

NEW YORK STATE
COMMISSION ON SENTENCING REFORM

Transcript of Public Hearing

Tuesday,
November 13, 2007
9:30 a.m.

New York City Bar Association
42 West 44th Street
New York, New York

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN ATTENDANCE:

Chair:

Denise E. O'Donnell, Esq.
Division of Criminal Justice Services

Commissioners:

Anthony Bergamo, Esq.
Chairman,
Federal Law Enforcement Foundation, Inc.

Brian Fischer
Commissioner,
New York State Department of Correctional
Services

Michael C. Green, Esq.
Monroe County District Attorney

Joseph R. Lentol, Esq.
Member,
New York State Assembly

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Michael P. McDermott, Esq.

O'Connell and Aronowitz

Hon. Juanita Bing Newton

Deputy Chief Administrative Judge for Justice
Initiatives

New York State Office of Court Administration

Eric T. Schneiderman, Esq.

Member,

New York State Senate

Cyrus R. Vance, Jr., Esq.

Morvillo, Abramowitz, Grand, Jason, Anello &
Bohrer

Also Present:

Anthony Annucci, Esq.

Department of Correctional Services

Arleigh Green

Court Reporter

T E S T I M O N Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Marsha Weissman

Center for Community Alternatives. 7

Richard M. Greenberg, Esq.

Office of the Appellate Defender 14

Gabriel Sayegh

Drug Policy Alliance 24

Daniel R. Alonso, Esq.

New York City Bar Association. 32

Robert M. Morgenthau, Esq.

New York County District Attorney. 41

Shreya Mandal

The Legal Aid Society. 51

Anne J. Swern, Esq.

1st Assistant District Attorney

Kings County District Attorney's Office. 62

Norma Fernandes

President, DTAP Alumni Association 72

Bridget G. Brennan, Esq.

Office of the Special Narcotics Prosecutor

for the City of New York 78

Robert Gangi

Executive Director

Correctional Association of New York 87

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY (cont'd)

Glenn Martin

Associate Vice-President, The Fortune Society. 98

Elizabeth A. Gaynes, Esq.

Executive Director.

The Osborne Association. 103

Richard A. Brown, Esq.

Queens County District Attorney. 112

Nancy Grosselfinger

International League for Human Rights. 118

Robert J. Dennison

Retired Chairman

New York State Board of Parole 127

Phillip M. Genty, Esq.

Columbia University School of Law. 137

Donna E. Lieberman, Esq.

Executive Director

New York Civil Liberties Union 148

Alfred R. Siegel, Esq., Deputy Director

Michael Rempel, Director of Research

Center for Court Innovation. 156

Anita R. Marton, Esq.

Vice-President, Legal Action Center. 172

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY (cont'd)

Seep Varma

Executive Vice-President

New York Therapeutic Communities, Inc.182

Amy Oliveras

Co-President, CURE-NY.189

Sarah From

Director of Public Policy and Communications

Women's Prison Association197

Alissa C. Kampner Rudin, Esq.

General Counsel, Family Justice, Inc..205

Erika L. Wood, Esq.

Deputy Director, Democracy Program

Brennan Center for Justice at NYU Law School215

Rhonda Ferdinand, Esq.

Assistant District Attorney

Office of the Special Narcotics Prosecutor for the

City of New York224

Cheri O'Donoghue

FREE234

Kirk James

Associate Director

The College Initiative243

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY (cont'd)

Michelle Fine

Distinguished Professor of Psychology

The Graduate Center, City University of New York254

Hon. Laura Safer Espinoza

New York City Criminal Court, Bronx County266

Emani Davis

Co-Chair, Youth Advisory Board

New York City Initiative for Children of

Incarcerated Parents276

Rev. Vivian Nixon

Executive Director

College & Community Fellowship288

Lisa M. Rappa.295

Felipe Vargas

Director of Criminal Justice Programs

The Doe Fund300

Beatrice Lozada

Prison Families Anonymous.312

Andrew Conn.318

Eddie Beaujoin.329

Alberto Oliva.334

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TESTIMONY (cont'd)

Mentoring a Prisoner

William E. Waters

Program Director

The Osborne Association338

Eric Marsh

New Spirit II, Inc.348

Judith Greene

Justice Strategies357

John Culpepper, Executive Director

Lower Washington Heights

Neighborhood Association366

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

[Time noted: 9:30 a.m.]

COMMISSIONER O'DONNELL: We are officially opening the Hearing on Sentencing Reform for the State of New York.

We were created, as many of you know, by Executive Order of Governor Spitzer, to look at virtually all aspects of New York sentencing laws, alternatives to incarceration, re-entry, victims' issues. And, we have been working very, very hard at our mission, many times -- in fact, all summer meeting one full day a week.

We've heard from many experts throughout the country on sentencing issues. We issued our preliminary report on October 15th, 2007. And, we are hard at work, again, on working on many of the sentencing issues before us.

I hope you had an opportunity to look at our preliminary report. We're hoping to get feedback from the public. This is our effort to reach out and hear from advocates in the community, experts on sentencing issues, because we know that we are only 11 people and there are many, many opinions out there, and information out there that we think is important for us to consider.

1 So, I'd like to begin. This morning, our
2 first speaker is Marsha Weissman, of the Center for
3 Community Alternatives.

4 And Marsha, as you know, each of our
5 speakers have 10 minutes. We have a timekeeper here,
6 who will keep you on track. And, welcome to the
7 Commission.

8 TESTIMONY OF MARSHA WEISSMAN, CENTER FOR COMMUNITY

9 ALTERNATIVES

10 MS. WEISSMAN: Good morning. I don't
11 know if I need this, but maybe it's getting taped or
12 something.

13 Good morning. Thank you for the
14 opportunity to speak here. And, I'm a little shocked
15 that I'm number one. I don't think that's ever
16 happened before.

17 And, I want to start by not only thanking
18 you for holding these hearings, but also the obvious
19 hard work and thought that went into the preliminary
20 report.

21 I am the Executive Director of the Center
22 for Community Alternatives. For over 25 years, we
23 have worked to promote reduced reliance on
24 incarceration in ways that promote public safety. We
25 work virtually at every point in the continuum of the

1 criminal justice system, from alternatives to
2 detention, ATI programs, working with people in
3 prison, preparing them for release and re-entry
4 programs.

5 It's an opportune time -- a moment to
6 reform New York's sentencing laws. We have the
7 obvious energy and creativity of a new
8 administration. New York has incredible resources
9 here, scholars, the Vera Institute of Justice, ATI
10 programs -- not only CCA's but others. And, we have
11 the work -- I don't know if you looked at this in
12 your report -- Eric Cadora and Justice Mapping, that
13 looks at the community impact of the over-reliance on
14 incarceration.

15 And last year, New York really became a
16 pioneer in amending its penal law to include a fifth
17 goal of sentencing; and that is explicitly to promote
18 reintegration and re-entry.

19 My comments today are going to be a little
20 bit bold, and may seem a bit critical; and, I do this
21 with respect and not because I don't see real
22 opportunities in the report. But, I was raised by a
23 mother who, if I brought home a report card that said
24 B+, she would say "How come not an A?" All right?

25 And, I think that there's opportunities

1 that still exist, as you continue your work, to take
2 the recommendations another step forward. And, I
3 think that in the interim time that you're looking at
4 your final recommendations, I would really urge that
5 some work be devoted to the larger framework of what
6 is the purpose of sentencing in New York.

7 And, I think that we know so much in this
8 state and nationally about the impact of
9 incarceration on not only the individuals who are
10 incarcerated, but their communities and families,
11 that part of, I think, what we need to look at is the
12 real explicit question of length of sentence and how
13 many people are going to prison.

14 And, I know you heard from Jeremy Travis
15 and Michael Jacobson, and they both indicated that
16 they thought we are incarcerating too many people for
17 too long. And so, my remarks really talk to that
18 very basic question.

19 I think it's terrific and admirable that
20 New York has been able to reduce its prison
21 population, and has done so without compromising
22 public safety. But, New York, that considers itself
23 not only a national leader but an international
24 leader, still is part of the phenomena of mass
25 incarceration. The rate of incarceration in our

1 state exceeds the rates in all parts of the other
2 developed world. Even at 63,000 we're incarcerating
3 326 people per 100,000 people, compared to, for
4 example, Canada. The rate there is 107 per 100,000.

5 So, I think that we can take -- use the
6 new penal law to do a couple of things. The first is
7 really apply evidence-based standards to sentencing.
8 And, the question should be, in the imposition of
9 sentences, what sentence is going to be promote
10 public safety? What sentence is best going to
11 promote reintegration? What sentence is best going
12 to promote family reunification and community
13 stabilization? And, what sentence is going to best
14 promote victim restoration?

15 And, there is a model in Oregon, in
16 Multnomah County, that's beginning to do this, that
17 collects data and analyzes the information to
18 determine what is most effective in sentencing. And,
19 it's no surprise that the preliminary results from
20 their work is that expanding community-based
21 sentencing typically produces more public safety.

22 That kind of approach to sentencing really
23 puts the onus on all of us to promote the reduction
24 of crime, rather than -- and measure sentences on
25 that ability, rather than their ability to inflict

1 punishment.

2 A second point we would make is that we
3 were really quite surprised that the report didn't
4 address issues of racial disparity in sentencing.
5 That is such an important issue in this country, and
6 New York is not immune from racial disparities in
7 sentencing. And, we think that any effort at
8 sentencing reform really needs to take a very careful
9 look at that question.

10 I know you also heard from Bruce Western,
11 who talked about the community impact of the
12 over-reliance on incarceration and disparities in
13 sentencing. And, in his testimony before Congress
14 about a month ago, Doctor Western recommended
15 something that I think is really worth exploring in
16 New York. And, that is something called "social
17 impact panels." And, that would take a look at the
18 prospective impact of any proposed sentence on
19 questions of disparity and what's happening to
20 communities.

21 We also think that -- and I know that a
22 core recommendation was around determinate
23 sentencing. And, we would urge that perhaps that be
24 reconsidered, in light of the goal -- the new goal of
25 the penal law, and really look at is there a way of

1 reforming the parole process and perhaps using
2 indeterminate sentencing as a way to measure
3 achievements while in prison, and use that as the
4 benchmark towards release, and have indeterminate
5 sentencing be a means to reward, if you will, people
6 who are fulfilling their obligations in prison and
7 making best use of programs.

8 Our other point would be we were actually
9 surprised that in the discussion around victims, that
10 there was no mention of restorative justice. And,
11 there's been just such a body of work over the last
12 two decades about the importance of restorative
13 justice in attending to the needs of victims. It
14 recognizes that the question is who is harmed, how
15 are they harmed, and what can we do to repair the
16 harm. It doesn't presume that victims are really
17 anchored to revenge and retribution. And, I think
18 polling shows that victims are, in fact, more
19 supportive of rehabilitation than even the general
20 public.

21 A couple of more -- of additional points,
22 just very quickly. We really think that the
23 Commission needs to look at length of sentence. With
24 respect to recommendations on youthful offenders, we
25 support expanding youthful offender status to age 20,

1 but we think that it doesn't go far enough. We think
2 that New York should fall into line with national and
3 international standards, and raise the age of
4 majority for prosecution in the adult court to the
5 age of 18. And, we also would hope that you don't
6 increase any sentence lengths on YOs.

7 Lastly, we think that with respect to
8 financial penalties, it's not enough just to organize
9 them into a more understandable format. I think we
10 need to take a look at the impact -- the realistic
11 impact on the accumulation of these penalties and set
12 up a system that can be achievable by people who owe
13 these penalties, serve the victims, and -- and not
14 put the burden on people who can't pay.

15 In closing, I -- it's our hope that over
16 the next few months that you really look at the
17 proposals for reform, measuring them according to a
18 standard about whether the recommendation will
19 actually help undo the harm of mass incarceration.
20 If it doesn't do that, I think it's not worth doing.
21 We simply cannot wait another 40 years to dismantle a
22 system that doesn't respond, really, to victim needs,
23 harms communities and families, and undermines long-
24 term public safety.

25 So, thank you, very much, for your hard

1 work, and for the opportunity to speak today.

2 COMMISSIONER O'DONNELL: Thank you, very
3 much.

4 I neglected to say at the start that we
5 are having a transcript prepared of today's
6 proceedings, and they will be made available to the
7 public. So, even though our crowd is slowly building
8 this morning, your testimony will be available, and I
9 appreciate it very much. Thank you.

10 Our next speaker is Richard Greenberg, of
11 the Office of the Appellate Defender. Welcome.

12 TESTIMONY OF RICHARD GREENBERG, ESQ.,

13 OFFICE OF THE APPELLATE DEFENDER

14 MR. GREENBERG: Thank you. Good morning,
15 Commissioner O'Donnell and members of the Commission.

16 My name is Rick Greenberg, and I am the
17 attorney in charge of the Office of the Appellate
18 Defender.

19 We are a non-profit indigent criminal
20 defense office that provides high-quality appellate
21 and post-conviction representation to those convicted
22 in the First Department. We also provide very
23 client-centered services, including a great deal of
24 re-entry work. We have a social work unit that we
25 have been -- that we incorporated into our practice

1 more than eight years ago. And, we've been working
2 with our clients very closely on re-entry.

3 First, I want to commend the Commission
4 for also, as Marsha said, for your very thoughtful
5 report. I think that you have offered some very far-
6 reaching, and comprehensive, and really progressive
7 proposals.

8 I have submitted a written statement that
9 addresses quite a number of the proposals in your
10 report, and I think we support most of them. I want
11 to make a few comments on specific areas in the
12 limited time I have, and I want to make a couple of
13 recommendations that I think would go further than
14 what you have done in your report already.

15 First of all, I want to discuss
16 determinate sentencing and the lengths of sentences.
17 Marsha touched on that. Of course, there's always
18 been a great controversy about determinate versus
19 indeterminate. And, I think that what we see is --
20 those of us who have been around long enough see that
21 the pendulum swings every 20 or 30 years, and kind of
22 the public sentiment, and the thought goes towards
23 one or the other. Right now, I guess the pendulum
24 has swung back towards determinate.

25 I personally don't think that it's as

1 important whether we have determinate or
2 indeterminate as whether the sentencing system we
3 have, whichever it is, is imposed fairly, and that
4 the sentences, the incarceration terms are as short
5 as feasible and as consistent with sentencing goals
6 that the terms should be short, and -- and this is
7 where I'm going to make a recommendation in a moment
8 -- there has to be some opportunity for review or for
9 earlier release.

10 And, of course, with an indeterminate
11 sentence, you have people going to the parole board
12 after one-third or one-half of their sentence, and
13 that was the opportunity. Now, as this Commission
14 pointed out, parole decisions oftentimes are very
15 subjective, and not evenly balanced across the state,
16 and there was some thought that they weren't being
17 done fairly. And so, I think that there's a move
18 towards determinate sentencing. And, as you have
19 said in your report, risks and needs assessment,
20 evidence-based sentencing.

21 But, let me talk first about the length of
22 sentences. When we went to determinate sentencing in
23 1995, and then again in 1998, I don't think there can
24 be any dispute that the length of time that people
25 served went up considerably. We used to have people

1 going before the parole board at some point in their
2 sentences. Instead, we had a fixed term, with the
3 possibility of one-seventh off; and even then, once
4 those policies went into effect, we saw the
5 diminution of good time being granted. In fact, a
6 lot of people were being denied good time, not
7 because of poor behavior in prison, but because they
8 didn't take a particular program that may not have
9 even been available to them. So, a lot of people
10 even lost that one-seventh.

11 But, when we went to determinate
12 sentencing, the Governor at that time said this was
13 truth in sentencing. Instead of fooling the public,
14 because people would get out early on parole, we're
15 going to tell the public what the person is really
16 getting. But, what he didn't say was we're going to
17 also add five years on the back for post-release
18 supervision. So, there really was no truth. You had
19 people getting a sentence of 10 years that really was
20 a sentence of 15 years, because we added five years'
21 post-release supervision on the back.

22 So, I ask you to look very closely at the
23 length of time. If we're going to move toward a full
24 determinate system, then I would strongly urge the
25 Commission to reduce the mandatory minimums and the

1 maximums, as well; but, at least give the judge
2 discretion, even in violent felony offense cases, to
3 impose a lower minimum sentence when it's
4 appropriate.

5 Once again, you know, it's very easy to
6 lump people together and say, well, we have violent
7 felons out there. But, a violent felony can be a
8 daytime burglary in an apartment where nobody is
9 home, and that person could get a sentence for a
10 violent felony. And again, we're not condoning any
11 of this conduct, but you have to look at it in the
12 big scheme of things.

13 I would support the use of a risk and
14 needs assessment as the Commission has proposed. And
15 actually, I think that that would be a very, very
16 good thing to replace what is currently used, the
17 pre-sentence report. My experience in 30 years of
18 practice at the appellate and trial level is that the
19 PSRs that are done, at least in the New York City
20 area, are virtually garbage. They don't have any
21 real investigation that goes on. They are filled
22 with hearsay. They are filled with innuendo. They
23 are done very -- in a cursory fashion. They
24 generally take the paperwork from the case, whether
25 it's a felony complaint or an indictment, or they

1 talk to the D.A., and they put in some kind of
2 paragraph about what the crime is about. But,
3 there's no real effort to understand this person
4 before the Court and what, perhaps, made them do
5 this, what are their shortfalls, what are the factors
6 in their life that need addressing, what is their
7 prognosis.

8 So, a true scientific objectively-based
9 instrument would be a major step forward, so long as,
10 again, that it's implemented fairly. And by that, I
11 mean there has to be notice to the defense prior to
12 the sentencing date as to the preparation of this
13 instrument. There should be input by the defense,
14 because oftentimes, certainly in the case of a
15 pre-sentence report prepared by the Probation
16 Department, they don't really speak to the defense
17 attorney, so they don't get the information that the
18 defense has about this individual. So, I think for a
19 true risk and needs assessment to be done fairly, the
20 defense has to have input.

21 And then, of course, there has to be due
22 process at sentencing, so that if the defense
23 contests something that is in that report -- that
24 instrument -- there can be an opportunity to
25 address that and have a due process hearing of some

1 sort. I don't think it would be necessary, in most
2 cases, particularly if the defense has input all
3 along.

4 And finally, that it should be done by a
5 neutral agency, perhaps like the CJA, or something --
6 Vera -- other than the Probation Department.

7 What I want to propose about determinate
8 sentencing is I think that, in order to have a system
9 that's fair, in order to use this objective criteria
10 that you're getting, there has to be a mid-point
11 review of someone's sentence when it is a long
12 sentence. I'm not saying a two- or three-year
13 determinate sentence needs a mid-point review. But,
14 I think once you get over about eight years, in that
15 range -- and the Commission could look at this -- I
16 think if you're sentencing someone to 8, 10, 12, 15,
17 or 20 years in prison on the determinate sentence,
18 there has to be a point at which that person's status
19 is reviewed, their rehabilitation, their
20 institutional record is reviewed, with the possible
21 outcome of a sentence reduction.

22 And, what I would say is, in lieu of --
23 because we wouldn't have a parole board reviewing
24 these people -- what I would say is, in lieu of that,
25 you would have a mid-point review perhaps where

1 another risk and needs assessment is prepared. It
2 could be reviewed by the sentencing judge. It
3 doesn't necessarily require that the prisoner be
4 brought back to court for that. It could be done on
5 paper, or in some other fashion.

6 But I think that, in fairness, there
7 should be some kind of review. And I can tell you
8 that, in my experience working with prisoners in
9 state prisons -- and I go to the prisons all the time
10 to see my clients and work with them -- it's been my
11 experience that most people in prison start to turn
12 around, turn their life around and start to really
13 make changes, in a short time. And by that, I mean
14 within the first couple of years. Two, three, four
15 years in prison, people are often really becoming
16 focused on what went wrong, and why they're here, and
17 not wanting to come back here, and doing what it
18 would take to not come back here. And, I don't think
19 you need to keep somebody in prison for 12 years or
20 15 years to find that out.

21 I think if a person, after four, five, or
22 six years, has really turned it around and has
23 demonstrated through their prison conduct, their
24 disciplinary record, their programming, a host of
25 factors, that they have really changed their life for

1 the better, they're on the right path now, why not
2 have a Court look at that and offer an opportunity
3 for a reduction in sentence?

4 I also think that you need to look at the
5 mandatory persistence which I guess on your proposal
6 will remain indeterminate -- the violent persistent
7 felon. In 1995, all of the mandatory minimums for
8 those sentences were doubled. It used to be six to
9 life for a "D" felony, eight to life for a "C," and
10 ten to life for a "B" felony, and they've got
11 doubled, to 12, 16, and 20. That's way too much
12 time, even for someone who is a three strikes violent
13 felony offender. Again, that could be a gun
14 possession. It could be a daytime burglary. There
15 are violent felonies that are not necessarily violent
16 in the sense that most people think.

17 And while, again, you have the life
18 sentence at the back end. Why not give the Parole
19 Board an opportunity to look at these people a little
20 bit sooner?

21 I just want to say a word about re-entry.
22 My office does a lot of re-entry work. And, as I was
23 talking with Commissioner Fischer earlier, we have
24 run re-entry programs in the state prison facilities.
25 And, I would just urge -- I don't really have time to

1 go into this any further. It's in my written
2 comments. But, I would urge you to look at
3 partnerships between DOCS and other agencies like
4 OAD, which have social work offices, which can
5 provide help to DOCS in providing re-entry services
6 within the prison system.

7 So, I'm sorry I don't have any more time.
8 But, thank you for your time, and I appreciate the
9 opportunity.

10 COMMISSIONER O'DONNELL: Well, thank you.
11 I appreciate you being here today.

12 I am, at this point, just going to break
13 it before we get to our next speaker, just to
14 introduce the Commissioners. And, I'm going to start
15 to my far right, and Brian, could you just introduce
16 yourself?

17 COMMISSIONER FISCHER: Brian Fischer,
18 Commissioner of the New York State Department of
19 Correctional Services.

20 MR. GREEN: Mike Green, Monroe County
21 District Attorney.

22 MR. VANCE: Cy Vance. I'm in private
23 practice in New York City.

24 COMMISSIONER O'DONNELL: Denise
25 O'Donnell. I'm Commissioner at DCJS.

1 JUDGE NEWTON: Juanita Newton, Judge in
2 the New York State Court System.

3 ASSEMBLY MEMBER LENTOL: Joe Lentol,
4 State Assemblyman.

5 SENATOR SCHNEIDERMAN: Eric Schneiderman,
6 State Senator.

7 MR. McDERMOTT: Mike McDermott, private
8 practice in Albany.

9 MR. BERGAMO: Anthony Bergamo, Chairman,
10 Federal Law Enforcement Foundation.

11 COMMISSIONER O'DONNELL: Thank you, very
12 much.

13 Our next speaker is Gabriel Sayegh, of the
14 Drug Policy Alliance. Mr. Sayegh?

15 TESTIMONY OF GABRIEL SAYEGH,
16 DIRECTOR, DRUG POLICY ALLIANCE

17 MR. SAYEGH: Thank you. Good morning. I
18 want to thank you all for letting me testify here
19 today.

20 I know that there were nearly a hundred
21 people who applied to testify at this hearing in New
22 York today, and dozens were turned down because of
23 lack of space. And so, I just -- I hope that the
24 Commission considers holding another set of hearings
25 here in New York City. There's obviously the

1 interest for New Yorkers to share their thoughts
2 about the preliminary report and ideas around
3 sentencing reform. There is a strong interest there.

4 You all have a very difficult task ahead
5 of you still, even with the publication of the
6 preliminary report, and an important one. Bringing
7 consistency and clarity to New York State's
8 sentencing structure could not come at a more
9 important time.

10 It was Commissioner O'Donnell who said in
11 the press release and the comment in the beginning of
12 the preliminary report that the current system is
13 Byzantine, it's inconsistent, and the need for
14 consistency, and clarify, and evidence-based
15 practices is obvious. And so, I'll start that to say
16 you will have a tough task ahead of you and an even
17 tougher one yet, to find consensus before your final
18 report.

19 In reading over the preliminary report, it
20 is clear that this body has the capacity, the
21 know-how, and the executive mandate to make
22 substantive recommendations for effective reform in
23 this state. It is precisely for this reason that my
24 organization -- the Drug Policy Alliance -- and
25 dozens of allied organizations in the coalition Real

1 Reform New York were utterly shocked and dismayed by
2 the Commission's lack of meaningful reform
3 recommendations regarding the Rockefeller Drug Laws.

4 In fact, it was worse than a lack of
5 reform recommendations. The preliminary report
6 actually raised the question about whether or not
7 reform was actually needed. This was shocking unto
8 itself, considering the 35-year legacy of the
9 Rockefeller Drug Laws.

10 What I found even more alarming was that I
11 could not find the word "race" or "racism" in the
12 entire report. Now, on Page 27 of the report, the
13 term "disparity" does appear, in reference to
14 disparities in mental health and drug treatment
15 services in urban and rural communities, and it's an
16 excellent observation and an important one that I
17 hope the Commission continues to pursue. This is as
18 good a place to start as any regarding disparities in
19 our state that related to sentencing issues. But, to
20 stop there regarding disparities, it stuns the
21 conscience and, frankly, is unbelievable.

22 Almost everyone locked up under the
23 state's Rockefeller Drug Laws are people of color.
24 It's almost 92 percent. It may as well be everyone.
25 This is despite the fact that whites and people of

1 color use and sell drugs at roughly equal rates.
2 Some studies show that whites use and sell drugs at
3 higher rates than people of color, and certainly in
4 New York, whites are the majority in the state
5 population. Isn't this a disparity one that warrants
6 the Commission's attention? It is not even mentioned
7 in the preliminary report. Why is that? What
8 happened internally that something as profoundly
9 important as this level of disparity, that no one
10 would expect to find in any democratic nation, let
11 alone in a state like New York that has been a leader
12 on so many fronts, as the historical background in
13 the report lays out -- how could this not warrant
14 attention, even a mention in the report?

15 The report correctly identifies DOCS as
16 the largest treatment provider in the State of New
17 York. Yet, I could find no questioning of whether or
18 not this actually makes sense. Why would the prison
19 system be the largest treatment provider in our
20 state, given that OASAS is the largest arbiter of
21 services in the country of mental health and
22 treatment services of its kind? It doesn't make
23 fiscal sense. It doesn't make sense for effective
24 treatment. There's no science to back that up.

25 And, in short, it seems as though the

1 tacit statement being made is that people of color in
2 the State of New York, who have drug problems, can
3 receive treatment so long as they're in a prison
4 cell. And, even then, the treatment is not even
5 certified.

6 With regard to real reform of the
7 Rockefeller Drug Laws, the studies, they have been
8 done. The editorials and op-eds have been written.
9 The stories of injustice have been told. The terms
10 have been negotiated. The politics are absolutely
11 clear. The research is in. Real reform is needed.
12 And, when I say "real reform," I'm talking about the
13 restoration of judicial discretion in drug cases,
14 reducing sentences to levels that are certainly more
15 humane than they are now, and more in line with what
16 is going on with the rest of the country, expanding
17 community-based drug treatment programs and
18 alternatives to incarceration, which was a
19 recommendation in the preliminary report, and I
20 encourage you to continue to pursue that, and
21 retroactivity, to bring fairness to those serving
22 inhumane Rockefeller Drug Law sentences currently.

23 So, I ask again, why didn't the Commission
24 address these disparities? And, I raise this
25 question because it is probably the singular most

1 asked question of the membership of our coalition
2 around the state, and including our members, both
3 within the State of New York and outside the State of
4 New York. We have 100,000 people that we identify as
5 members of our organization, many of whom contacted
6 us in the state and outside the state, and said what
7 is going on?

8 It's beyond me. I don't know. I'm not
9 part of the internal deliberations. I can only
10 surmise three possible reasons.

11 The set of policies known as the
12 Rockefeller Drug Laws -- which are, by any honest
13 account, the last vestiges of Jim Crow policies that
14 are on our books today -- legal racial segregation
15 and discrimination -- perhaps that is simply not
16 enough to move this body to action. Now, I don't
17 think that's the case. I'm familiar with many of the
18 -- with the work of many of the Commissioners. I
19 know some of the Commissioners as people of
20 conscience. I don't believe that that's what's going
21 on.

22 A second reason could be that the
23 Commission has prioritized politics over sound
24 research, and at the expense of the mandate that was
25 given to you by the Governor of the State of New

1 York. This is more likely the case, although, again,
2 I'm not privy to the internal deliberations and so I
3 can't say for certain.

4 A third reason that the Rockefeller Drug
5 Laws did not take a more prominent position in the
6 report, and that racial disparities certainly showed
7 up not at all, was that the Commission has made a
8 decision that, despite the overwhelming evidence to
9 the contrary, the prosecutors who testified before
10 the Commission about how wonderful the Rockefeller
11 Drug Laws have been, and useful in the State of New
12 York, are actually correct. And, to believe this,
13 the Commission would have to suspend its judgment,
14 ignore the science, ignore reality and evidence-based
15 practices from around the country, and buy wholesale
16 into what is, at its base, a political claim of the
17 worst order. And, if this is the reason that the
18 Commission punted with regards to the Rockefeller
19 Drug Laws and did not mention racial disparities,
20 then the other reasons don't really matter. They
21 could be true or not.

22 Right now, as I sit before you, many of
23 our allies are holding a press conference outside of
24 this building to express frustration with the lack of
25 reform recommendations regarding the Rockefeller Drug

1 Laws, and to demand meaningful reforms. Prominent
2 religious leaders, treatment experts, formerly
3 incarcerated people under the Rockefeller Drug Laws,
4 family members of those incarcerated under the laws,
5 experts in alternatives to incarceration and
6 treatment, and dozens of community members are
7 outside in the cold rain for one reason only: the
8 need for reform of these laws is clear.

9 For the vast majority of New Yorkers, this
10 is not a debatable issue any longer. For many
11 scientists, it's not a debatable issue. For
12 academics, it's not a debatable issue. It seems only
13 when we get down to actually doing something do we
14 say we need more studying to be done; which
15 essentially, in our view, is a way of saying sorry,
16 we're not going to do that right now.

17 I know all of you have a tough task ahead
18 of you. That's how I opened up. I truly believe
19 that. I want to thank you for your work. I want to
20 say that we, as the Drug Policy Alliance and the Real
21 Reform Coalition of New York, will work with you to
22 whatever degree that we're able to do so, to help you
23 come to an effective final report.

24 But, we ask you to please pay attention to
25 this: Don't punt the ball. And, it's time to figure

1 out what we're going to do about it. And, not just
2 what we're going to do, but what we're going to do is
3 going to be measured by basic standards of justice,
4 fairness, science, and human rights.

5 Thank you for your time this morning.

6 COMMISSIONER O'DONNELL: Thank you, very
7 much.

8 Dan Alonso? Good morning. And Dan, you
9 are speaking on behalf of the New York City Bar
10 Association, correct?

11 MR. ALONSO: That's right. Your host
12 this morning.

13 COMMISSIONER O'DONNELL: Thank you, and
14 than you very much for hosting us in this beautiful
15 building.

16 MR. ALONSO: Our pleasure.

17 TESTIMONY OF DANIEL R. ALONSO, ESQ.,

18 NEW YORK CITY BAR ASSOCIATION

19 MR. ALONSO: Thank you for the
20 opportunity to present the City Bar Association's
21 views on the important issue of criminal sentencing.

22 I currently serve as the chair of the
23 Council on Criminal Justice, which is the
24 Association's coordinating body for development and
25 implementation of criminal justice policy. The

1 Council is composed primarily of experienced criminal
2 justice practitioners, judges, prosecutors, defense
3 lawyers, and the chairs of our constituent
4 criminal-related committees, such as criminal law,
5 corrections, and the like.

6 Our members constantly grapple with the
7 issues that you folks are examining today, and the
8 vast complexity of New York sentencing systems, and
9 we all work to do justice on behalf of the public or
10 of our clients. We applaud your decision and the
11 Governor's to address these issues now, at the time
12 when this Association is, itself, in the midst of a
13 wide-ranging examination of issues relating to the
14 collateral consequences of criminal conviction,
15 including issues relating to re-entry, parole, drug
16 treatment, and rehabilitation in general.

17 The views I'm about to give you, which
18 hopefully will be brief, represent those of the
19 Association generally, and the Criminal Justice
20 Council in particular, and I'm simply going to
21 discuss two brief points.

22 One is I will discuss the Association's
23 general and long-standing support for the concept of
24 determinate sentencing. And second, I will explain
25 why we must condition our support today on the

1 development of appropriate sentencing ranges. We
2 haven't seen those yet, of course. Your preliminary
3 report is quite recent, and we've only had a chance
4 to address the general issue which I think is the
5 central focus of changing to a largely or almost
6 exclusively determinate system, which we support.

7 We support it for a number of reasons.
8 Obviously, as you noted in your preliminary report,
9 New York has been moving towards a determinate
10 sentencing scheme for many years, as far back as 30
11 years ago, with the Executive Advisory Committee on
12 Sentencing chaired by D.A. Morgenthau, who I
13 understand is following me this morning.

