over -- in this slide, between 1980 and 2001. If we look at things like sentencing guidelines, parole abolition, three strikes laws, truth in sentencing laws, these are all measures that, of course, reduce -- reduce judicial discretion in sentencing, that have had the effect, I think, of increasing the risk of incarceration given a conviction. And, in some cases, also increasing time served.

So nationally, each of the cell entries here are the number of states with these sorts of measures. In 1990, only two states had sentencing guidelines. By 2001, 17 states had sentencing guidelines.

In 1980, 17 states had abolished their parole boards, 33 states had abolished parole by 2001.

So -- but these national trends, of course, are well known to the Commission.

Part of the consequence, of course, of these changes in the structure of sentencing has been the growth in incarceration. So, let me put this in a comparative context to this.

If we look at Western Europe, as we well know, if we measure the scale of the prison system in a given country, by the incarceration rate -- the
number of people in prison or jail per hundred thousand of the population. In Western Europe, the incarceration rates vary between about 50 and 100 per 100,000. So, about .05 of one percent of the population, about .1 percent of the population. And, in the United States, of course, for 2001, the incarceration rate was about 700 per 100,000. So really, an order of magnitude larger than in Western Europe.

So, from a -- in a comparative perspective, the United States is extremely unusual. And we're also historically an extremely unusual time. Because, for most of the 20th Century, if we look at state imprisonment rates from 1925 through 1972, up here on the -- up here on the graph, incarceration rates varied in a very narrow band, at round about the European level, at about 100 per 100,000. So, for most of the 20th Century, we -- we were where Western Europe is now.

And then, of course, incarceration rates began to grow, and they have increased in every single year for the next thirty years. And nationally, of course, they're still growing, even though we have seen declines recently in New York.

These figures don't include the jail
population. If we add the jail population, that's another third, and that gets us to about 800 per 100,000.

And, that's not the whole correctional population, the population in supervision, because we have another three-quarters of a million people on parole. These are the figures, latest that were available. Another 4.1 million on probation.

So, 7 million people in the United States now are under some sort of criminal justice supervision, and this is completely historically unprecedented. So, this is really a new age we're looking at. We'd have to go back three decades to find a very different time.

This is not -- these numbers are not the most important thing in the context of my research. These numbers are not the most important thing about what's happened to the changes in criminal justice in the United States over the last thirty years. What's really significant is the way in which, for my purposes, incarceration is distributed across the population.

So, if we look nationally, the incarceration rate in 2004 was about 700 -- 700 per 100,000, about .7 percent of the population. But, if we look at
young men, particularly young men with less than a high school education, men in their 20s, who have dropped out of high school, the figures show that by 2004, among white men, the incarceration rate was 7,000 per 100,000. So, it was ten times higher than the national average.

And, as we all know, of course, there's a massive racial disparity in incarceration rates. And, if we look at African/American men in their 20s, their incarceration rate is about 13,000 per 100,000 -- 13 percent of young black men are now behind bars, on an average day. And, if we look at young African/American men with very low levels of schooling -- those who have dropped out of high school -- and that's about the bottom 15 percent of the population -- over a third -- I estimate over a third of those young black men with low levels of education are incarcerated.

And again, just to emphasize, this is historically entirely new. We only have to go back twenty years to find a time when this wasn't true.

Now, this is normally how we think about incarceration rates, as the point time, the proportion of the population who are in prison or jail.

Sociologists of the life course might think about the
risk of incarceration in a different way and say, "Well, what's the likelihood that a person would ever spend time in prison by -- by the time, say, they reached their mid-30s?" Because, if you -- if you're going to go to prison, you will tend to have been admitted to prison for the first time by your mid-30s, so this is, like, what's the lifetime risk -- the lifetime risk of imprisonment?

And, if we look at birth cohort that's born immediately after World War II. They're born '45 to '49. And so, this is a birth cohort that's reaching their mid-30s at the end of the 1970s, before the big runup in imprisonment rates. And we can see that, among non-college, African/American men, in this birth cohort born in the late 1940s, I estimate about 12 percent of them will serve time in state -- state or federal prisons. And now, we're just talking about prison incarceration.

And, we can compare the experience of this birth cohort to another birth cohort born in the late 1960s. Okay? So, this is a birth cohort born 1965 to '69. And, this -- this birth cohort is reaching their mid-30s at the end of the 1990s. So, they're growing up through the prison boom.

And, for this birth cohort, among non-
college, African/American men -- so this is high school graduates, plus those that have dropped out of high school -- nearly a third of those young black men will have prison records by their mid-30s now. And again, this is historically novel.

And then, if we look at the very bottom of the education distribution, we look at young men who have dropped out of high school in the '65 to '69 birth cohort, by 1999, 60 percent of those men, we estimate nationally, have served time in state or federal prison. Nationally, now, this means about 28 months of time served at the mean. So, this is a significant period of institutionalization.

Now, sociologists of the life course typically don't think about going to prison as a life event that marks someone's passageway through -- through young -- young adulthood. Sociologists of the life course typically think about things like completing schooling, getting married, serving in the military.

And, we can compare risks of imprisonment to these other more familiar life events that mark the passageway through -- through adulthood, and we can see that there are racial disparities in marriage rates, college completion, completion of a four-year
degree, serving in the military. And, for this birth cohort of people born in the late 1960s, imprisonment for African/American men has become more common than military service, and more common than completing -- completing the four-year degree. And again, this is -- this is entirely historically new.

Now, why might we want to -- why might we want to think about the lifetime risk of imprisonment for different groups in society? Well, we may think that imprisonment confers the enduring status that affects a whole variety of life chances after your release. It may affect your economic opportunities. It may affect your family life, and so on.

So, I'm going to provide some evidence now that suggests that going to prison reduces economic opportunity. And for some people, this is a controversial idea. And, to other people, it's obvious. So, I guess, I approached it -- I approached that question empirically.

Here are, very quickly, some estimates from the National Longitudinal Survey of Youth. It's a very unusual social survey. It follows a cohort of young people who were born in the 1960s, from 1979 through '04. The survey is still in the field, so we're re-interviewing people each year. Most social
surveys aren't very good at studying people involved in the criminal justice system because they only focus on the non-institutional population. The NLSY is very good at interviewing people in prison when they -- when they become incarcerated. And indeed, in the NLSY, about one in five of the African/American male respondents have been interviewed in prison at some time in the course of the survey that's been going for about twenty years now.

And so, I did a statistical analysis, looking at the effects of going to prison on young, crime-involved -- young, crime-involved men. These are men with low levels of schooling, a history -- a history of criminal behavior. We're also able, in this statistical analysis, to control for things we don't normally control for in wider market studies.

Here, I'm interested in looking at the effects of imprisonment on things like your hourly wages, the number of weeks you work each year, your -- the rate of wage growth, and your job tenure -- how long have you been in your current job? And, what do the results say?

The statistical analysis suggests that spending time in prison reduces your hourly wages by about 25 percent, compared to a comparable low
education, crime-involved man who hasn't spent time in prison. Your annual employment is reduced by about seven weeks. Your annual earnings was reduced by about 40 percent, because if your wage rate goes down, and your employment goes down, then your earnings go down by even more.

The hourly wage growth goes down by about 25 percent. I think that's important, because wage growth over the life course is what allows men to age into a whole variety of pro-social roles, as a worker and a provider for families, and so on. And, that's not happening in people who have served time in prison. And, job tenure is reduced by about a third.

So, this is a population that's relegated to the secondary sector of the labor market, churning around in low-income jobs that offer no wage growth or continuity of employment.

In the aggregate, what does this mean? In the interests of time, I'll focus on one set of numbers here. And, this is the bottom row in this table. The earnings loss over the lifetime -- which for our sample means up to about age 40 -- the earnings loss is equal to about the cost of incarceration. If we think of the dollar cost of the -- the dollar average cost of the prison bed, the --
the earnings loss is about equal to that dollar cost -- that dollar cost of incarceration. So, the numbers I think we typically see in correctional areas, if we take account of the social impact of incarceration on economic opportunities in the labor market, the true cost counting that number might be twice as large.

Why do people who have served time in prison do so poorly on the job market? Well, their skills may be depleted by time out of the labor market. The behaviors for survival in prison may not be adaptive for getting and holding a job. And, the social connections that provide job opportunities become weaker the longer you spend incarcerated.

We conducted an audit study. This is a method used to study employment discrimination, typically racial/gender discrimination. We used it to study the effects of criminal stigma. How do employers react to job seekers with -- with criminal records?

What did we do? We recruited a bunch of young college graduates. They -- we gave them fictitious resumes. We put them in teams of two. We had a team of two African/American fictitious job applicants, and a team of two white fictitious job applicants. Within each team, we randomly gave
someone a resume that showed evidence of a criminal record. It listed a Parole Officer as a reference, and as part of your work history, it listed employment in a correctional facility.

In all other respects, the -- the testers were identical. They dressed the same. We taught them to respond the same way to questions in job interviews which, for the entry-level jobs we were applying for in the five boroughs, over a period of about a year in 2004, the job interviews were typically very, very short.

And, what we were interested in seeing was how did employers respond to the resume without the criminal record, compared to the resume with the criminal record. In the best-case scenario, where the job applicant presenting the criminal record was a well spoken, clean-cut young man who dressed identically to our other applicant, and answering questions in the same way, here are our results.

In our white team, employers would call -- call our job applicants back 32 percent of the time for a second interview, or to make them a job offer. For the white job applicant with a criminal record, the call back rate was only 24 percent. So, the effects of criminal stigma there are about eight
percentage points, or about 25 percent of the 32 percent call back rate.

Among our African/American testers, the -- the black testers without criminal records were called back about 24 percent of the time, which was exactly the same as the call back rate for the white tester with the criminal record. So, our black tester with a clean record is doing about as well as the white job applicant with -- with a criminal record.

The African/American tester with the criminal record is being called back only 9 percent of the time. So, the effects of criminal stigma are larger in our audit study -- are larger for blacks than whites. And, here are a few more statistics about the black/white -- the black/white differences.

So, it -- it certainly seems to us that criminal stigma, the extreme reluctance on the part of employers to hire people with criminal records is a -- is a large part of the economic disadvantage we saw in the survey data.

It also suggests that policy interventions focused only on the supply side of the labor market, improving skills and so on, is only part of the story if we're thinking about improving the economic opportunities for people coming out of prison -- out
of prison. We also have to think about the demand side of the labor market, how employers view job applicants with -- with criminal records.

Okay, my final part. Imprisonment disrupts family life. The only thing I want to say here, and there's a lot more I could say, is to just show you some statistics showing the number of children, nationally, who have a father in prison or jail. And, among white kids, this is children under the age of 18, across the whole country, about half a million white kids by 2000 had a father in prison or jail, and that's about one percent of all white children. Among Hispanic children, about 400,000 of those kids had a father, on an average day, in 2000. That's about three and a half percent of Hispanic kids. And, among African/American kids, about a million -- a million black kids had a father in prison or jail on an average day in 2000. It would be higher now, because the incarceration rate is higher. That's about nine percent.

If we were to look just at young children -- if we were to look at children ten years and under, the figures would be even higher.

There's a lot more to say, I think, about the effects of incarceration on families, but let me
leave it at that. And, I'll conclude.

I have tried to provide some empirical
evidence for the idea that imprisonment has now become
a normal life event for young black men with little
schooling. For those at the very bottom of the
education distribution, this is literally true. It's
more common than not that the young African/American
man who has dropped out of high school will go to
prison, with negative -- I'm sorry -- I should say
negative effects on earnings and employment. About a
25 percent loss in wages, I think is the take home
number there.

And, this process affects not only the
current generation of those who are in prison, but
also the next generation, through the effects of
incarceration on families and these very high risks
that we're seeing, particularly among
African/Americans, of parental imprisonment.

So, let me stop there.

COMMISSIONER O'DONNELL: Thank you, very
much, Doctor. I really appreciate it. That was very
important research.

MR. WESTERN: Thank you.

[Applause]

COMMISSIONER O'DONNELL: And, I appreciate
you making the trip and sharing it with us. I appreciate Senator Schneiderman for recommending you.

And, any questions? I'm sure we'll be coming back to you. Yes, Cy?

MR. VANCE: Bruce, there was a point in your presentation where you -- if I was listening correctly, you were correlating the prison costs with the lost economic opportunity. And, I'm not sure I followed that part of your discussion.

MR. WESTERN: Sure. So, the idea here is that, given the estimates of the reduction in earnings that's a consequence of the imprisonment, over a lifetime, or through age 40, this means that, for whites, for example, the consequence of imprisonment, they will lose about $114,000 in earnings. And, these are very low earning men. So, these are men earning of the order of 10 to 15 thousand dollars a year. And, over a lifetime, it adds up to about $114,000.

The cost of their incarceration is, for 28 months, at the median, it's going to be around, nationwide, about $30,000 a year. And so, the bottom row there just shows what's the -- the cost of incarceration, the economic cost of incarceration, and the earnings loss, as a proportion, as a percentage of the cost in the correctional voucher of -- of that
incarceration today.

MR. VANCE: Okay. Thank you.

COMMISSIONER O'DONNELL: Thank you, very much.

MR. SCHNEIDERMAN: Thanks, Professor.

COMMISSIONER O'DONNELL: I'm sure we'd have many more questions if we weren't running behind schedule. But, we really appreciate you being here with us.

Michael Jacobson, welcome. And thank you, very much, for joining us.

As all of you know, I'm sure, Michael is currently the director of the Vera Institute of Justice. He has a long history of service to New York State, to New York City, as New York City's Correction Commissioner, as New York City's Probation Commissioner, formerly also working in the Budget Office, so he actually brings a financial perspective to the whole issue of criminal justice and incarceration.

He has written a book which should interest us significantly here on the Sentencing Commission, Downsizing Prisons: How to Reduce Crime and Mass Incarceration.

So, I can't think of anyone who is more
eminently qualified to speak to us about many of the
issues we have to consider on the Sentencing
Commission than Michael Jacobson. So, thank you, very
much.

REDUCING THE PRISON POPULATION
AND REINVESTING IN COMMUNITIES

MR. JACOBSON: Sure, thank you.

So, I thought what I'd do, and I see I'm on
the schedule for an hour, and no one wants to hear me
talk for an hour. So, I'll try my best to sort of
catch you up on your schedule. I'm also going to
spare you a little bit from -- give you at least a
little break from PowerPoint and slides, and just talk
for a few minutes just about what I was asked to talk
a little about, this sort of national -- where we are
nationally, and what some other states are doing, in
terms of looking at reducing their prison populations
and reinvesting some of that savings -- either real
budget savings, or imputed budget savings, or
diminishment of planned increases -- back into
community-based programs.

So, I'm going to spend a few minutes talking
about that from the national context, and the talk a
little bit about some New York specific stuff. And,
you should please feel free to interrupt or
inter-react at any point.

COMMISSIONER O'DONNELL: Mike, I am also just going to ask you, if you're -- since you know New York, and you know New York's system, any kind of practical recommendations that you have about things that we should either look at or consider changing would be very helpful to us, as well.

MR. JACOBSON: Oh, sure. All right. I was going to make some Marty Horn joke, but --

[Laughter]

MR. JACOBSON: So, this is an issue, obviously, that a lot of states are struggling with now, and it's actually a pretty interesting historical time in this country to deal with these issues. I mean because, as Bruce said, the scale of imprisonment and the massive growth have put a lot of states around the country -- some more than others -- in a position where they simply have to look really hard at changing some of those trends, both because states can no longer afford to do this, and the budget pressures are enormous.

You know, budget pressures are never enough just to -- to change this. They can be helpful, but you can never just change these kind of trends based on money, especially in this field. I mean, the field
of correctional policy making and punishment policy is so hyper-political, so filled with all sorts of politics. It's the field where individual, high-profile crimes or high-profile events have more impact on policy than any other field in government. And, that's not to say that other areas of government -- transportation, social services, environmental protection, education -- aren't sort of filled with politics, but none of them are filled with the politics that this field is.

Around the country, I've probably worked in about 20 or 25 states, on a lot of these issues, and that's always in the sort of back of our mind. This field is about more than facts and figures, and evidence-based practice. The context for this field is that policy is made in very, very political ways. And, that's just a reality that, I think, policy makers have to deal with when they're sort of thinking through what kind of policy to make.

So, there is enormous budget pressures on states and, you know, similar to New York. All right, we had some cash sloshing around this year, but we have some very tough out years ahead of us, in terms of the budget. And, like most other states, Medicaid is the big -- the big, eight-hundred pound gorilla in
the room, exerting enormous budget pressures on states. It's just a combination of Medicaid, trying the cost containment of Medicaid, trying to keep tax rates low, is forcing a lot of states to look at corrections and corrections spending in a way that they haven't for years and years.

So, a lot of states, some more than others, are sort of struggling with how do we -- how do we very affirmatively, assertively, start to sort of reduce that trend, reduce the rate of growth, even try to get some reduction. And New York is -- I know you all know is an interesting in this context, because we do actually have a shrinking prison system over the last ten years.