14 Since then, we have studied the issue on a
15 number of occasions. Back in 1985, my predecessor,
16 John Doyle, endorsed determinate sentencing in
17 testimony before the New York State Committee on
18 Sentencing Guidelines, which of course ultimately
19 were never enacted. But, we did support it as far
20 back as then.

21 Our support for this concept has not been
22 free from controversy. We recognize that lawyers of
23 goodwill inside and outside the Association can
24 support retaining the indeterminate sentencing
25 system; and, in fact, some do. But, we believe that

1 four factors underscore our approach -- our support,
2 rather, for moving to a determinate sentencing
3 approach.

4 The first is that we believe that it
5 promotes certainty in criminal sentencing, which is
6 lacking in the New York system. We don't think that
7 attorneys can properly advise their clients
8 effectively without knowing how much time they face.
9 Similarly, potential violators can't be deterred by
10 sentences they don't understand. I mean, we've all
11 been practicing for a couple of decades in the
12 system, and I don't know of more than one or two of
13 our members fully understand the State's sentencing
14 system. It's labyrinthian, as you folks have pointed
15 out in your report.

16 We don't think that victims will believe
17 that justice has been done, nor will they be able to
18 make effective plans for future safety if they don't
19 know how long a defendant will be imprisoned.

20 An interesting anecdotal note that we
21 discussed in the Criminal Justice Council when we
22 discussed your report is that several Council members
23 who regularly work with criminal defendants have
24 reported that even certain clients would be in favor
25 of determinate sentencing, despite the fact that it

1 might result in a longer time in prison. The concept
2 of knowledge of the future gives folks quite a bit of
3 comfort.

4 Second, we've long believed that Courts
5 and -- rather than the Parole Board or any other
6 institution, should be primarily responsible for
7 making decisions with regard to sentencing. And, our
8 recent focus on collateral consequences has provided
9 us with an opportunity to examine critically the
10 parole system.

11 At a Council-sponsored forum held here
12 just last year, various experts discussed the parole
13 system in depth and identified several serious
14 problems with which I know the Commission is
15 familiar, including in the difficulty in recent years
16 of obtaining parole under any circumstances for
17 entire classes of offenders.

18 I just noted last week the recent example
19 that the Parole Board didn't give parole to our
20 oldest inmate, Doctor Charles Friedgood, the 89-year-
21 old man, and they made a finding that he was likely
22 to violate the law again. And, that was reversed by
23 a different panel of the Parole Board. We think
24 that's a pretty good anecdotal example of certain of
25 the problems inherent in the parole system.

1 We do recognize and support that the
2 Commission has recommended that second degree murder
3 and other similar offenses continue to be
4 indeterminate, but we used the Friedgood example as
5 an example of the vagaries of parole.

6 We note that your recommendation that good
7 time be preserved is crucial to our support of
8 determinate sentencing.

9 The third reason we agree that determinate
10 sentencing is valid is that it has a much greater
11 tendency to promote uniformity than the present
12 system. After all, a system where all participants
13 have a good idea at the outset how much time an
14 offender will serve allows greater transparency and
15 reduces the possibility that similarly situated
16 offenders will be treated differently.

17 And finally, determinate sentencing is a
18 truth in sentencing measure. And, we think that's
19 important. It will help promote public confidence in
20 our criminal justice system. All of us who are
21 involved in the system are well familiar with the
22 cynicism of the average member of the public over the
23 discrepancy between pronounced sentences and time
24 actually served. Victims, their families, and
25 members of the public deserve to know, in plain

1 English, the length of time defendants will serve.

2 And, additional clarity with regard to
3 sentencing, including the recommended elimination of
4 various back door mechanisms, will greatly improve
5 accountability and restore public confidence.

6 Now, to the caveat. The Commission noted
7 in its report that the appropriateness of determinate
8 sentencing is predicated upon the adoption of
9 appropriate sentencing ranges. If these ranges were
10 to set out unduly harsh penalties, or excessively
11 restrict judicial discretion by, for example,
12 limiting alternatives to incarceration, or having
13 excessively narrow sentencing ranges, then we believe
14 we would simply trade one set of problems for
15 another. For that reason, the Association conditions
16 its endorsement of determinate sentencing on its
17 future review of the actual sentence ranges developed
18 by the Commission.

19 The Association recognizes, in conclusion,
20 that determinate sentencing need not result in longer
21 or less flexible sentences. If sentencing ranges are
22 broad enough, and set at appropriate levels, the
23 advantages of determinate sentences can be gained
24 while preserving judicial discretion. We look
25 forward to working with the Commission in this area.

1 We thank you for undertaking this important and
2 necessary task. And, we wholeheartedly endorse the
3 key conclusion of determinate sentencing, with the
4 caveat that we need to see what the ranges are.

5 Thank you, very much, for the opportunity.

6 COMMISSIONER O'DONNELL: Thank you, very
7 much.

8 MR. ALONSO: Thank you.

9 COMMISSIONER O'DONNELL: I appreciate it.

10 SENATOR SCHNEIDERMAN: Madame Chair?

11 COMMISSIONER O'DONNELL: Yes?

12 SENATOR SCHNEIDERMAN: Just one question.

13 Mr. Alonso, I don't know if you all are
14 willing to take a shot at it, but to the extent that
15 you have a specific recommendation relating to
16 sentencing ranges, that might be helpful for us to --
17 I know that that's the question no one really wants
18 to bite into, but if it's possible to give us any
19 sense of where you are on that issue, that is,
20 obviously, a tough issue for us to address going
21 forward.

22 MR. ALONSO: I'll take that back to the
23 Association, certainly.

24 SENATOR SCHNEIDERMAN: Okay, thank you.

25 JUDGE NEWTON: May I ask a question, too?

1 Since you didn't use up all your time, I
2 have a question, too, and maybe you can follow up in
3 a similar report that the Senator said.

4 We have this great debate: Is it more
5 important to treat like people in a similar way?
6 And, that's always the reason for narrow ranges.
7 And, you said that the ranges should not be unduly
8 narrow. So, I assume that means that the notion of
9 everybody in that box doesn't have to be treated the
10 same is one that resonates with you, as well.

11 MR. ALONSO: We believe, fundamentally,
12 in judicial discretion, which I hope is something
13 that resonates with you, Commissioner.

14 JUDGE NEWTON: Well, this was not a
15 plant.

16 [Laughter]

17 MR. ALONSO: We believe, fundamentally,
18 in judicial discretion. We don't think the state
19 system is plagued by the same kinds of problems that
20 Judge Frankel identified 30 years ago, that
21 ultimately led to the Federal Sentencing Guidelines.

22 So, we very much hope that New York will
23 not, as a legislative matter, enact narrow sentencing
24 ranges like the Federal Government has. That's a
25 different system, with a whole different set of

1 issues, and in fact, the Association was
2 constructively critical of the draft sentencing
3 guidelines 20 years ago, when they first came out.

4 So, I can't be more specific than to say
5 please don't make them too narrow. But, I would be
6 happy to take back to the Association and to our
7 constituent committees the concept of crafting
8 different ranges.

9 JUDGE NEWTON: Thank you.

10 MR. ALONSO: Thank you.

11 COMMISSIONER O'DONNELL: Thank you, very
12 much.

13 Our next speaker is our District Attorney
14 here in Manhattan, Robert Morgenthau. Mr.
15 Morgenthau?

16 MR. MORGENTHAU: Good morning.

17 COMMISSIONER O'DONNELL: Good morning.

18 TESTIMONY OF ROBERT M. MORGENTHAU, ESQ.,

19 NEW YORK COUNTY DISTRICT ATTORNEY

20 MR. MORGENTHAU: Thank you for giving me
21 the opportunity speak with you today. You are doing
22 extremely difficult and important work, and I
23 appreciate the challenges presented by the task you
24 have undertaken.

25 As you know, in 1977, I chaired the

1 Governor's Executive Advisory Committee on
2 Sentencing, which examined some of the same subjects
3 that you have considered. The principal
4 recommendation by that Commission was that the State
5 adopt a system of determinate sentencing. At the
6 time, virtually all felony sentences in New York were
7 indeterminate.

8 That proposal was not accepted. There was
9 strong lobbying against it, by both the judges and
10 the Parole Officers. And, the result was that did
11 not get enacted by the legislature.

12 We now have determinate sentencing for
13 violent felonies and drug felonies, and your
14 preliminary report recommends extending determinate
15 sentencing, with some exceptions, to all first and
16 second non-violent felony offenders. I endorse that
17 proposal.

18 A system of determinate sentencing
19 promotes -- quote -- "truth in sentencing" -- unquote
20 -- by allowing the Courts, prosecutors, defendants,
21 and the public to know with some certainty how long a
22 defendant sentenced to prison will actually remain in
23 prison. By contrast, in indeterminate sentencing,
24 when judges set a minimum and maximum term in prison,
25 it's the Parole Board that determines the actual

1 length of the sentence. Of course, you all know
2 that.

3 As the final report of the Advisory
4 Committee on Sentencing noted, this places a veil of
5 secrecy over sentencing and obscures from public view
6 precisely who is making sentencing decisions, what
7 those decisions are, and why they are made. The same
8 may be said of some programs administered by the New
9 York State Corrections Department, such as work
10 release and merit time programs that effectively
11 reduce sentences imposed by the courts.

12 These programs currently applicable to
13 sentences for drug and other non-violent felonies do
14 provide an incentive and an opportunity for inmates
15 to obtain drug treatment, educational credits, and
16 vocational skills that will assist their re-entry
17 into the community, and those programs are extremely
18 important and, I think, under-funded. However, these
19 programs also create uncertainty about the length of
20 time an inmate will actually serve and thus run
21 counter to a principal aim of determinate sentencing.
22 For that reason, the use of early release programs
23 should be closely monitored, to ensure that they are
24 being used in a way that serves the public interest.

25 Now, where violent are concerned, public

1 safety is of paramount importance. And, both victims
2 and the public-at-large should be assured that the
3 actual release dates will bear as close a
4 relationship as practical to the terms fixed by the
5 Court. Therefore, the Commission should proceed with
6 extreme caution if it plans to consider the extension
7 of work release, merit time, and similar programs to
8 violent offenders.

9 The needs of violent offenders and the
10 public may better be served by drug and education
11 programs in prison, a period of intense supervision
12 after release, and closely monitored community-based
13 re-entry programs.

14 Determinate sentencing does not, by
15 itself, ensure fairness and uniformity in sentencing,
16 since statutes allow judges to impose any sentencing
17 within a range. For example, a defendant convicted
18 of robbery in the first degree, a Class B violent
19 felony, may be sentenced to a determinate sentence of
20 imprisonment of not less than five or more than 25
21 years. That's a pretty wide range. Not
22 surprisingly, different judges are apt to choose
23 different sentences within the permissible range for
24 defendants similarly situated.

25 When the Advisory Committee on Sentencing

1 was formed in 1977, sentencing in New York was marked
2 by widespread disparity, inconsistency, and
3 uncertainty. In fact, we conducted an empirical
4 study which showed that judges presented with
5 identical pre-sentence reports differed, and differed
6 dramatically in both the type and length of sentence
7 they imposed. We found that judges tended to
8 sentence in part based on their own predilections,
9 and since judges differ in personality and viewpoint,
10 so did the sentences they meted out.

11 The problem has been addressed to some
12 extent by mandatory minimum sentences which are now
13 required for a variety of serious offenses.
14 Mandatory minimums eliminate some potential
15 disparities at the low end of the spectrum of
16 possible sentences.

17 The Commission's preliminary report
18 suggests that judges' discretion may be further
19 limited by narrowing the permissible range of
20 sentences for particular crimes. However, that will
21 almost certainly result in the narrowed sentencing
22 ranges be inadequate to address the most serious
23 offenses, particularly serious violent felonies.

24 A more promising approach would be to
25 establish sentencing guidelines which would not be

1 binding on judges, but would provide benchmarks for
2 the imposition of sentences above the mandatory
3 minimum, or for sentencing in cases where there is no
4 mandatory prison sentence. This would promote
5 consistency by providing judges with an objective
6 basis to evaluate critical factors concerning the
7 offense or the defendant's background that may be
8 relevant to sentencing.

9 Establishing sentencing guidelines may be
10 a project that is outside the scope of the current
11 Sentencing Commission's mandate, but it is a matter
12 that deserves further study.

13 And, as we consider changes in the
14 sentencing laws, we must make certain that the
15 pendulum does not swing so far in the direction of
16 reform that the dramatic reductions we've made in
17 violent crime are put at risk. Drug sentences have
18 already been reduced as a result of the Drug Reform
19 Act of 2004. Further reductions are likely to be
20 counterproductive. As any resident of a drug-
21 infested neighborhood can tell you, there is link
22 between illegal drug trafficking and unlawful
23 behavior, including violent crimes.

24 Significant mandatory sentences are still
25 needed to ensure that serious offenses and repeat

1 offenders receive appropriate punishment. They are
2 also essential if we want to keep crime down.
3 Mandatory sentences also provide a meaningful
4 incentive for defendants to accept demanding long-
5 term residential drug treatment as an alternative to
6 prison. Leading experts in drug treatment as an
7 alternative to prison have long recognized that the
8 prospect of a stiff prison sentence is important to
9 ensure that drug-dependent defendants enter and
10 remain in treatment programs.

11 As the preliminary report recognizes,
12 there is recognition reflected in current practices
13 that some persons facing mandatory state prison
14 sentences for low-level drug sales and possession of
15 small amounts with intent to sell, Class B felonies
16 under the current law, should not receive the
17 mandatory minimum sentence. And, I agree with that.

18 Historically, in New York County, 80
19 percent of such defendants who have no prior felony
20 convictions have been permitted to plead guilty to
21 lesser charges and receive shorter terms or
22 alternative sentencing, such as drug treatment or
23 probation. Thus, in a limited class of "B" felony
24 drug cases, where the defendant is not a predicate
25 felon, and there are other mitigating factors, such

1 as a defendant who is drug-dependent and who is
2 willing to undergo drug treatment, the law should
3 allow for an appropriate disposition that does not
4 involve state prison, at least where the prosecutor
5 consents. While the results may be achieved now by
6 policy, as in our case, or by plea bargaining, it is
7 appropriate that the law be changed to reflect
8 current realities and practices.

9 But, to allow for alternative sentences in
10 appropriate cases, we need much more resources for
11 drug treatment programs and drug education. Studies
12 have shown that at least a third of defendants going
13 to prison are drug dependent.

14 And, I want to make a suggestion here
15 which may be beyond the scope of my testimony today.
16 But, I think that all persons arrested for felonies
17 should undergo drug tests. And, it would have to be
18 voluntary -- it would have to be voluntary. But,
19 this has worked in the District of Columbia for
20 years. And, it accomplishes a number of different
21 things.

22 In the first place, it helps the judge in
23 deciding what kind of a sentence should be imposed.
24 It lets the Department of Corrections know what the
25 drug-dependent population is, so that they can

1 formulate appropriate treatment programs. And, it
2 lets the legislature know how much money needs to be
3 appropriated for drug treatment.

4 And, beyond that, it shows the trends of
5 drug abuse. I mean, you'll find out, as they have in
6 the District of Columbia, that 40 percent of the
7 people -- and, you know, I'm just making these
8 statistics up -- a certain percentage of people are
9 heroin addicts, a certain percentage are cocaine
10 addicts, and so forth. So, you know what the drug
11 population is and, you know, now we look at emergency
12 room admissions to see what the drug population is.
13 But, this would be a very important research tool,
14 and very inexpensive. The last time I costed out to
15 take a sample would be about \$4.00 a person. So,
16 it's probably gone up with inflation, but it's not an
17 expensive procedure, and it's welcomed by the
18 overwhelming percentage of defendants, because they
19 feel that they'll get consideration if they're drug
20 dependent, and they'll ultimately benefit.

21 But, I want to emphasize that funding for
22 programs to address the problem of drug addiction is
23 grossly inadequate. Less than one-third of my own
24 office's cost for administering drug treatment
25 programs are reimbursed by the City or State. And,

1 as Chairman of the Police Athletic League, I also
2 know that additional financial support for after-
3 school programs that keep young people off the
4 streets and away from drugs is badly needed.

5 You know, on forfeiture cases, under the
6 formula established by the legislature, OASES gets
7 41 percent of drug forfeiture cases. And on Friday,
8 we had a big forfeiture case, and \$1,100,000 went to
9 OASES for their programs. But, I think there needs
10 to be a dedicated source of funding for treatment in
11 the Department of Corrections' jurisdiction and also
12 out, and I urge once again, as I have in the past,
13 that a portion of the money that the City's District
14 Attorneys -- and it could be the State's District
15 Attorneys -- raise from tax prosecutions and other
16 white collar crime be earmarked to support expanded
17 drug education, drug treatment, and alternatives to
18 incarceration for low-level drug defendants.

19 And, we're all concerned about the re-
20 entry program, you know, and properly so. And about,
21 you know, a third of the people are going to be
22 re-arrested within three years, so we've got to make
23 a greater effort to get people who are drug dependent
24 off drugs while they're incarcerated.

25 COMMISSIONER O'DONNELL: Well, we greatly

1 appreciate having a former Chair of the Commission
2 come and address us. We are going to have to stick
3 to some time frames. So, I am going to ask you if
4 you would wrap up your remarks, but we appreciate you
5 being here today.

6 MR. MORGENTHAU: I have one final remark
7 to make. And that is, I would like to advocate a
8 permanent, independent sentencing commission to
9 continue the work of this Commission.

10 Thank you, again, but I believe very
11 strongly that there should be a permanent commission
12 on sentencing.

13 Thank you, again, for the opportunity to
14 appear before you.

15 COMMISSIONER O'DONNELL: Thank you, very
16 much, for being here today, Mr. Morgenthau.

17 I'm now going to turn to our next speaker,
18 Shreya Mandal, who is speaking for Bill Gibney, who
19 was originally scheduled to speak here, on behalf of
20 the New York City Legal Aid Society.

21 MS. MANDAL: Thank you.

22 COMMISSIONER O'DONNELL: Thank you.

23 TESTIMONY OF SHREYA MANDAL,
24 NEW YORK CITY LEGAL AID SOCIETY

25 MS. MANDAL: Good morning. My name is

1 Shreya Mandal, and that's the correct way to
2 pronounce it, --

3 COMMISSIONER O'DONNELL: Okay.

4 MS. MANDAL: -- and I am employed as an
5 in-house sentence mitigation specialist for the Legal
6 Aid Society Criminal Appeals Bureau. I currently
7 hold a Juris Doctorate in law, and I am also a
8 Licensed Master of Social Work in New York State. In
9 addition, I have had extensive training in the field
10 of psychotherapy for the past ten years.

11 Following the passage of the Drug Law
12 Reform Act of 2004, and continuing with the 2005
13 amendment allowing the re-sentencing of A-II drug
14 offenders, the Legal Aid Society recognized that it
15 was important to identify and address the needs of
16 clients who have the opportunity for re-sentencing.
17 In spite of the fact that no resources were
18 legislatively allocated, the Society asked me to
19 create a re-sentencing project centered on developing
20 sentence mitigation and clinical assessments which
21 could bring client stories to the courts through both
22 written and oral advocacy.

23 During the course of this project, I have
24 used the mitigation process as a path to identify the
25 need for critical mental health, substance abuse,

1 housing, employment, and immigration re-entry
2 services for A-I and A-II drug offenders. The social
3 work perspective allowed me to bring the voices of
4 our clients directly to the sentencing court.

5 This practice has proved critical in
6 informing the courts about our clients' humanity and
7 individual traumas that lead them to their
8 situations. Let it be clear that my job is never to
9 make excuses for anyone's actions, but merely to shed
10 light on a person's individual struggle in a broader
11 social context.

12 The power of the narrative has been
13 central to effective advocacy of these clients. Most
14 of these now ex-prisoners were courageous in voicing
15 these intimate stories to me. Some of my clients
16 have never had an outside visit in over 15 years of
17 incarceration, and they have been overwhelmed by the
18 chance to tell their life history to me, to explain
19 the personal details that often do not get voiced
20 during legal proceedings. And, I am profoundly
21 humbled as I bear witness.

22 The Legal Aid Society has supported my two
23 and a half year effort in advocating for
24 approximately 100 drug offenders thus far, clearly
25 understanding that the only viable way to address

1 drug law reform is through holistic advocacy, having
2 micro-level legal and social work practices inform
3 the broader policy consideration. Although we were
4 not funded to take on this ambitious support, it was
5 vitally important to us that the re-sentencing law
6 succeed.

7 The project assisted almost 20 percent of
8 the population most affected by the Rockefeller Drug
9 Laws. Re-sentencing relief from the courts was never
10 an automatic guarantee. I am thoroughly familiar
11 with places like Green Haven, Eastern, Auburn, Great
12 Meadow, Clinton, and Attica, to just name a few.

13 Face-to-face interviewing was the only way
14 to ensure that many of these ex-prisoners would be
15 humanized and not just discounted as another drug
16 felony statistic. I spent a considerable amount of
17 time assessing and collecting data on the life
18 histories of those most affected by our drug laws.

19 This re-sentencing project allowed me to
20 expand the range of our post-conviction services that
21 are desperately needed by long-term drug offenders.
22 Most of my clients have had long battles with
23 substance abuse and have taken on the challenge of
24 recovery and healing their addictions while in
25 prison.

1 The problem of substance abuse is rarely
2 an isolated experience, and is often preceded with
3 significant mental health issues. The treatment of
4 such mental health illness is hardly ever effective
5 in prisons. My clients have been largely
6 mis-diagnosed, misunderstood, and often times
7 mistreated, as a result.

8 In my experience, most drug offenders have
9 also been profoundly isolated from their loved ones
10 as a result of their prison terms, and they have been
11 in desperate need of family reunification. Most of
12 this population almost always needed some form of
13 transitional housing assistance, food, clothing, and
14 public assistance that gave them a solid start to a
15 second chance in life.

16 And, for those who have been successfully
17 re-sentenced and released, most of them wanted to
18 pursue a higher education, to ensure that they would
19 meet their personal goals and rebuild healthy lives.

20 After the passage of the Drug Law Reform
21 Act, many community-based organizations providing
22 housing, employment, mental health, and substance
23 abuse treatment voluntarily grouped together in an
24 informal coalition to fill the critical need to build
25 linkages between re-entry providers. I am certain

1 that these supportive re-entry networks will be
2 available to support additional community-based drug
3 treatment.

4 Based on my experience, it is in
5 everyone's interest that we develop new ways to place
6 additional drug offenders into community-based
7 programs. If it is done correctly, sentencing reform
8 can make all of our communities safer and more
9 productive places in which to live.

10 So, what are the considerations for
11 further drug sentencing reform?

12 There are many praiseworthy policy
13 recommendations in the Commission's preliminary
14 proposal. Many of them would be a real step forward
15 for New York practice. Re-entry courts for high risk
16 offenders, restricting confinement for those parole
17 violators who commit a new felony or rule violation
18 that threaten public safety, greater use of graduated
19 sanctions for parole violators, aligning community
20 supervision with the offender's risk level, expanding
21 YO eligibility, expanding merit time, enhancing
22 transitional employment opportunities, offering
23 assistance with essential identification are but a
24 few. Many of these sound policy proposals are within
25 the discretion of the Executive Branch, and can be

1 implemented quickly, as early as the next budget
2 cycle, without the need of additional legislation.

3 For our community, the recommendations
4 regarding further drug law reform are vitally
5 important. To a significant degree, the work of the
6 Commission will be judged by the quality of its drug
7 law reform proposal. In our view, meaningful drug
8 law reform is an essential part of the Commission's
9 mandate to, quote, "ensure the imposition of
10 appropriate and just criminal sanctions, and to make
11 the most efficient use of the correctional system and
12 community resources."

13 The Commission is aware of the research
14 which shows that there is a nationwide trend among
15 the states toward greater use of diversion away from
16 prison and into community-based treatment, greater
17 use of community corrections for non-violent drug
18 offenders, even repeat offenders, and a trend toward
19 procedures that allow judges to depart from mandatory
20 minimum sentences. The trend is motivated by the
21 fact that community-based treatment has been shown to
22 be far less expensive and at least, if not more,
23 effective than prison. The obvious policy choice for
24 the Commission is to follow this trend and expand the
25 available procedures for more effective and less

1 costly community treatment.

2 If New York is to join the trend, the
3 Sentencing Commission has to create additional ways
4 to place offenders into diversionary programs,
5 increase the numbers of programs, and create a way to
6 assess the quality of program performance. Until
7 now, District Attorneys, through their control of the
8 indictment and plea process, have had almost
9 exclusive control over admission to alternatives to
10 prison. This near control over the use of
11 alternatives is a product of the discredited
12 Rockefeller Drug Laws.

13 While some District Attorneys created high
14 quality alternative to prison DTAP programs to
15 alleviate the harshness of those laws, and the
16 Commission report cites the success of the Brooklyn
17 DTAP program, many did not. Many of those programs
18 that were established that were very restrictive
19 eligibility criteria. This has to change because it
20 is a recipe for continued inaction. The Commission
21 proposal to allow judges to impose alternative
22 sentences, but only with the consent of the District
23 Attorney, is inadequate.

24 We should have more uniform policies
25 statewide, and judges, as the sole neutral party in

1 the life sentences of the Rockefeller Laws were
2 necessary to encourage pleas and to get people into
3 treatment. Yet, we see no fundamental change in the
4 practice after the 2004 sentence reductions. In
5 fact, more drug offenders are going to prison now
6 than several years ago.

7 The argument ignores all of the research
8 evidence and the experience from an increasing number
9 of states that community-based treatment is more
10 effective and less costly, in terms of future crime
11 prevention. When properly operated, the
12 cost-effective community-based treatment alternatives
13 can give us even safer communities than mandatory
14 minimum sentences. Those people who do not
15 successfully complete community-based treatment will
16 still face the threat of a prison sentence.

17 The social and economic costs of a
18 mandatory minimum prison policy is enormous. The
19 costs go beyond the cost of imprisonment. Such a
20 policy removes potential sources of support and
21 income from our communities, and thereby increases
22 the cost of our social support network. It also
23 carries a high humanitarian cost, as it separates
24 families and increases the burden on our foster care
25 system. Community-based treatment can reduce the

1 impact of these unintended consequences.

2 In light of the compelling public safety,
3 fiscal, and humanitarian reasons to expand the use of
4 treatment alternatives, it would be a great mistake
5 to allow opposition to prevent the Commission from
6 completing its mandate to explore the just and
7 efficient use of correctional system and community
8 resources. It will take executive leadership to
9 fulfill the mandate, but it can and should be
10 accomplished.

11 Judges should be empowered to sentence
12 first-time "B" felony offenders, as well as those
13 predicate felony drug offenders whose addiction is a
14 primary cause of the crime, into a drug treatment
15 program. Allowing a prosecutorial veto over this
16 necessary power would render the reform illusory.

17 As we did in the Drug Law Reform Acts, the
18 Legal Aid Society is fully prepared to devote its
19 time, energy, and resources to work with the
20 executive, the judiciary, the District Attorneys, and
21 other members of the criminal justice system to make
22 the expansion of community-based treatment
23 alternatives a success. We have valuable experience
24 and a proven track record of success. It can be
25 done. We ask that you demonstrate the courage and

1 the wisdom to work with us to ensure that it is done
2 well.

3 Thank you.

4 COMMISSIONER O'DONNELL: Thank you,
5 Ms. Mandal. And, I also want to thank William
6 Gibney, who is here, who assisted us and spoke to the
7 Commission earlier. Thank you, very much.

8 MS. MANDAL: Thank you.

9 COMMISSIONER O'DONNELL: We appreciate
10 it.

11 Our next speaker is Anne Swern, from the
12 Kings County District Attorney's Office, who also, I
13 believe, oversees the DTAP Program.

14 Welcome, and thank you for joining us.

15 TESTIMONY OF ANNE J. SWERN, ESQ.,

16 1st ASSISTANT DISTRICT ATTORNEY, KINGS COUNTY

17 MS. SWERN: Thank you, Commissioner.

18 Good morning. I'll be summarizing my written remarks
19 that I've submitted, and focusing on two topics --
20 drug treatment diversion for non-violent felony
21 offenders and recidivism reduction through re-entry
22 -- from the perspective of a D.A.'s office.

23 Specifically, I would like to encourage
24 this Commission not to throw the baby out with the
25 bath water when you're looking at the reform of these

1 laws. I will talk about DTAP and I will talk about
2 ComALERT, both programs run by the Brooklyn District
3 Attorney's Office. Notably for this Commission, both
4 of these programs were created with the current
5 sentencing structure.

6 DTAP. In an effort to break the cycle of
7 substance abusers committing crimes, going to prison,
8 and re-offending upon release to support their habit,
9 District Attorney Hynes has been in the forefront of
10 instituting prosecution-run Drug Treatment
11 Alternatives to Prison. His DTAP Program, which was
12 launched in 1990, has been extensively evaluated by
13 the National Center on Addiction and Substance Abuse
14 at Columbia University and boasts a recidivism rate
15 for graduates that half the rate for comparable
16 defendants who served state prison sentences. As of
17 November 1st, 2007, 2,550 defendants have been
18 accepted into Brooklyn DTAP, of which over 1,000 have
19 graduated, and 377 are currently in treatment.

20 During the course of this pioneering
21 treatment effort, and his many years of combating
22 violent drug-related crime in Brooklyn, D.A. Hynes
23 has come to certain conclusions about how DTAP and
24 diversion can effectively reduce recidivism without
25 jeopardizing public safety in the process. There are

1 five keys elements to accomplishing this goal.

2 First, it's essential that diversion into
3 treatment be reserved for those who are truly
4 addicted. As a number of studies have shown,
5 treatment can reduce criminal recidivism and can do
6 so in a more cost-effective way than incarceration.
7 However, spending treatment dollars on those who are
8 not addicted is not just a waste of money, but it
9 also compromises the treatment of those who are
10 addicted.

11 Treatment diversion should not be
12 automatically offered to a defendant based solely on
13 a charge. Treatment diversion should be offered
14 based upon an evaluation of the individual -- the
15 defendant's addiction, his or her criminal and
16 personal history, and the facts of the case.

17 Not all of those arrested for drug
18 offenses are addicted. A number of offenders peddle
19 drugs out of greed, sometimes engaging in violence to
20 protect their turf, placing their desire to make
21 money over the welfare of those communities so
22 adversely affected by the drug trade within their
23 midst. By the same token, some defendants who have
24 been arrested for non-drug offenses are,
25 nevertheless, drug addicts who are motivated to

1 commit their crimes by addiction. In 1998, Brooklyn
2 DTAP began accepting defendants who were facing non-
3 drug charges, such as burglary and larceny.

4 An effective drug treatment program like
5 DTAP must engage in the careful screening of program
6 candidates, with regard to both the facts surrounding
7 the defendant's criminal activity and the defendant's
8 clinical suitability to treatment. If the latter is
9 not conducted by qualified clinicians who have an
10 expertise in clinical and forensic evaluations,
11 valuable treatment funds will be wasted on offenders
12 who won't receive an intervention that will change
13 their behavior and, thereby, prevent recidivism.

14 In short, treatment works for the
15 addicted. So, let's make sure that the addicted get
16 that treatment.

17 Second, violent individuals should not be
18 diverted into community-based treatment, and their
19 cases should be carefully screened so that public
20 safety, the safety of all non-forensic clients in the
21 drug treatment program, the treatment provider staff,
22 and the public-at-large, in the event that the
23 diverted offender absconds from treatment, is not
24 jeopardized by an offender's diversion. Again, it's
25 important to look beyond the charges on the rap

1 sheet.

2 A DTAP candidate may have serious violence
3 issues that don't appear in his criminal history; for
4 example, a history of domestic violence or
5 gang-related violence. That's why our warrant
6 enforcement team does a background check on each
7 candidate.

8 At the same time, we will not disqualify a
9 candidate merely because they have a technical VFO on
10 their rap sheet. For example, a candidate may have a
11 prior second degree burglary conviction. Closer
12 investigation reveals that that defendant had
13 burglarized his own parents' house, and it is those
14 same parents who are now pleading that we agree to
15 divert their drug-addicted son into DTAP. If a
16 background check reveals no other violence in
17 connection with this defendant, we would offer him
18 treatment.

19 The third key element to DTAP is the use
20 of long-term residential treatment for predicate
21 felons; and, more specifically, the effective
22 therapeutic community model. Defendants with
23 extensive drug histories, who have repeatedly engaged
24 in criminal activities to finance their drug habits
25 -- that is DTAP's target population -- require

1 intensive intervention and rehabilitation to support
2 reintegration into society.

3 For many DTAP participants, the
4 environment in which they were living, and the people
5 they were associating with, and the places that they
6 frequented bolstered that drug addiction. The
7 participants need to be removed from that environment
8 for a significant length of time to begin the process
9 of recovery and re-socialization.

10 Moreover, many participants need a range
11 of supportive services in addition to substance abuse
12 treatment; services such as medical care, educational
13 and vocational training, parenting training, and HIV
14 education, testing, and counseling.