And, public opinion on this issue has changed, too, actually pretty dramatically, both nationally and in New York. If you look at all the national polls -- the Harris polls, Gallup polls, sort of specific polls, the Peter Hart poll in 2001 -- a lot of scholars have done a lot of work on changing public opinion around crime, and it's pretty interesting.

On the, you know, group on the early '80s to the early '90s, if you look at all the national polls, the answer to the standard question of what do you
think Government, one of the -- what's the biggest problem that Government should be dealing with, whether this question is basically on local Government, state Government, the answer was always crime. Always. Crime was always number one. And then followed by a series of taxes, health, education.

You know, fast forward ten or twelve years later, and the answer of crime, right, to that question, I think in the most recent -- it's either Gallup or Harris poll, I can't remember -- is so statistically insignificant it doesn't even make it onto the charts.

It's been the terrorism, obviously does, where it didn't -- it didn't before, but that's very -- it's a very different issue, and it's obviously, in a lot of ways, in terms of the public's mind, not specifically a local issue. But if you -- if you sort of take terrorism, or like, you know, the war in Iraq out of the equation, and just look at the things that state governments can do, the number one and number two issue in every state, nationally, is some version of health and education. That's -- that's where all the public concern is. That's what our current Governor ran on. And, that's where all the political pressure is in most -- in most states, all right? So,
some combination of health, education, taxes. It is not about crime, and street crime, and the demand to build new prisons. All right, some -- it's different in -- it's different in some states than others.

But it's actually more of a rarity now that there's actually a Governor's race around this country where crime is a huge political issue. It's very different than ten or twelve years ago. It was a big issue in Maryland, and we can pick out states where it was, but very, very different.

So, and not -- not only have those sort of politics changed, but if you dig inside of policy, itself, you'll see that over again, the last ten or twelve years -- you know, you can see this in a lot of the Rockefeller drug polling that's happening in New York -- Americans have made a very big shift, in terms of what they think prison should be used for, all right? We're still a very punitive country.

When we think people are violent, or have committed violent crimes, we're -- we're very comfortable with giving them very long sentences and keeping them well past their crime committing years, which we -- every -- every system does, and certainly we do.

But for -- for people that the American
public as sort of non-violent, right, and this is -- this is actually a very complicated issue, but, you know, the public tends to make a sort of simplistic distinction here. So, you're a violent person or you're not a violent person, and they tend to think of non-violent people as these sort of drug sale and possession cases, property crime cases, they're now more willing than not to use alternatives to prison than prison, itself.

And, I think that -- and that's -- and, you can see that not only in polling but in things like California's Proposition 36, which is probably the single biggest, in some ways, you know, act of prison diversion legislation in the last 20 or 30 years. I'm sure some of you are familiar with that. It was a public referendum -- this is what California does -- to divert tens of thousands of drug sale and possession felony cases from prison into treatment.

Arizona did the same thing, also through public referendum. And, Kansas just two years ago didn't do it through public referendum, but they did legislatively, mandated treatment in lieu of prison for the same sort of class of low-level drug felony offenses.

All right, all -- in terms of crime, all
very conservative states. And, in both Arizona and in California, those things -- those referendums passed overwhelmingly, all right?

And again, it sort of reflects the changing nature of thinking on these issues, you know, especially around drug crimes where, you know, it's become such a personalized issue. I mean, everyone knows someone who has some issue with drugs or substance abuse. And while, you know, you may think it's a big problem that, you know, Uncle Ted is a crack addict, you don't necessarily want to see him go to Attica for three to five. So, people have sort of personalized it, and you can give -- you see that in the polls.

So, all these things have sort of come together, again in some states more than others, for policy makers to really take a hard look at their -- the size of their prison systems, the scope of their systems, how much money they can spend on their systems, and sort of alternatives, in terms of, you know, what gets you public safety and what -- what's the most efficient use of dollars, in terms of buying public safety.

And, you know, because of the changing nature of public opinion, because of so much pressure
on things other than crime -- especially health and education -- it allows -- it's an opening for policy makers.

And it -- you know, and especially because of this last fact, the -- if you look over the last ten to fifteen years, the only state governmental function that grows as a percent -- as a percentage of state budgets -- I mean, everything grows in absolute terms -- is corrections, all right? It's true in almost every state, and it's true nationally. Only corrections keeps eating up a larger percentage of state budgets. It rises more than secondary and primary education, transportation, environmental protection.

So, it actually creates an interesting dynamic in the state houses and legislatures across the country, because all the pressure on legislatures is around health and education issues, but they have to keep spending more and more money on a prison system for which there is no huge public outcry to spend more money.

So, all that has sort of come -- sort of allows a moment, right? An interesting historical moment, given all the charts that Bruce was going over in the last twenty or thirty years, to take a sort of
hard look at how much -- how much we spend, who is in, what are -- what are the results we're getting, and are there better things to do?

So, one of the -- one of the things that a lot of states are -- are looking at, in various -- in various ways are what's -- there are sort of different terms. It comes in the general rubric of justice reinvestment. Are there -- are there things you can do to control your prison cost, control your correctional expenditures, and take -- take that money and spend it on something that could get you more public safety, right? Can use those dollars more efficiently.

Because, one of the things that there is general consensus on in the sort of expert -- you know, world of experts, and -- and certainly the academic criminologists who study these issues, is that -- and Vera actually just did a -- it's a self-serving statement -- a really interesting piece of work on this, did all the research on the effectiveness of incarceration, with people sitting in incarceration.

But, if you look at all the empirical work that's been done on the relationship between crime and incarceration over the last ten years -- and, you
know, some of it is pretty controversial -- you know, the -- the general sort of broad consensus is that if you look at all the crime reductions nationally over the last ten or twelve years, that somewhere between 15 to 20 percent -- some say 25 percent -- so, a quarter of that -- of the big reduction we've had in the U.S. can be explained by the increased use of incarceration over that same period of time. So, not nothing, right, 20, 25 percent. But, by no means, you know, the -- the overwhelming proportion.

And, what there is also general consensus on is that going forward -- right, that's an historical look -- going forward, you will only get more and more marginal results from putting more and more people in prison.

And, why is that? Well, because we've always put, right, a lot of violent -- the violent felons have always gone to prison. They've always stayed a long time. As Paul's chart showed, they're staying -- they're staying even longer now. What's -- what's driving the size of prison systems across the country is keeping those violent -- the people who have committed violent crimes in even longer, right? Very questionable public safety benefits. It doesn't matter what you did. When you hit your 40s and 50s,
you're done. You know, your back hurts, and your days
of committing violent crimes, statistically, for the
most part, are over.

But then, what we've also done is load our
prison systems with people who have been convicted of
non-violent crimes. Again, especially drug-related
possession and sale cases. If you go back to 1980,
there were probably about 10,000 of those people in
prisons across the country. We have about 300,000
now. And again, most criminologists are saying for
that group of people, right, incarcerating relatively
low-level users and possessors of drugs, you buy
yourself almost no public safety at huge costs.

Why? Because those are the kinds of crimes
that are essentially job opportunities. In my terms,
if you put a wait list in prison, it's not like
there's someone waiting on the street corner to take
his job as soon as he's in. Why would you put a --
you put a violent offender in prison, well you get
specific deterrence, right? That person is not going
to go around committing violent crimes. And, you
hopefully get some general deterrence, as well, from
dissuading other people from doing it, right? Not
ture for low-level drug offenders, especially sales,
right, because that's a job. It's an economic
opportunity. When that kid is off the street corner, another kid is going to take his place, right? This is again -- and, there are exceptions to this, but that's the national pattern.

So, going forward, right, the more money you spend on putting people in prison, the less you're going to get from it, from a public safety point of view. And again, if you just look at the empirical research, you know, the consensus, again, on a national basis, and there is -- there is some disagreement about this -- it seems to be that, you know, for roughly every ten percent more you spend on prisons -- again, a national number.

So, in New York, I've sort of lost track of the DOCS budget. I think two and a half billion, give or take, or whatever. So, you know, for another quarter of a billion dollars of expenditures in New York, you get about -- again, using national numbers, a one to two percent reduction in crime. So, not nothing, but a little, at huge cost. Right?

So, this is the question that a lot of states are sort of struggling with now. You know, if -- if you're going to get less and less public safety benefit from spending more and more on prisons, right, what -- where else should we be spending your scarce
dollars, you know, and how -- how can we -- how can we start to sort of shrink the size of these prison systems, or at least put off some of the growth, or, in New York's case, at a minimum, stabilize the -- the decrease we've had in the population, and I would argue that we should keep -- that it should -- it should keep going down, right, how do you do that in -- how do you capture those dollars, and what do you spend them on, if you -- if you're still interested in driving down public safety?