15 Fourth, the treatment residential beds
16 must be readily available and accessible in all
17 jurisdictions. The crisis moment of an arrest can
18 motivate an offender's swift engagement in the
19 treatment process, and the delayed placement means
20 that we lose additional impetus towards recovery.

21 In addition, if defendants have to wait
22 months in county jails before they can be placed in a
23 treatment facility, the savings on prison
24 incarceration costs begin to evaporate. It is
25 important, too, that the residential treatment

1 facility be able to accommodate offenders with
2 special needs.

3 Fifth, the final key element I want to
4 mention is the use of a deferred sentencing model
5 that has contributed significantly to DTAP's
6 effectiveness. DTAP began as a deferred prosecution
7 model. That is, the charges were held on abeyance
8 until treatment completion or failure. DTAP now uses
9 a deferred sentencing model. Participants are
10 required to plead guilty to a felony prior to program
11 admission, and the plea agreement includes a specific
12 prison term which will be imposed in the event of
13 treatment failure. Thus, the risk associated with
14 failure shifted from a strong probability of a prison
15 sentence under the old model to a virtual guarantee
16 of a prison sentence under the new model.

17 In 1998, after conferring with the defense
18 bar in Brooklyn, we adopted the deferred sentencing
19 model with the initial goal of extending treatment to
20 a greater number of offenders. We found that the
21 switch in models in 1998 significantly increased the
22 treatment retention rates.

23 For those defendants admitted to DTAP
24 under the deferred prosecution model, the one-year
25 retention rate was 64 percent. Under the deferred

1 the Center for Court Innovation, stated, "As to who
2 reaps the most benefit from drug court, the studies
3 suggest that participants facing more serious charges
4 and a longer sentence in the event of program
5 failure, are more likely to succeed. Great legal
6 coercion increases the chances that an addicted
7 person will succeed in treatment."

8 Now, ComALERT, I have my explanation in my
9 written materials. I'm not going to tell you the
10 details of it. But, I will say it's not a treatment
11 re-entry court. It's a re-entry partnership.
12 There's a difference. We're not associated with the
13 administrative court that sanctions the parolees, but
14 it is a re-entry partnership, and I urge you to look
15 at the written remarks for a description of it.

16 What I will point to, though, and I'll
17 finish hopefully on time, is that Bruce Western,
18 formerly of Princeton University, and now at Harvard,
19 recently completed the research evaluating ComALERT.
20 Professor Western has analyzed the recidivism rate of
21 the ComALERT graduates from July, 2004, to December,
22 2006, and compared those rates to all ComALERT
23 attendees for that period, and to those of a matched
24 control group of Brooklyn parolees who did not
25 participate in ComALERT.

1 Outcome percentages for ComALERT graduates
2 were substantially better in all categories when
3 compared to those of a matched control group. One
4 year after the release from prison, parolees in the
5 matched control group were over twice as likely to
6 have be re-arrested, re-convicted, or re-incarcerated
7 as ComALERT graduates. Even two years out of prison,
8 ComALERT graduates show far less recidivism than the
9 parolees of the matched control group -- 29 percent
10 of the ComALERT graduates were re-arrested, 19
11 percent were re-convicted, and only 3 percent re-
12 incarcerated for a new crime. By contrast, 48
13 percent of the matched parolees were re-arrested, 35
14 percent were re-convicted, and 7 percent re-
15 incarcerated on a new crime.

16 Even re-incarceration based on parole
17 violations occurred much less frequently for ComALERT
18 graduates than for parolees in the matched control
19 group. As to employment, ComALERT graduates were
20 nearly four times as likely to be employed as the
21 parolees in the matched group, and they also had much
22 higher earnings than the parolees in the control
23 group.

24 We thank the Commissioner and DCJS for
25 funding that study. And, we would invite the entire

1 Commission to come look at all the diversion that we
2 have in Brooklyn and our re-entry partnership.

3 COMMISSIONER FISCHER: One question?

4 COMMISSIONER O'DONNELL: Yes.

5 COMMISSIONER FISCHER: On the DTAP, the
6 statistics are for one year. Do you have statistics
7 for three years?

8 MS. SWERN: Yeah, we -- when Columbia
9 University researched it, they did it five years out.
10 And, the white paper, which is in your materials,
11 from Columbia has that research over a five-year
12 period of time.

13 COMMISSIONER FISCHER: Thank you.

14 COMMISSIONER O'DONNELL: Thank you, very
15 much.

16 Okay. Our next speaker is Norma
17 Fernandes. She is also going to speak about the
18 Brooklyn DTAP Program.

19 Welcome.

20 TESTIMONY OF NORMA FERNANDES,
21 PRESIDENT, DTAP ALUMNI ASSOCIATION

22 MS. FERNANDES: Good morning. This
23 testimony is as a former graduate of DTAP.

24 I was the youngest child of three. I grew
25 up in a dysfunctional environment. When I was 11, my

1 mother passed away from cirrhosis of the liver. At
2 the age of 15, I dropped out of high school because I
3 was addicted to heroin.

4 The foundation of my teenage years
5 revolved around jail and the street corners in
6 Brooklyn, either selling drugs or at a more desperate
7 time, robbery. Because of my addiction, I didn't
8 care who I hurt.

9 After many attempts to get sober through
10 30-day detoxifications as well as time in jail, these
11 experiences did nothing to keep me off drugs.
12 Although time in jail prevented me from committing
13 crimes while I was there, it gave me the only
14 opportunity to clean out my system, rest, and time to
15 think about how I would become a better criminal when
16 I was eventually released. This was the cycle of my
17 life up until the age of 22.

18 I decided to enroll in a methadone
19 program. At the time of my final arrest, I was on 90
20 milligrams of methadone and charged with a felony
21 level crime, sale of a controlled substance. I knew
22 I had effectively outgrown my status with the New
23 York City Department of Corrections, and would soon
24 find myself in an upstate prison.

25 Fortunately for me, the Brooklyn D.A.,

1 Charles J. Hynes, believed in substance abuse
2 treatment alternative instead of prison. And for
3 this, I will always be grateful to him.

4 I never thought I would ever be able to
5 live life without getting high and committing crimes.
6 However, I was given an opportunity to participate in
7 DTAP. I was diverted into a program of long-term
8 residential drug treatment, instead of going upstate
9 to prison.

10 Detoxifying off the methadone at Ryker's
11 Island was a nightmare. I lost 45 pounds in less
12 than two months, and I felt like I was going to die.
13 I had no appetite, nor was I able to sleep. My body
14 reacted violently and painfully to the awful
15 withdrawals from the methadone. It was an agonizing
16 process that included many fights with fellow
17 sufferers undoubtedly because I was still sick and
18 suffering, and I was a very angry person during this
19 time.

20 I was later mandated to Samaritan Village,
21 a therapeutic community located in Ellenville, New
22 York. My time spent there will never be forgotten.
23 It wasn't easy adjusting to a structured environment
24 and sitting in groups, and when I arrived to
25 Samaritan Village, I was scared, angry, and lonely.

1 As time went on, however, I began to learn a lot
2 about myself, the real me, and I can probably say
3 that Samaritan Village helped me grow up.

4 I obtained my GED while I was there. I
5 learned how to live life soberly and responsibly. I
6 learned how to set short-term goals and long-term
7 goals. These experiences empowered me and encouraged
8 me to strive hard so I could accomplish anything I
9 wanted to achieve in my life.

10 Today, I'm a college graduate, and I'm an
11 owner of a four-family building in Brooklyn. I'm
12 also a proud single parent with a very intelligent,
13 level-headed daughter. I love the person I am today,
14 and I have no doubt that I would have -- if I had not
15 been offered the chance to enter long-term
16 residential treatment, I would have not set any
17 positive goals nor accomplished them. And, I would
18 definitely not be here today, sharing this story.

19 The only choices guaranteed me in the
20 future I would have been facing back then were pretty
21 grim: Either become a recidivism statistic in
22 prison, with an even higher sentence, or a death
23 statistic, buried in the cemetery somewhere instead.
24 I have accomplished every goal I have set for myself,
25 and I will continue to be prosperous in everything I

1 do.

2 I am now employed with the Kings County
3 District Attorney's Office, as the Community Resource
4 Coordinator for the ComALERT re-entry program,
5 assisting individuals paroled to Brooklyn in
6 obtaining vital supportive services. The services
7 include outpatient drug treatment, job placement,
8 vocational training, free GED courses, health
9 benefits, and VESID entitlements.

10 The fact that ComALERT is sponsored by the
11 Kings County District Attorney's Office plays an
12 essential role and has a positive impact on each
13 agency providing supportive services to our ComALERT
14 clients. And even though there are clients that walk
15 into ComALERT initially resistant because it's a
16 program sponsored by the D.A.'s Office, once they
17 become engaged in the re-entry program and involved
18 in the different services provided at ComALERT, they
19 are anxious to come back.

20 I know how imperative it is for
21 formerly-incarcerated individuals to have these
22 essential supportive services in order to
23 successfully reintegrate back into the community.
24 Supportive services are particularly important for a
25 population that is highly at risk to recidivate

1 because they don't have access to effective substance
2 abuse treatment, or have no marketable skills to
3 secure employment.

4 As a former client and now a productive
5 community member, and a social service professional,
6 my personal experiences have shown me, in a number of
7 ways, that programs like ComALERT and DTAP aren't
8 only effective at restoring lives. Thanks to the
9 enlightened thinking of civic leaders like Brooklyn
10 D.A. Charles Hynes, I now also see how these programs
11 have solid economic and public safety benefits that
12 each and every one of us can all enjoy.

13 COMMISSIONER O'DONNELL: Thank you, very
14 much, for sharing your story. We appreciate it.

15 I have Bridget Brennan here? Bob Gangi?
16 Moving along here, we may -- oh, Bridget, I'm sorry.
17 Okay.

18 MS. BRENNAN: Where would you like me to
19 sit?

20 COMMISSIONER O'DONNELL: Either place
21 would be fine.

22 MS. BRENNAN: Okay.

23 COMMISSIONER O'DONNELL: And, Bob Gangi,
24 if you want to come up for the next seat, over here?
25 Okay.

1 Bridget Brennan, as many of you know, is
2 the Special Narcotics Prosecutor for the City of New
3 York. Welcome.

4 TESTIMONY OF BRIDGET G. BRENNAN, ESQ., SPECIAL
5 NARCOTICS PROSECUTOR, OFFICE THE SPECIAL NARCOTICS
6 PROSECUTOR FOR THE CITY OF NEW YORK

7 MS. BRENNAN: Good morning. And, thank
8 you, very much, for the opportunity to address the
9 Commission.

10 I commend the Commission members on your
11 preliminary report. I have reviewed it. And, you
12 have synthesized a tremendous amount of information.
13 You've identified critical issues for further study.
14 And, I support the Commission's mission to make
15 sentencing more coherent, more consistent, and more
16 transparent. I also agree with the proposal to
17 convert entirely to determinate sentences for all
18 crimes.

19 I'm Bridget Brennan. I'm the Special
20 Narcotics Prosecutor for the City of New York, and
21 have been since 1998.

22 My office prosecutes felony narcotics
23 offenses and related crimes throughout New York City,
24 from international importation cases to the
25 street-level entrenched narcotics gangs that afflict

1 so many communities still in our City.

2 For 35 years, my office has been a leader
3 in this field. We were instrumental in prosecuting
4 kingpins like Nicky Barnes and Frank Lucas during the
5 heroin epidemic of 30 years ago. We worked
6 tirelessly with the New York City Police Department
7 during the crack epidemic, to stem the burgeoning
8 crack trade, and the soaring violence that went along
9 with it, during the '80s and '90s.

10 In this decade, we have continued to
11 target drug-infested areas around New York City, and
12 try to respond to community concerns about
13 neighborhood trafficking. We have earned national
14 recognition for our investigations into international
15 importation and money-laundering rings.

16 My agency has more than three decades of
17 experience in this field with New York State's drug
18 laws, but with federal statutes and with the statutes
19 of neighboring states, as well. So, I think we are
20 uniquely qualified to offer you our experience and
21 our insight into one of your specific areas of
22 concern, which is further reform of the state's drug
23 laws.

24 We have seen consequences intended and
25 unintended of the last Drug Reform Act. My testimony

1 today will focus on that area marked for further
2 study by the Commission: whether there is a need for
3 further reform of the state's drug laws.

4 Right now, in our city, we are tightening
5 the noose around the drug trade. We have put out of
6 business countless open-air drug markets that used to
7 be the defining factor in many neighborhoods. And,
8 as a result, the rate of homicides, shootings, and
9 violent crimes that were such a part of street-level
10 dealing have reached historic lows.

11 Now, through vigilant and effective
12 narcotics enforcement, we continue to maintain those
13 low rates. Every community in the City has
14 benefitted, perhaps none more than those previously
15 home to the open-air drug markets. Neighborhoods
16 where people once huddled in their homes fearing the
17 drug dealers on the corner, dodging bullets whizzing
18 past their windows, are now enjoying a renaissance.
19 But, our work is far from over. There are still far
20 too many neighborhoods plagued by drug dealing and
21 related violence.

22 I admit I have been puzzled by the
23 pervasive language in the Commission's preliminary
24 report referring to non-violent drug crimes.
25 Although drug crimes are categorized as non-violent

1 for sentencing purposes, the link between drugs and
2 violence is indisputable. Drug dealers hoard a
3 precious commodity, and theirs is a cash-only
4 business. Drug dealers rely on brutality and
5 intimidation to maintain their turf, keep order in
6 their organizations, and prevent anyone who might not
7 like what they are doing from complaining about them.
8 Hardly a non-violent business.

9 As an Assistant District Attorney handling
10 homicide cases in the 1980s, I can tell you that
11 two-thirds of the homicide cases that I handled were
12 related to drugs in some way, shape, or form. There
13 are other crimes classified as non-violent in our
14 penal law, like certain categories of burglary,
15 manslaughter, and grand larceny, which will just as
16 surely result in a prison sentence for the second
17 felony offender, but they are not addressed in the
18 Commission's report at all.

19 The drug laws in New York State are not
20 monolithic. There are probably a couple of hundred
21 sections and subsections. And, before the Commission
22 recommends changing them, I hope you will become as
23 familiar with them as I am.

24 "B" felonies, in particular, address a
25 huge range of criminal behavior. Every day in the

1 City, dozens of undercover officers put their lives
2 at risk making purchases of drugs at locations where
3 complaints are running high. That is what typically
4 sparks an investigation.

5 The complaint goes something like this:
6 "I've just moved -- a guy has just moved into
7 Apartment 5-B, and there are drug sales going on
8 24/7." And, an undercover officer is sent inside the
9 apartment to investigate and to buy narcotics,
10 resulting in a "B" felony case. But, that is not the
11 only criminal conduct that rises to the level of a
12 "B" felony.

13 Keep in mind the effect of the drug law
14 changes enacted in 2004, when the amounts required
15 for top level felony possessions were doubled. The
16 "A" level felony possessions were doubled.

17 And, that meant the range covered by the
18 "B"s also increased markedly, so that now a "B"
19 felony offense, possessory offense, covers the range
20 of possession between half an ounce of a narcotic
21 drug, up to four ounces of a narcotic drug. And,
22 that means from hundreds of vials of crack, or
23 glassines of heroin, to thousands of vials or
24 glassines of heroin or crack.

25 Just last week we indicted a search

1 warrant case where we recovered a large amount of
2 Ketamine, 167 ecstasy pills, 4 large bags of
3 methamphetamine, an ounce of crack, a money counting
4 machine, and \$6,000. The highest count in that case
5 was a "B" level offense, demonstrating once again
6 that a "B" felony offender can capably run a complex,
7 sophisticated, and profitable drug organization.

8 The majority of drug dealers my office
9 prosecutes are non-addicts. Felony narcotics crimes
10 involve the sale of drugs or the possession of more
11 than personal use amounts. In our cases,
12 substantially larger than personal use. These are
13 pretty sophisticated operations, even at the street
14 level. The majority of our felony narcotics
15 defendants are in drug trade to make money. An
16 addict is the last person a drug organization would
17 trust with a substantial amount of drugs or cash, or
18 even information.

19 But, for those who are addicts, we do
20 offer treatment programs as an alternative to
21 incarceration, and Rhonda Ferdinand from my office
22 will be here to speak to the Commission later this
23 afternoon about our programs.

24 Often, I am asked why it would not be
25 better to give judges total discretion to decide what

1 to do in a drug case. In the first instance, judges
2 already have substantial discretion, guided by a
3 statute which determines the minimum and maximum for
4 a crime.

5 And secondly, have we forgotten our
6 history? Forty years ago, judges did have complete
7 sentencing discretion, and the result was chaos. The
8 outcome of the case depended far more on the whims of
9 a judge than on the facts before the Court. And, at
10 that time, even the Chief Judge of the Court of
11 Appeals recommended taking sentencing away from
12 judges. That's why the range of sentences was put
13 in.

14 Judges should have discretion, and they
15 do. But, the parameters of that discretion must be
16 limited.

17 There are areas where I think we need a
18 change in the law. We definitely need a kingpin
19 statute. We're a center for international narcotics
20 trade here in New York City, and yet we have no
21 kingpin statute.

22 I don't believe the drug laws need further
23 reform. Because, if you look at the tri-state area
24 -- New York, New Jersey, Connecticut -- and if you
25 look at the overall structure of New York's drug

1 statutes, we are among -- we are the most lenient,
2 looking at the overall structure. You can pick a
3 statute here or there that's going to be different,
4 but overall we are the most lenient.

5 Again, I thank the Commission for the
6 opportunity to testify. For the past few years, the
7 debate over the drug laws seems to me to have drowned
8 out the voice of people who feel themselves trapped
9 by drug dealers. I urge the Commission to reach out
10 broadly to hear the concerns of these people who
11 write me letters all the time, usually anonymously,
12 requesting help.

13 And, I'm going to end my testimony with an
14 excerpt from one of those letters which I received
15 recently, very recently.

16 "Much of Harlem has been overrun with drug
17 dealers for many years. We see arrests of drug
18 dealers and users taking place regularly, but are
19 very frustrated to see the same individuals back on
20 the street in a short time. We also see these very
21 same drug dealers move from street corner to street
22 corner to avoid police. Numerous areas also suffer
23 from many serious crimes, including break-ins,
24 strong-arm robberies" -- and the letter continues.
25 "Many people are afraid to come out of their houses

1 traffic.

2 UNIDENTIFIED: No, he's right here.

3 COMMISSIONER O'DONNELL: Oh, he is here.

4 Okay. He's making a dramatic entrance.

5 And Elizabeth Gaynes, if you are here, you
6 can take the next seat. She's not here yet, so Glenn
7 Martin, you can take the next seat. Okay.

8 I think many people here know Bob Gangi,
9 who is the Executive Director of the Correctional
10 Association.

11 And, welcome, and thank you for being here
12 today.

13 TESTIMONY OF ROBERT GANGI, EXECUTIVE DIRECTOR,

14 CORRECTIONAL ASSOCIATION OF NEW YORK

15 MR. GANGI: Well, thank you, Chairperson
16 O'Donnell, and thanks to -- I want to express our
17 appreciation to all the Commission members for the
18 opportunity to speak to you, and particularly for
19 having me follow Bridget Brennan, which I was not
20 expecting.

21 And, I always appreciate Bridget's remarks
22 and have enormous respect for her work, and am always
23 sort of also impressed with how I can have so much
24 respect for her work and how I can disagree so
25 strongly with almost every point that she makes about

1 the Rockefeller Drug Laws. So, I will depart from my
2 expected remarks just to address a few things -- a
3 few of the issues raised by Prosecutor Brennan.

4 One is her point about violence being
5 connected with the drug trade. Of course, there are
6 times violence is connected with the drug trade. And
7 then, there are times violence is not connected with
8 the drug trade. The problem with mandatory
9 sentencing laws is judges can't use their discretion
10 to make distinctions between when someone is both
11 involved in the drug trade and engaged in truly
12 disruptive and violent behavior in the community.

13 Her other point, you know, she read the
14 letter from the community member complaining about
15 the drug dealing on the street. I mean, one way you
16 could suggest that if things are so bad in certain
17 communities, that's just more evidence that drug laws
18 haven't worked. Drug laws have been on the books for
19 nearly 35 years, and the drug trade is still rampant
20 in certain communities in New York City. There
21 should be greater emphasis on treatment and
22 prevention than there is on -- than there is today,
23 and less emphasis on sort of hard line law
24 enforcement practices.

25 And also, by making the point -- or by

1 raising the complaints of community members about
2 drug dealing, there's almost the suggestion that
3 people who promote the repeal of the Rockefeller Drug
4 Laws don't think there should be law enforcement
5 efforts engaged in stopping the drug trade in the
6 communities. That's very far from true.

7 Our point is that the current approach,
8 which concentrates mainly on law enforcement, and
9 despite Ms. Brennan's claims about the nature of the
10 laws, harsh mandatory sentencing laws, that other
11 approaches should be tried and would be much more
12 effective in dealing with the problems described by
13 the -- in the community member's letter that
14 Ms. Brennan read.

15 And her one last point is she says that we
16 need to restrict judicial discretion because when you
17 have judicial discretion as we had 35 years ago,
18 before the drug laws were passed, you had such a wide
19 discrepancy in the range of outcomes of cases. You
20 still have that kind of discrepancy in the outcome of
21 cases, because the discretion now is in hands almost
22 entirely of the prosecutors. So, we all know we have
23 62 different prosecutors across the state. Many of
24 them have different approaches to drug offenses.

25 So, someone guilty or convicted of a drug

1 offense in the Bronx will get a very different kind
2 of response and penalty than someone convicted of a
3 drug offense in Chenango County. And also, within
4 each District Attorney's Office, you have many
5 different Assistant District Attorneys, some of whom
6 will practice and engage in different kinds of
7 responses to drug offenses.

8 So, it should be very clear that mandatory
9 sentencing does not eliminate discretion. Mandatory
10 sentencing removes discretion from the judges and
11 places it in the hands of the prosecutors. And, in
12 effect, in an adversarial system of justice,
13 mandatory sentencing schemes stack the deck in the
14 favor of one side.

15 And, I -- those were my, I guess, off the
16 cuff, off the top of the head remarks in response to
17 Prosecutor Brennan.

18 The -- my key purpose in making a
19 presentation to the Commission is to strongly
20 recommend that it include in its final report a
21 proposal to repeal the Rockefeller Drug Laws and to
22 return sentencing discretion to judges in all cases.
23 I want to make several points to support that
24 position.

25 One is that the changes that were enacted

1 -- the so-called modifications to the laws that were
2 enacted in 2004 and 2005 were not meaningful. The
3 mandatory sentencing provisions of the drug laws are
4 still on the books. Meaning, again, judges still do
5 not have the discretion to sentence people to
6 non-incarcerative penalties.

7 The main criterion for guilt remains the
8 amount of drugs in someone's possession at the time
9 of arrest, not their role in the transaction. So,
10 for the most part, the major drug dealers avoid the
11 sanctions of these laws.

12 These laws, in their nearly 35 years of
13 being on the books, have caused problems rather than
14 solved problems. And, I will just quickly refer to
15 my prepared testimony, all of which -- which all of
16 you received, to make some of these points.

17 As of January, 2007, there were over
18 13,900 drug offenders in state prison. The vast
19 majority of the drug offenders in state prison do not
20 have histories of violent behavior. In 1999, 80
21 percent of the people convicted of drug offenses did
22 not have any record of violence in their history.

23 There is a large number of people -- over
24 5,000 people who are serving time in New York State
25 for drug offenses who were convicted of possession,

1 rather than dealing, indicating by that statistic the
2 large number of low-level minor offenders that end up
3 in prison because of the Rockefeller Drug Laws.

4 The -- another important statistic which
5 indicates how the changes in the drug laws really did
6 not modify or significant alter how we adjudicate
7 drug cases in New York State is that more drug
8 offenders were sent to prison in 2006 -- the exact
9 number is 6,039 -- than were sent to state prison in
10 2005 -- 5,835 -- and 2004, before the changes went
11 into effect -- 5,657 -- 5,657. That point supports
12 the analysis that the way we adjudicate cases is
13 still more or less in effect, and we're still sending
14 literally, each year, thousands of low-level non-
15 violent offenders to prison, and many of whom could
16 be handled and whose problems could be addressed more
17 effectively through community-based treatment.

18 The drug laws result in skewed law
19 enforcement. They often result in the arrest,
20 prosecution, and long-term imprisonment of addicts,
21 minor dealers, and persons only marginally involved
22 in the drug trade. The major traffickers, as I said
23 before, usually escape the sanctions of the law. And
24 there's also, as I said before, the principal problem
25 is that the main criterion for guilt is not your role

1 in the drug trade, but the amount of drugs in your
2 possession when you are arrested.

3 As a principal weapon in the so-called war
4 against drugs, the statute results directly in the
5 following misguided practice. Law enforcement
6 agencies focus their effort on minor offenders who
7 are most easily arrested, prosecuted, penalized,
8 rather than on the drug trade's true masterminds and
9 profiteers.

10 A major problem with the drug laws is the
11 racial inequities that they lead to. Despite the
12 fact that research shows that the majority of people
13 who use and sell drugs are white, 91 percent --
14 approximately 91 percent of the people doing time for
15 a narcotics offense in a New York State prison are
16 people of color.

17 There is a quote from the head of
18 narcotics enforcement in the Chicago police force
19 that, I think, sums up the inequities of these laws.
20 "There is as much cocaine" -- and I'll read the quote
21 -- "There is as much cocaine in the stock exchange as
22 there is in the black community. But, those guys are
23 harder to catch. The deals are done in office
24 buildings and somebody's home, and there is not the
25 violence associated with it that there is in the

1 black community. But, the guy standing on a corner,
2 he's almost got a sign on his back. These guys are
3 just arrestable."

4 And now, I'm switching to my statement.
5 The rationale for the policy that produces this
6 outcome might make sense superficially but the
7 practices are ultimately discriminatory and have a
8 devastating impact on communities of color by
9 uprooting families an individuals.

10 The -- let me see, I want to, in the few
11 minutes I have left, I want to make some final
12 points. Although the research shows that alternative
13 programs are more effective and less effective than
14 imprisonment, the research actually shows that people
15 who are -- who participate in drug treatment programs
16 have lower recidivism rates than people who are
17 locked up for drug offenses, the mandatory sentencing
18 schemes like the Rockefeller Drug Laws limits the
19 court's ability to make appropriate use of them. In
20 fact, it is fair to state that as long as the
21 Rockefeller Drug Laws are on the books, New York's
22 Governor and legislature of over three decades ago
23 have more to say about the outcomes of today's
24 narcotics cases than judges who sit on the bench and
25 hear all the evidence presented.

1 The Rockefeller Drug Laws are outdated,
2 wasteful, ineffective, unjust, and marked by racial
3 bias. They distort law enforcement practices,
4 enforce an imbalance in the adjudication of drug
5 case. It is time to remove the stain of these
6 statutes from New York's Penal Code. The Commission
7 members can achieve this long overdue objective. So,
8 I root you fellows and you women on.

9 Any questions in the 50 seconds left?

10 JUDGE NEWTON: I have a question in the
11 50 seconds left.

12 So, are you saying that money should be
13 made more available to get at the stockbrokers? But,
14 what do we do with the person standing on the corner
15 who is no doubt -- undoubtedly the subject of the
16 community person's letter?

17 MR. GANGI: Um hmm, right.

18 JUDGE NEWTON: Because, we do know that
19 these sellers of drugs create havoc in the community,
20 and such, --

21 MR. GANGI: Right. Well, I --

22 JUDGE NEWTON: -- so what -- so, there's
23 a tremendous tension. What -- what are you saying we
24 should do with the person is standing on the corner,
25 if --

1 MR. GANGI: I'm not -- I'm not suggesting

2 --

3 JUDGE NEWTON: -- you're saying not
4 arresting. What should we do with that person?

5 MR. GANGI: Well, I'm not suggesting that
6 we don't arrest the drug dealer on the corner who is
7 disrupting the community. I'm suggesting that
8 imprisonment isn't only the -- it shouldn't be the
9 mandatory response for that person's offense.

10 I'm suggesting that there should be more
11 treatment available at the community level, that
12 there should be also other kinds of programs that I
13 would call community crime prevention programs, that
14 work towards stabilizing families, providing
15 employment. Some of the people -- particularly
16 people who get involved in minor levels of drug
17 dealing, are doing it because there's literally
18 virtually no other economic opportunity available to
19 them.

20 And, many of the same people who -- many,
21 when -- when Prosecutor Brennan suggests that there's
22 an outcry from the communities about the need for a
23 sort of tougher law enforcement when it comes to the
24 drug trade, there's also a very loud call for those
25 communities for more drug treatment, for more

1 speaker is Glenn Martin, of The Fortune Society.

2 Welcome, Mr. Martin.

3 TESTIMONY OF GLENN MARTIN, ASSOCIATE VICE-PRESIDENT,

4 THE FORTUNE SOCIETY

5 MR. MARTIN: Thank you. My name is Glenn
6 Martin. I'm the Associate Vice-President of Police
7 and Advocacy at The Fortune Society. I'm also
8 formerly incarcerated, but I look at that as just a
9 really bad internship for my current position.

10 [Laughter]

11 MR. MARTIN: I'm also from one of those
12 communities that Prosecutor Brennan mentioned. And I
13 would argue that after you incarcerate too many
14 people from those communities, those communities
15 become gentrified and most of the folks who were
16 living there before are not living there currently,
17 anyhow.

18 Founded in 1967, The Fortune Society has
19 been a staunch advocate for criminal justice policies
20 which balance public safety with the creation of
21 opportunities for people to regain their lives after
22 being involved in the criminal justice system. The
23 Fortune Society would like to thank Commissioner
24 O'Donnell and the Sentencing Commission members for
25 the opportunity to testify at today's hearing.

1 I'm going to be very succinct, and I'm not
2 going to offer very specific recommendations, because
3 I would like the Commission to continue to think
4 broadly when considering reform. Governor Spitzer
5 exercised enormous courage and vision when he issued
6 Executive Order Number 10 calling for the
7 establishment of a Commission on Sentencing Reform.
8 He gave the Commission a clear mandate to make
9 recommendations on the future of sentencing in New
10 York State in order to reform a system that is
11 convoluted, complex, and in disarray.

12 Some of the thoughtful and forward-
13 thinking recommendations supported by The Fortune
14 Society include improving the quality and
15 accessibility of substance abuse treatment and other
16 community-based and institutional programming;
17 enhancing certification and clinical training
18 requirements for treatment providers, including
19 Department of Corrections staff; expanding merit
20 time; expansion of work release; improving release
21 procedures; expanding education and vocational
22 training in prisons; increasing access to higher
23 education in prison -- and I would add post-release
24 to that; procuring identification, Medicaid, and
25 other benefits; and restoration of voting rights to

1 people on parole.

2 However, while many of the recommendations
3 in the Commission's preliminary report are insightful
4 and respond to the Governor's call to create a --
5 quote -- "equitable system of criminal justice." The
6 glaring omission of any mention of the racial
7 disparity inherent in our sentencing laws, real
8 Rockefeller Drug Law reform, the damage caused by
9 mass incarceration on certain communities, or the
10 need for an immediate and systemic expansion of
11 alternatives to incarceration and other community-
12 based alternatives to imprisonment is a
13 disappointment.

14 Additionally, New York State has been able
15 to reduce crime and its prison population
16 simultaneously over the past few years, but there is
17 no mentioning of reinvesting those dollars in the
18 communities that continue to be ravaged by our
19 criminal justice system, or the upstate communities
20 which rely on prisons as a -- quote -- "economic
21 engine."

22 People who reside in New York's low-income
23 communities of color have eagerly awaited the release
24 of this report, hoping that the proverbial noose of
25 the criminal justice system would soon loosen itself

1 from the necks of their children. Without bold,
2 sweeping changes in our approach to criminal justice,
3 the foot of the criminal justice system will continue
4 to crush the necks of the very specific communities
5 in our state, whether it's the seven highly impacted
6 New York City communities often discussed by policy
7 makers and advocates, or the upstate communities of
8 Buffalo, Syracuse, Rochester, and Albany, which are
9 all beginning to experience a spike in violent crime.

10 While there's a growing national concern
11 about unequal treatment within the criminal justice
12 system, this Commission creates an opportunity for
13 New York State to once again assume leadership on
14 this key issue.

15 Members of the Commission, you were
16 appointed based on immeasurable expertise, influence,
17 and experience. Your acknowledgment that the work is
18 far from complete is a comfort to those of us who
19 await additional recommendations which will make the
20 rest of the country stand up and take notice.

21 The Fortune Society wants to remind the
22 Commission that during this historic moment, the
23 citizens of New York are banking on your wisdom and
24 ability to create a final set of recommendations
25 which balance public safety, reduce over-reliance on

1 incarceration, enhance victims' rights, save dollars,
2 and create opportunities to rebuild the people and
3 communities that are disproportionately impacted by
4 the criminal justice system. Anything short of this
5 amounts to an indeterminate sentence of punishment
6 for affected communities.

7 Thank you, once again, for this
8 opportunity to testify, your willingness to open up
9 your efforts to public scrutiny, and for your hard
10 work on the Commission. The Fortune Society remains
11 a resource to the Commission as you continue your
12 difficult work.