And, we tend to use -- and this is, again, going back to Bruce's charts and others, right, that we've -- we've sort of defaulted to prison, and that -- that's what we do, because it's our primary method of sort of social control and sort of prevention, but there are a lot of other things that we know, that there's evidence on, that -- that criminologists know, like Doctor Latessa, that get you more public safety than just throwing people with a broad brush into prison.

COMMISSIONER O'DONNELL: Mike, could I just interrupt you for a second?

MR. JACOBSON: Yeah.

COMMISSIONER O'DONNELL: I don't want to take you too off key here, but you were pretty much
involved in the criminal justice system here in New York City when the City, you know, began their transformation in substantial reductions in -- in crime, and in violent crime.

What -- I guess we asked the question when we went through these numbers, what do you attribute that reduction, you know, really significant, substantial? Is it 30 percent or 40 percent, you know, numbers? What do you attribute that to?

MR. JACOBSON: Me.

[Laughter]

COMMISSIONER O'DONNELL: I was going to set you up for that. But, --

MR. JACOBSON: All right. Next?

Yeah, you know, and that's -- you know, I mean, it's a great question, and it's -- you know, as you know, this is sort of a cottage industry. You know, people sort of writing and taking credit. And, you know, it's still -- it used to be more so. It's still a very political discussion in New York. I mean, a lot of --

COMMISSIONER O'DONNELL: Right.

MR. JACOBSON: A lot of people made their reputations. A lot of investment. Then, you know, who gets sort of credit for the crime decline? You
know, was it the NYPD? If it is, how much? Is it 50 percent, 100 percent? What else? What about the changing nature of the drug markets, right?

There's -- you know, if you look at the academic -- if you look at all the academic literature that's been written about New York, and it's really -- it's kind of all over the place, right, in ranging from, you know, Rudy's book, and Bratton's book, and some others, which basically say, "Well, it's the NYPD. It's me, the NYPD," you know, and all the change in strategies, they get all the credit. Others, you know, Andrew Karmen, and Bernard Harcourt, who's a law professor in Chicago, they take a very different view, right? The NYPD gets some credit, but they say, you know, there were already overall national trends going down.

New York had about twice the national average in crime declines, so clearly something different happened in New York, but crime was going down everywhere. And, you know, some people will say, "Yeah, the NYPD obviously gets some credit if you look at the timing." But, a lot of it has to be the changing nature of the drug markets, right, the -- the changing, you know, that the demand for crack, and sort of all the supply network -- networks that sprung
up around distributing crack are gone, right? And, that was responsible -- the networks, themselves -- for a huge amount of violence, because there was so much profit in it, and the pharmacological effects of crack made people violent at crime, and that's -- that's not true now, right? There's almost no hard drug use in teenagers in New York City now.

And so, a lot of criminologists will say, "Well, that -- you know, that was a huge contributor to the crime decline." And, you know, then the answer to that, you know, from a different group of people is, you know, if -- if Bill Bratten or, you know, I'm sure, Ray Kelly were standing here, he'd say, "Well, that's true. That's did decline. And, they declined because we -- the NYPD -- made them decline, right, because of our work."

So, you know, the -- the interesting thing about New York, for me, is not -- is not what was responsible for the decline. And, you know, obviously you can't -- and, you know, the NYPD and everything they did is obviously in that mix, but I think it's a longer discussion. I think a whole bunch of other things were layered on top of that.

But, what's interesting about the crime decline in New York is that while that decline was
happening, right, from '93 to, you know, the current
-- even though there's a little tick, right, it still
continued to go down, right, two very counterintuitive
things happened, right?

The jail system which, starting in -- peaked
in the City in about '92 or '93, right, when crime
started to go down, you know, peaked at about 23,000
people who were in the system. And, that was about
the highest average daily population that the City
had. Today, it has between 13,000 or 14,000. Right.
The jail -- the total population of the New York City
jail system is, you know, less than -- but -- but, you
know, about 40 percent, approaching half of what it
used to be. And, that's while crime has continued to
go down.

And -- and the same is true, not in the same
scale, on the State level, right? The State used to
have -- and Paul will know off the top of his head --
but, you know, in the mid 70s, and now we have -- I
don't know -- what's the population today? Low 60s.
Right? About a 12 to 14 percent decrease. It's a
very unusual state, New York, and it's actually a good
national example.

The only problem with it, with this example,
is that it's New York. And, once you leave New York,
no one really cares about New York.

[Laughter]

MR. JACOBSON: It's like -- you know, it's the same thing about California, you know, it's not -- it doesn't work for -- for the work we do to go into Mississippi and talk about New York. You know, they just don't care.

But, it -- but, it -- but, it is a really good example of a state that's managed to get huge, right? And, we are the leader in national crime declines, largely driven by New York City.

But, we're also the leader in simultaneous reductions in jail population and prison population. So the nice thing about that -- that story, right, to me, is that regardless of why you think crime went down, or the different strategies you believe contributed to that decrease -- the policing, obviously, is one -- it did not involve, right, this -- this fact is not in dispute. It did not involve more use of jail or prison. It actually involved less.

And, I could sort of go through how that happened. And, believe me, you don't want me to do that. But -- but, it's -- but, at a macro level, it's a hugely important story. And I think for New York,
it's a -- it's an important story to sort of keep going. You know, it's not -- it's not like were sized, in my opinion, just right now, and we've sort of reached our limit, and we used to be in the mid 70s, and now we're in the low 60s, and we're done.

I mean, every state could easily do, in percentage terms, what New York did. And, I think we should keep doing it both because, from a public safety point of view, it's an entirely manageable proposition, and we -- we know that you could take some of the dollars that are now spent on corrections and get more public safety. Right? Forget about -- forget about cost. Forget about budget for a moment. You could take the dollars that -- or some amount of the dollars that we now spend on our correctional system, and buy yourself more public safety if you did other things.

And, this is where other states are now, in different -- in different ways, right? And, they're looking at -- and, I'll just talk for a couple of more minutes, and then I'll stop, because I've probably hit the wall.

And, you know, states tend to look in sort of three general areas. One, just -- just sentence lengths. Again, you know, going back to Paul's chart,
right, with the time -- the average time served, it's hugely increased here, and everywhere, all sorts of research showing that especially marginal either additions or reductions in sentence lengths get you nothing -- nothing, nothing, nothing, nothing. They don't buy you more public safety. They don't increase recidivism. They just cost a lot of money. Right?

So, if every state -- if New York, if you just reduced your overall length of stay by a month, right? That -- how many admissions? 24,000, give or take, right? So, 24,000 probably turns into about -- so, that's -- that's, say, 2,000 prison beds, give or take. Depending on what numbers you use, you'd save 60, 70, 80, 90 million dollars. Who knows? That's a lot of money.

And, not only I, but a number of people would argue if you spent -- you would buy yourself a lot more public safety by driving your -- your length of stay down by 30 days, extracting that money, and spending it on a whole bunch, again, of -- of other things.

And, I give you some of those things, if you look at that Vera report on reconsidering incarceration, we go through sort of the crime reduction benefits of a variety of programs, whether
they're community-based programs, in corrections, itself, or just things like hiring more police and doing some strategic things with them, to decreasing your dropout rate, to raising those -- going back to Bruce's chart -- wages in certain labor markets, you will get more public safety than you do from that loss of 30 days in prison. So, that's one.

Right, the other big area that people are looking at -- I'm sure. I wasn't here. But, I know Marty can spend more than five minutes talking. I'm sure he gave you the whole sort of parole -- his whole sort of parole spiel on get rid of parole, and don't have parole supervision.

And one of the reasons he says that is because of the issue with the technical violators, right. We send -- and New York is about average. We send about an average number of people back to prison for technical violations, not -- not just criminal, but of probation. California is the national leader on this. They're worse than every other state. So, it's one of the nice things about California, is they're -- and, I used to love this when I was in probation at the jail -- because of how much -- how much by Probation Officers and Correction Officers complained about their workload, or caseload, or
crowding, all you've got to do is look at California, and you start to feel pretty good about yourself.

[Laughter]

MR. JACOBSON: So, the -- and the thing about technical -- the whole issue around technical parole violators is a complicated one. It's very nuanced. Once of the reasons we send back so many people are because, you know, these paroling agencies and probation agencies are so under-resourced, they're so poorly resourced, but they all have enough -- so they -- they sort of have no options, right? They have nothing at their disposal.

COMMISSIONER GREEN: If I could go back a minute?