13 Thank you.

14 COMMISSIONER O'DONNELL: Thank you. Any
15 questions? I think we still have a minute or two
16 left.

17 [No responses.]

18 MR. MARTIN: Thank you.

19 COMMISSIONER O'DONNELL: Thank you.

20 Elizabeth Gaynes? Is she here? Okay. Hi,
21 Elizabeth.

22 And, Daniel Anshack, if he's here? He can
23 take a seat. Thank you.

24 And, Elizabeth Gaynes is from the Osborne
25 Association. Thank you for joining us.

1 TESTIMONY OF ELIZABETH A. GAYNES, ESQ.,
2 EXECUTIVE DIRECTOR, THE OSBORNE ASSOCIATION

3 MS. GAYNES: Good morning. I am from the
4 Osborne Association.

5 The preliminary report clearly represents
6 an extraordinary volume of work. I'm impressed, and
7 I'm thrilled that, unlike so many important policy
8 discussions that are held after a horrible crime has
9 occurred, or with some huge crisis, that you've
10 actually looked at it at a moment when there's this
11 huge opportunity. Too many discussions happen when
12 an editor or a legislator is concerned or wants to
13 send a message.

14 Unfortunately, the current sentencing
15 scheme is largely a result of those efforts, and
16 that's why we have structure cases when the crime is
17 committed near an airport, or near a school, and
18 other crimes that are naming opportunities for the
19 victims. So, I get we want to simplify the
20 structure.

21 I -- my first job after law school was in
22 Buffalo, where I was in the early '70s, and I worked
23 for a man I then considered and still consider the
24 best defense lawyer in the world, although he was
25 actually on the bench for 30 years. And, according

1 crime. That ought to be the minimum term. And, if
2 the person uses his time in prison to demonstrate
3 that his new risks and needs assessment justifies
4 serving the remainder of his sentence, the maximum in
5 prison, so be it. But, in many cases, he will have
6 changed, and community supervision is more
7 appropriate.

8 Determinate sentencing completely ignores
9 the fact that people can and do transform their
10 lives. In a sense, this Commission has to decide:
11 people change or they don't. And, if people can
12 change, definite sentencing is the most cynical
13 possible approach to thinking about this.

14 It does make re-entry planning easier in
15 many ways, and I understand it. But, it doesn't make
16 us safer. And, if you were to base the new sentences
17 on the time that people are now serving, you would be
18 stuck with boot-strapping from a period of several
19 years where parole was holding people far beyond
20 what's necessary. And, what would happen is the same
21 thing that's happened in virtually every state where
22 parole has been abolished, which is that sentences
23 are longer, people in prison have fewer incentives to
24 participate in programs. And, in the context of
25 abolishing parole with thousands of people currently

1 parole-eligible, will continue to be eligible for
2 parole, but inside of an environment in which parole
3 has been essentially de-constructed and taken apart.

4 Of course there are problems with the
5 parole system. There do need to be new guidelines.
6 There need to be clear guidelines that take into
7 account more than the original crime. Those ideas
8 were part of recommendations that I attached to the
9 testimony that a group of people -- that may have
10 already been submitted, and the report included some
11 of those.

12 And, I also suggest that if there's a
13 permanent Commission, you consider a separate task
14 force on parole, which I am willing to serve on,
15 which might look at should parole come under
16 corrections? Should it include presumptive release
17 at the minimum for all felonies, based on preset
18 criteria and assessments, along with developing
19 guidelines and investigating and remedying the low
20 utilization of medical parole, and adding mechanisms
21 for release based on age and health considerations in
22 appropriate cases.

23 I do understand the need for certainty,
24 but I understand better the need for justice.

25 Some of the other recommendations I would

1 like to make relative to the report:

2 The report identifies housing as a barrier
3 to re-entry, and I certainly agree. We all know
4 there will never be enough affordable or supportive
5 housing to solve the problem of people coming home
6 from prison or, for example, for my staff. But --
7 and, it's fine to welcome people into public housing,
8 which doesn't represent the largest number.

9 We found over the years that the most
10 potent solution to re-entry housing is to re-engage
11 families, and to help them bring people home. Many
12 families are disengaged, at least in part, because of
13 New York's far-flung prison system, and because of
14 the high cost of supporting a loved one during and
15 after incarceration. They can't support themselves
16 immediately upon coming home.

17 We should consider, in my view -- you
18 know, in our child welfare system, we have something
19 called kinship foster care, in which we realized that
20 it was more effective to pay for foster care for
21 family caregivers, rather than to give kids to
22 strangers. If we're willing to invest in re-entry
23 housing, and supportive housing, and shelters, and
24 all of those other things, why aren't we willing to
25 provide cash assistance to families during six months

1 post-release, to make it easier for families to bring
2 people home? It is not cost-free to be able to
3 support re-entry, and it would go a long way toward
4 helping families reach out to family members.

5 I would also suggest that we not begin to
6 rely on boutique re-entry units as the way of
7 thinking about resolving the re-entry process.
8 Osborne has been intimately involved in the delivery
9 of services within a variety of DOCS re-entry
10 programs, including Orleans, Queensboro, and
11 Chateaugay, and we support the idea of beginning to
12 plan for re-entry at the beginning, and bringing
13 people home -- closer to home prior to release. But,
14 we found that relatively short periods allocated for
15 such interventions -- 30 days to 6 months -- may not
16 be as useful as they are disruptive. And, I would
17 wait for evaluation before we recommend that they be
18 expanded.

19 A boutique program, like a re-entry court,
20 is expensive, it's unproven, and it will not change
21 the basic fact that 20,000 to 25,000 people will be
22 leaving prison every year, and we have to make sure
23 that every single prison is prepared to send people
24 home fully prepared.

25 JUDGE NEWTON: A definition of

1 "boutique," please?

2 MS. GAYNES: A program that only serves a
3 few people, and it's a wonderful model, but it can't
4 -- but we --

5 UNIDENTIFIED: Can't be replicated.

6 MS. GAYNES: -- we're just -- we're not
7 going to rid of Greenhaven, Attica, and Sing Sing.
8 People will leave those prisons, and they should be
9 as prepared as people leaving the smaller units.

10 JUDGE NEWTON: Thank you.

11 MS. GAYNES: Most important, we must
12 expand work release. There is no reason why
13 everybody who leaves prison shouldn't be allowed the
14 opportunity, including removing the eligibility
15 guidelines around crimes. We're too focused on
16 eliminating what we call violent offenders from every
17 single program.

18 If people are coming home, regardless of
19 crime, they should be the first people that be able
20 to access the programs that most make re-entry
21 possible. Work release should be open to people, and
22 parole should be decided for long-termers perhaps a
23 year before eligibility, so that they can take
24 advantage of work release programs.

25 I'm running out of time. I have written

1 testimony. I want to say one more thing.

2 I thought the most disappointing thing was
3 the section addressing crime victims. We have an
4 extraordinary project now for long-termers, where
5 we're involving victims and victim surrogates, and
6 exploring ways that people can take responsibility
7 and get insight into their crime.

8 The recommendations seem to assume that
9 everyone harmed by crime is more interested in
10 vengeance than in healing. And, as a society, we do
11 victims a tremendous disservice by encouraging the
12 view that only long prison sentences will give crime
13 victims the peace that they seek.

14 Of course their views are important at the
15 time of charge and sentencing. And, they should
16 receive compensation and supportive services. But,
17 we call criminal cases The People of the State of New
18 York versus The Defendant, not the victim against the
19 defendant, for good reason. Crime affects the entire
20 community, and the more restorative and reparative
21 approach will benefit everyone involved, including
22 the family of the victim and the family of the person
23 in prison.

24 Finally, I don't need to spend any time on
25 this, because, of course, somebody else will testify

1 about it later, but I also think that families were
2 -- and the impact of all of these regulations and
3 laws on children has not been adequately addressed in
4 the report. And, I believe there is a tremendous
5 opportunity at each point -- at time of arrest, at
6 time of sentencing, and at time of parole
7 consideration -- to require that we take into account
8 every one of these important decisions. The risks
9 and needs, children have them, too. And, if we're
10 going to be looking at the impact of our policies, we
11 should look at them not just on victims and the
12 people serving time, but on our families and
13 communities.

14 Thank you.

15 COMMISSIONER O'DONNELL: Thank you, very
16 much.

17 JUDGE NEWTON: Thank you.

18 COMMISSIONER O'DONNELL: Any other -- any
19 questions?

20 Is Daniel Anshack here? No? Judge Brown,
21 would you come right up?

22 Next on the schedule is Judge Richard
23 Brown, our Queens District Attorney. He is going to
24 speak to us about the DTAP program.

25 Welcome.

1 TESTIMONY OF RICHARD A. BROWN, ESQ.,

2 QUEENS COUNTY DISTRICT ATTORNEY

3 JUDGE BROWN: Thank you, Commissioner. I
4 thank you and your colleagues for giving me the
5 opportunity to testify this morning. I have provided
6 you with prepared testimony, and I'd like to briefly,
7 in the few minutes that we really have this morning,
8 talk to you a little bit about drug reform.

9 It's an issue that I have spoken to on
10 many occasions in the past, and it's an issue to
11 which I am certainly no stranger. In 1973, I was New
12 York City's legislative representative in Albany, and
13 I vigorously opposed to enactment of the so-called
14 Rockefeller Drug Laws, and I was joined at the time
15 by many others, not the least of whom were the
16 District Attorneys of this state.

17 Six years later, after serving as a New
18 York City Criminal Court Judge, as a Supreme Court
19 Trial Judge, and observing first-hand the inequities
20 and the injustices that resulted from the enforcement
21 of those laws, I returned to Albany as counsel to the
22 Governor. And, high on my personal agenda was reform
23 of our then-existing drug laws. In 1979, we
24 significantly modified those laws, to provide a more
25 rational sentencing structure, by giving the

1 judiciary greater flexibility to deal leniently with
2 first offenders involved in small-scale transactions.

3 The 1979 revisions, together with the
4 implementation of the re-sentencing provisions,
5 contained therein grants of Gubernatorial clemency,
6 of which I had direct and personal involvement, and a
7 host of sentencing reforms affecting drug offenders
8 that have been implemented since that time, have
9 resulted in a dramatic reduction in the number of
10 drug offenders in New York prisons today. Indeed,
11 there are 41 percent fewer drug offenders in state
12 prison today than ten years ago.

13 Most drug offenders in prison today in New
14 York State are there not because they possessed a
15 small amount of drugs, or have been swept up by the
16 Rockefeller Drug Laws, but because they repeatedly
17 sold drugs to make money, or they possessed large
18 quantities of drugs intended for distribution to
19 local communities, or because they were also
20 convicted of violent crimes.

21 The vigorous enforcement of our existing
22 drug laws has been a major reason why we've been able
23 to see such a dramatic reduction in crime,
24 particularly violent crime, in New York State over
25 the past decade. Drug dealing, I don't have to tell

1 you, is big business. And drug dealers use violence
2 to protect their turf. They intimidate witnesses.
3 They rob one another. And, they punish those who
4 threaten their livelihood.

5 Having come so far and having reduced
6 violent crime to the extent that we have, it would be
7 a serious mistake, in my judgment, to take away from
8 the law enforcement professionals the tools that have
9 enabled us to make our streets safer, and which have
10 given us the ability to provide treatment
11 alternatives to those who need them and are prepared
12 to avail themselves of them.

13 In 1992, which was my first year as
14 District Attorney of Queens County, we had 361
15 homicides in my county. The majority of those
16 homicides -- the vast majority of them were drug-
17 related. Last year, we had 84 homicides in Queens.
18 It's an almost 80 percent reduction. And this year,
19 we're down another 10 percent, compared to the same
20 period last year.

21 The residents of my county, the residents
22 of localities all across the state will, I believe,
23 not forget the -- that which occurred only a few
24 short years ago, the opening of the drug markets, the
25 drive-by shootings, the children caught in the

1 crossfire in feuds between drug dealers. These
2 things have not stopped by accident. They've stopped
3 because the members of these violent drug gangs have
4 been arrested and put in prison.

5 While those who repeatedly deal drugs in
6 our communities for profit, and those who have been
7 convicted of violent crimes in connection therewith,
8 should of course be sent to prison, but those who are
9 involved in drug crimes because they're addicted to
10 drugs should be diverted to treatment. And, over the
11 last 10 years, there has been a dramatic increase in
12 the availability and utilization of alternatives to
13 incarceration.

14 As you, in your report, note, there are
15 currently 196 drug treatment courts in operation or
16 in the planning stages in New York, as well as a
17 growing number of programs modeled on the so-called
18 DTAP Program.

19 Our Queens DTAP Program, for example,
20 targets non-violent second felony drug offenders who
21 face mandatory prison sentences. They have their
22 cases dismissed outright after completing up to
23 24 months of residential treatment. We have a
24 74 percent retention rate in that program, and a
25 70 percent completion rate.

1 For first felony offenders, we have a very
2 active and involved felony treatment court. And, for
3 those charged with misdemeanors, we have a
4 misdemeanor treatment court. Close to 3,000
5 offenders have participated in these programs alone
6 in Queens County. Central to the success of our DTAP
7 and our treatment court programs has been the
8 effectiveness of having both a strong carrot and a
9 strong stick in place, and in keeping offenders in
10 treatment.

11 Breaking the drug habit is extremely
12 difficult. It requires a long and serious
13 commitment. If a defendant knows that he or she
14 faces only a very short period of time in prison, the
15 defendant may well opt for prison rather than
16 treatment. If our goal is to address the substance
17 abuse that leads to criminal conduct, we must not
18 lower drug sentences to the point where we create a
19 system that encourages defendants not to enter
20 treatment. Similarly, if you lower drug treatment --
21 drug sentences, you will probably reduce the
22 incentive for incarcerated drug offenders to
23 participate in resident treatment programs.

24 So, instead of lowering sentences or
25 eliminating mandatory minimums, there are other steps

1 that we can take right now that will help more
2 addicted offenders enter treatment programs in lieu
3 of incarceration.

4 For example, there are instances where all
5 of the parties agreed that a particular offense
6 should not serve an incarcerative sentence, but plea
7 restrictions injure our ability to shape an
8 appropriate disposition. I would, therefore, support
9 a proposal along the lines that your report
10 recommends, to create an exception to the plea
11 restriction provisions of the Criminal Procedure Law.

12 Similarly, you've suggested exploring
13 certain modifications in the Youthful Offender
14 statute. That makes some sense, to me.

15 A few other thoughts. I would urge that
16 funding be provided to counties to ensure that drug
17 courts have trained professionals to conduct
18 independent screening and do case management, to
19 provide staffing, technical assistance for the
20 smaller counties, and to make treatment services
21 available and geographically accessible to special
22 populations.

23 The key, in my judgement, relative to drug
24 law reform, is not to dismantle the drug and second
25 felony offender laws that have been so successful in

1 proud New Yorker as a Westchester County Probation
2 Officer for five years, followed by New York State
3 Division for Youth counselor for another five years
4 in the South Bronx.

5 And subsequent -- and there are other
6 moments for -- of pride for us, as well, including
7 the fact that after the second World War, the State
8 Department of the United States seconded Supreme
9 Court Justice David Peck, and the Director of
10 Probation and Parole, Fredrick T. Moran, to Germany,
11 to work on a controlled release plan for war
12 criminals. And, that work resulted in an accelerated
13 release of war criminals that by the year 1958, only
14 two of the remaining -- of the 1,200 or more war
15 criminals processed were out, including people who
16 had been sentenced at Nuremberg to death. I'm sure
17 that they brought their New York State experience in
18 and back, as well, and I think we need to include
19 that sense of history in the deliberations going on.

20 I think -- I've read the report that's
21 been prepared, and I have to agree that there
22 probably needs to be a problem-solving process. But,
23 whether it rises to the level of special courts, I'm
24 not quite sure. There may be other ways. And, I
25 would like to present to you a little bit of

1 information about what's going on at the
2 international level, because it might be that we
3 could learn from others elsewhere, outside of our own
4 country; and, if not, perhaps we could just learn to
5 understand ourselves a little bit better and how it
6 is that we have grown to be so much more punitive
7 than our brethren in fellow democracies in Western
8 Europe, in particular.

9 The first group that has been working in
10 the area of criminal justice for a long time is the
11 United Nations. There is a sizeable body of
12 internationally developed standards, called the
13 Standards and Norms, which have become accepted
14 because of the consensus method by which they were
15 devised. And now, there are not less than nine areas
16 which I believe have relevance to this Commission,
17 not the least of which is the standard minimum rules
18 on the treatment of offenders, which means prisoners,
19 but anybody in custody; the model treaty on transfer
20 of prisoners, which means a treaty to export willing
21 inmates who are foreign nationals willing to go back
22 and are willingly received by their countries;
23 standards on non-custodial alternatives, known as the
24 Tokyo Rules, which are very well developed and
25 provide a lot of guidance; the Model Treaty on the

1 Transfer of Conditionally-Released prisoners, which
2 would be parole or probation persons. There's
3 another one on juveniles, which you may want to look
4 sideways on, although it may be outside your ambit,
5 at least the definition of a juvenile. A very
6 significant body on the rights of victims of crime
7 and the management and handling of their concerns.

8 Another large body recently developed in
9 the past decade on restorative justice, and that
10 means restorative justice at all stages of the
11 criminal justice process, including at the very end.
12 And, that is enshrined, as well, in a United Nations
13 ECOSOC Resolution of the year 2000.

14 There are other things that would be
15 important to keep a peek on, as well -- independence
16 of the judiciary and the role of the prosecutor, so
17 as not to impinge on their areas.

18 That's the United Nations.

19 At the same time, the Council of Europe,
20 which is an intergovernmental body of the European
21 region, has been working in the area of criminal
22 justice for at least a half century. But, in the
23 past three years, they have refreshed their prison
24 rules, which is dealing with the management of
25 prisoners, and they have produced two additional

1 documents, called the -- considered recommendations
2 by the Committee of Ministers. The Committee of
3 Ministers are the foreign ministers or the justice
4 ministers of European countries.

5 And, one of them is on a life term
6 management -- the management of long-term and life
7 prisoners. And, it is flush with guidance on how to
8 grow responsibility and accountability in an offender
9 so that they are earlier readied for release. And,
10 the other one is on the conditional release/parole of
11 offenders.

12 My own focus of research for the past
13 decade has been on the management and release of war
14 criminals and those convicted of similar crimes in
15 national jurisdictions. Thus far, in Europe, one of
16 our -- our closest brothers in the democratic
17 tradition, there have been some trends emerging,
18 least of which is not everyone who is charged is
19 convicted, that they engage in global sentencing for
20 the totality of the acts that are performed, so that
21 they do issue a single determinate sentence, rather
22 than a series of little sentences for the individual
23 crimes.

24 The sentences appear to be moderate, by
25 New York standards, so that a 40-year sentence would

1 be unusual, and a 15-year sentence would be the most
2 normal. This is for a war crime, now. Crimes
3 against humanity that are called, you know, rape, and
4 murder, and so on, and so forth, once you break them
5 down and find out what the conduct is, it's actually
6 called those things.

7 Then, there is automatic credit for time
8 served in custody while your case is being heard.
9 And, there is an automatic one-third credit off the
10 sentence. And, in some countries, there is a maximum
11 cap in spite of the sentence.

12 So, the other day, you heard that those
13 folks who blew up the trains in Madrid got, you know,
14 skeighty-eight years -- a thousand years and
15 something or other. What it doesn't tell you is
16 that, in Spain, there is a lifetime cap of a 30-year
17 sentence. So, if these guys are as young as I think
18 they are -- they're 20, 30 years old -- they'll be
19 out by the time they're 50, max 55. In Italy, the
20 cap is 20 years.

21 See, the construction in Europe is
22 different. They see it as life is a generation, and
23 a generation is 20, 25 years, and they start dropping
24 back from -- from then.

25 In addition to which, post-release

1 supervision or parole varies from country to country,
2 and it probably will be changing, in accordance with
3 these recommendations that have been re-fortified.

4 So, for your purposes, based on what I've
5 seen elsewhere, and what we've heard about the
6 wearing out of offenders along with the rest of us as
7 we age, the fact that recidivism drops off
8 significantly with age, and that's almost a universal
9 trend in the post-35 years of age onward group, I
10 would propose that the Commission consider the
11 following:

12 That every inmate, from the age of 55
13 onward, on an annual basis, irrespective of their
14 sentence of conviction, be screened as Professor
15 Latessa was talking about, for persistent
16 criminogenic attitudes in particular. So, the
17 emphasis is on not what they once did in their golden
18 days past, but how are they these days, in terms of
19 outlook and attitude.

20 And, if those can be detected by a
21 validated instrument -- and I think that could happen
22 -- they should be reviewed annually with a view
23 toward release where they might be picked up by
24 Social Security, or pension, or Medicare, because we
25 have another problem that could emerge, and it

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BERGAMO: May I?

COMMISSIONER O'DONNELL: Would you answer one question quickly?

MR. BERGAMO: I'm sorry. Do you have a paper on what was done, so that we can read it? Do you have a paper on those topics?

MS. GROSSELFINGER: Can I give you a paper on this?

MR. BERGAMO: Yes.

COMMISSIONER O'DONNELL: Yes.

MS. GROSSELFINGER: Yes, yes, I can give you lots of references, as well. I've got some good reading material, --

MR. BERGAMO: Okay.

MS. GROSSELFINGER: -- and some Web site addresses that you can go to get the materials, because the mention of this stuff is already on the Web. It's not a secret.

MR. BERGAMO: Okay, thank you.

MS. GROSSELFINGER: You're welcome.

COMMISSIONER O'DONNELL: Thank you, very much.

Robert Dennison, I understand, is here. The former head of the Parole Board, retired Chair of the Parole Board in New York, is here to speak with

1 us.

2 And, we appreciate your many letters that
3 you've written to us, and meetings that you have met
4 with individuals on the Commission.

5 Welcome, Mr. Dennison.

6 MR. DENNISON: Thank you. Should I -- I
7 know there are a few people missing. Should I go
8 ahead?

9 COMMISSIONER O'DONNELL: Yes. We're
10 going to have to alternate during the day --

11 MR. DENNISON: Okay.

12 COMMISSIONER O'DONNELL: -- with lunch
13 and breaks, because we want to continue.

14 MR. DENNISON: Okay.

15 COMMISSIONER O'DONNELL: So, please go
16 ahead.

17 TESTIMONY OF ROBERT J. DENNISON, RETIRED CHAIRMAN,
18 NEW YORK STATE BOARD OF PAROLE

19 MR. DENNISON: Well, thanks for giving me
20 an opportunity. I think I can address -- mine is
21 very simple, just a very, very simple, simple issue.

22 It does address one of your, you know, one
23 of the issues that you want to explore: What
24 improvements can be made to the manner in which
25 offenders are supervised in the community, and how

1 should supervision be aligned with risk? I'm pretty
2 much going to address the latter part of that phrase
3 -- how supervision can be aligned with risk.

4 And, if I could just give you a little
5 background. As Commissioner O'Donnell said, I did
6 retire as Chairman of the State Parole Board in
7 March. Before that, I was a Parole Board
8 Commissioner -- I was Chairman for three years,
9 Parole Board Commissioner for oh, I don't know, about
10 four or five years. But, before that, I was a Parole
11 Officer in New York City for many years. I had about
12 six different jobs in Parole, three different jobs in
13 Corrections. I worked in Probation. So, I wasn't
14 really good at anything, so that's why I had all
15 those jobs.

16 [Laughter]

17 MR. DENNISON: But, no, the point is --

18 COMMISSIONER O'DONNELL: Quite contraire,
19 I mean. We'll say it for the record.

20 MR. DENNISON: The point is, I mean, I do
21 know about the population that I'm talking about. I
22 supervised them right here, in Manhattan, in the
23 Bronx, and Brooklyn. And basically, it's the people
24 who have life sentences. We're not talking about the
25 people who have life sentences for drug sales, or

1 drug possession. We're talking about the people who
2 get sentenced to life for, you know, for murder, for
3 kidnaping, for crimes like that.

4 And basically, I'll just read what I
5 wrote. It's a proposal for amending Section 259-j of
6 the Executive Law, which currently prohibits the
7 Parole Board from exercising discretion in
8 terminating the supervision portion of the sentences
9 for those people who are serving life sentences for
10 convictions other than drug sale or drug possession.

11 The current law basically states that no
12 matter how young a person was -- these are my own
13 words. It doesn't actually say this, but no matter
14 how young a person was when their crime was
15 committed, what their specific involvement was, how
16 many years they've spent in prison, what they've
17 achieved educationally, how long they've been under
18 Parole supervision, or how well they're doing in the
19 community, they have to stay on parole for the rest
20 of their natural lives. It makes absolutely no
21 sense.

22 Since the Parole Board was formed about --
23 in 1930, I believe. So, from 1930 to 2004, about
24 75 years, the Parole Board has had the discretion to
25 look at these cases and say -- and not so much, you

1 know, as Brian knows, and as Brian, I'm sure, has
2 said, that inmates serving life sentences are
3 certainly the best inmates in state prison. And,
4 when they get out on parole, it's actually a test
5 whether they're on parole three years, five years,
6 seven years, ten years. But, their whole natural
7 lives to be on parole? It doesn't -- it really --
8 it's stupid, quite frankly.

9 So, I don't know. I spoke to -- I spoke
10 to several legislators, and I -- many of the ones I
11 spoke to didn't even realize they did this.
12 Basically, they took away the discretion of the Board
13 to look at a case and say, look, this person was very
14 young when they committed the crime. This person was
15 in prison for -- the longest you can be -- the
16 shortest amount of time you can be in prison for a
17 crime like this is 15 years, and many have been in
18 prison 20, 25, 30, and, you know, an endless number
19 of years.

20 And also, you know, there are some people
21 who think oh, murder, so what? So, they're on parole
22 for the rest of their lives, who cares? But many
23 people -- I mean, many people didn't actually do a
24 shooting, a stabbing. They may have been a lookout.
25 They may have been with somebody. Juvenile --

1 juveniles get life sentences. This affects
2 juveniles, on parole for their natural lives.

3 And, I'm not saying -- or I'm not
4 advocating that everybody should get off parole. I'm
5 -- what I'm just advocating for is for discretion.
6 Let a group of people, the Parole Board, take a look
7 at each case individually. And, you know, it's not
8 an easy decision. You know, having made many of
9 them, I mean, you really do look at the case. I
10 mean, you look -- you look at what the victims think,
11 you look at what the judge thinks, the District
12 Attorney. You look at how well the person has done
13 in prison, what their family life is.

14 And, many of these guys -- and I worked
15 with -- tried to work with several men and women who
16 are on parole for their life -- they're really,
17 really very productive people. They're heads of
18 agencies. They have responsible jobs. I mean, just
19 to keep them on parole until they die? For what? I
20 mean, it doesn't really -- it's stupid.

21 Before I -- before I left as Chairman of
22 the Parole Board, I polled all the Parole Board
23 Chairmen in the country, to see how they felt about
24 it. There's only one other state that has this
25 prohibition. It's West Virginia. And, they're even

1 thinking of changing it.

2 So, it's counterproductive, economically.

3 It -- I don't know how much it costs to supervise
4 somebody on parole, but whatever the figure is. And,
5 this pool is never shrinking now. It's just going to
6 get bigger, and bigger, and bigger.

7 But again, I'm saying, you know, maybe
8 some people should stay on parole for their whole
9 lives. Fine. But at least give the Parole Board the
10 discretion to look at the case and say yes, no. If
11 -- if the parole -- and, it takes two out of three
12 Commissioners to discharge somebody. If -- you know,
13 and they can take as much time as they want. It
14 doesn't -- it's not a, you know, quick decision.

15 They can -- they get input from the Parole
16 Officer, from his supervisor, from his supervisor.
17 They get -- you know, they have a lot of knowledge
18 about the case. They could even speak to the person
19 on parole, if they wanted -- if they needed, you
20 know, further clarification.

21 So, it's a real -- you know, if -- if
22 you're -- and I think even in your preliminary
23 report, you don't say that there should be
24 determinate sentences for murder. I think that was
25 -- they're still indeterminate, correct?

1 COMMISSIONER O'DONNELL: Um hmm.

2 MR. DENNISON: So, if you're giving -- if
3 you're going to keep or if the State is going to keep
4 the responsibility of determining when somebody
5 should be released to a panel of two or three Parole
6 Board Commissioners, the decision then as to whether
7 or not they should spend their whole lives on parole
8 should also be given to the same panel.

9 But, it's even -- it's even a much easier
10 decision, because they have been on parole for many,
11 many years. So, you can actually see how well
12 somebody is doing. It's not -- you know, it's not
13 like in a -- when you make a decision on whether or
14 not somebody should be released. I mean, you're
15 really -- they haven't been tested, so to speak,
16 because they're not really out in the community.
17 But, the people that I'm talking about -- the
18 population that I'm talking about is out in the
19 community, doing -- doing extremely, extremely well.

20 And, I hate to talk about recidivism or
21 re-entry, because I get so confused when, you know,
22 people talk about recidivism. But, it -- however you
23 determine recidivism, they're -- by far, they have
24 the lowest percentage of people who recidivate than
25 any other group you can -- you can possibly imagine.

1 So that and -- and, to fully -- you know,
2 to -- you know, I know the buzz word is re-entry
3 these days. But, to fully have someone re-enter
4 society, you know, it's kind of hard when you're on
5 parole for your whole life, especially when you're
6 doing really well. I mean, the -- you know, as I
7 said, I've been a Parole Officer for many years, so I
8 know. It's -- it's -- you know, the Parole Officer,
9 you come by somebody's house all the time, and it is
10 somewhat -- you know, as it should be, in certain
11 cases.

12 But, you know, it just -- it just makes no
13 sense to me. You know, so --

14 COMMISSIONER O'DONNELL: Can I ask you a
15 quick question? And, don't interpret this as -- as
16 not being in favor of your proposal, because I think
17 we're very much open minded about it.

18 But, we have heard that Parole places
19 individuals on administrative type of parole after a
20 period of time, if they no longer pose any kind of
21 risk. And, that -- so, it isn't someone coming up to
22 the house and looking over someone's shoulder all the
23 time.

24 Is that --

25 MR. DENNISON: No, that's incorrect.

1 COMMISSIONER O'DONNELL: -- your -- okay.

2 MR. DENNISON: The least frequent
3 somebody can report on parole right now is once a
4 month. That's the least frequent. If you're in a
5 nursing home, or something like that, then -- there
6 used to be what they called inactive parole
7 supervision, but that was abolished by the
8 legislature. So, that's not correct, at all.

9 The least frequent is once a month. And,
10 Parole Officers still have to go to houses of those
11 people who are on parole.

12 COMMISSIONER O'DONNELL: Okay. I
13 appreciate that. Yes, Joe?

14 MR. DENNISON: Yes, Mr. Lentol?

15 ASSEMBLY MEMBER LENTOL: Yes, Chairman
16 Dennison, could you just tell us if you think or how
17 you think elimination of parole for these offenders
18 would protect society?

19 MR. DENNISON: It would protect society
20 in the sense -- thank you -- that it would free a
21 Parole Officer up. The pool of people in this
22 category are getting larger, and larger, and larger.

23 And, by not having to go to peoples'
24 homes, by not having to take office reports, by not
25 having to go to peoples' jobs for the people in this

1 group, it would free you up to supervise people who,
2 you know, are persistent violent offenders, people
3 who are, you know, have prior -- a lot of prior
4 convictions for robbery and burglaries. It would
5 devote more time.

6 Because, you know, I mean, we are a
7 paperwork society, and there's reports and stuff that
8 has to be written, even on, you know, this group of
9 people. So, it would give the Parole Officers a lot
10 more freedom.

11 I actually probably was embarrassed when I
12 had guys on my case load, and women like this, who
13 there was nothing to say to them. When you went to
14 their house, or when they came to see you, there was
15 almost nothing to say to them any more, because they
16 were doing, probably, better than I was. So, --

17 [Laughter]

18 MR. DENNISON: So, anyway. So, that's my
19 proposal. And hopefully, you guys will take a
20 serious look at it. Thanks for giving me an
21 opportunity to speak.

22 COMMISSIONER O'DONNELL: Well, thank you.

23 ASSEMBLY MEMBER LENTOL: Thank you, very
24 much.

25 COMMISSIONER O'DONNELL: I appreciate it.

1 And, Phillip Gentry [sic]?

2 MR. GENTY: Yeah, Genty.

3 COMMISSIONER O'DONNELL: Okay. I'm
4 sorry. Genty. Is our next speaker. From Columbia
5 Law School, on the impact of sentencing.

6 Welcome, Professor.

7 TESTIMONY OF PHILLIP M. GENTY, ESQ.,

8 COLUMBIA UNIVERSITY SCHOOL OF LAW

9 MR. GENTY: Thank you, very much. And, I
10 want, first of all, to thank the Commission for
11 holding these hearings, and for giving me the
12 opportunity to appear and speak today.

13 The Commission's report is an impressive
14 document, which has created a framework for analyzing
15 critical issues of sentencing and prison re-entry in
16 New York.

17 I have been involved for 25 or so years in
18 work with the New York State prison system, and with
19 many of the individuals incarcerated within that
20 system. And, for much of that time, the primary
21 focus of my research and my work with students in
22 Columbia's clinical program has been on preserving
23 the ties between incarcerated persons and their
24 families, and on successful family reunification.
25 And, I think that many of the Commission's

1 observations and recommendations about sentencing
2 implicate these issues of family preservation and
3 reunification, as well as the larger issues of
4 rehabilitation and re-entry.

5 The report -- in the report, the
6 Commission notes that New York currently has a
7 labyrinthian sentencing structure which is veritable
8 object lesson in disorder and confusion. The
9 Commission observes that current sentencing policy is
10 the product of ad hoc and piecemeal amendments, and
11 the Commission recommends moving to a more rational,
12 evidence-based practice which would include, in part,
13 the use of risk and needs assessment instruments at
14 all stages of criminal proceedings, from sentencing,
15 the initial incarceration, to release. And, a
16 central goal would be to facilitate better informed
17 release decisions and successful re-entry.

18 These conclusions that the current
19 sentencing laws are often irrational and incoherent,
20 and that we should moving to an evidence-based system
21 come together and are vividly illustrated, actually,
22 by our system of Parole Board practices and the
23 impact they have on families. And, it's these
24 practices that I want to discuss in my remarks today.

25 The Parole Board guidelines that are in

1 effect -- and, by the guidelines, I don't mean what's
2 in the statute and the regulations, but an actual
3 internal document with a time matrix -- date back to
4 the late 1970s. And, these guidelines have
5 essentially been obsolete for more than 20 years.

6 The guidelines were created for a purpose
7 that no longer exists. At the time that the
8 guidelines were created, the Parole Board had primary
9 responsibility for setting most minimum sentences in
10 felony sentences that were indeterminate. In other
11 words, the Parole Board would see somebody as soon as
12 they -- more or less as soon as they were received
13 into prison, and set their minimum sentence.

14 The guidelines, therefore, measure two
15 factors only. They measure the seriousness of the
16 crime and the prior criminal history, and these are
17 factors that should be taken into account at the time
18 of sentencing. The problem is that the
19 responsibility for setting these sentences was
20 removed from the Parole Board and restored to the
21 courts in 1980. And this was done, as the
22 legislature said, to eliminate unnecessary
23 duplication between the Parole Board and the
24 sentencing courts.

25 So, since 1980, the Parole Board's main

1 responsibility has been to evaluate individuals for
2 parole release after they have served their minimum
3 sentences. However, the Parole Board guidelines were
4 never changed to reflect this change in mission.

5 To this day, the guidelines continue to
6 measure only two factors -- seriousness of the crime
7 and prior criminal history -- rather than the array
8 of factors that would be relevant to a meaningful
9 assessment of who the individual is today and whether
10 that individual has been rehabilitated and can be
11 released safely from prison.

12 This, then, is an important example of
13 what the Commission has described as disorder and
14 confusion caused by an ad hoc and piecemeal approach
15 to sentencing. Our current Parole Board guidelines
16 were designed for a purpose that ceased to exist 27
17 years ago. And, they're ill suited to the purpose
18 for which they are now being used.

19 A consequence is that the Parole Board
20 often acts as if it were still responsible for
21 sentencing decisions. It simply re-examines the
22 underlying crime and criminal history, and in doing
23 so, it fails to consider any changes that may have
24 occurred in the individual in the many years that
25 have passed since the crime was committed. The

1 Commission has commented on this, on Pages 16 and 17
2 of the report. It's especially true, of course, for
3 individuals who are convicted of felonies classified
4 as violent.

5 But the consequence for the individuals
6 and for their families is a growing sense of cynicism
7 and despair as they -- as they really lose any sense
8 of their -- that that is anything that can be done --
9 any kind of rehabilitation that will -- that will be
10 measured when they appear for parole hearings.

11 The promulgation of new Parole Board
12 guidelines is, therefore, long overdue. Guidelines
13 for parole release decisions for persons serving
14 indeterminate sentences should give less weight to
15 the underlying offense and more weight to the
16 individual's accomplishments while in prison. This
17 is a change that's actually commented on as a
18 possibility at Footnote 105 of the Commission's
19 report.

20 Specifically, the guidelines should
21 utilize the evidence-based risk and needs assessment
22 recommended by the Commission. As the Commission
23 notes on Page 37 of the report, such an approach is
24 already used in parole release decisions in
25 Pennsylvania.

1 To restore hope and rationality to the
2 system, the Parole Board guidelines should,
3 therefore, be modified and updated to require the
4 Board to give appropriate weight to the extent of an
5 individual's rehabilitation and the lack of risk to
6 public safety if the individual is released.
7 Guidelines should incorporate and reflect the most
8 up-to-date research available.

9 This would include research showing that
10 persons who have served sentences for many categories
11 of violent crimes actually have a very low rate of
12 recidivism. And this -- of course, Commissioner
13 Dennison just commented on this a moment ago.

14 One example is that some preliminary
15 research has shown an especially low recidivism rate
16 among women who are convicted of crimes classified as
17 violent.

18 In short, Parole guidelines should be
19 dynamic, and they should acknowledge peoples'
20 capacity to change significantly during their time
21 incarcerated -- of incarceration. But, in order to
22 effect such changes, adequate rehabilitative
23 programming must be available in the prisons.

24 Thus, a further essential component of an
25 evidence-based approach to parole release decisions

1 is an increase in the resources for programs that
2 have been shown to succeed. These include programs
3 in higher education, vocational training, and
4 therapeutic counseling.

5 In addition, work release eligibility
6 should be expanded to persons convicted of all
7 categories of crimes, at least to be potentially
8 eligible, because these programs play an important
9 part in helping individuals make a successful
10 transition back into the community. On Pages 48 and
11 49 of the report, the Commission describes these type
12 of -- these types of rehabilitative programs, and
13 notes that these programs have been shown to reduce
14 recidivism.

15 And, although the Commission does not
16 discuss them specifically, programs that can end up
17 strengthening family ties through facilitation of
18 visitation, phone calls, and other assistance to
19 children and families also have a proven impact on
20 successful re-entry.

21 In short, updating and rationalizing
22 Parole Board guidelines and practices, and increasing
23 resources available for educational, vocational,
24 family preservation, and work release programs will
25 further the goals articulated by the Commission, to

1 use evidence-based practices to reduce risk, increase
2 public safety, and ensure a successful re-entry.

3 I look forward to seeing how these
4 recommendations develop, and I hope that you'll
5 continue to involve the public in our deliberations.

6 I thank you again for the time and the
7 opportunity to speak. And, I'm certainly happy to
8 address any questions that you might have.

9 COMMISSIONER FISCHER: I have a question.

10 COMMISSIONER O'DONNELL: Yes.

11 COMMISSIONER FISCHER: The recent
12 lawsuit, Graziano, I believe it's called?

13 MR. GENTY: Yes.

14 COMMISSIONER FISCHER: How do you
15 interpret that to be -- does that -- does not that
16 address the issue of the parole decision?

17 MR. GENTY: It addresses the issue. The
18 problem, as I see it, is that we really don't have
19 any written guidelines that say this is how parole
20 decisions should be made. So, the lawsuit will, I
21 think, affect that.

22 But, at the same time, we don't have
23 anything that somebody could look at and say, okay,
24 these are the factors that matter. Here are the
25 things that parole boards should be measuring, to

1 Assemblyman Lentol?

2 ASSEMBLY MEMBER LENTOL: I just --
3 listening to your remarks, I couldn't help but get
4 the impression that you were in favor of
5 indeterminate sentencing, as opposed to determinate
6 sentencing.

7 Am I incorrect in that conclusion?

8 MR. GENTY: I am -- I am in favor of it,
9 for at least some -- some number of offenses. I
10 think that, as the Commission report notes, it's a
11 difficult question in the abstract, because I would
12 need to know what the length of the determinate
13 sentences are. Certainly, there's something to be
14 gained with certainty, but -- but, I would need to
15 kind of line the two things up, side by side.

16 In any event, I assume, based on the
17 Commission's reports that -- report, that A-I
18 felonies would continue to be governed by
19 indeterminate sentencing. And so, for -- at the very
20 least, those recommendations would apply there.

21 But, I -- I actually am of some --
22 somewhat of two minds, as to your other -- your
23 broader question.

24 ASSEMBLY MEMBER LENTOL: Thank you.

25 COMMISSIONER O'DONNELL: We appreciate

1 mentioning, not from the NYCLU side of the fence, is
2 Glenn Loury, a noted African/American scholar and
3 social conservative, who calls the war on drugs a
4 monstrous social machine that is grinding poor black
5 communities to dust."

6 I would add, among the consequences, the
7 enormous and almost unfettered and unreviewable
8 discretion that is given to prosecutors, that results
9 in a, I believe, routine miscarriage of justice and
10 enormousy disastrous consequences for low income
11 inner city communities of color.

12 It's well documented that there is an
13 enormous racial and ethnic disparity regarding those
14 who are incarcerated for drug offenses here in New
15 York. We believe that -- and it's well documented,
16 too -- that this is due to selective arrest and
17 prosecution, inadequate -- inadequate legal
18 representation, and the absence of judicial
19 discretion in the sentencing process. Yet, this
20 Commission's preliminary report is silent on the
21 issue of race. This is a glaring omission.

22 The racial disparities in New York's
23 prison population have increased dramatically since
24 the mid-'80s and the advent of the war on drugs.
25 Take these figures: 1980, there were 886 people

1 incarcerated for drug offenses in New York; a third
2 were white. The rest were African/American or
3 Latino. In the year 2000, there were 8,227 new
4 commitments for drug offenses. Of those, 6 percent,
5 versus 32 percent 20 years before, were white; and 93
6 percent were African/American or Latino. Today, more
7 than 90 percent of the people incarcerated for drug
8 offenses are African/American or Latino.

9 The racial disparities, which are often
10 dismissed by some as reflecting higher rates of
11 offense in communities of color, are simply not due
12 to that. There are, according to Government studies,
13 not those disparities. In fact, according to a
14 recent Government study, 72 percent of the estimated
15 1.8 million illegal drug users in New York are white.
16 The majority of the sellers are white. And, there
17 are many more drug sales in the white communities.
18 But, they tend to escape detection for a host of
19 reasons.

20 Among those, we see higher arrest and
21 conviction rates for blacks and Latinos that are not
22 related to the higher level of drug offense, but only
23 -- but, I think, can only be explained by factors
24 including racial bias. We see unequal treatment at
25 every stage of the criminal justice process. Let's

1 look at arrests.

2 The war on drugs has been waged largely in
3 poor inner city communities. Here in New York City,
4 let's look at the policing practice. We see routine
5 racial profiling. And, the statistics bear that out.

6 According to the data recently released by
7 the New York City Police Department, there were over
8 500,000 stop-and-frisks in the year of 2006. Of
9 those, 55 percent were black, 30 percent were Latino,
10 and 11 percent were white; 90 percent of the people
11 stopped were found to have engaged in no illegal
12 activity; and blacks were 20 percent more likely to
13 be stopped without any evidence of wrongdoing than
14 whites.

15 Racial bias is also starkly evident in New
16 York's marijuana arrest statistics. It's well
17 documented in Government studies, again, that whites
18 use marijuana at least as often as blacks; but the
19 per capita arrest rate of blacks for marijuana
20 offenses is nearly eight times that of whites.

21 In 1997 to 2006, there were 362,000
22 marijuana possession arrests in New York City. Of
23 those, 84 percent were people of color. The rest
24 were white.

25 We see disparities in prosecution. Even

1 assuming -- and I think this is a big assumption --
2 that there are completely race-neutral charging and
3 plea bargaining decisions, we see racial disparities
4 in the prosecution because of the unequal access to
5 legal resources. It doesn't take the NYCLU's word to
6 document that the system of indigent defense is
7 grossly -- is in a state of crisis.

8 The Kaye Commissioner -- Kaye Commission
9 concluded that minorities disproportionately suffer
10 the consequences of an indigent defense system,
11 including inadequate resources, substandard client
12 contact, unfair prosecutorial policies, and the
13 collateral consequences of conviction.

14 Most of the people charged with drug
15 crimes are poor. Most of them are people of color.
16 And, they rely on the state's public defense system.

17 With regard to sentencing, once you get to
18 the sentencing stage, the racial disparities are --
19 have come into play. And, they produce a pool of
20 defendants that is comprised almost exclusively of
21 people of color. Ninety-eight percent of the people
22 charged with drug offenses end up pleading guilty,
23 and the judge is required to impose a mandatory
24 minimum sentence.

25 Many judges have expressed frustration and

1 outright rage at the fact that their hands are tied
2 -- judges all over the state -- New York County,
3 Queens, Broome County, et cetera.

4 As a society, we aspire to a system of
5 criminal justice that is fair. We rely on vigorous
6 advocacy on both sides, and a neutral arbiter, the
7 judge. But, the mandatory minimum sentences of the
8 Rockefeller Drug Laws relegate the judge to the role
9 of bystander, and have driven defense attorneys to
10 advise clients to accept plea bargains they might
11 otherwise have counseled against.

12 As a former criminal defense attorney who
13 got my start as the Rockefeller Drug Laws were just
14 coming into practice, I know what this means. The
15 risks are enormous. The lack of judicial expression
16 -- discretion to provide any leniency or
17 consideration of the facts and circumstances
18 surrounding the particular case are little to none.
19 And, defense lawyers are in the unfortunate position
20 of having to counsel people to cut their risks --
21 they're enormous -- and take a plea even when the
22 case may be flawed, even when there is a lousy case
23 against them.

24 It's often said by prosecutors and others
25 that reform of the Rockefeller Drug Laws will lead to

1 a rise in crime. Nobody wants a rise in crime; not
2 even the New York Civil Liberties Union. That's
3 right.

4 [Laughter]

5 MS. LIEBERMAN: But, there is really no
6 evidence to conclude that reforming the Rockefeller
7 Drug Laws will lead to a rise in crime. A recent
8 study by the Sentencing Project, in fact, found that
9 there was no discernible pattern of states with
10 higher rates of increasing incarceration experience
11 more significant declines in crime. Quite the
12 contrary. States that report below-average increases
13 in incarceration rates had above-average declines in
14 crime rates. Thank you.

15 Research shows that the concentration of
16 incarceration in particular communities may actually
17 elevate crime. It disrupts the informal social
18 controls which regulate individual behavior in
19 community, intact families, most notably work places,
20 churches, social clubs, and others. And the research
21 also shows that these are far more important than the
22 formal controls -- police and incarceration.

23 I want to talk for a second about family
24 disintegration. An estimated 11,000 drug offenders
25 include 1,000 women -- including 1,000 women, have

1 young kids. There are 25,000 kids in New York State
2 who have parents in prison for non-violent -- just
3 non-violent drug offenses. The consequences are well
4 documented -- psychological trauma, financial
5 deprivation, and physical dislocation -- which leads
6 to destabilized communities. Also, the churning
7 effect from the constant removal and return of
8 prisoners, and the concentration of incarceration
9 leads to further de-stabilization of our most
10 vulnerable neighborhoods.

11 We have written testimony that can
12 document this, and I think -- I think we have either
13 already shared it or will.

14 COMMISSIONER O'DONNELL: Thank you, very
15 much, --

16 MS. LIEBERMAN: You're welcome.

17 COMMISSIONER O'DONNELL: -- for being
18 here.

19 MS. LIEBERMAN: Okay.

20 COMMISSIONER O'DONNELL: Anita Marton?
21 You've been waiting for a --

22 UNIDENTIFIED: The other two speakers are
23 --

24 COMMISSIONER O'DONNELL: Pardon?

25 UNIDENTIFIED: The other two speakers are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

here.

COMMISSIONER O'DONNELL: Oh, okay. If you don't mind waiting, then?

We're going to have A. Siegel and M. Rempel, from the Center for Court Innovation. Thank you for joining us, one on each side?

MR. SIEGEL: Okay. Thank you. I'll start?

COMMISSIONER O'DONNELL: Yes. Thank you for being here.

TESTIMONY OF ALFRED R. SIEGEL, ESQ., DEPUTY DIRECTOR,
AND MICHAEL REMPEL, DIRECTOR OF RESEARCH,
CENTER FOR COURT INNOVATION

MR. SIEGEL: Good afternoon. My name is Alfred Siegel. I'm the Deputy Director of the Center for Court Innovation, a not-for-profit organization that works with courts and related agencies, prosecutors, the defense bar, probation and parole officers, and others to reduce crime, aid victims, strengthen neighborhoods, and promote confidence in justice. The Center serves as the independent research and development arm of the state court system.

I want to thank the Commission for extending an invitation to the Center to speak today

1 on the very important issues raised in your recently
2 published preliminary report. We commend the
3 Commission for the thoughtful and progressive ideas
4 presented in that comprehensive document.

5 I am joined by Michael Rempel, the
6 Director of Research at the Center. Each of us has
7 some brief remarks. And then, obviously, we'd
8 welcome your questions. I will confine my remarks to
9 responding to some of the specific questions
10 contained in the Hearing Notice.

11 As an organization that has been at the
12 forefront locally, nationally, and internationally in
13 the establishment of a range of problem-solving
14 courts, the Center for Court Innovation strongly
15 believes that equipping the justice system with
16 responsible alternative sentencing options can
17 simultaneously promote public safety, re-shape
18 offender behavior, and inspire greater confidence in
19 the system's ability to reduce crime.

20 Problem-solving courts seek to address social
21 problems, such as substance abuse, mental illness,
22 homelessness, and domestic violence, issues that
23 contribute mightily to criminal behavior, fuel high
24 case loads in our courts, and profoundly affect the
25 quality of life in our neighborhoods.

1 As you are well aware, addressing these
2 problems has historically proven quite vexing to the
3 justice system. We are all familiar with the term
4 "revolving door," a euphemism for a justice system
5 devoted to rapidly processing criminal cases, but one
6 that has little or no impact in reducing crime or
7 altering offender behavior.

8 Before the advent of problem-solving
9 courts, judges often were confronted with too few
10 meaningful community-based alternatives to address
11 offender behavior. The result was a system that did
12 a wonderful job of protecting litigants' legal rights
13 and moving the docket, but did little to address the
14 problems that brought people into court in the first
15 place.

16 Incarceration was the safest option, even
17 though it offered little realistic prospect of
18 rehabilitation and left offenders woefully unprepared
19 for life back in the community upon their release.
20 And, probation and parole officers, burdened by
21 overwhelming caseloads, have scant resources through
22 which to link those assigned to their charge to
23 vitally needed assistance.

24 Conversely, problem-solving courts,
25 including the drug courts that my colleague,

1 Mr. Rempel, will be discussing shortly, are making a
2 difference. These courts provide ready access to
3 services, matching offenders to programming through
4 comprehensive assessments. Compliance with service
5 mandates is rigorously monitored by program staff and
6 judges. And, infractions are aggressively dealt with
7 through responsive interventions and graduated
8 intermediate sanctions.

9 New York now has 229 drug courts, 39
10 integrated domestic violence courts, 35 domestic
11 violence courts, 15 mental health courts, 7 sex
12 offender management courts, and 9 community courts.
13 Together, these problem-solving courts are dragging
14 down recidivism among participants and helping to
15 reclaim neighborhoods, while aiding victims in
16 achieving more effective enduring case outcomes.

17 Problem-solving courts rely on
18 collaborative, multi-disciplinary partnerships among
19 justice system players, law enforcement, and
20 community-based providers to improve the quality of
21 justice. These courts are information-driven.
22 Judges and other key decision makers are armed with
23 more information so that they can make better
24 determinations. Evidence-based assessments help
25 identify offender deficits and facilitate the

1 crafting of individualized responsive sanctions.

2 Offenders, as noted, are held accountable
3 through vigorous monitoring of compliance. And, each
4 of the programs utilize research and data analysis to
5 tell us whether the courts are achieving the results
6 they were designed to accomplish. Are they, in fact,
7 working?

8 Indeed, there is a wealth of evidence now
9 that supports the notion that these reforms have
10 promoted fairness and improved the effectiveness of
11 the justice system. Researchers have documented
12 reductions in street crime, substance abuse, and
13 recidivism, as well as enhanced compliance with court
14 directives and increasing public trust in justice.
15 Upon seeing these kinds of results, problem-solving
16 justice has been hailed by all 50 State Court Chief
17 Justices.

18 In recent years, we have applied the
19 problem-solving approach to the challenges posed by
20 offender re-entry. In one of our community courts,
21 the Harlem Community Justice Center, we have been
22 testing the impact of problem-solving justice in
23 helping parolees adjust to life back in the community
24 upon their release from confinement.

25 In Harlem, the formerly incarcerated

1 return to a community that provides few genuine
2 opportunities to earn a living wage legitimately,
3 secure decent and affordable housing, or receive the
4 education, training, and assistance they need to have
5 a fighting chance to become productive, law-abiding
6 members of society. At the Justice Center, we are
7 attacking these problems head on, working with our
8 partners at Division of Parole, and an array of local
9 providers.

10 At the program, re-entry begins when a
11 prospective parolee receives a scheduled release
12 date. At that point, a comprehensive pre-discharge
13 plan is prepared that focuses on risk, treatment
14 needs, and other critical services like housing, work
15 force training, employment, education, and family
16 engagement, issues that if left unaddressed could
17 affect a parolee's compliance and continuing ability
18 to remain arrest-free.

19 The plans are informed by comprehensive
20 psycho/social assessments and home visits conducted
21 prior to the offender's release. Once released,
22 participants report directly to the Community Court,
23 where they appear before a legal authority who lays
24 down the law -- an Administrative Law Judge. At the
25 initial hearing, parolees sign a contract agreeing to

1 comply with the conditions of release and the --
2 individual, individualized service plans.

3 A team of on site Parole Officers, social
4 workers, and locally-based providers then work with
5 the parolees to implement the plans and to begin the
6 process of moving offenders down the road to
7 reintegration and productive lives. Compliance is
8 rigorously monitored, and parolees must report
9 regularly to the courthouse to meet with the
10 Administrative Law Judge and their Parole Officers.
11 Non-compliance meets with an immediate response, and
12 incentives like public congratulatory ceremonies are
13 used to encourage adherence to release conditions.

14 All of this takes place in the community
15 where participants live, a model of service delivery
16 that greatly improves the chances of successful
17 reintegration. The work going on in Harlem is
18 important, and it holds a great promise for the
19 future.

20 The Commission has asked for ideas on how
21 to improve the current system for preparing offenders
22 for re-entry. The re-entry court includes the
23 ingredients of a comprehensive re-entry strategy --
24 an extensive pre-discharge planning, locally-based
25 supervision, linkages to readily-accessible and

1 necessary services, collaborative case management,
2 sanctions and incentives, and ongoing judicial
3 monitoring -- all in a community setting; components
4 that, in combination, are likely to achieve re-entry
5 success.

6 In several instances, the court has been
7 expanded to serve as a sanction for non-compliant
8 parolees, offering more intensive monitoring with
9 heightened surveillance while providing critically
10 needed services. Utilizing the re-entry court in
11 this manner is a safe, responsible alternative to
12 revocation and incarceration, particularly for those
13 parolees charged with technical infractions. Such
14 programs are not only cost effective when compared to
15 the significant, expensive re-incarceration, but most
16 importantly represent sound public policy.

17 Now, I'll turn the microphone over to
18 Mike, who will talk about the current state of drug
19 court research.

20 MR. REMPEL: Good afternoon. And, as Al
21 mentioned, my name is Mike Rempel, and I am the
22 Research Director of the Center for Court Innovation.

23 Time does not permit reviewing the
24 literature on every approach to court-mandated
25 treatment, which is my focus today. But, my

1 testimony will focus on the drug courts, the most
2 popular and proven model on a national scale.

3 The original Miami Drug Court opened in
4 1989. As of April, 2007, there were 1,767 drug
5 courts opened nationwide, including 1,038 programs
6 serving adult criminal defendants. How do drug
7 courts work?

8 The specific practices vary from
9 jurisdiction to jurisdiction, but the model's
10 essential outline is as follows:

11 The court mandates addicted defendants to
12 substance abuse treatment as an alternative to
13 incarceration, or an alternative to probation. In
14 most drug courts, defendants formally enroll upon
15 pleading guilty to some offense; but in some places,
16 defendants may enroll before a plea is taken.

17 In either scenario, the defendant receives
18 tangible legal incentives to do well. Successful
19 participants have the charges against them dismissed
20 or reduced, while those who fail are sentenced to
21 jail or prison.

22 During the treatment process, the court
23 closely monitors the defendant's performance through
24 regular drug testing, meetings with court-affiliated
25 case managers, and ongoing court appearances before a

1 dedicated drug court judge. At each such appearance,
2 the judge converses directly with the defendants,
3 motivating them to comply and reminding them of the
4 consequences of non-compliance. Also, the judge
5 responds to progress and setbacks by administering
6 internal rewards and sanctions.

7 Since the treatment literature tells us
8 that relapse is typical, even among those actively
9 seeking help, the drug court model advocates the use
10 of multiple chances in response to positive drug
11 tests, missed court dates, or other non-compliance.
12 That is why the model promotes the heavy use of
13 interim sanctions such as essays, jury box
14 attendance, or short jail stays over final sentences
15 of incarceration, until such time that a participant
16 is repeatedly or severely non-compliant.

17 The drug court research literature is
18 voluminous and generally positive. And, I'll just
19 add I don't know if I'll have time to finish my
20 remarks, but you will see, in your packets and the
21 comments as well, several citations if the Commission
22 is interested in looking at some of this literature.

23 But, I will quickly summarize that from a
24 series of literature reviews and commentaries
25 published in the early 2000s, including one by the

1 U.S. Government Accountability Office, all concluding
2 --

3 COMMISSIONER O'DONNELL: Let me just say,
4 since there are two of you, and you could have
5 requested two, you know, ten-minute time slots, we'll
6 let you finish. So, --

7 MR. REMPEL: Thank you.

8 COMMISSIONER O'DONNELL: -- take your --
9 the time you need.

10 MR. SIEGEL: We thought we had to split
11 our time.

12 MR. REMPEL: Well, thank you, very much,
13 and I'll --

14 UNIDENTIFIED: This issue is not soft.

15 [Laughter]

16 MR. REMPEL: -- I'll start back a few
17 sentences ago.

18 JUDGE NEWTON: Well, no, not that much
19 time.

20 [Laughter]

21 COMMISSIONER O'DONNELL: At least we'll
22 give you a few minutes.

23 MR. REMPEL: All right. I think I've got
24 about two and a half more.

25 The drug court research -- all right. I

1 told you that.

2 Whereas 10 to 30 percent of persons
3 enrolling in treatment voluntarily graduate, or are
4 still active in treatment one year later, the
5 equivalent one-year retention rate for drug court
6 participants averages about 60 percent, nationwide,
7 and 66 percent in New York State.

8 Furthermore, a series of literature
9 reviews and commentaries published in the early
10 2000s, including one by the U.S. Government
11 Accountability Office, all conclude that drug courts
12 generally reduce recidivism.

13 One particularly influential study was a
14 randomized trial of the Baltimore Drug Court, which
15 demonstrated significant recidivism reductions over
16 both two-year and three-year tracking periods after
17 the initial arrest.

18 Locally, a state-wide evaluation of New
19 York's Drug Courts completed by the Center for Court
20 Innovation in 2003, demonstrated a 32 percent average
21 recidivism reduction across six different sites, over
22 a one-year post-program period, beginning after
23 program exit or disposition. Those results are in
24 Figure 1, when you are able to see it.

25 To help inform evidence-based

1 policymaking, as important as whether drug courts
2 work is to understand why. In this regard, among
3 other factors, the evidence strongly points to the
4 critical role of (1) clear legal incentives and (2)
5 intensive judicial supervision.

6 Concerning, first, legal incentives, the
7 tangible threat of imprisonment in response to
8 failure is widely believed to explain why drug court
9 retention rates are so much higher than retention
10 rates for persons enrolling in treatment voluntarily.
11 Even within drug courts, the evidence indicates that
12 where the legal incentives are relatively greater,
13 the outcomes are relatively better, as shown in
14 Figure 2. Again, I don't believe you're looking at
15 it now, but when you get it --

16 COMMISSIONER O'DONNELL: We'll look at it
17 later, um hmm.

18 MR. REMPEL: One-year retention rates at
19 the Brooklyn treatment court are lowest for
20 participants pleading to a misdemeanor, who face an
21 average of six months in jail in the event of
22 failure; and on the other end of the spectrum are
23 highest for predicates participants pleading guilty
24 to a felony with a prior felony conviction on the
25 record, who face an average of three to six years in

1 state prison.

2 And, since you're not looking at it, I'll
3 just add that the difference is almost double between
4 those two extremes, just to show the impact of the
5 stronger legal incentives for the more serious
6 offenders. Such findings suggest that drug courts
7 are particularly effective with more serious
8 categories of defendants.

9 Concerning the second, judicial
10 supervision, a series of randomized trials conducted
11 in several northeastern sites indicate that drug
12 court outcomes are consistently better when
13 participants are required to appear bi-weekly before
14 the drug court judge, than when they are only
15 required to appear as needed. The impact of
16 appearing regularly before the judge was especially
17 pronounced for high-risk defendants, defined in this
18 research as having previously failed treatment or
19 having anti-social personality disorder.

20 Additionally, based on preliminary
21 findings presented publically last June, a multi-site
22 drug court evaluation including 23 drug court and 6
23 comparison sites across the country will show that
24 drug court participants have better outcomes
25 specifically as a result of:

1 (1) more positive defendant perceptions of
2 the fairness of the judge;

3 (2) more frequent court appearances before
4 the judge; and

5 (3) more frequent meetings with court-
6 affiliated case managers or probation officers.

7 COMMISSIONER O'DONNELL: Okay. Can you
8 wrap up?

9 MR. REMPEL: Yes.

10 COMMISSIONER O'DONNELL: Okay.

11 MR. REMPEL: Well, I'll just say briefly
12 there are some other initiatives, such as Brooklyn's
13 DTAP Program, that have demonstrated positive results
14 with less judicial oversight. And, in the case of a
15 program such as DTAP, this likely has to do with its
16 particularly intensive case management model, as well
17 as the fact that it focuses on predicates who face
18 multi-year prison sentences and who may, therefore,
19 have all the legal incentive they need to do well,
20 even without the high level of constant judicial
21 supervision, as in the drug courts.

22 So, to summarize, major conclusions from
23 this testimony are:

24 Drug courts are an effective model in
25 reducing imprisonment, drug use, and recidivism.

1 And, to the extent that strong legal
2 incentives are applied, relatively more serious
3 defendants are targeted, and the court plays an
4 ongoing proactive role in supervising the treatment
5 process, the benefits of drug courts will generally
6 be maximized.

7 COMMISSIONER O'DONNELL: Thank you. We
8 did have Judge Kluger come and speak to the
9 Commission on the New York problem-solving courts,
10 and we did ask at that time whether there were any
11 existing barriers in New York State law that
12 prohibited the work of the problem-solving courts.
13 We have not heard any recommendations coming from the
14 courts or from you.

15 But, if there are any, we would like to
16 hear from you on that issue, because we, I think, as
17 a Commission, are wholeheartedly in support of the
18 important role New York has played in the
19 problem-solving courts, and look forward to hearing
20 more from you on the re-entry courts, as well. Okay?

21 Thank you, very much.

22 MR. SIEGEL: Thank you, very much.

23 MR. REMPEL: Thank you.

24 COMMISSIONER O'DONNELL: Anita Marton,
25 you've been waiting from the beginning.

1 MS. MARTON: I have. There is a benefit
2 to being here in the beginning. You can short of
3 shorten your comments, you can amend them, you can
4 refer to other people.

5 COMMISSIONER O'DONNELL: Okay.

6 TESTIMONY OF ANITA R. MARTON, ESQ.,

7 VICE-PRESIDENT, LEGAL ACTION CENTER

8 MS. MARTON: I am Anita Marton. I am
9 Vice-President of the Legal Action Center. I really
10 appreciate the opportunity to be here today.

11 I was also at a number of the meetings
12 that you held over the summer, so I certainly know
13 and appreciate all the hard work that you all did
14 over that summer. And, all the people that you heard
15 testifying really do appreciate all your hard work.

16 And, we also are grateful for having had
17 the opportunity to serve on the subcommittee on
18 supervision in the community.

19 I, too, have a lot of comments I want to
20 make about the sentencing recommendations, but I
21 really wanted to highlight first the many
22 recommendations that you made in your report that we
23 really do -- we recommend the support, and we thank
24 you for making those recommendations. Because, there
25 are so many of your recommendations having to do with

1 re-entry, and treatment, and community programming,
2 and parole reform that we support, and I do want to
3 acknowledge those features of the report.

4 I was struck by something that Jonathan
5 Gradess said when he spoke before you. The term
6 "alternatives to incarceration" -- it implies that
7 the term should be "incarceration," and that
8 "alternative" is not the first choice, but it is the
9 alternative to the preferred choice, or the first
10 choice. And, I would argue that that should be
11 exactly opposite. Crime can be reduced further and
12 criminal justice costs can be cut if incarceration is
13 used as the last, and not the first, resort.