MR. JACOBSON: Yeah.

COMMISSIONER GREEN: If I heard you right, you were talking about, as a policy decision, you might advocate for intentionally driving down prison population and reinvesting the money --

MR. JACOBSON: Right.

COMMISSIONER GREEN: -- on the prevention side. In terms of timing, how long is it going to take you to realize a savings that you can reinvest? Because, I've got to assume that driving down that number immediately isn't going to save you
the money.

MR. JACOBSON: Yeah.

COMMISSIONER GREEN: You still have the prisons open. You've got the people working.

MR. JACOBSON: Right.

COMMISSIONER GREEN: So what -- what's the time lag before you're going to realize the savings under that hypothesis?

MR. JACOBSON: Yeah, that's a really good question. And part -- you know, part of it depends on -- on how you're going to drive down the savings, right? So, I'm not advocating this, but if tomorrow you said -- like Washington state, right?

Washington state said -- passed a law, I forget how many years ago -- you can't go back to prison for a technical violation. It can't -- can't be done. You cannot go back to prison. After a while, you can go back to jail. You can never go to prison. Never.

So, if you did that, for instance, in New York State, you'd start to see the savings, you know, like phase in pretty quickly as the, you know, Paul's, whatever it was -- 8,000 to 10,000 violators just went somewhere else.

If you just, you know, selectively cut the
length of stay of different classes of inmates,
depending whose length of stay -- or, you know, if you
take a five-year sentence to four years, right, you're
not -- you're not going to get that savings for four
years.

So, you can do it more or less quickly, but
I think you're -- you're -- the question you're
pointing to is you -- you have to -- you have to prime
the pump. Right? Almost no matter how you do this,
right? You can -- and, you know, budget offices are
really good at this, if they want to be helpful. And,
if they don't want to be helpful, they'll -- they'll
sort of always fall back on, well, when we see the
savings, then -- then we'll get it and reinvest it.
So, let's see the savings first.

And, I would argue that --

COMMISSIONER GREEN: My point is though, no
matter how quickly we do save -- even if you reduce it
on the front end by --

MR. JACOBSON: Right.

COMMISSIONER GREEN: -- by doing something
with the violators, --

MR. JACOBSON: Right.

COMMISSIONER GREEN: -- just because we
reduce the prison population doesn't necessarily mean
we're going to save money in the short run.

MR. JACOBSON: Correct. That's correct.

And that's -- that's correct. And, there's all -- there's -- this is another thing I can talk about forever and, believe me, you don't want me to.

But -- but, it -- so, it depends what kind of money you're saving, right? Are you -- are you saving currently budgeted funds? Are you saving money that the Department is planning to spend on sort of either capital increase, or capital expenditures?

And again, these are the sorts of things that, if -- if, again, if you -- if you decided, right, today, that you were going to do something, forget about what it is, that was going to drive the prison system down by a thousand beds a year from now, right, one of the question is, well, what are you saving? I mean, and part of that depends on what else is -- on what else is happening, right?

Maybe the Legislature will pass some new law that will drive it up by 5,000, right? So, you've only -- you know, you've -- you've gone -- so your action has caused it to grow by four instead of five. Or maybe nothing will happen. And, it will actually, like the system has actually decreased, right.

Then, the question is so what's the savings?
You know, how do you get the savings? Right? Is -- you know, is Brian just sort of close housing, little housing areas all over the place? Are we going to finally bit the bullet and close a prison? You know, are you going to get marginal savings? Are you going to get fully loading savings? I mean, these are all really good, practical and technical questions.

But, the fact is that almost no matter what the answer to that is, budget offices are really good, if -- if they -- if they want to be helpful here about figuring that out, whether it's offsetting future growth, whether it's trying to extract money by getting marginal savings out, or whether by pushing the system to get fully loaded savings out, I mean, those are all good questions that need to be put on the table.

But, in almost any -- regardless of what the answer is, you could put together a strategy. If you, you know, decide we're going to do these four things, whatever they are, and they're going to get your population down, or at least offset projected growth, that's either real money, that's currently budgeted money that will be spent, again, at different rates, that you can, again, if -- if -- if the Governor's office and the Legislature is sort of there, that you
can money to prime the pump with, to start investing in these things. And -- and a budget office will, you know, they -- they can invest five million today, and start taking it out a year and half, two, three years from now.

And, one of the advantages of showing a few years in the state budget now is that you can actually start to remove some of that money in the out years. I mean, this drives Commissioners crazy, because they're always nervous. You're sort of taking it out before things have actually happened, right?

So, you know, if I was Brian, and someone said we're going to do all this brilliant stuff, and you're going to save 3,000 beds, so we're taking 3,000 beds' worth of dollars out of your budget in, you know, two years from now, right? This is what gives people agida. But, you know, that's why they came to New York. So -- and, you have to -- and, you have to make it happen. That's the thing.

I mean, the reason I like that is it -- you have to force these things down, and you can't -- you can't just -- you can't just do something and sort of hope -- hope the system shrinks. You have to force it to shrink.

And, using -- using the budget process
wisely to do that, in my opinion, is a really good thing to do. But, it does -- it does mean everyone has to give up something, right? The budget -- the budget office has to come up with money up front, and there has to be some general consensus on -- in terms of what you save.

And, you know, parole violators are a good example, again. There are -- there are programs like Washington state, which is clearly on one end of the scale. But, if you look around the country -- and, I've already gone over, so I'll just stop in a couple of minutes.

COMMISSIONER O'DONNELL: No.

MR. JACOBSON: If you look -- if you look around the country, like so many of these agencies are in the same boat, right? As I was saying, right? Their caseloads are too high. They have very few options in terms of whether it's transitional housing, or employment programs, drug treatment, or access to, you know, electronic bracelets, whatever, right? But, all these -- all these parole agencies have enough money to know when people are violating. And, everyone violates. Everybody violates. If you guys were on parole, you'd be violating parole. I mean, maybe not all of you.
MR. JACOBSON: I know a few of the people in the room. I know a few would. Why don't you just look at who is coming out of prison, right? Their levels of education, and mental illness, and drug use, and all that stuff, and compare them to the standard conditions of parole. You have to be drug free. You have to be looking for a job. And you have to have a stable address. And, you know, just really, you know, some mentally ill guy with a drug problem is going into the shelter system, right? That's a violation. That guy's gone. Right? It's a violation. It's just going to happen.

So -- and, the technology to catch people who are violating is -- it's cheap. It's reliable. It's easy. Drug testing is easy. Curfew checks, easy. So, all these agencies are sort of in an interesting political situation, right?

They have -- they know that huge numbers of people are violating, right? Because -- and -- and you want to, and you should, you have to react to violator behavior. You can't -- you can't just sort of let it go.

But, if your agencies have nothing, right, and so many of them do -- they have nothing. Right?
Their -- their choice is to sort of ignore the violation, or jump to the most punitive, expensive sanction you have, right, which is prison? And again, California is the poster child for this. Right? Those agents have nothing, nothing, right? But, they all know when their caseload is violating, and they're all violating. So, they send everybody to prison.

And, you know, it's insane. It's a waste of public money, but it's understandable. I mean, if I was a Parole Officer operating in a hyper-political environment, right, where I thought the governor and the mayor would literally be hanging me out to dry, as past governors and mayors have done to Parole and Probation Officers, I'd send people to prison, too.

But, I -- you know, when you talk to these folks, no matter whether it's New York or other states, right, they'll all say, "Look, you have to react to violator behavior. I can't let it go. But, do I need to send everybody to prison? No, but I -- you know, so give me some other options and I will use that, right?" But, there are no other options.

And again, there are -- there are -- that's not true in all the cases. So, what a lot of the states are doing is sort of building those systems -- systems of intermediate sanctions in parole, and in
community-based programs, to give them the options that (a) we know work better than prison, and (b) just keeps people from going to prison for three, to four, to five, to six months, which again, there's absolutely no evidence, not a shred, not one piece of research evidence that I know of in the United States of America, that says sending someone back to prison for a technical parole violation for three, four, or five months gets you any public safety benefit whatsoever.

And, you know, the common thinking is, you know, we're getting -- we're getting this guy before he goes down a slippery slope. He was a drug addict. He's using drugs again. It's only a -- you know, if he's only a month away from burgling a house. And, you know, it's not like that can't be true. But, it doesn't -- the research doesn't bear it out.

So, what parole -- what parole agents across the country are asking for is, you know, to give -- give me other options, right, because I do need to react to violations. And they're right. It's important. You can't let them go, and some of those should be prison, all right? If you have a sex offender and he's hanging around the school yard, right, time to go to prison, right? But, if you're
using drugs, one, two, three times, do you necessarily
have to go to prison, or even Willard? You know,
that's the question.

Anyway. So, a lot of states are looking at
length of stay, technical parole -- technical parole
violations, and community-based programs as -- as a
way to sort of, again, both on political terms of sell
it as a public safety, a public safety program, and
they also happen to free up incredible amounts of
resources that can be better spent, right. Right, not
all of it.

A lot of people need to be in prison, they
need to be in for a long time, but on the margins --
and this is a field where on the margins are -- are
huge numbers, both in terms of people and finances.
And, whether it's -- you know, New York is no
different than any other state. It is, in terms of
the --

COMMISSIONER O'DONNELL: But, we are going
to have to wrap up.

MR. JACOBSON: Yeah, no, I'm done.

COMMISSIONER O'DONNELL: No, you -- I
really appreciate your very practical advice and --
and look at the system. And, I hope we can call on
you and Vera as we move forward, because part of our
mission in the Executive Order is essentially that, to look at alternatives to incarceration that can save money.

MR. JACOBSON: If what you offer is --

COMMISSIONER O'DONNELL: So, the numbers --

MR. JACOBSON: -- all the numbers in the world of --

[Applause]

COMMISSIONER O'DONNELL: Just one question here.

COMMISSIONER ALEXANDER: If I could just make this comment, you know? And, we talked about technical violations. The technical violation isn't just dirty urines, or not being home when you're supposed to, but part of technical violations is absconding. That person who absents him or herself away from supervision, and we don't know where they are, they pose a certain danger.

We've been having talks with Michael, and the Vera Institute, in terms of looking at that population, from a standpoint of studying why people are absconding. And so, we're presently looking at that as a separate discipline. If we can figure it out, then maybe we can kind of reduce the amounts of incidences of absconding, and thus reduce some of the
rates of technical violations. So, we're certainly looking forward to Michael's continued involvement with us in that endeavor.

COMMISSIONER O'DONNELL: That's great.

Thank you, very much.

MR. JACOBSON: Thank you.

[Applause]

COMMISSIONER O'DONNELL: Okay. Let's take a five-minute break, and then we'll be back for our eighth and final speaker of the day.

(Off the record.)

COMMISSIONER O'DONNELL: Let's get back in session here.

Judge, if you're ready, I -- I'm sorry we put you in the position of being our eighth speaker today. It's been a very, very busy day. But, I have to tell you, we are just delighted to have you here.

The Honorable Judith Harris Kluger is the Deputy Chief Administrative Judge for Court Operations and Planning for New York State. She is responsible for court reform, restructuring projects, and specialized courts, including integrated domestic violence courts, drug courts, mental health courts, community courts, sex offender -- or offense courts. And, we hope, at some point in the future, reentry
So, we've had many discussions already about the important role of specialized courts here in New York. I'm particularly interested, if you can work it into your remarks, in any obstacles that may exist in the law to specialty courts, ways that our recommendations may facilitate specialty courts, and I think it's important that we understand the important roles that have -- that have taken place, and changes here in New York, as a result of all of these innovations.

So, thank you for joining us.

**SENTENCING PRACTICES IN NYS'S SPECIALTY COURTS**

JUDGE KLUGER: It's great to be here. Just before I start, we were having some technical difficulties. I have a few slides. Shall I just proceed? Okay. It seems they're --

UNIDENTIFIED: Right. We'll bring it up when we get the computer. This computer doesn't run that particular program.

JUDGE KLUGER: Okay. In the interests of moving along, and knowing I'm the last speaker today, the unenviable position -- I don't know if Mike Jacobson is here, but I wanted to say it in front of him, that I hold him completely responsible.
COMMISSIONER O'DONNELL: He actually was on time. But, everybody else has been a little behind schedule.

JUDGE KLUGER: And, as I was standing outside, I'm like cutting my remarks.

In any event, it's a pleasure to be here.

And, I would like to talk to you about New York State's problem-solving courts. And, as Deputy Chief Administrative Judge, that is what I do. I oversee the problem-solving courts and treatment courts in New York State.

There are currently 278 of these courts, and another 42 that we plan to open this year. And, when we refer to problem-solving courts -- and that's what we call them, rather than specialty courts -- what we're talking about are drug treatment courts, mental health courts, domestic violence courts, integrated domestic violence courts, and sex offense courts.

And, the primary goal of these courts is to identify the underlying problems that bring defendants or litigants into the court system, and to provide a disposition and resolution of the case that addresses those problems.

In drug courts and mental health courts,
treatment generally serves as an alternative to incarceration. In domestic violence and sex offense courts, intensive judicial monitoring is used to hold defendants accountable to the terms and conditions of their sentences. And, these sentences are generally not alternative to incarceration.

All of New York's problem-solving courts have a dedicated judge and court part, and handle the cases from the time they are identified as eligible through disposition. Judges and staff for these parts are trained in the issues that commonly arise in these cases, and court teams work closely with other agencies inside and outside the court system to coordinate the delivery of services to litigants and their families.

These courts engage more closely with litigants primarily through intensive judicial monitoring, and are able to react more quickly to non-compliance or misconduct.

There are a few key principles and differences among these courts that I want to highlight for you. Principal among them is whether the court is a treatment court, and whether it provides for alternatives to incarceration or alternative sentences.
Drug courts and mental health courts are both treatment courts. They are based on the principle that an eligible defendant has a disease or disorder that can be treated, and that is the root cause of whatever behavior brought them into the court system.

In contrast, domestic violence, integrated domestic violence courts, and sex offense courts do not engage in treatment in exchange for a reduced or alternative sentence. These courts are not based on a treatment model. Unlike defendants with a drug addiction or a mental illness, criminal behavior by sex offenders and perpetrators of domestic violence cannot be ascribed to a treatable condition.

Offenders in sex offense and domestic violence courts are not offered less punitive outcomes in exchange for participation in treatment. However, in these courts, the dispositions may still be preferable to the offender other than what he or she would have received elsewhere. For example, a judge who has an understanding of sex offense behavior and a good working relationship with probation is in a position to order conditions of probation specific to the particular circumstances of the case. And a defendant who is being monitored while in a batter's
education program may be more likely to be compliant and avoid violating the terms of his sentence. In order to give you a better understanding of each of these courts, I will go through them one by one, and then, of course, I'll be happy to take any questions that you may have.

We have, in New York State close to 200 drug treatment courts. So, they are our busiest court. In each of these courts, defendants -- the case undergoes a legal screening before entering into drug treatment court to determine if the charges are compatible with the design of the drug treatment court program and to ensure that the charges don't include offenses such as acts of violence, which would exclude them from participation.

Each defendant then undergoes a clinical screening to determine if he or she is addicted, and a candidate for treatment. To successfully complete drug treatment, a defendant must meet all the requirements of a participation agreement. In addition to successfully completing a mandated drug treatment program, other requirements can include completing a GED, obtaining employment, attending vocational training, and paying any outstanding fines, costs, or child support.
There are three basic drug court models:

There is the plea and deferred sentence model; the post-sentence model with participation in drug court is a condition of the defendant's sentence; and a pre-plea model, where a guilty plea is not required to participate in drug court.

The most commonly used model is the plea and deferred sentence. In this model, a guilty plea is accepted by the court and sentencing is adjourned pending the outcome of drug treatment and the completion of any other drug court requirements.

Once a plea agreement is reached, a voluntary contract is entered into and signed by the defendant, defense counsel, the assistant district attorney, and the court. The contract outlines specific outcomes for success and failure. And, as most of you know, relapses are an expected part of drug treatment, and they're addressed with graduated sanctions, the final and most severe being termination from the program and the imposition of a sentence.

The rewards for a defendant's completion of drug treatment can raise from imposition of a revocable sentence, such as probation or a conditional discharge, to the withdrawal of the guilty plea and complete dismissal of the case. Failure in most cases
will result in a sentence of incarceration.

In the post-sentence model, participation in drug court is a condition of sentence -- of a sentence of probation or a conditional discharge. Successful completion of drug court may result in early discharge from probation. Failure may result in the filing of a violation of probation, or a violation of the conditional discharge.

This model is often used with offenders who are charged with driving while intoxicated to address a particular issue. When DWI participants have their cases considered in a plea and deferred sentence model, their ability to drive is curtailed for a period of time. This is because a condition of participating in the drug treatment program is that they do not drive.

Once participants complete the program and are sentenced, the statute requires mandatory license revocation. The result is that DWI offenders often have -- are subject to much longer periods where they are not allowed to drive longer than intended by the statute. The court system has previously included in its legislative agenda a proposal to address this problem and perhaps this is something that the Commission could consider, as well, as far as a
recommendation.