14 Community corrections, when properly
15 utilized, not only better protect public safety and
16 save money, but really avoid the disruption that
17 incarceration causes families and communities. And,
18 you've heard many other speakers already talk about
19 it. At the Legal Action Center, we too did an
20 informal survey of what the resources were in the
21 community, not just in New York City, which could
22 also, of course, use more resources, but upstate,
23 with regard to community programming and treatment.

24 Monroe County was one of the few that had
25 any kind of alternative to incarceration program.

1 I'm going to use the word "ATI" only as a convenience
2 now, because it's a short term, but I could say
3 community supervision. Monroe County was one of the
4 only counties upstate that had it. We talked to
5 providers in Buffalo, who say we only have two slots
6 available, and if they get, you know, if they get
7 taken up by probation, we don't have room for parole.
8 And, you know, we're turning people away who are
9 going to be ending up in prison, who need our
10 services. And, we just don't have sufficient
11 capacity.

12 So, I really hope that in this budget,
13 whether in the Governor's budget or in the
14 legislative budget, we do see more funding for
15 treatment, and more funding for community-based
16 services.

17 Among the recommendations we also
18 appreciated was the reports acknowledging the
19 relationship between OASAS and DOCS, and that
20 services in DOCS are not OASAS licensed, but that
21 there should be close collaboration between the two.
22 And, we certainly support, you know, that there be
23 unified implementation of validated instruments, et
24 cetera, a very important comment, I thought, in the
25 report.

1 I'm just going to list some of the many
2 recommendations that you either made or are
3 considering. The merit time proposals are very
4 important.

5 I wanted to say something about your
6 recommendation about youth. We certainly -- we
7 certainly support extending youth -- YO status for
8 people, for youth above the age of 18. I thought
9 there was something very interesting that you said in
10 the report. You said in the report that there's
11 nothing magical about the age of 18, which separates
12 eligible from ineligible youth from receiving
13 Youthful Offender status.

14 So, too, there is nothing magical about
15 the age of 16 that represents when a youth is
16 required to be treated as an adult in our criminal
17 justice system. When you're 16 in our state, you're
18 not allowed to vote. Why? Maybe they don't feel
19 that you are able to have the requisite knowledge to
20 make a decision about whether you can vote. If
21 you're 16, you can't drink. Why? Because that is a
22 decision that you may not have the ability to discern
23 whether it's safe to drink and drive, or whatever the
24 concerns are. Clearly, 16 is not viewed as being the
25 right age. But, at 16, you must go into the criminal

1 justice system. There is no discretion.

2 Now, we understand, and there has been
3 some concern expressed, that there are some youth
4 that commit very serious crime. If we -- if we raise
5 the age, which every state except New York and one
6 other state has done -- if we raise the age, it
7 doesn't mean that no youth above the age of 16 will
8 not be seen in the criminal justice system.
9 Currently, if you're under 16, depending on the kind
10 of crime you're alleged to have committed, you are
11 treated as an adult.

12 But, to provide an opportunity, if you
13 are 17, if you are 16, to be seen in a family court
14 rather than a criminal court, would help to eliminate
15 some of the many barriers that people with criminal
16 records face once they have that kind of record.

17 We also support expanding work release,
18 improving the release procedures, certainly expanding
19 educational and vocational training in prisons,
20 procuring identification, Medicaid, restoring the
21 right to vote for persons on parole. I feel a little
22 bad about not going into detail about each of them,
23 but because we have limited time, I just wanted you
24 to know that we really support those recommendations
25 and really hope that we can -- we can see them

1 carried out.

2 With victims' rights, I also have a piece
3 in my testimony, which you will see when you review
4 the written, that has to do with principles of
5 restorative justice, as well, and an expanded view of
6 victims' rights. You've heard already from a number
7 of people who have gone into greater length than I
8 have time here about that, but I do want to support
9 that view of looking at victims' rights from a
10 broader restorative justice perspective.

11 With sentencing reform, again, you've
12 heard from Liz Gaynes and other folks talk about the
13 importance or why -- the benefits of indeterminate
14 sentencing. The one thing I would like to add about
15 determinate sentencing is that we agree with the
16 members of the Commission who withheld support until
17 they understood, you know, what the range would be,
18 or because it warrants further study.

19 I don't know what the information was that
20 the Commission had a chance to look at. I don't know
21 whether you had a chance to look at how sentencing
22 patterns have changed since there has been
23 determinate sentencing for the folks who already
24 received it. Have they gone up? Have they come
25 down?

1 And, I wouldn't look at overall numbers.
2 I would look at jurisdiction. Because, I don't know.
3 It's just theoretically, conceivably, New York City
4 sentencing patterns could have gone down, and they
5 could have gone up in many upstate communities. And,
6 because there are many more people getting prosecuted
7 in the City, it might appear that sentences have gone
8 down when, in fact, they haven't.

9 Three minutes. I am going to my
10 sentencing reform comments. And, I will leave my
11 determinate sentencing comments at that.

12 I was going to talk about the racial
13 disparities. You've heard about that, as well. I
14 wanted to address a number of the issues that were
15 raised by the D.A.s.

16 The first and foremost we keep hearing is
17 how the Rockefeller Drug Laws, how our sentencing
18 laws are responsible for our dropping crime. Well,
19 the laws were passed in '73. And, for 20 years, the
20 crime rate went up. Were the Rockefeller Drug Laws
21 responsible for the rise in crime? They certainly
22 were responsible for the rise in the rate of
23 incarceration.

24 But, I would argue that the Rockefeller
25 Drug Laws, or our sentencing laws, have been the one

1 constant. They were there when the crime rate went
2 up. They were there when the crime rate went down.
3 But, there were other factors that changed. There
4 were different policing factors. People were aging
5 out. There were more treatments available in the
6 community. There were many other variables that I
7 would say are responsible for the drop in crime,
8 rather than the Rockefeller Drug Laws. So, that was
9 -- that's one of the arguments that we frequently
10 hear.

11 Risk to public safety. There are a number
12 of responses I have to that, that requirement -- that
13 argument that the laws are necessary in order to
14 protect public safety. First of all, the prosecutors
15 say they still want to have a voice. I'm addressing
16 some of the concerns that were raised in your report,
17 that were raised by prosecutors.

18 Prosecutors will still have a say in what
19 happens to an individual, if the laws are changed to
20 give judges discretion. They just won't be
21 prosecutor, judge, and jury. They will have their
22 rightful place as prosecutor. The defense lawyer
23 will have a chance to argue his or her point of view.
24 And the judge is in the best position to make that
25 determination.

1 Addressing -- effectively addressing the
2 reasons behind the rise, or the drug crimes that we
3 see committing -- committed, communities may be
4 concerned about drug dealing in their community, but
5 they want effective responses. They want to address
6 the underlying factors that have led to that.

7 We have heard already how effective
8 treatment is. Treatment is more effective than
9 incarceration in addressing addiction. We did a poll
10 -- we commissioned a poll in 2002. Update,
11 downstate, Republicans, Democrats, it didn't matter
12 what race, it didn't matter what party, people
13 supported drug treatment for addicted individuals
14 rather than incarceration, and they strongly
15 supported judges being the individuals to make that
16 decision, rather than District Attorneys.

17 Okay. I know I have time. I do want to
18 just, you know, mention as well that the disparities
19 that existed, as Bob Gangi said before, the
20 disparities that have existed when judges had the
21 discretion, before the Rockefeller Drug Laws, have
22 been shifted. And, it's the prosecutors that have
23 the discretion now. And, we see some communities
24 that are very good at diverting people, and we see
25 other prosecutors who will have none of it.

1 If you happen to be lucky enough -- if I
2 can use that term, if you're arrested in Brooklyn,
3 you have more of an opportunity to receive any kind
4 of community sentence than in many other parts of the
5 state.

6 So, I thank you for the opportunity. I
7 have so many, many more things to say, as everybody
8 here. I just really appreciate, again, all that you
9 have done. And I hope that, in the final report,
10 there will be some more recommendations with regard
11 to sentencing reform.

12 Thank you, very much.

13 COMMISSIONER O'DONNELL: Thank you.

14 And, I just want to reiterate that if you
15 are submitting hearing testimony, that we do intend
16 to review the hearing testimony. I know it will be
17 quite voluminous. We're looking for law students to
18 be able to help us with that.

19 But, we do intend to ensure that we read
20 everyone's testimony that is submitted to us, as
21 well.

22 MS. MARTON: I appreciate that. Thank
23 you, very much.

24 COMMISSIONER O'DONNELL: Thank you.

25 Our next speaker is Seep Varma, who is

1 from NYTC, Inc.

2 MR. VARMA: Yes, NYTC, Inc., New York
3 Therapeutic Communities.

4 COMMISSIONER O'DONNELL: Okay.

5 TESTIMONY OF SEEP VARMA, EXECUTIVE VICE-PRESIDENT,
6 NEW YORK THERAPEUTIC COMMUNITIES, INC.

7 MR. VARMA: Good afternoon. I thank you
8 for giving me the opportunity to be here. My name is
9 Seep Varma. I am the Executive Vice-President of New
10 York Therapeutic Communities, Inc., and the
11 Chairperson of the Criminal Justice Committee of the
12 Association of Alcoholism and Substance Abuse
13 Providers in New York State.

14 NYTC, Inc. is a not-for-profit
15 organization that operates substance abuse treatment
16 programs for men and women that are involved in the
17 criminal justice system. Our programs operate both
18 within the prison system and in community-based
19 residential settings.

20 The therapeutic community, or TC,
21 treatment model that we use has been shown to be
22 particularly effective in reducing substance abuse
23 relapse and recidivism among criminal justice
24 clients. I have direct oversight responsibility for
25 day-to-day operations of these programs.

1 I'm here to speak to you today about the
2 important contribution that community-based substance
3 abuse treatment providers are making in the area of
4 public safety, and the need for strong -- a strong
5 commitment from the State to support continuation and
6 expansion of these efforts.

7 And, I'll just skip through, in the
8 interests of time, some of the data and background
9 data that I noted, from reading the report, that you
10 guys are very familiar with.

11 NYTC, Inc. operates a program called
12 "Stay'n Out," which is acknowledged as having been
13 the model for the New York State CASAT and ASAT
14 programs, which now offer substance abuse treatment
15 services to more than 5,000 inmates every single
16 year.

17 Stay'n Out has also been widely emulated
18 in other correctional settings, both nationally and
19 internationally. And since its inception in 1977,
20 the program has successfully treated thousands of men
21 and women, helping them lead productive lives free of
22 involvement with drugs and crime.

23 Now, Stay'n Out continues to serve inmates
24 that are presently incarcerated in the State's
25 correctional system, operating a program for men at

1 the Arthur Kill Correctional Facility in Staten
2 Island, and operating a program for women at the
3 Bayview Correctional Facility in Manhattan. And, the
4 program operates under a direct contract with New
5 York State Corrections. Both Stay'n Out programs are
6 licensed and monitored by the New York State Office
7 of Alcoholism and Substance Abuse Services.

8 In your preliminary report, on Page 28,
9 you referenced the licensing of the treatment
10 programs inside of DOCS, and we support absolutely
11 wholeheartedly that there be a requirement that all
12 DOCS treatment be licensed by OASAS, and that all
13 counselors working within DOCS settings be
14 credentialed as alcoholism and substance abuse
15 counselors by OASAS. I mention that in particular
16 because we are the only private, not-for-profit
17 organization that operates a program inside of
18 Corrections that is licensed and monitored by OASAS,
19 and I wanted to be sure that the Commission was aware
20 that such a program does exist.

21 In addition, we operate -- NYTC operates
22 something called the "Serendipity Program," which is
23 a network of community-based residential treatment
24 centers in Bedford-Stuyvesant, Brooklyn, where we
25 have a 50-bed program for men, and a 40-bed program

1 for women that is licensed and funded by OASAS.

2 NYTC also operates outpatient treatment
3 services for individuals who are on probation, and
4 who are at risk of violation. And those two programs
5 -- one in Brooklyn, one in Queens -- service more
6 than 250 clients.

7 The effectiveness of Stay'n Out in
8 reducing substance abuse relapse and criminal
9 recidivism has been well documented. An independent
10 evaluation of the Stay'n Out Program, done by the
11 National Development and Research Institute, found
12 that after release to parole, 27 percent of Stay'n
13 Out graduates were re-arrested, compared to 41
14 percent for inmates who had received no in-prison
15 treatment.

16 A subsequent evaluation by New York State
17 DOCS confirmed the program's effectiveness, and
18 particularly impressive was the continued success of
19 female participants from the Bayview Correctional
20 Facility, and it found that almost eight out of ten
21 of them who had successfully completed the program
22 were arrest free after five years.

23 So, it is a unique model that our
24 organization offers, providing substance abuse
25 treatment while an inmate is incarcerated, and then

1 also continued follow up, residential treatment once
2 an inmate leaves the state correctional system and
3 goes into the community. We believe that that's the
4 necessary infrastructure, and that combination is
5 sort of a one/two punch that needs to be replicated.

6 Moving down some in my written comments,
7 and getting to some recommendations, we would
8 recommend that you would consider expansion of
9 programs such as Stay'n Out, that provide these
10 coordinated services; that you would mandate
11 coordination of benefits such as Medicaid, SSI, et
12 cetera, prior to release; that you would establish a
13 system through the use of community-based substance
14 abuse treatment providers, to evaluate and develop
15 continuing care plans for all substance-abusing
16 inmates prior to them being released.

17 We would also recommend that you dedicate
18 one or more correctional facilities specifically for
19 this purpose. And, while we're encouraged and are
20 aware of the new project at the Orleans Correctional
21 Facility, we'd hope that there are plans -- continued
22 plans for a similar program in New York City and,
23 additionally, a program that would also service
24 female inmates, and inclusion of not-for-profit
25 community-based providers, such as Stay'n Out and

1 others, in that process.

2 We would recommend that you develop a
3 broad range of services, in addition to substance
4 abuse treatment, that would include all modalities of
5 treatment. I know that in your document, you
6 referenced that many of the graduates from Willard do
7 continue in outpatient treatment, while a very few of
8 them actually continue in residential treatment. And
9 our experience has been, and our research has shown,
10 that in-prison treatment, followed by community-based
11 residential treatment, followed by outpatient
12 treatment, that that's a continuum of care which
13 would currently be impossible, given the resources of
14 the current residential system. We know that there
15 is about 3,000-plus graduates or completers of the
16 Willard program every year, and there's about 9,000
17 residential substance abuse treatment slots in the
18 state. So simply, the math would not permit such a
19 large influx of people, which is I'm assuming why
20 they mostly use outpatient treatment.

21 We would encourage expansion of the
22 State's Re-entry Planning Council to include
23 community-based providers. We would encourage
24 expansion of alternatives to incarceration and drug
25 and alcohol treatment programs. We would recommend

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CURE-New York.

TESTIMONY OF AMY OLIVERAS, CO-PRESIDENT,

CURE-NY

MS. OLIVERAS: Yes, good afternoon.

Thank you, very much, for having us here today. I
applaud you all for being so actively involved in
this Commission.

CURE is an organization that's committed
to reducing crime and recidivism by reforming the
criminal justice system, as well as a reform of the
individuals. We're just one of 30 organizations that
belong to a newly-formed Coalition for Rehabilitation
and Re-entry. Our recommendations for parole and the
eventual discharge from supervision are representing,
in part, the correlating platform issue of this
coalition.

And, I'm going to deviate from my written
statements, which have been submitted, along with 20
pages of supporting research results, and just
address a question that you asked Chairman Dennison
earlier, when you asked if there wasn't a point where
supervision would be reduced for a person on parole
in New York State that has a life sentence.

I just spoke to a man on the phone last
week. His name is Jay Kobleen [phonetic]. I'm sure

1 he wouldn't mind me using his name. He made work
2 release, as a person sentenced to 25 to life for a
3 violent felony offense. He was released -- he made
4 work release just before it was ended by Governor
5 Pataki. He just squeaked out the door. He was on
6 work release for nine years before he was granted
7 parole. He's since been on parole seven years. This
8 is a man whose Parole Officer has changed several
9 times. He has a nine o'clock curfew, is violation
10 free, has never been late for a curfew, has never
11 tested positive for any substance. He had no history
12 of substance abuse, and is still tested monthly. I
13 don't know how much those tests cost. And, they're
14 administered regularly even to people without any
15 history of drug use or drug abuse.

16 He has waited several times for hours in
17 the parole office, to pick up a travel pass for
18 travel within New York State, to see the birth of his
19 daughters -- his granddaughters. They were being
20 Caesarian section, and he was asked to participate.
21 He was told to come pick up a travel pass. You know,
22 an appointment was made, and he was told to pick up a
23 travel pass, and the Parole Officer never showed up.
24 The Senior Parole Officer refused to give it to him.

25 So, this has been going on for how many

1 years now? So, I just wanted to use that to give a
2 face or a little story behind what people on long-
3 time parole are going through.

4 I'm here to talk about parole supervision,
5 but primarily the ability to be discharged from it.
6 In addition to my own personal belief, there's an
7 enormous amount of current evidence-based data to
8 justify returning to the pre-1998 version of
9 Executive Law 259-j, and allowing the Parole
10 Commissioners the discretion to grant discharge from
11 parole to all those small percent of people on
12 parole.

13 A great majority of the statements I am
14 making are from research results that were just
15 published in August of this year. I'm including
16 supporting articles and sources.

17 The research and science behind parole
18 reform found that recidivism is very common among
19 recently released offenders. A Bureau of Justice
20 Statistics study found that just over one-half of all
21 released prisoners in a national sample will return
22 to prison within three years.

23 Now, I'm going to deviate, also, from
24 using the word "prisoner." That is term used in this
25 research. I prefer to continue to refer to these

1 people as "people," so these are people in prison to
2 me.

3 Twenty-six percent were returned to prison
4 solely for a technical violation. Recidivism studies
5 consistently show that people in prison are going to
6 return to crime and they'll do so quickly -- if
7 they're going to return to crime, they'll do so
8 quickly. If they can remain completely arrest free
9 for the first year after release, they have low
10 probabilities of recidivism thereafter.

11 Successful parole policies must balance
12 the carrot and the stick. One of the core missions
13 of parole is behavioral change. In recent years,
14 parole supervision shifted from a
15 casework/rehabilitation model to a
16 surveillance/deterrence model.

17 Today's parole contract clearly spells out
18 the negative consequences that will be applied if
19 someone on parole fails to comply with a specified
20 condition. This model is based almost entirely on
21 disincentives, rather than incentives; and, as such,
22 fails to reflect scientific principles of how
23 contracts can best be structured to foster long-term
24 behavioral change. A balance of rewards and
25 sanctions is necessary to foster pro-social behavior

1 and treatment participations.

2 And all of these things are showing how,
3 after a certain amount of time, it's done. After
4 three years, five years, whatever the term is,
5 lifetime parole is completely unnecessary.

6 Successful parole policies should build in
7 motivational incentives. Current parole contracts
8 fail to build in sufficient motivational incentives
9 and positive rewards to encourage parolees, people on
10 parole to stay involved in treatment programs.
11 Research shows that offenders should be involved in
12 programs for a minimum of three to six months to
13 achieve measurable positive outcomes. Combining both
14 of these elements -- behavioral contracting and
15 accelerated parole discharge -- produces tangible
16 benefits for public safety, recidivism reduction, and
17 resource allocation.

18 And, in response to someone else's
19 question, improving public safety by allowing people
20 to be released off parole allows services to be
21 front-end loaded. People that are at high risk for
22 re-offending, which is not the people that are
23 convicted of the most serious crimes, people with a
24 high risk of re-offending could be -- the money could
25 be redirected, or resources redirected so that they

1 could be given treatment, more intense supervision,
2 their family brought into the supervision. And, that
3 could be accomplished by decreasing this pool of
4 people on parole.

5 Incentives can effect lasting behavioral
6 changes. The parole system today is focused almost
7 entirely on disincentives and negative sanctions;
8 whereas incentives and positive reinforcements are
9 required for lasting change. Research shows that
10 punishment-only systems tend to cause people to
11 change their behavior briefly, or only long enough to
12 avoid further punishment, but seldom do such changes
13 continue once the threat of the sanction is lifted.

14 Negative interventions, inconsistently
15 applied, can encourage recidivism. Inconsistent
16 application of negative interventions can actually
17 increase the risk of re-offending. On the other
18 hand, the procedural justice literature suggests that
19 if the offender believes that he or she is being
20 treated fairly, they're more likely to comply with
21 the law or program requirements.

22 The prospect of getting off parole can
23 motivate lasting positive change. People on parole
24 have consistently said that one of the strongest
25 motivators to enroll in rehabilitation programs and

1 keep attending would be the prospect of getting off
2 parole supervision. Today, most are successfully
3 discharged from parole if they adhere to their parole
4 conditions, mostly remain crime free for the length
5 of that pre-assigned time period.

6 The recidivism studies have consistently
7 shown that those who will return to crime will do so
8 quickly, so it's important that parole supervision is
9 focused on those at high risk to re-offend, thus
10 ensuring public safety. Resources should not be
11 wasted on those that have demonstrated that they
12 don't need supervision and are least likely to re-
13 offend. Instead, services should be front-end loaded
14 to address the needs of those most likely to violate
15 the conditions of their parole or commit new crimes.

16 I'm going to get right to my
17 recommendation. You gave me three minutes. I'm
18 going to wrap up.

19 I recommend restoring the discretion to
20 the Board of Parole, the discretion afforded them for
21 over 70 years, to discharge any person from parole
22 that serves three consecutive years of unrevoked
23 parole and whose discharge would not conflict with
24 the best interests of society, and who has
25 demonstrated a good faith effort to comply with any

1 order of restitution.

2 COMMISSIONER O'DONNELL: Thank you, very
3 much.

4 MR. BERGAMO: Can I ask a question?

5 COMMISSIONER O'DONNELL: Yes.

6 MR. BERGAMO: Thank you. Thank you, very
7 much. I personally agree with most of what you're
8 saying.

9 Is there a model state that has this?

10 MS. OLIVERAS: Yes. California.
11 California is now in -- they're supposed to institute
12 it this month. I have all the research.

13 MR. BERGAMO: California? Thank you.

14 COMMISSIONER O'DONNELL: Okay. Thank
15 you, very much.

16 Our next speaker is Rhonda Ferdinand.
17 Rhonda, are you here? I don't know if she's here
18 right now.

19 Okay. A. Kampner Rudin? Okay.

20 Erika Wood? I think we might be a little
21 ahead of schedule.

22 Susan From? Do you mind coming out of
23 order here? Okay. And, Susan is --

24 MS. FROM: It's Sarah, actually.

25 COMMISSIONER O'DONNELL: Sarah -- I'm

1 sorry -- is from the Women's Prison Association.

2 TESTIMONY OF SARAH FROM, DIRECTOR OF PUBLIC POLICY &

3 COMMUNICATIONS, WOMEN'S PRISON ASSOCIATION

4 MS. FROM: Thank you, Chairperson

5 O'Donnell, and members of the Commission, for the

6 opportunity to testify before you today. My name is

7 Sarah From, and I'm the Director of Public Policy and

8 Communications at the Women's Prison Association here

9 in New York City.

10 WPA is a direct service and advocacy

11 organization that works to create opportunities for

12 change in the lives of women at all stages of

13 criminal justice involvement. Last year we helped

14 over 3,500 women in New York obtain housing,

15 employment and healthcare, reunify with their

16 families, connect with their communities, and comply

17 with their criminal justice mandates.

18 We also work nationally to reform the

19 public policies and systems that impact women's lives

20 on an everyday basis, and we've been doing this work

21 for over 160 years.

22 While the word "prison" has always been a

23 part of our name, most of WPA's work actually occurs

24 in the communities in which women live, the

25 environments in which they must succeed if they are

1 to avoid criminal justice involvement. WPA was
2 privileged to participate in the work of the
3 Commission. Our Executive Director, Ann Jacobs,
4 served as a member of the Subcommittee on Supervision
5 in the Community.

6 As many speakers throughout the course of
7 this Commission have underscored, this is a unique
8 and important opportunity for New York to remedy some
9 of the most egregious inconsistencies and injustices
10 in our criminal justice system. What is done in New
11 York will be noticed and considered around the
12 country. There is much to comment on in the
13 preliminary report, and I have heard this morning my
14 colleagues hit on a lot of the major points. So
15 today, I would like to speak with you specifically
16 about how the recommendations would impact women,
17 their families, and communities.

18 And, the first point I want to make is a
19 simple one; and that is that gender makes a
20 difference. The way women enter the criminal justice
21 system is different. The way they experience the
22 criminal justice system is different. And, what they
23 need to lead law abiding, self-sufficient lives in
24 the community can be different.

25 At this critical juncture when we are

1 reforming our systems and practices, if we fail to
2 acknowledge and plan for these gender differences,
3 the outcome will be insufficient in dealing with the
4 unique needs of women.

5 No doubt, the members of the Commission
6 are well aware that women involved in the criminal
7 justice system face particular challenges to
8 succeeding in the community. Women in the system
9 face higher rates of childhood and adult trauma,
10 mental illness, and substance abuse than their male
11 counterparts. And, in New York, women in prison are
12 more than twice as likely to be HIV-positive than men
13 in prison.

14 Overwhelmingly mothers, criminal justice
15 involved women are often the primary caretakers of
16 children. Most have low levels of formal education,
17 spotty or non-existent work histories, and housing
18 situations that are tenuous, at best. Women in the
19 system tend to be older than men. The average age in
20 prison skews toward the mid-thirties. As for men in
21 the system, the women in the criminal justice system
22 are disproportionately of color.

23 I urge the Commission, if it has not
24 already done so, to avail itself of the research that
25 has been published documenting what it takes for

1 systems to be gender responsive. There is an
2 emerging body of literature on the intersection
3 between evidence-based practice, which gets a lot of
4 emphasis in the preliminary report, and gender
5 responsive theory. It suggests that there can be
6 considerable benefit to doing work in a way that is
7 both evidence based and gender responsive.

8 What we know is that systems that are
9 designed and built for men are often insufficient at
10 meeting the needs of women. We see this both in the
11 research on what treatment modalities work for women,
12 and the stories our clients tell us every day about
13 feeling unable to talk about past trauma in co-ed
14 recovery groups.

15 Being gender responsive does not mean
16 developing a separate system of sentencing,
17 imprisonment, and re-entry for women. Rather, it
18 means drawing upon what evidence tells us works with
19 women at every stage of the criminal justice process,
20 and ensuring that our practices are reflective of
21 these principles.

22 Risk and needs assessment tools should be
23 gender validated. Institutional case management and
24 programming offered to women inside correctional
25 facilities should reflect what the research shows

1 works for women. Services provided in the community
2 -- including case management, substance abuse
3 treatment, and mental health treatment -- should be
4 gender responsive. The National Institute of
5 Corrections provides a wealth of information and
6 assistance on how this can be done. They are working
7 with California to make its classification tool
8 gender responsive, and with departments of probation
9 in Connecticut and Utah to implement gender
10 responsive case management models for working with
11 women. Now is the time for New York to consider a
12 similar approach.

13 Second, I would like to join the chorus of
14 practitioners, policy analysts, researchers,
15 advocates, directly affected people, legal
16 professionals, and family members who call upon this
17 Commission to remedy our state's Rockefeller-era
18 sentencing laws, in particular the so-called
19 "Rockefeller Drug Laws" and the second felony
20 offender laws.

21 Women are harmed in particular ways by
22 mandatory minimums and lack of judicial discretion.
23 Rarely the top players in drug crimes, women often
24 have little information to trade with the prosecution
25 toward a reduction in sentence during plea negotiations.

1 With the prosecutor holding the power to reduce the
2 charges and thus determine the sentence she will
3 receive, a woman can end up serving significant time
4 for a relatively minor involvement in a crime.

5 The resulting prison sentence does little
6 to address the underlying issues -- usually trauma,
7 poverty, and addiction -- that led to criminal
8 justice involvement in the first place. Once
9 released, women face a daunting array of barriers,
10 both legal and social, to creating fruitful and law-
11 abiding lives in the community. Meanwhile, the
12 underlying issues that brought her into contact with
13 the system often remain still unaddressed.

14 Our first response to addiction and
15 low-level drug crimes should not be incarceration.
16 New York should follow the lead set by states like
17 California, Arizona, and Kansas in offering treatment
18 instead of incarceration as a response to those with
19 low-level drug offenses. These interventions should
20 be community-based and, as I said before, gender
21 responsive.

22 New York has a vibrant community of
23 alternatives to incarceration, and the research shows
24 that they work. To truly bring treatment and
25 alternatives to incarceration to scale will require a

1 significant investment of resources on the part of
2 the state. As Michael Jacobson pointed out when he
3 testified before this Commission over the summer,
4 public opinion has shifted such that there is the
5 political will to make this investment, and Anita
6 Marton just spoke about this earlier today.

7 The Commission can play an important role
8 in recommending that now is the time for a
9 significant reinvestment of resources back into our
10 communities.

11 In conclusion, New York has taken a bold
12 step in convening this Commission to undertake the
13 first comprehensive look at the state's sentencing
14 laws in forty years. I and many others hope that the
15 Commission will be equally bold in its reforms, and
16 recommend significant changes to enhance public
17 safety, justice, and self-sufficiency for all New
18 Yorkers.

19 COMMISSIONER O'DONNELL: Thank you, very
20 much.

21 MS. FROM: Thank you.

22 COMMISSIONER O'DONNELL: We're now going
23 to take a break, until one o'clock, because we're a
24 little bit ahead of schedule. We've had two speakers
25 cancel.

1 I appreciate everyone sticking to their
2 schedule, but we'll be back here in about ten or
3 twelve minutes, and I thank you all for attending.

4 (Whereupon, a brief recess was taken.)

5 COMMISSIONER O'DONNELL: We should resume
6 in hearing from our speakers. So, I'm looking at
7 kind of who we missed here.

8 Rhonda Ferdinand? Is she here?

9 A. Kampner Rudin?

10 MS. RUDIN: Yes.

11 COMMISSIONER O'DONNELL: Okay. Would you
12 mind being our first afternoon speaker?

13 MS. RUDIN: I will.

14 COMMISSIONER O'DONNELL: And, after that,
15 Erika Wood?

16 MS. WOOD: Yes.

17 COMMISSIONER O'DONNELL: If you're here,
18 you can come up and take the other seat. That would
19 be great.

20 MS. RUDIN: Can I submit the copies of
21 the testimony?

22 COMMISSIONER O'DONNELL: Downstairs,
23 she's collecting all the testimony, once you came in,
24 but somebody here could take it, too.

25 MS. RUDIN: Okay.

1 which they are connected.

2 Family Justice's unique organizational
3 focus, therefore, is not limited to the consequences
4 for individuals convicted of a crime, but on entire
5 families that have loved ones involved in the
6 criminal justice system. By and large, criminal
7 justice issues are public health issues, and by
8 definition, serious multi-generational health
9 concerns take a dramatic toll on families, especially
10 those living in poverty.

11 We must recognize and address the
12 collateral consequences for families. Numbers alone
13 cannot capture the full impact on families and
14 neighborhoods when a loved one and community member
15 cycles in and out of the criminal justice system.
16 More than 2.4 million American children have at least
17 one incarcerated parent; and more than 5 million
18 children have a parent on probation or parole.

19 Many children deprived of a parent suffer
20 from trauma, anxiety, guilt, shame, and fear. They
21 frequently manifest sadness, withdrawal, low
22 self-esteem, aggressive behavior, truancy, a decline
23 in school performance, and use of alcohol or other
24 drugs, which then triggers the cycle to start anew.
25 And, when people are incarcerated, they may be unable

1 to fulfill their roles as parents, caregivers,
2 providers, and companions.

3 Incarceration strains families and social
4 networks in myriad ways. Men, women, and young
5 people sentenced to a state facility are often
6 hundreds of miles away from family, making visitation
7 prohibitively expensive and logistically difficult
8 and, at times, creating estrangement. Those burdens
9 punish entire families, particularly families that
10 live in poverty.

11 Not only do they lose a source of income,
12 but incarceration often forces a family to spend
13 additional funds to visit or even maintain telephone
14 contact with a loved one. And, the family left
15 behind must make many sacrifices to try to compensate
16 for forced separation.

17 We need to train judges and prosecutors.
18 Family involvement is an indicator of parole and
19 probation success, and should inform sentencing
20 decisions. New York's District Attorneys and judges
21 sitting in criminal courts, drug courts, mental
22 health courts, and other specialized judicial
23 settings will be better equipped to consider and draw
24 on a defendant's social network if they receive
25 training on how to tap family as a resource.

1 By engaging members of the family, broadly
2 defined, from the moment an individual enters the
3 criminal justice system, he or she can receive
4 support and a positive form of coercion from a loved
5 one. This can inspire motivation and underscore a
6 judge or counsel's recommendation, leading to
7 improved post-sentencing outcomes.