The proposal would allow the time period during which a defendant's license was suspended while attending court ordered drug treatment prior to sentence to offset the revocation period that commences at the time of a sentence that's required by statute.

The third and least commonly used is the pre-plea model. Here, a guilty plea is not required as a condition of participation. Success in the program may result in dismissal of all charges or a charge reduction and a non-jail sentence.

In the case of failure, the case proceeds -- in the case of failure of the drug treatment, the case proceeds on the trial calendar.

In general, the average time a defendant is in drug court is 12 to 24 months. This basically depends on the level of the -- the design of the program, which is different county by county, the level of the crime charged, and the progress made by the defendant in completing drug treatment and complying with any other conditions.

To help you better understand the variances that occur in our state, I'll give you some examples of actual sentences in different drug courts.
In Queens treatment court, a first-time felony offender would be required to plead guilty to a felony offense. And, upon successful completion of treatment, the case would be dismissed, the plea vacated, and all charges dismissed. If the defendant failed in treatment, he or she could be sentenced to one year in jail.

On the other hand, in Chenango County, a similar defendant charged with the same offense would be required to plead guilty to a felony, and be sentenced to five years probation upon successful completion of drug treatment. That defendant might receive an early discharge from probation, but would still have a felony conviction.

And variances such as these, of course, occur because there are 62 D.A.s, and each of them has different policies and procedures regarding the cases. But, I will say that the D.A.s in this state have been tremendously cooperative and responsive and have, I think, realized that drug treatment courts work, and have done what they could to further the drug treatment court expansion, which is why we have almost 200 of those courts in the state.

Studies have shown that drug treatment courts reduce recidivism. A State-wide evaluation of
drug treatment courts completed in October of 2003 showed that the recidivism was reduced an average of 29 percent over the first three years following the arrest that led the defendant to participate in drug -- in treatment court, and a 32 percent decrease in recidivism for the year following completion of drug treatment.

And, as many of our problem-solving courts, these courts have been replicated around the country and around the world. New York State received an award several weeks ago from the National Association of Drug Court Professionals for taking the drug court treatment concept to scale, and there were 3,100 people from around the country participating in this conference. So, in about fifteen years this has gone from an experiment to really a widely recognized solution for many drug offenders.

I'll talk briefly next about our mental health courts. There are twelve of them operational state-wide. And, the goal of these courts is to limit defendants to treatment when mental illness is the underlying cause of the criminal activity. As with our drug treatment courts, sentences in mental health courts are generally alternatives to incarceration.

These courts were established through a
collaborative planning process within each county, and their policies and procedures may vary, and also reflect local plea and sentencing patterns.

As in our drug courts, the deferred sentencing model requires the defendant to plead guilty, and sentencing is adjourned until completion of the program.

In the post-sentence model, where sentencing is not deferred, successful completion of the program is a condition of sentence, which is often probation.

In both cases, the progress of the defendant is monitored very closely by the court, and there are numerous court appearances to ensure that the defendant is complying with the conditions of the program.

As in drug treatment courts, in the limited number of mental health courts, the defendants are accepted in a plea-free basis -- plea-free -- that's a hard word to say -- plea-free basis. Eligibility in drug court is determined by a review of the current charges, the defendant's criminal history, and any available mental health records.

If a plea agreement is reached, the terms of the agreement are incorporated into a participation agreement that is signed by all the parties. This
agreement specifically outlines that the defendant agrees to participate in the mental health court, and includes cooperation and participation in treatment, and also frequent court appearances.

Again, sentencing policies vary throughout the state. In Plattsburgh mental health court, a guilty plea will result in a sentence of probation with court monitoring. And, as the defendant progresses in treatment, the frequency of compliance appearances may be reduced and finally, upon graduation from the court, no further appearances will be required. But, the defendant would have a criminal conviction.

In the Queens mental health court, sentences for successful completion range from a complete dismissal of all the charges, to a reduced charge and the imposition of a non-compensatory sentence.

Research literature has begun to emerge on mental health courts, and the early results are quite promising. For example, a trial implemented in California showed both lower re-arrest rates and improved psychosocial functioning after a year in mental health court. And, in a study of the Brooklyn Mental Health Court, when comparing the year before and after participation began, participants showed
improvements in multiple areas, including re-arrest, homelessness, drug and alcohol use, psychiatric hospitalizations, and psychosocial functioning.

Regarding our sex offense courts, there are five currently operating in New York State. And, one purpose of these courts is to closely monitor offender behavior when offenders are not sentenced to incarceration. These, again, are not treatment courts, and are not designed as alternatives to incarceration.

In a sex offense court, sentencing may include probation with specific terms, incarceration, or a combination of both. Upon conviction of a designated sex offense, the court certifies that the defendant is a sex offender pursuant to the Sex Offender Registration Act. The sentencing court determines the offender's risk level, either at the time of sentence in probation cases, or when the offender is released from custody when he receives a sentence of incarceration.

In the sex offense cases, the period of probation has been enhanced. It's ten years for felony convictions, six years for misdemeanors, and often probation will include special conditions such as defendant participating in certain sex offense
therapies. Some of the other special conditions may include submitting to polygraph examinations, limits on Internet use, driving restrictions, and the completion of a sex offender treatment.

Once sentence is imposed in these courts, defendants may be required, as a condition of probation, to return to the sex offense court for compliance monitoring during the probationary period. The frequency of this depends on -- varies by court and depends on the behavior of the defendant. And cases are re-calle ndared in these courts if the defendants -- if there is a violation of probation filed.

An example of a disposition in the Oswego Sex Offense Court for a felony offense would be the imposition of a split sentence and six months -- six months local jail time, and ten years probation, with as many as 54 different conditions. And, they can include paying of fees, attending -- taking polygraph tests, and attending sex offender therapy.

The defendant would return to court there, as well, to be monitored periodically by a judge, to ensure that he is complying with the terms of the sentence.

Our domestic violence courts are created
within our courts of criminal jurisdiction to handle cases involving domestic violence. There are currently 28 of those operating around the state, and another five are being planned.

The majority of domestic violence cases in our state are misdemeanor offenses. The most common sentences imposed are periods of probation or a conditional discharge, and a large number of cases are adjourned in contemplation of dismissal. Sentences may also mandate attendance in a batterer education program, substance abuse programs, and also may require performance of community service.

In these courts, as well, there is a condition that the defendants return to court periodically, to be supervised by a judge, so that there can be a determination whether the conditions and terms of the conditional discharge, probation, or the order of protection are being complied with.

Again, the length of monitoring depends on how compliant the defendant is, and may include as often as weekly, and if compliance is good, will be monthly or even less frequent than that. But, the courts do swiftly re-calendar cases when there has been a failure by the defendant, and they do impose sanctions.
The integrated domestic violence courts build on what we've done with domestic violence courts, but in these courts, families -- family, matrimonial, and family court matters are all before one judge. There are currently 38 of these courts in operation in New York, and they have handled more than 50,000 cases for over 10,000 families. So, that just gives you some idea of how many families have multiple cases in the different courts.

Cases do maintain their individuality in the integrated domestic violence court. So, while a court may hear all three types of cases, each is handled on its own merit. So, what I have said regarding domestic violence cases certainly applies to the integrated domestic violence cases, as well. A judge will monitor the defendant, will know -- will have a full picture of the family, and be able to impose conditions on a sentence which don't conflict with each other.

In studies about these courts, the integrated domestic violence courts, three themes generally emerge. First, these courts successfully link defendants to advocacy and -- offender victims to advocacy and services. They appear to develop improved mechanisms to hold defendants accountable.
Studies in Brooklyn, Milwaukee, Pittsburgh, and San Diego all showed a consistent pattern of more frequent judicial status hearings to verify offender compliance, and a greater use of sanction in response to non-compliance.

Also, a number of studies have found that victims appear to be more satisfied with the judge, the court personnel, and the court process when the cases are handled in integrated domestic violence courts.

So, that's basically an overview of our problem-solving courts. I'd be certainly happy to take whatever questions you have at this time.

COMMISSIONER O'DONNELL: Judge, have you considered reentry courts? Have there been discussions about reentry courts?

JUDGE KLUGER: Well, the issue is those courts are now handed to parole, reentry, and administrative law judges handle those cases if there are violations. So, it certainly is something we've talked about. But, it would require a change in -- in the way these cases are handled.

COMMISSIONER O'DONNELL: Yes, George?

COMMISSIONER ALEXANDER: Probably one of the differences with these courts that you have now,
your specialty courts, the courts maintain
jurisdiction over those individuals while they are put
on probation, --

JUDGE KLUGER: Right.

COMMISSIONER ALEXANDER: -- and the change
would be with parole is that somehow you would have to
maintain jurisdiction over that group even after
they've gone to prison and come out, right?

JUDGE KLUGER: Right, correct, which we
don't have now.

There's a limited -- in the Harlem Community
Court, there is a reentry court. It's staffed by an
--

COMMISSIONER ALEXANDER: Right, an ALJ, --

JUDGE KLUGER: -- administrative law judge,
--

COMMISSIONER ALEXANDER: -- right.

JUDGE KLUGER: -- so, I mean, we're doing a
little bit there, trying to enhance services, but it's
not something that's easy to expand, because of the
issue you just brought up.

COMMISSIONER O'DONNELL: And also is it
correct that none of these courts are creatures of the
penal law or correction law? They're all judicially
created?
JUDGE KLUGER: Well, I mean, they're all
within the framework of the law. I mean, none of
these are --

COMMISSIONER O'DONNELL: Right.

[Laughter]

JUDGE KLUGER: -- illegal --

COMMISSIONER O'DONNELL: No, I'm not saying
that. I just -- I'm just --

UNIDENTIFIED: Yeah, outside of the --

COMMISSIONER O'DONNELL: Yeah. I'm not
saying they're unlawful. I'm more looking at whether
they're -- whether changes in the law would facilitate
the growth of the court, or the -- the workings of the
court?

JUDGE KLUGER: Well, I mean, for example,
in one area. We use interim probation supervision in
some of these courts. And the law limits that to one
year. And, I think it would be useful if we were able
to have interim probation in certain circumstances
imposed for a greater period of time than that.

Because, particularly in the mental health
and drug courts, a defendant can be in those courts
for a lengthy period of time. So, that's one example
where it might be useful to have a change in the law.
The DWI situation that I mentioned, as well.
But, I mean, we're able to, within the framework of the current penal law to do what we do. I mean, the integrated domestic violence courts would benefit from a restructuring of our whole court system, but --

COMMISSIONER O'DONNELL: Um hmm.

JUDGE KLUGER: -- that's probably beyond your mandate.

COMMISSIONER GREEN: Do any of your courts use risk assessment instruments, in terms of assessing recidivism risks prior to deciding what course of treatment to follow?

JUDGE KLUGER: Let me -- we don't know of any tool that we could rely on, technically. So -- so, we don't -- we don't use any particular tool. Frank, is --

UNIDENTIFIED: No, not that I'm aware of, Judge.

JUDGE KLUGER: Yeah.

COMMISSIONER BERGAMO: Judge, thank you for being here today.

A question: You gave us several examples of inconsistency between different courts, in terms of how they treat the same offense.

Would you be in favor of a mandate that it
has to be the same?

JUDGE KLUGER: No. I mean, I think a lot of this is at the discretion of the local District Attorney and perhaps it -- you know, that's the way it should be. I mean, there are different -- I don't think it's -- it can be a one-size-fits-all.

COMMISSIONER O'DONNELL: Are there areas of the state that don't have any drug courts?

JUDGE KLUGER: Very few. I mean, we're practically all over, and if not yet, we will be.

COMMISSIONER GREEN: Can you comment at all on funding challenges that these courts face, both drug courts, mental courts, and some of the other courts?

JUDGE KLUGER: I mean, huge funding challenges. I mean, we do this within the court system, with our existing resources. And, we ask the other stakeholders -- the District Attorney, and the defense bar, and the -- and the advocate community, and the service community, to be a part of this, and with very few additional resources.

We are able to occasionally access grant funding, which we do very aggressively. But, as you know, that runs out. A grant is for a particular period of time.
And right now, we're facing a particular challenge with the groups that assist victims of domestic violence in our courts. A lot of these are local, very grassroots organizations. They don't have a lot of funding. And, when their grant funding runs out, they really are in a very dire situation.

Yes?

COMMISSIONER LENTOL: Do judges -- I guess these are judges of the supreme court. Are they assigned after receiving a certain amount of training in order to develop expertise in these areas before they're allowed to sit --

JUDGE KLUGER: You know, we do --

COMMISSIONER LENTOL: -- in these specialty courts?

JUDGE KLUGER: -- extensive training in all the courts. We do training before the judges begin to sit in the courts. Then, we have -- particularly in our drug courts, because we have so many and there is a lot of transition, they've been in existence for quite some time, we have transitional training throughout -- several times a year.

And so, there's ongoing training, both before the judges enter the courts, and -- and onward. And, we have a -- our training budget, we have a -- a
big amount of our budget is spent for training.

MR. SCHNEIDERMANN: Excuse me. Just to follow up on -- on an earlier question, can you say anything to us about the funding stream or -- or how this -- if the courts are growing very rapidly, how does -- how do you keep the funding --

JUDGE KLUGER: Well, there are a --

MR. SCHNEIDERMANN: -- coming?

JUDGE KLUGER: -- couple of things. First of all, we're not creating more cases. These are the number of cases that are in our court system. We're just handling them in a different way.

The drug -- for example, drug treatment programs are not funded by the court. We use programs that exist already, and they all have to be OASAS licensed. So, we are -- we are reallocating our resources to a certain extent, but we are not -- we can always use more funding, but we are not letting the fact that we don't have additional funding prevent us from going forward.

Yes?

MR. VANCE: Do the specialty courts and the resolutions of cases all require the consent of the District Attorney and --

JUDGE KLUGER: Yes, unless the defendant
MR. VANCE:  And, would -- and, to follow up, I think, on Mr. Bergamo's question. You made an earlier comment that 62 counties defer to the discretion of the District Attorneys, in terms of resolving these cases, which I understand. But it also leads to, you know, perhaps, inconsistency state-wide.

And my question is would -- for simplification purposes, would you support modifications where the District Attorney's consent was not required to resolve these cases?

JUDGE KLUGER:  Well, you know what? I'd have to see what's involved. I really couldn't comment on that now, no. I think it would be hard -- a hard thing to -- do.

I think they have discretion, and they are the prosecuting authority in the County. And, I think any change in how plea bargaining and whose consent is involved is -- is a question that I think I'd have to think about a little more than just an off-the-cuff answer.

COMMISSIONER O'DONNELL:  Judge, it would be very helpful if you could solicit opinions, suggestions from the judges in the specialty courts
about whether there are any barriers in the existing laws, or additional changes in the laws that may facilitate their ability to operate the problem-solving courts. You may have done that by virtue of the -- your legislative proposals from year to year, but that is something that I think we'd be interested in.

JUDGE KLUGER: No, I think they were looking at -- the City Bar just issued a report on the immigration consequences for offenders who participate in drug courts.

And, as it happens, even if a defendant's case is dismissed, but he or she had to enter a plea up front, in order to participate in drug treatment, that disposition can have a very negative effect -- a negative effect on their immigration status. That's not our law. That's -- that's the immigration law, and that's --

COMMISSIONER O'DONNELL: Right.

JUDGE KLUGER: -- I mean, I think it's worth looking at that for whatever recommendations you may make outside of what we're doing here.

COMMISSIONER O'DONNELL: Okay. Well, thank you, very much. It's been great having you here.

[Applause]
COMMISSIONER O’DONNELL: And, we really applaud you on all the work that you’ve done in all of the problem-solving courts throughout the state.

Well, we could go into executive session, but I think it’s much too late for that. I just want to make two comments.

One, you have a copy of the letter that I did send to the Governor about the extension to October 1st. And, I have heard no feedback, so we’ll be proceeding with that letter having been sent.

Secondly, I think one of the observations here is that a lot possibly can be done in these areas administratively, through changes in regulations, through guidelines and procedures. So, I just want you to kind of keep that in the back of your mind.

Legislation is wonderful. I’m sure we’ll have recommendations about legislation. But, a lot of what I heard today, and I think the problem-solving courts are an example of that, is you can do some very creative things, and make some very significant changes sometimes without legislation.

And, I think we should keep that in the back of our mind, too, because we aren’t directed specifically to confine our recommendations to changes in legislation. So, we may have recommendations on
other lines, as well.

So, thank you, very much. Again, I always have an open door, so call me if you have any ideas, suggestions.

[Time noted: 4:30 p.m.]

* * * * *
I, June Accornero, do hereby certify that I typed the preceding transcript of the proceedings of the New York State Commission on Sentencing Reform, held on Wednesday, June 27, 2007, at Governor's Office, 633 Third Avenue, New York, New York, and that this is an accurate transcript of what happened at that time and place, to the best of my ability.

June Accornero