8 Short-term improved outcomes will
9 translate into long-term preventive measures --
10 preventive impacts on successive generations whose
11 family members, no longer separated by incarceration,
12 will have a real chance of overcoming the potentially
13 debilitating effects of involvement in the criminal
14 justice system. Ideally, District Attorneys and
15 judges will stop seeing so many members of subsequent
16 generations cycling in and out of the criminal
17 justice system.

18 New York State should expand and rely on
19 ATI programs. Drug treatment and other ATI programs
20 have far-reaching benefits for individuals and
21 families. These programs provide treatment for
22 conditions such as addiction and mental illness,
23 which often result in criminal justice involvement.
24 Fortunately, the programs are often located closer to
25 home than correctional institutions are, thus

1 eliminating the prolonged burdensome separation a
2 prison sentence entails. Many ATI substance abuse
3 programs that engage the family are more effective,
4 and result in measurably better outcomes than those
5 that do not recognize family members as a resource
6 and, therefore, do not involve them.

7 The State should encourage and facilitate
8 family contact during incarceration. Longer
9 sentences mean more time is spent away from the
10 beneficial influence of loved ones. Research on the
11 relationships of incarcerated men reveals that those
12 who maintain strong family ties while in jail or
13 prison demonstrate higher levels of post-release
14 success than those who do not maintain family ties.
15 In another study, researchers found that family
16 relationships had a significant influence in
17 preventing relapse among parolees who had a history
18 of harmful involvement with alcohol or drugs.

19 New York State should increase its use of
20 programs within facilities to foster literacy,
21 parenting, and job training skills, and to treat
22 addiction. Such programs can serve a dual purpose.
23 For instance, reading and writing exercises can
24 become opportunities for reaching out to family and
25 friends, and for analyzing and exploring

1 relationships. Making literacy programs practical
2 and personal has obvious benefits and comes at
3 relatively little cost where such programs already
4 exist.

5 Other ways to support connections
6 including offering phone cards, and improving
7 visitation conditions. Though these strategies may
8 require additional expenditures, the amount of money
9 saved through more effective prevention and
10 intervention is unquestionably worth the cost.

11 An example of a state that's putting these
12 ideas into practice is Washington. Its Department of
13 Corrections coordinates parent-teacher conferences
14 for prisoners and their parenting partners. And
15 there, care is taken to protect the incarcerated
16 parent's status where concerns exist about a teacher
17 stigmatizing the child.

18 We must think beyond risk and need.
19 Increasingly, states are examining their corrections
20 risk assessment tools and case management systems,
21 and considering how families can be a resource for
22 their loved ones while they are incarcerated and as
23 they prepare for re-entry from prison. A few states
24 are demonstrating bold leadership and gaining
25 national attention by adopting the family-based

1 strength-based family-focused approach.

2 Traditionally, assessment tools have
3 rarely asked about the strengths of the individual's
4 themselves, the social supports they will rely on
5 during incarceration, or the positive attributes and
6 abilities of people in their support networks. Once
7 these resources are identified and discussed, staff
8 can draw on them in case management and re-entry
9 planning.

10 Family Justice has developed a tool, along
11 with the National Institute of Corrections,
12 Corrections Departments in Massachusetts, Michigan,
13 Ohio, and Oklahoma. We've called it our "relational
14 inquiry tool." This tool, created and tested with
15 corrections counselors and case managers consists of
16 carefully crafted questions designed to gather
17 information and build support between staff and
18 individuals involved in criminal justice systems.
19 The tool helps identify the strengths in peoples'
20 social networks and family relationships,
21 particularly as they prepare to return home from
22 prison or jail.

23 More than 80 percent of incarcerated and
24 formerly incarcerated people who participated in
25 testing this tool stated that it would be useful in

1 planning for re-entry from prison. And nearly
2 80 percent of the case managers also said that the
3 tool would help in re-entry planning. Seventy-five
4 percent of the staff reported that the tool increased
5 their understanding of the incarcerated men and
6 women.

7 We must create opportunities for family
8 members to support one another before release.
9 Family members play a vital role in the re-entry
10 process. Research shows that parole outcomes improve
11 when individuals have strong family support.

12 In an Urban Institute Study in Chicago,
13 people interviewed four to eight months after their
14 release cited family as the most important factor in
15 helping them stay out of prison. A study by the Vera
16 Institute of Justice found that for individuals
17 recently released from jail or prison, supportive
18 families were an indicator of success across the
19 board, correlating with lower drug use, greater
20 likelihood of finding jobs, and less criminal
21 activity.

22 To summarize, as New York State reforms
23 its sentencing laws, we must ensure greater
24 opportunity for family involvement. It is critical
25 that we tap the strengths of social networks during

1 incarceration, through alternatives to incarceration,
2 so that people will stop cycling in and out of the
3 criminal justice system. This will help improve the
4 health and well being of families, and the safety of
5 our neighborhoods.

6 Bold leadership will help New York's
7 families now and for generations to come, but only if
8 we act now.

9 Thank you.

10 COMMISSIONER O'DONNELL: Thank you.

11 MR. BERGAMO: Thank you.

12 COMMISSIONER O'DONNELL: A quick -- quick
13 question. Has Family Justice worked at all with
14 Northpointe and COMPAS, or with the ESE instrument?
15 Because I think both do have a family component, but
16 I don't know if they benefitted from your project or
17 your research.

18 MS. RUDIN: We've only worked with them
19 through working with the Departments of Parole and
20 Probation, but not independently.

21 COMMISSIONER O'DONNELL: Not directly, I
22 see then.

23 MS. RUDIN: No.

24 COMMISSIONER FISCHER: I have -- I have a
25 comment. I just -- you called in Michigan as one of

1 your examples.

2 MS. RUDIN: Um hmm.

3 COMMISSIONER FISCHER: Michigan does not
4 allow family reunion programs at all, flat out, by
5 statute, and yet we do a lot. I just find it a
6 little inconsistent that you're pointing to a state
7 that frankly has not been very cooperative with
8 families, but we are, and I think that's a little
9 unfair.

10 MS. RUDIN: Well, Michigan has -- has
11 started to work with us, with this particular tool
12 that I talked about. And, I think that there's some
13 interest in the State of Michigan, in its Department
14 of Corrections. And, I'm actually not familiar with
15 its statutes.

16 But, I know that the Department of
17 Corrections is interested there in -- in identifying
18 strengths in the family, and I would hope that it is
19 in the direction of doing some family -- family
20 reunion work during incarceration.

21 COMMISSIONER FISCHER: Okay.

22 COMMISSIONER O'DONNELL: Thank you.

23 MS. RUDIN: Thank you.

24 COMMISSIONER O'DONNELL: We appreciate
25 it.

1 Okay, so next we have Erika Wood.

2 MS. WOOD: Hi.

3 COMMISSIONER O'DONNELL: And Erika is
4 from the Brennan Center for Justice, and talking
5 about restoring voting rights, among other things.

6 MS. WOOD: That's right.

7 COMMISSIONER O'DONNELL: Welcome.

8 TESTIMONY OF ERIKA L. WOOD, ESQ., DEPUTY DIRECTOR,
9 DEMOCRACY PROGRAM, BRENNAN CENTER FOR JUSTICE

10 MS. WOOD: Thank you, very much. Good
11 afternoon. As Commissioner O'Donnell said, my name
12 is Erika Wood. I am the Deputy Director of the
13 Democracy Program at the Brennan Center for Justice
14 at NYU School of Law. I would like to thank the New
15 York State Commission on Sentencing Reform and the
16 New York State Division of Criminal Justice Services
17 for holding this hearing and giving me the
18 opportunity to testify.

19 I commend the Commission for its important
20 policy recommendations. They are important steps
21 towards rectifying injustices that continue to
22 permeate our criminal justice system.

23 The Brennan Center for Justice is a
24 non-partisan public policy and law institute that
25 focuses on fundamental issues of democracy and

1 justice. As part of our mission to advance voting
2 rights for all Americans, we lead a national campaign
3 to restore the vote to people with criminal
4 convictions.

5 Today, my testimony will focus on the
6 Commission's recommendation to restore voting rights
7 to people on parole.

8 The right to vote forms the core of
9 American democracy. Our history is marked by
10 successful struggles to expand the franchise to
11 include those previously barred from the electorate
12 because of race, class, or gender. As a result, our
13 democracy is richer, more diverse, and more
14 representative of the people than ever before. There
15 remains, however, one significant blanket barrier to
16 the vote: 5.3 million American citizens are not
17 allowed to vote in this country because of a felony
18 conviction. As many as four million of these people
19 live, work, and raise families in our communities.
20 In New York, over 122,000 people are barred from
21 voting, nearly 56,000 of whom are people on parole
22 living in the community.

23 Felony disenfranchisement laws vary by
24 state, ranging from Virginia and Kentucky, where all
25 felonies result in permanent disenfranchisement, to

1 Vermont and Maine, where voting rights are never
2 suspended. The rest of the country falls somewhere
3 in between, forming a patchwork of different laws
4 across the country. The current law in New York
5 disenfranchises people in prison and on parole, while
6 people on probation are allowed to vote. Thirteen
7 states and the District of Columbia already allow
8 people on parole to vote.

9 Felony disenfranchisement laws in the
10 United States are deeply rooted in the troubled
11 history of American race relations. In the late
12 1800s, these laws spread as part of a larger backlash
13 against the adoption of the reconstruction amendments
14 which ended slavery, granted equal citizenship, and
15 freed slaves, and prohibited racial discrimination in
16 voting. Felony disenfranchisement laws were part of
17 an organized effort to maintain white control over
18 access to the polls.

19 At the same time that states were enacting
20 these provisions, they expanded their criminal codes
21 to punish offenses that they believed freedmen were
22 most likely to commit. Targeted criminalization and
23 felony disenfranchisement combined to produce the
24 legal loss of voting rights, usually for life, which
25 effectively suppressed the political power of

1 African/Americans for decades.

2 The history of New York's felony
3 disenfranchisement law is consistent with this
4 national narrative. The current law is a relic of a
5 shameful and racist past. In New York, felony
6 disenfranchisement provisions were created in tandem
7 with other provisions, such as literacy tests and
8 property requirements, that sought to exclude
9 African/Americans from participating in the political
10 process. At the second Constitutional Convention in
11 1821, delegates met specifically to address black
12 suffrage. Based on their belief in blacks' unfitness
13 for democratic participation, the delegates designed
14 new voting requirements aimed at stripping
15 African/American citizens of their right to vote.

16 The result was Article II of the New York
17 State Constitution, which contained new
18 discriminatory suffrage restrictions, including
19 unusually high property requirements for
20 African/Americans, as well as the felony
21 disenfranchisement provisions. The felony
22 disenfranchisement provision of Article II remains
23 intact today.

24 The disproportionate racial impact of
25 disenfranchising laws also continues to this day.

1 Nationwide, 13 percent of African/American men have
2 lost the right to vote, a rate that is seven times
3 the national average. Given current rates of
4 incarceration, three in ten of the next generation of
5 African/American men across our country can expect to
6 lose the right to vote at some point in their
7 lifetime.

8 The disproportionate rates of
9 incarceration have caused New York's disenfranchised
10 population to be overwhelmingly composed of people of
11 color. Nearly 87 percent of those disenfranchised
12 under New York's law are African/American or Latino.
13 In contrast, probationers in New York, who never lose
14 the right to vote, are more than 51 percent white.

15 Moreover, because 80 percent of New York's
16 prison population hails from a handful of communities
17 here in New York City, the political strength of
18 certain urban communities is decimated by current
19 disenfranchising policies. Not only do these
20 communities lose voting strength when residents are
21 incarcerated upstate, but the political strength of
22 the entire community continues to be crippled even
23 after people return home from prison, because
24 community members who are on parole are not eligible
25 to vote.

1 The Commission's report recognizes that
2 effective re-entry practices reduce recidivism and
3 protect public safety. The Commission concludes that
4 fostering civic participation is one way to
5 facilitate the re-entry process. And, that restoring
6 the right to vote to people on parole is fundamental
7 to that participation.

8 The Commission's recommendation is
9 consistent with a growing belief among law
10 enforcement leaders nationally. Officials with deep
11 experience in law enforcement have begun speaking out
12 against disenfranchisement, not only because they
13 believe in democracy, but also because they are
14 committed to protecting our public safety. They
15 recognize that brining people into the political
16 process makes them stakeholders, which helps steer
17 former offenders away from future crimes. While
18 clearly it is difficult to prove that restoration of
19 the franchise directly reduces crime rates, allowing
20 voting after release from incarceration affirms the
21 returning community member's value to the polity,
22 encourages participation in civic life, and thus
23 helps to rebuild the ties to fellow citizens that
24 motivate law abiding behavior.

25 I call your attention to a resolution

1 passed by the American Probation and Parole
2 Association, calling for restoration of voting rights
3 to people on parole, finding that -- quote --
4 "disenfranchisement laws work against the successful
5 re-entry of offenders." A copy of this resolution is
6 attached to my testimony, and it's also available on
7 the APPA Web site.

8 Laws that continue to disenfranchise
9 people after release from prison often lead to
10 widespread confusion among both elections officials
11 and the public. This is certainly the case in New
12 York. Thousands of eligible New Yorkers with felony
13 convictions have been illegally denied the right to
14 register and vote because of confusion and
15 non-compliance on the part of elections officials.

16 Studies in 2000 and -- 2003 and 2005
17 showed that county election officials are unclear
18 about the law, leading to the potential
19 disenfranchisement of eligible voters. A 2006
20 Brennan Center report revealed that one-third of all
21 counties in our state refuse to register people on
22 probation, even though they never lose the right to
23 vote, and another third illegally required
24 individuals to show documentation or other proof of
25 their eligibility status.

1 Because of this persistent misinformation,
2 many New Yorkers with felony convictions do not know
3 whether they are eligible to vote. In 2005,
4 researchers found that about half of New Yorkers
5 surveyed incorrectly thought they were ineligible to
6 vote while on probation, and about 30 percent
7 believed that they lost the right to vote if they had
8 only been arrested, but not convicted. Nearly 30
9 percent of people with felony convictions in New York
10 thought that they would never be eligible to vote
11 again. The widespread confusion among impacted
12 individuals and state officials suggests that there
13 is a need for a simplified voting system with easier
14 eligibility rules and proper notification procedures.

15 Nationwide, governors, legislators, and
16 voters have taken bold steps towards restoring the
17 right to vote to people with felony convictions.
18 Some recent important reforms include:

19 On July 4, 2005, Iowa Governor Tom Vilsack
20 signed an Executive Order restoring voting rights to
21 80,000 Iowa citizens.

22 In Rhode Island, on election day in 2006,
23 voters were the first in the country to approve a
24 state constitutional amendment authorizing automatic
25 restoration of voting rights to people as soon as

1 they're released from prison.

2 In April of this year, Florida Governor
3 Charlie Crist issued new clemency rules, ending that
4 state's policy of permanent disenfranchisement.

5 And also in April, Maryland Governor
6 Martin O'Malley signed a law streamlining his state's
7 complicated restoration system.

8 Our research indicates that Governor
9 Spitzer has the authority to restore voting rights to
10 people on parole through his broad clemency powers
11 under Article 4, Section 4, of the New York
12 Constitution. A brief memo outlining our analysis is
13 attached to my testimony, and is also available on
14 our Web site.

15 Restoring voting rights to people on
16 parole will enhance New York's democratic system,
17 advance civil rights, promote broad public safety and
18 future crime prevention, ease administrative burden,
19 and establish a fair voting process that includes all
20 citizens who have served their prison time. We
21 encourage the Governor to use his broad powers to
22 take this important step for democracy.

23 Thank you, and I welcome your questions.

24 COMMISSIONER O'DONNELL: Thank you. So,
25 you submitted your testimony to us.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. WOOD: Yes, you have it.

COMMISSIONER O'DONNELL: Thank you.

MS. WOOD: Thank you, very much.

COMMISSIONER O'DONNELL: We appreciate
it.

MR. BERGAMO: Thank you.

COMMISSIONER O'DONNELL: Rhonda
Ferdinand? Is she here? Okay.

And, Rhonda is an A.D.A. with the Special
Narcotics Office, to speak to us about the DTAP
Program.

And, after Ms. Ferdinand, Cheri
O'Donoghue? Would you just take this seat, up here,
Ms. O'Donoghue?

TESTIMONY OF RHONDA FERDINAND, ESQ.,
ASSISTANT DISTRICT ATTORNEY, OFFICE OF THE SPECIAL
NARCOTICS PROSECUTOR FOR THE CITY OF NEW YORK

MS. FERDINAND: Madame Chairwoman,
members of the Commission, good afternoon. I come
before you today with great news.

We, in New York State, in my opinion, have
gotten it right. We, at all levels of government,
with social service agencies and providers, are
working together to administer and sustain the most
effective, comprehensive set of alternatives to

1 incarceration programs that this country has ever
2 seen.

3 Drug courts are in almost every county
4 now. The Drug Treatment Alternative to Prison
5 Program has been expanded statewide. Road to
6 Recovery has been implemented. Parole has effective
7 alternatives. Probation has effective alternatives.
8 There's Willard and Extended Willard, CASAT, work
9 release. Like, the list goes on and on.

10 We should be proud that today in New York
11 State treatment is available for an addicted offender
12 at all levels of our criminal justice system. The
13 structure exists now to compel addicted offenders to
14 get well, to do what they chose not to do before
15 entering the system.

16 Thousands have graduated these programs,
17 drug and crime free, and viable taxpaying citizens.
18 Our low recidivism rates and high retention rates are
19 a testament to our success. I submit that each
20 graduate has contributed to our low crime rate city-
21 and state-wide.

22 In spite of the good news, there are those
23 who need to be divisive, who seek to cloud our news,
24 interjecting controversy such as judicial versus
25 prosecutorial discretion. The good news, by clear

1 and convincing evidence, is that New York State has
2 gotten sentencing right, and judges and prosecutors
3 are working together in that accomplishment
4 respectful of each other's role. Look, drug court
5 has prosecutors. And prosecutorial-based programs
6 such as DTAPs, are administered in courtrooms with
7 judges.

8 And, just as I celebrate this good news, I
9 sound a warning, loud and clear. The warning is
10 simply this: Further reduction in our sentencing
11 laws will devastate and erode the success of
12 alternatives to incarceration initiatives.

13 By way of introduction, my name is Rhonda
14 Ferdinand. I'm Executive Assistant District Attorney
15 in the Office of the Special Narcotics Prosecutor.
16 I've had the privilege of establishing and leading my
17 office's Alternative to Incarceration Bureau and the
18 honor of being a sustained part of the conversation
19 that has shaped New York State's alternatives to
20 incarceration initiatives as they exist today.

21 I have been an Assistant District Attorney
22 for over 22 years. And, as such, I've been fortunate
23 to serve three distinguished and enlightening Special
24 Narcotics Prosecutors. The first prosecutor, the
25 Honorable Sterling Johnson, Junior, planted the idea,

1 the seed. In the mid-1980s, during the height of the
2 crack explosion in New York State, he sent me to find
3 out what was then, to me, just three letters -- A-T-I
4 -- and his purpose was simple: Find out if there's a
5 role for prosecutors. That was a recognition by him
6 that addressing demand reduction is as important as
7 addressing supply reduction.

8 This was before drug courts, DTAP, and
9 other such initiatives. In hindsight -- I didn't
10 know then, but in hindsight, I know now why he chose
11 me. He was the kid from Bed-Stuy and I was the kid
12 from East New York. We knew first hand how open air
13 drug markets kill dreams, hopes, opportunity, and
14 devastated viable neighborhoods. He chose me because
15 he knew I would know first hand that drug sale and
16 possession are very violent crimes with victims that
17 stack up far beyond your imaginations.

18 He chose me because he knew I understood
19 that drug pushers and drug peddlers, drug dealers,
20 should never, ever been seen as victims of our
21 sentencing laws -- not when they sell poison in front
22 of our schools, and our playground, at the front door
23 of our places of worship, in the hallways of our
24 homes, in pathways, in our parks -- not when they
25 sell poison to our children, our mothers, and our

1 fathers -- not when they turn our homes into jails,
2 with bars on the windows and doors, with large
3 objects in front of our windows to shield bullets and
4 robbers.

5 He chose me because he knew that long
6 before I became a prosecutor I knew first hand that
7 all "B" felony drug sellers were not addicts or
8 victims, but also included predators and destroyers.
9 And, he chose me because he knew that I would be able
10 to figure out the difference.

11 My other two prosecutors -- Robert
12 Silbering and especially Bridget Brennan, who
13 addressed you earlier this morning -- gave me wings
14 and wind to develop, implement, and expand viable
15 alternatives to incarceration programs, and to remain
16 part of the dialogue. Bridget Brennan has never
17 considered clipping my wings, even when the cost of
18 operating our programs surpassed the funding.

19 I'm here speaking as a long-time friend of
20 diversion and treatment, as a proponent of effective
21 treatment alternatives to jail. Back in the 1980s,
22 when I first appeared on the scene, when I first
23 interjected a prosecutor into the conversation, it
24 was at an ATI roundtable where many of the heads of
25 some of the City's largest community-based programs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

sat.

I was mistrusted. I was interrogated as to my real purpose of being there. But, I made friends. And, there is a man named Jack Rothy -- he was from the Department of Probation -- who first extended the olive branch. And when others noticed that my purpose was sincere, they too extended the olive branch.

I returned to each and every one of those meetings, listening and learning. I quickly figured out that I, as a prosecutor, possessed two things that treatment providers were desperately short of -- addicts to treat and the means of keeping them in treatment.

You have heard about the best way to get people to modify their behavior. You provide them with incentive -- the carrot -- and you threaten them with punishment -- the stick. Well, treatment providers looking to enroll addicts were all about the carrot. They offered -- literally offered free breakfasts, lunch, carfare, and snacks, in addition to an array of wonderful services to get addicts in their doors and keep them there. However, enrollment and retention remained low. Few addicts were takers. And, more importantly, few stayers.

1 Surprisingly, the answer was in the law
2 enforcement side of the equation -- the proverbial
3 stick. We made our addicts an offer that was much
4 harder to resist than free meals and carfare: Get a
5 stiff sentence in jail or take those nice treatment
6 providers up on their generous offer to get your life
7 back and have your felony either dismissed or reduced
8 to a misdemeanor.

9 What the treatment providers did not
10 realize, and what we're forgetting here now, is that
11 for most addicts, drug treatment is a unattractive
12 alternative. By definition, an addict will not
13 choose to get better. The addiction won't let him or
14 her. He might want to. She might think she should.
15 His or her family may want them to. But, when that
16 addiction kicks in, the addict is out the door, back
17 on the street, back committing crimes to pay for the
18 next fix, back victimizing the public.

19 And so, with my stick and their carrot, we
20 found common ground, the community providers. We
21 found common ground and gave birth to two of the most
22 effective programs that I have ever administered --
23 one with the Osborne Association, and the other with
24 the Women's Prison Association.

25 A few years later, along came DCJS and

1 OASAS, two beacons of light, armed with an ATI
2 program designed by a prosecutor, Joe Hynes -- the
3 Drug Treatment Alternative to Prison Program, which
4 revolutionized alternative to incarceration in our
5 criminal justice system.

6 I would like to share two stories with you
7 -- one personal and one professional. As you know,
8 as I stated earlier, I grew up in the East New York
9 section of Brooklyn, a nice block of attached homes,
10 right off of East New York Avenue.

11 A few doors down from me where I lived,
12 there was a very nice woman and her children. She
13 had a son around my age, and her son and I were
14 acquaintances. We even shared a dance or two at our
15 block parties in the summer.

16 One day, I was returning home from school,
17 and I noticed that her house had been boarded up, and
18 a yellow sticker framed the entry door. I asked my
19 mother what had happened, and she told me that our
20 neighbor and friend had been murdered by her son.

21 That nice boy I used to dance with became
22 addicted to crack, and bludgeoned his mother because
23 she would not give him money for crack.

24 I shared this with you so that you would
25 know that I understand addiction at a very real

1 level. There are a lot of sad stories in this
2 business. There are a lot of sad stories in this
3 business, but I will shock some and say that the
4 sentencing laws as they exist today in New York State
5 are not one of them.

6 We in New York State have it right.
7 Without the stick of the sentencing laws, we go back
8 to empty treatment facilities, because addicts who
9 would choose to bludgeon their own mothers rather
10 than quit the habit will not blink an eye if they're
11 not facing a stiff sentence in state prison.

12 This is why ATI programs have had a hard
13 time attracting misdemeanor and first offenders into
14 treatment. In those cases, the carrot of addiction
15 outweighs the stick of probation, a few days in jail,
16 and easy time.

17 One of my most recent memories came from a
18 woman -- and this is the professional story -- who
19 successfully was admitted into our peer treatment
20 program. She suddenly died while in treatment. It
21 turned out that her drug use had weakened her heart,
22 and it gave out.

23 I shut my office down, my unit, three
24 attorneys and seven paralegals, and we attended her
25 funeral. I was approached by her grieving mother,

1 and the part that I will never forget is that her
2 mother said to me. I was expecting someone
3 distraught, filled with pain, anger, and bitterness.
4 Instead, she came up to me and said, "Thank you."

5 She said originally her daughter hated our
6 programs because she was forced to enter treatment.
7 And, she resented me personally for pushing her into
8 a corner with no options. She said at the end her
9 daughter was turning around and appreciated not being
10 addicted.

11 She ended by saying, "Thank you, because
12 without your programs, my daughter would be -- and I
13 -- and I probably would have never known where she
14 was, nor would I have had the chance to say goodbye,
15 much less bury her."

16 I repeat. We in New York State have it
17 right. Lessening the sentencing laws will kill the
18 effectiveness of diversion programs, and many more
19 others of addicts will suffer.

20 Our dialogue should be about strengthening
21 efforts to support recovery -- housing, jobs, day
22 care, education, and healthcare.

23 Thank you, very much.

24 COMMISSIONER O'DONNELL: Thank you, very
25 much, Ms. Ferdinand.

1 Our next speaker is Cheri O'Donoghue, who
2 is representing the organization FREE.

3 TESTIMONY OF CHERI O'DONOGHUE, FREE

4 MS. O'DONOGHUE: I am Cheri O'Donoghue,
5 and I have a 24-year-old son, Ashley. Can you hear
6 me?

7 UNIDENTIFIED: No.

8 UNIDENTIFIED: No, speak into the
9 microphone.

10 MS. O'DONOGHUE: Okay. I have a 24-year-
11 old son. His name is Ashley. And, he is
12 incarcerated under the Rockefeller Drug Laws.

13 Ashley is -- his category of offense is a
14 "B" felony category. And, I'd like you to keep that
15 in mind as you hear people like Bridget Brennan --
16 you heard her earlier speak of the "B" felony
17 category. Ashley's situation is nothing like what
18 she described a "B" felony offense.

19 I'll give you a little bit of information
20 -- or, actually, I'd like to tell you the story about
21 what happened to Ashley. And, I'd also like to thank
22 Bridget Brennan for making the case for the need -- a
23 great case for the need for judicial discretion,
24 although I don't think that was her intention. And,
25 the reason I say this is because, when you hear

1 Ashley's story, you will hear that it is very
2 different from the kind of "B" felony cases that she
3 described.

4 Ashley was arrested in a sting operation
5 orchestrated by the Oneida County Police, and two
6 Hamilton College students -- Peter McEneaney and
7 Preston Kraus. Peter had purchased a small amount of
8 cocaine from Ashley, and he and Preston were selling
9 it on their school campus. Eventually, someone
10 alerted the police, and they were called in --
11 alerted the police and they were called into the
12 school. The school officials decided to cooperate
13 and have Peter and Preston interviewed by the police
14 officers, and this is what happened.

15 The police officers instructed Peter and
16 Preston to involve themselves in a sting operation.
17 And basically what happened is they told them that
18 helping them catch the source -- the person that they
19 got the drug from -- was a way to go about this and
20 was also a means of getting themselves off, so that
21 they wouldn't have to go to prison.

22 The police instructed Peter to call Ashley
23 and order as much cocaine as he could without seeming
24 suspicious. In this case, it was 2.6 ounces. They
25 told -- the police officers told Peter and Preston

1 that they wanted to go for an A-I felony charge,
2 meaning that they should ask for more than two ounces
3 of cocaine.

4 At that time, when this happened, it was
5 in 2003. And, anything over -- I think it was
6 over two ounces, would qualify for a 15-to-life
7 sentence, an A-I felony.

8 In return for their participation, Peter
9 and Preston were offered their freedom. They were
10 offered their records sealed. And basically, they
11 were allowed to continue their lives as they were
12 before. But, that's not what happened to Ashley.

13 Ashley was arrested, and he was -- he was
14 charged originally with an A-I felony sentence. He
15 was allowed to plead down to a "B" felony. And, that
16 "B" felony carried a 7-to-21-year sentence. This is
17 for a first-time felony of any kind that Ashley had,
18 and a non-violent felony, at that.

19 Now, I'm not saying that it's right to
20 sell drugs. It isn't. But, the crime that was
21 committed -- or, I should say, the sentence that was
22 given for the crime to commit -- that -- for the
23 crime that was committed was very excessive, cruel,
24 and inhumane. And, that's exactly what the
25 Rockefeller Drug Laws are.

1 Since Ashley's arrest came in October of
2 2003, he was sentenced under the old laws, prior to
3 the changes in 2004 and 2005, which I might add were
4 minor changes. A lot of people did not benefit from
5 those changes, contrary to what the public thinks.

6 And, in addition to that, the people in
7 the "B" felony category, although the sentencing grid
8 did change, and you can get -- you would get a lesser
9 amount of years in your sentence for that category
10 now, those who are already incarcerated under the
11 "B" felony category were not allowed to apply for
12 retroactivity. So, those people who the law was
13 supposed to give some, I guess, ease to, those people
14 are not going -- were not able to -- were not able to
15 take advantage of the change in the law.

16 So, all of those people -- and that's
17 upwards of 14,000 people in that category -- are
18 still there. And, they are still going to be there
19 until something is done as far as the retroactivity
20 pieces. So, that's one thing that I'd like to ask
21 for. I'd like to have that looked at.

22 I would like the Governor to address that,
23 and give these people some relief, and let the people
24 that should be re-sentenced have their sentences
25 reduced. Otherwise, I don't see the point of

1 changing the law in first place, if people can't take
2 advantage of it.

3 I feel like Ashley's story is a compelling
4 one. I believe that it's a -- it's a perfect
5 illustration of everything that's wrong with the
6 Rockefeller Drug Laws. Here is a young person -- he
7 was 20 at the time -- who gets hit with a kingpin's
8 sentence. It just doesn't make any sense.

9 These other two young men were allowed to
10 go on and live their lives. They're probably
11 graduating from college this, you know, summer, or
12 maybe they graduated last year. In the meantime,
13 Ashley is in prison, has been there for four years
14 now.

15 The Rockefeller Drug Laws devastate
16 families. They pull families apart. I haven't found
17 -- I mean, it's totally turned our lives upside down,
18 and I am not -- I'm not the only person. There are
19 so many people who are dealing with this.

20 It's something that has to be looked at.
21 It actually is something that really should be taken
22 care of. You know, I appreciate the opportunity to
23 come here and speak, but, you know, to keep having
24 hearings and research on something that is so obvious
25 and has been researched to death just doesn't make

1 sense to me.

2 The Governor knows what to do. He knows
3 what the right thing to do would be, and I think that
4 he should step up to the plate. I remember that he
5 said on day one everything changes. But, it seems
6 like the Rockefeller Drug Laws is one of those things
7 that's just not changing, and it really worries me.

8 I'd also like to say that for people who
9 are interested in finding out more about Ashley's
10 case, you can Google his name -- Ashley O'Donoghue --
11 and you can get a very good story which was written
12 about him in the Village Voice newspaper, called
13 "Anatomy of a Drug Bust" by Jennifer Gonnerman.

14 It is very interesting, especially when
15 you see that our former Attorney General, Dennis
16 Vacco, was the lawyer for one of the Hamilton College
17 students. And Kevin McEneaney, a high-level
18 executive at Phoenix House, one of the nation's
19 largest drug treatment centers, is the father of the
20 other student.

21 I find it shocking that people who could
22 have helped did more harm than good, at least where
23 Ashley is concerned. But, at the same time, any
24 parent facing the possibility of losing their child
25 that many years to such horrible laws, I can see how

1 by any chance?

2 COMMISSIONER O'DONNELL: Yes, they were
3 white. And, another thing, I don't understand how,
4 at 18, they qualified for the Youthful Offender law,
5 but they did. And, they got -- they don't even have
6 records, you know, and the thing about it is that
7 Ashley has a record, and this is going to follow him
8 for a very long time.

9 ASSEMBLY MEMBER LENTOL: And, did I hear
10 you say that they re-sold the drugs that they bought
11 from Ashley?

12 MS. O'DONOGHUE: Yes. They were selling
13 the drugs on campus. They were caught, and that's
14 what happened. The police officers basically said,
15 "Listen, if you want to -- if you want us to be easy
16 on you, give up your source. The thing to do is to
17 set this person up, but we want to make this a big
18 drug bust, so we want you to ask you for at least,
19 you know, more than two ounces of cocaine. That will
20 give us an A-I felony conviction."

21 And then, what would happen is it would
22 look like they caught the drug kingpin; meanwhile,
23 Peter and Preston go off and, you know, their
24 families continue their lives. Meanwhile, our lives
25 have really been very, very difficult since this has

1 happened.

2 It's unfair, and the reason I say that
3 Ashley's story is a good example of the Rockefeller
4 Drug Laws is because it points everything -- it
5 points to everything. It points to race. It points
6 to, you know, having connections, and having money.

7 Here are people like Dennis Vacco
8 defending somebody's son, who was basically doing the
9 same thing that Ashley was doing, which was wrong,
10 but still, you know, it -- it just -- I can't find
11 any justice in what happened to Ashley, and that's
12 why I continue to fight for justice for my son today.

13 ASSEMBLY MEMBER LENTOL: Thank you.

14 COMMISSIONER O'DONNELL: Thank you, very
15 much.

16 And, is Kirk James here?

17 MR. JAMES: Yes.

18 COMMISSIONER O'DONNELL: Okay. Could you
19 come up and join us, please?

20 And, Michelle Fine?

21 Mr. James, you're our next speaker.

22 MR. JAMES: I wanted to submit these
23 things to you.

24 COMMISSIONER O'DONNELL: Okay. And, if
25 you could leave it -- here, John. Our counsel can

1 take your testimony. Okay.

2 And, Mr. James is here from The College
3 Initiative. Welcome.

4 TESTIMONY OF KIRK JAMES,
5 ASSOCIATE DIRECTOR, THE COLLEGE INITIATIVE

6 MR. JAMES: I'd like to first start by
7 thanking you for this opportunity, thanking everyone
8 that's here.

9 So, I'm Associate Director of The College
10 Initiative program. We're a re-entry program
11 affiliated with The City University of New York,
12 based at Lehman College in the Bronx, with offices
13 also at The Fortune Society, on 23rd Street.

14 Our mission is to assist formerly
15 incarcerated men and women to better their lives and
16 their communities through higher education. Today,
17 I'm here to speak about the importance of higher
18 education in regards to re-entry, but also to remind
19 you that we need to take a proactive stand to disrupt
20 the pipeline to prison.

21 Unfortunately, we're all too familiar with
22 the astronomical number of men and women incarcerated
23 in the United States today. The figures are
24 staggering. There are 2.2 million people
25 incarcerated. About one in twenty Americans is

1 color, in particular black males. As the Prison
2 Policy Initiative puts it, incarceration is not an
3 equal opportunity punishment.

4 Over 70 percent of those incarcerated in
5 the U.S. are people of color. Over 50 percent of
6 those incarcerated in the U.S. are black males.
7 There are more black men of college age in prison
8 than in college.

9 Most of those incarcerated fell through
10 the cracks educationally while they were growing up.
11 In urban areas 52 percent of black males do not
12 finish high school. Seventy-five percent enter
13 prison without a diploma or a GED. Forty percent in
14 prison are functionally illiterate, meaning that they
15 cannot read or write. As Angela Davis puts it,
16 problems of education become problems of violence and
17 public safety.

18 While incarcerated, people are spoke of as
19 "offenders," or "ex-cons," or "felons." These words
20 carry an underlying message that we are not speaking
21 about someone not like us. We're speaking about
22 others, further de-sensitizing and alienating this
23 population. I urge everyone here to begin using the
24 words that support the healing of incarcerated people
25 and those who are coming home. There is no "us" and

1 "them." There is only "us."

2 I wanted to read this history about the
3 Attica riots, and how education came into play after
4 that, but I'm going to skip that, for time's sake.
5 But, we need to think about it, and we should never
6 forget Attica, because a great sacrifice was made
7 that day and change did occur.

8 There was funding for libraries and
9 educational programs afterwards. A group of men
10 incarcerated at Green Haven formed a think tank, in
11 collaboration with Reverend Muller, the prison
12 chaplain, and Charles Berry, the superintendent.
13 They invited Dutchess County Community College to
14 give college-level classes. Soon afterwards, Marist
15 came in and provided Bachelor degree programs.

16 The idea of college in prison spread, and
17 during the next few years, there was at least one
18 college associated with each of the 70 prisons
19 throughout New York State. Some prisons had two or
20 three degree programs, including graduate degrees.

21 For those who were fortunate enough to be
22 incarcerated in a facility with a degree program,
23 miracles occurred. Men and women who might never
24 have had access to college took advantage of these
25 classes, and relationships with instructors and

1 volunteers who were able to come into prisons through
2 these programs grew. Today, many of the leaders of
3 agencies and not-for-profits serving people in
4 re-entry came up through the college programs in
5 prisons.

6 How were these college programs financed?
7 These college programs were paid for using Pell and
8 TAP grants, paid directly to the colleges.

9 Fast-forward to the late '80s and early
10 '90s. The pendulum which, after Attica, had
11 invigorated programs inside is now swinging in the
12 direction of get tough on crime. Mandatory
13 sentencing laws, beginning with the Rockefeller Drug
14 Laws in 1973, put people behind bars for longer and
15 longer sentences. This get tough approach that
16 spread and grew into a get tough on crime attitude
17 was culminated in 1994 and 1995 with the elimination
18 of Pell and TAP for prison college programs.

19 Hundreds of prison college programs closed
20 overnight. This was a sad, sad day for thousands
21 behind bars who had access to new possibilities. If
22 prison is the end of one road, college offered a
23 different road.

24 Since then, there have been a handful of
25 programs through private colleges and private money.

1 In a statement from the women at Bedford Hills
2 Correctional Facility in 1996, they stated that "We
3 understand the public's anger about crime, and
4 realize that prison is first and foremost a
5 punishment for crime. But, we believe that when we
6 are able to work and earn a higher education while in
7 prison, we are empowered to truly pay our debts to
8 society by working towards repairing some of what has
9 been broken. It is for this reason in the name of
10 hope and redemption that we ask you to help us build
11 a college program here at Bedford Hills Correctional
12 Facility."

13 Now, the sad piece of the story.
14 Recidivism and re-arrest rates are enormous. Two out
15 of three people released from prison are re-arrested
16 within three years. Prison activist Eddie Ellis once
17 said that if a business had so many returns, they
18 would quickly go out of business. Why is this not
19 happening with the criminal justice system?

20 Simply attending school behind bars, there
21 is a 29 percent reduction in the recidivism. Higher
22 education in prison yields at least \$2 in public
23 savings for every dollar spent. After employment,
24 higher education is the single most effective way to
25 prevent further crime and lower recidivism.

1 At The College Initiative, our five-year
2 statistics show that one out of 400-plus students who
3 have completed a semester or more has returned to a
4 New York State prison since 2002. The majority of
5 our students major in human services/social work,
6 further demonstrating their propensity for change and
7 social justice.

8 Successful re-entry is a process. It
9 should not start when someone is released. Instead,
10 it should start at the beginning of incarceration.
11 What can you do?

12 We need to advocate for higher education
13 within the prison system, bring back federal funding
14 to allow men and women the opportunity to truly
15 rehabilitate their lives and create opportunities for
16 success once released.

17 Educational release programs need to be
18 reconsidered. If we can allow someone to participate
19 in work release, work in some marginal job, we can
20 surely allow someone the opportunity to work towards
21 attaining a sustained success that would come with a
22 college degree.

23 The Department of Parole and the
24 Department of Corrections need to realize that
25 college is a vital alternative for men and women

1 being released from prison, and treat it as such,
2 allocating funding for re-entry programs that can
3 successfully demonstrate that their programs work.

4 And also, spread the word. The CUNY
5 system is free for all men and women being released
6 from prison. The doors are open. Let's move
7 forward.

8 This is something I speak about with
9 personal experience. I, myself, was incarcerated at
10 18 years old. When I heard that lady's story, I
11 thought of myself, because I wasn't a drug kingpin,
12 but yet I was sentenced to seven years to life under
13 the Rockefeller Law. I'd never been in trouble. I
14 was in college. But, I made the wrong decisions.

15 And, we need to keep that in mind. People
16 make bad decisions. But, we need to afford a system
17 that allows people to change, to truly change, a
18 system that allows people to grow. I was fortunate
19 enough that while I was incarcerated, that there was
20 a college program. And, this college program is
21 truly why I am here today.

22 I look around at a lot of my friends or
23 associates from the time I was incarcerated, and
24 these people, they're back in jail. And, the
25 difference between me and them was the fact that I

1 was able to go to school and able to better myself.

2 And, I've continued to use the time since
3 I've been released to better myself through higher
4 education. We need to really use higher education as
5 a tool for what it is.

6 Thank you for this opportunity.

7 COMMISSIONER O'DONNELL: Well, thank you
8 for presenting your story, and addressing this
9 important issue. And now, Superintendent Fischer is
10 here, and has spoken out even on national television
11 about his desire that we have college education in
12 our New York State prisons. So, --

13 MR. JAMES: He said he wants that to be
14 his legacy.

15 [Laughter]

16 COMMISSIONER O'DONNELL: So, you're
17 talking to the right crowd. Thank you, very much.

18 MR. JAMES: Thank you.

19 COMMISSIONER O'DONNELL: Michelle Fine is
20 with us also, from CUNY, to talk about college in
21 prison. Welcome.

22 MS. FINE: Actually, I have two topics,
23 college in prison and --

24 COMMISSIONER O'DONNELL: Okay.

25 MS. FINE: -- parole determination for

1 persons convicted of murder.

2 COMMISSIONER O'DONNELL: Okay.

3 TESTIMONY OF MICHELLE FINE,

4 CITY UNIVERSITY OF NEW YORK

5 MS. FINE: Thank you for making time.

6 I'm a Distinguished Professor of Psychology, at the
7 Graduate Center. I also want to just honor the story
8 of Ashley's mom. I think maybe she just left, but
9 it's very moving, I think, for all of us to be here
10 and listen.

11 I want to talk to you about two research
12 projects that I've been involved in, in the last ten
13 years. And, while they might seem disparate to you,
14 I think they're linked.

15 I was encouraged by the document that
16 suggested that you were interested in evidence-based
17 strategies to reduce re-incarceration and increase
18 the -- reduce re-incarceration, and increase public
19 safety.

20 So, the two studies -- one concerns
21 college in prison, and the other concerns an analysis
22 we've been doing on parole determinations for people
23 who have been convicted of murder, particularly
24 repeated parole denials.

25 The question that joins these two studies

1 are what needs to be in place in prison to facilitate
2 transformation and reduce the likelihood of
3 re-incarceration; and then, to what extent do parole
4 hearings take those transformations into account?

5 Let me start with the first study that my
6 colleague from CUNY seemed to have cited. As you all
7 know, the Pell grants disappeared in '95. The light
8 went out at a place like Bedford Hills. The numbers
9 in GED, ESL, ABD classes went -- went way down when
10 college -- when the Pell grants were cut off.

11 We initiated -- not only was college
12 resurrected at Bedford Hills, but we initiated an
13 evaluation to document the impact of college on the
14 women, the prison environment, the post-release
15 outcomes, and their children. This was a
16 collaborative research project, including researchers
17 from CUNY, women inside Bedford, and the
18 administration was very supportive, as well as a
19 number of universities and community members.

20 To make a very long story short -- and
21 I've provided you lots of reading material for you
22 guys to read this evening about the college program
23 -- there were four big findings. We interviewed
24 women, dropouts from the colleges. We interviewed 20
25 women post-release. New York Department of

1 Corrections was wonderfully collaborative and did a
2 re-incarceration study for us, a three-year follow
3 up. We interviewed correction officers, many of whom
4 disagreed with the idea of college. And, let me tell
5 you the four big findings.

6 The one was the re-incarceration rates
7 when DOCS tracked women who had been in the prison,
8 in -- in the prison, with the same crime and the same
9 incoming education, re-incarceration drops from
10 29.9 percent to 7.7 percent, simply with
11 participation in college. So, if you need another
12 stat, you've got it, Commissioner Fischer.

13 When we talked to corrections officers, it
14 was actually very interesting. Because, as you can
15 imagine, many of them are struggling to pay for
16 college for themselves and their children. And yet,
17 even those who were concerned that the women were
18 receiving college, discussed with us the reality
19 that, at night, the women are studying, and that they
20 know they're not coming back.

21 The third thing we did was a cost/benefit
22 analysis, and we documented -- again, it's in the
23 materials -- the enormous tax savings that the State
24 would incur if, in fact, we were able to offer
25 college while people are in prison, given the

1 dramatic reduction in re-incarceration rates.

2 The third was that there was a reduction
3 in disciplinary incidents for those women who had
4 been in the college. And, the fourth was that the
5 children of the women in the college program were
6 much more likely to express high educational
7 aspirations. In fact, they complained to us that
8 now, when they visit their moms, all she wants to
9 talk about is homework.

10 [Laughter]

11 MS. FINE: And, when they're on trailers,
12 all she wants to do is homework. And yet, they were
13 delighted that now they could tell their friends that
14 their moms are just upstate, going to college.

15 [Laughter]

16 MS. FINE: So, the level of
17 re-incarceration, tax savings, peace in the prison,
18 and the children -- college in prison made an
19 enormous difference. And, as I've testified before,
20 even fiscal conservatives should think this is a good
21 idea, unless the point is simply keeping people
22 locked up, which takes me to our second research
23 project.

24 More recently, we've been studying the
25 parole process, particularly for persons convicted of

1 murder. Again, we have a very diverse research team
2 of university people, and formerly incarcerated women
3 and men. New York State Department of Corrections
4 has, again, been incredibly supportive in providing
5 quantitative statistical data for us.

6 We have looked at the re-incarceration
7 rates for persons convicted of murder from 1985 to
8 2004. And, as some of you know, it is either ironic
9 or well known that murder has incredibly low
10 re-incarceration rates. Whether you look before the
11 Pataki administration or after, after the Pataki
12 administration, obviously, the parole denials went
13 way up, murder has extremely low re-incarceration
14 rates.

15 In 1993, the parole -- the parole -- the
16 rate of first-time release was 28 percent for violent
17 offenders. In the year 2004, that dropped to three
18 percent. So, we have engaged in the systematic
19 pattern of multiple and cumulative parole denials.

20 We have also interviewed 34 men and women
21 who have done long sentences for murder. And, of
22 these 34 people, each of them was denied parole at
23 least once, many five times. Among these 34, there
24 were 84 denials, which is 168 years, which is over
25 five million dollars. These are people who are now

1 leaders in the community, who are doing incredible
2 work.

3 So, two issues emerge here, and then I
4 will get to gender. One issue is we have very good
5 data that now last almost 20 years, suggesting that
6 men and women who are incarcerated for murder have
7 extraordinarily low re-incarceration rates. We also
8 know that they have extraordinary -- extraordinarily
9 high parole denial rates. And, when you look at
10 gender, the data are even more compelling.

11 When you look at -- we asked DOCS to do an
12 analysis of the 2001 to the 2004 cohort of men and
13 women released for violent offenses who had served
14 long sentences. I'm good on time, thank you. Of the
15 4,900 men -- again, this is all in the documents that
16 you'll be reading tonight. Don't worry.

17 Of the 4,900 men who were released with
18 long sentences and violent crimes, five percent have
19 returned for a new crime over the 24-month period.
20 For the 128 women, one has returned. And, that was
21 for a new felony, and that was for a robbery.

22 People have -- people have returned still
23 at very low rates for a parole violation, which is
24 another conversation we could have. But, for the
25 most part, these are men and women who pose a very

1 low risk with respect to public safety.

2 I could talk to you about what it felt
3 like for these women and men to be denied parole. We
4 have lots of data, and you'll read some of it, and it
5 is a -- it's harrowing to hear what it's like to
6 spend 20 years in prison, show up at your first Board
7 meeting, confront a group of people who have a stack
8 of papers this thick, don't listen very much to the
9 college you went to, the HIV program you started, the
10 leadership training, the puppy program, the
11 parenting, the fact that you're drug free, and a very
12 different person than you were at 15, but to decide
13 to deny you parole on the basis simply of the nature
14 of your original crime.

15 The question I leave you with is if the
16 goal of the criminal justice is not simply
17 punishment, but is in fact transformation, there are
18 two pieces of good news. One is that college and
19 pre-college in prison will get you the transformation
20 you're looking for. And again, on this one, I am a
21 real nerd. I don't think we should have plumbing
22 programs, or carpentry programs alone. I think we
23 really need liberal arts college programs, where
24 people are reading, and writing, and studying, and
25 taking responsibility for the past, and re-imagining

1 the future -- I'm rounding third.

2 [Laughter]

3 MS. FINE: And, the third is that we need
4 a predictable and rational process for parole
5 deliberations for persons convicted of violent
6 crimes. The data are in. The re-incarceration rates
7 are low. These are men and women who have
8 transformed themselves and the communities around
9 them.

10 And, when you say no to them, or whoever
11 says no to them, they then have to call their babies
12 at home, who cry, "Mommy, you're a liar. You said
13 you were coming to my middle school graduation."

14 And, they also have to face the young
15 people back in the prison, who look up to these long-
16 termers and say, "If she didn't get out, with a clean
17 record and leadership, and commitment to all of us,
18 why should we give a damn?"

19 Thank you, all.

20 COMMISSIONER O'DONNELL: Thank you, very
21 much.

22 MR. VANCE: Do we have time for one
23 question?

24 COMMISSIONER O'DONNELL: Yes, um hmm.

25 MR. VANCE: Commissioner, I take it there

1 are high school programs in the facilities, as well.

2 COMMISSIONER FISCHER: Correct.

3 MR. VANCE: And, is there a sense that
4 there is as -- if not as dramatic, a dramatic
5 restorative result with those who complete high
6 school education and get out prison, as there is with
7 those who receive college education?

8 MS. FINE: My understanding is the high
9 school is a GED -- is GED prep. And, from what I've
10 seen, the more education you're offered, the better.

11 I think there is something amazing that
12 happens inside a college program. The men who went
13 to the Union Theological program and the programs
14 that were available at Sing Sing testified to the
15 same process of what it means to read and write.
16 And, as one woman put it, "see my own intellectual
17 signature."

18 There's a way in which studying the world,
19 and literature enables you to take responsibility for
20 the crime and also take responsibility for the
21 future. But, I think the evidence is good that the
22 more education we can offer inside and outside,
23 post-release, whether it's college now or CCF, the
24 better off we all are.

25 People who leave these programs show up at

1 -- I'm at the Graduate Center, and we have a
2 post-release program. People show up on college
3 campuses within a week. It's another world. It's
4 another network. It's another life. It's another
5 sense of self and possibility.

6 ASSEMBLY MEMBER LENTOL: So, what you
7 said -- the last thing that you said, --

8 MS. FINE: Yeah.

9 ASSEMBLY MEMBER LENTOL: -- about violent
10 people who are in jail, who may have turned their
11 lives around, undoubtedly determinate sentenced --
12 determinately sentenced, not indeterminately
13 sentenced. And, there's nothing we can do about
14 their sentence yet, save the one-seventh that they
15 might be able to get off.

16 MS. FINE: Yeah.

17 ASSEMBLY MEMBER LENTOL: Are you
18 recommending a tweaking of the determinate sentencing
19 statute in order to intervene to those people -- for
20 those people who have turned their lives around in
21 prison?

22 MS. FINE: At the moment, we're actually
23 talking about parole denials, that when people show
24 up at their parole hearing --

25 ASSEMBLY MEMBER LENTOL: Yeah, long-

1 termers who are not determinately sentenced.

2 MS. FINE: Real long-termers that -- who
3 are showing up at their hearings and being denied.
4 Again, these 34 -- one might argue they're the cream
5 of the crop. They're the people -- they're people we
6 know who have -- who have taken leadership positions.
7 They've shown up at many of your Commission hearings.

8 ASSEMBLY MEMBER LENTOL: Um hmm.

9 MS. FINE: These are people who are hit
10 three, and four, and five times. That's six, and
11 eight, and ten years.

12 So, at the moment, I'm talking a narrow
13 issue. There are other people much better prepared
14 to speak to determinate and indeterminate.

15 But, I guess the larger question is how
16 much is enough? When people have turned their lives
17 around, and they are role models within the prison
18 for the younger folks, about whom they have lots of
19 concern, it -- it bleeds -- a kind of cynicism bleeds
20 through the prison when a long-termer with a clean
21 record gets denied over and over, again.

22 MR. JAMES: If I could add --

23 COMMISSIONER O'DONNELL: Thank you.

24 MR. JAMES: -- to that really quick? I
25 think to touch on what Ms. Fine said, is that you

1 can't overcome the nature of your crime. You know,
2 you were sentenced for the nature of your crime.

3 So, if you go to the Parole Board and then
4 you're denied for the nature of your crime, what can
5 you do? I personally was denied parole twice. You
6 know, I earned a college degree while incarcerated.
7 I had an exemplary record. I started programs. I
8 did everything that was necessary, but I was denied
9 for the nature of my crime.

10 So, I think when people are denied for the
11 nature of their crime, it's very frustrating and, in
12 a sense, it probably has a negative impact because
13 someone who just did 20 years, there's no way they're
14 going to be able to change what occurred in 1980 or
15 what occurred in 1995. You know, they can only
16 change, you know, now.

17 COMMISSIONER O'DONNELL: Okay. I am
18 going to have to move, otherwise we --

19 MS. FINE: I appreciate the time.

20 COMMISSIONER O'DONNELL: -- won't get to
21 everyone here. So, thank you.

22 MS. FINE: Thank you, so much.

23 COMMISSIONER O'DONNELL: Thank you, very
24 much. We appreciate it.

25 And, our next speakers are Laura Safer

1 Espinoza? Is she here? And, Emani Davis? You're
2 here, and if you could come up, I'd appreciate it.

3 And, I'm sorry, did I -- that was
4 Professor Fine. Vivian Nixon? I'm sorry. Also
5 here? I'm sorry if I missed you, and if you could
6 wait, you'll be next. Okay. Thank you, very much.

7 So, we'll start with Laura.

8 JUDGE ESPINOZA: Yes.

9 COMMISSIONER O'DONNELL: And, Laura is
10 from the Bronx Criminal Court.

11 TESTIMONY OF HON. LAURA SAFER ESPINOZA,
12 NEW YORK CITY CRIMINAL COURT, BRONX COUNTY

13 JUDGE ESPINOZA: Good afternoon. I'm
14 very happy to be here.

15 I am a New York State Acting Supreme Court
16 Justice, and I've been the Presiding Judge of Bronx
17 Treatment Court since its inception in March of 1999.
18 This afternoon, I'm here on one of my very few
19 vacation days, because I feel very strongly about
20 what I want to share with you.

21 I want to tell you a little bit about
22 what's been most successful and valuable in our
23 important alternative to incarceration, as well as to
24 recommend measures that I feel would help to overcome
25 many of its failures and frustrations.

1 Since the beginning of our program, we
2 have had approximately 800 graduates, meaning former
3 defendants who have successfully participated in
4 substance abuse and mental health treatment, as well
5 as achieving employment, training, and/or enrollment
6 in full-time education. The most recent studies have
7 shown our retention rates to be close to 70 percent;
8 that means people who have succeeded or are still in
9 treatment. At any given moment, I'm responsible for
10 monitoring over 400 people in various stages of
11 treatment.

12 In New York, we know that at least
13 45 percent of those defendants convicted of drug
14 offenses normally recidivate within two to three
15 years. Recidivism among our drug court participants,
16 however, runs between 5 and 25 percent, with
17 graduates showing the most dramatic reductions. So,
18 the efficacy of the treatment court model is not in
19 question, either here or nationwide. So, I am not
20 here to convince you that the structure works, but
21 rather to point out the features that make it work,
22 to urge their expansion, and to ask for your help in
23 removing some serious obstacles to improvement.

24 In a nutshell, treatment court works
25 because it is based on a clinical model and employs a

1 team approach. Treatment is matched to clients'
2 medical and mental health needs. Monitoring occurs
3 through a very interactive court. And, a graduated
4 system of sanction and rewards is applied.

5 The judge receives input from treatment
6 programs, court clinical staff, as well as the
7 prosecutor and defense representatives. Then, as is
8 the case throughout most of our legal system, the
9 judge is responsible for final decisions. The space
10 for this model to work has been created because we
11 have abandoned in these cases the adversarial system.
12 Instead, we opt to fulfill our responsibility to our
13 communities by restoring healthy, productive men and
14 women, fathers, mothers, and children, ready to
15 reclaim their places.

16 The one critical area where this approach
17 is not applied, however, is the decision of who is
18 initially eligible to participate in these courts.
19 In that realm, in reviewing the pool of potential
20 participants, District Attorneys are the sole
21 gatekeepers. Under our legislative scheme, as you
22 know, judges do not have the power to offer these
23 non-incarceratory dispositions in many categories of
24 cases, nor do they have the ability to dismiss or
25 reduce cases for participants who have been fully

1 compliant.

2 I see this as a tragic flaw that has
3 barred the door to many people in need, for no other
4 reason than the views of a particular District
5 Attorney. In New York City alone, this has resulted
6 in almost no cases being sent to treatment court in
7 one borough, and many categories of cases being
8 barred in other boroughs. Bear in mind that these
9 are all non-violent cases where the alleged
10 perpetrator is affected by substance abuse and/or
11 mental illness.

12 Now, I know in your preliminary report
13 that you are considering recommending
14 institutionalization of the treatment court option in
15 legislation, and I would respectfully urge that the
16 mission of addressing the root causes of crime,
17 thereby reducing recidivism, and promoting healthier
18 communities, would also be served by expanding
19 judicial discretion in this area.

20 Another area that urgently needs your
21 attention is the provision of additional quality
22 programs for the clients who are eligible to enter
23 treatment courts. There is an appalling lack of
24 treatment capacity for the many dually-diagnosed;
25 that is, people who are suffering from both mental

1 illness and substance abuse. Particularly when
2 residential treatment is indicated, clients can sit
3 in jail, suffering further decompensation for many
4 weeks, even months, before a treatment bed is located
5 for them.

6 In instances that I have personally
7 tracked, people finally request sentences of
8 incarceration rather than continue to wait for a
9 placement that may never appear. Since they have not
10 received the much-needed help, however, it is almost
11 certain that we will see them again in the criminal
12 justice system.

13 Furthermore, in the Bronx, the population
14 is 40 percent Hispanic, the highest percentage in New
15 York City. Close to 48 percent of our borough's
16 population speaks a language other than English at
17 home. Despite this clear need, there are very few
18 programs that can accommodate non-English speakers.
19 If a client is Spanish-speaking and in need of
20 residential mental health treatment, there is not one
21 program in New York City that can accommodate him or
22 her. This is an incredibly short-sighted, cruel, and
23 frustrating failure to respond to individuals and
24 communities in need.

25 How am I doing on time?

1 COMMISSIONER O'DONNELL: Okay.

2 JUDGE ESPINOZA: Okay. There is a final
3 area that I would like you -- to urge you to
4 consider, and it is more in the realm of preliminary
5 discussion.

6 As you know, one of the major motivations
7 for people to participate in treatment court is the
8 possibility that they may have their charges
9 dismissed at the end of the process in return for
10 full compliance. The huge obstacles faced by people
11 with felony records in obtaining employment,
12 education, training, and even housing are well
13 documented, and I know you've been hearing them over
14 and over. New York State has tens of thousands of
15 individuals who carry non-violent felony convictions
16 on their records; many of them stemming from decades
17 before treatment court or any alternative to
18 incarceration like it was ever an option, with no
19 hope of their removal, and we are creating many more
20 in our courtrooms every day.

21 Certainly, hopelessness and lack of
22 alternatives contribute to higher rates of
23 recidivism. The same logic that underlies treatment
24 court, recognizing that we are better served by
25 curing underlying problems of people coming into the

1 criminal justice system, and returning them to their
2 communities without felony convictions, ready to make
3 a contribution, would also apply to an expungement
4 mechanism for certain felony convictions in New York.
5 Many states already have legislation that allows for
6 certain convictions, in some instances including
7 offenses considered violent under our scheme, to be
8 expunged for purposes outside the criminal justice
9 system -- that is, employment, housing, education --
10 after a significant period of law-abiding behavior.

11 The details and requirements differ, but
12 the reasoning is the same. Instead of closing doors
13 in ways that can only increase recidivism, we should
14 begin the discussion that could lead to a pathway for
15 those who have demonstrated their ability to turn
16 their lives around to become fully productive members
17 of our communities.

18 I know I was racing, but I wanted to say a
19 lot, and I thank you for the opportunity.

20 COMMISSIONER O'DONNELL: And, you got it
21 all in. Thank you, very much, --

22 COMMISSIONER FISCHER: A question --

23 COMMISSIONER O'DONNELL: -- Judge, for
24 taking time off.

25 COMMISSIONER FISCHER: A question.

1 JUDGE ESPINOZA: Um hmm.

2 COMMISSIONER FISCHER: Assuming that we
3 could, in fact, dismiss a case, on a drug case,
4 particularly, how would you handle the situation if,
5 after a short period of time of success, --

6 JUDGE ESPINOZA: They are --

7 COMMISSIONER FISCHER: -- correct.

8 JUDGE ESPINOZA: -- they have come back?

9 It is -- we have that situation now in
10 treatment court. The records are not actually
11 sealed. The conviction is vacated. However, for the
12 purposes of the criminal justice system, which is
13 what I said in the last paragraph, it is for the
14 purposes of the criminal justice system, any judge
15 looking at that rap sheet will see that the person
16 came in, had their case, pled guilty, went through
17 the alternative to incarceration, had the docket
18 dismissed. So, we know. People do not come back
19 through my court twice.

20 MR. GREEN: On cases that come into your
21 court, where the prosecutor screens a case and
22 recommends drug court or drug treatment, do you, as
23 the judge, review those cases to determine whether or
24 not you also feel that it's appropriate that they be
25 in your court?

1 JUDGE ESPINOZA: What happens is, in each
2 borough, there are -- there are pre -- there are
3 planning -- in the planning stage those negotiations
4 happen before, as far as the legal guidelines are
5 concerned. It's a long planning process, but the
6 bottom line that I -- and, it takes -- yes, the
7 judges have input into that, the D.A.s have input,
8 and the defense bar.

9 But, what I'm trying to point out is that
10 under the legislative scheme, no matter how deserving
11 I think a case is, I can't reach for those cases.
12 There are -- I can give examples of them.

13 MR. GREEN: But, my question is, as a
14 judge, when you sit there, just because a prosecutor
15 or a defense attorney says "I think this is
16 appropriate," I assume that you also exercise your
17 own --

18 JUDGE ESPINOZA: I also exercise --

19 MR. GREEN: -- independent judgment.

20 JUDGE ESPINOZA: -- discretion,
21 absolutely, I do.

22 COMMISSIONER O'DONNELL: Okay.

23 ASSEMBLY MEMBER LENTOL: I think -- may I
24 just ask one question? I know the time is up.

25 COMMISSIONER O'DONNELL: All right. No,

1 I'm more concerned that we won't get through everyone
2 else. But, one more question would be fine.

3 ASSEMBLY MEMBER LENTOL: Okay. I heard
4 what you said about the District Attorneys being the
5 gatekeepers, and I wondered if, you know, a District
6 Attorney would say that they are the gatekeepers and
7 they should be because they have to run for election
8 every four years and you, as a judge, don't have to
9 run until twelve years from now. And therefore, they
10 have a better understanding of what the public safety
11 involved in this case is.

12 What would you say to that argument?

13 JUDGE ESPINOZA: What I would say to that
14 argument is that I believe that the opinion polls
15 that I have read from New York, from New York City,
16 from New York State, and nationwide, have been
17 overwhelmingly in favor of alternative -- these
18 alternatives for people who suffer from substance
19 abuse who have committed non-violent felonies. I
20 don't believe -- I don't buy into the argument that
21 in the particular cases where the refusal is
22 happening that it really is a reflection of what our
23 communities want.

24 ASSEMBLY MEMBER LENTOL: Thank you.

25 COMMISSIONER O'DONNELL: Thank you, very

1 much, Laura.

2 JUDGE ESPINOZA: Thank you, very much.

3 COMMISSIONER O'DONNELL: Okay. Emani
4 Davis next, and Ms. Davis is here on behalf of --
5 well, she is a child of an incarcerated person,
6 correct?

7 MS. DAVIS: Yes. I was going to wait
8 really far into my thing to say that, but that's
9 okay. It's out.

10 COMMISSIONER O'DONNELL: Oh, I'm sorry.

11 [Laughter]

12 COMMISSIONER O'DONNELL: All right. I
13 owe you an apology here.

14 MS. DAVIS: That's okay. I've been out
15 for a long time, actually.

16 TESTIMONY OF EMANI DAVIS, CO-CHAIR, YOUTH ADVOCACY

17 BOARD, NEW YORK CITY INITIATIVE FOR CHILDREN OF

18 INCARCERATED PARENTS

19 MS. DAVIS: My name is Emani Davis, and
20 actually I'm here representing as the Co-Chair of
21 Youth Advisory Board, which is part of the New York
22 City Initiative for Children of Incarcerated Parents,
23 which is a project of the Osborne Association, and is
24 a collaboration among a lot of public and private
25 criminal justice and child welfare agencies. I do

1 considered when decisions are made about my parents.

2 Number four, I have the right to be well
3 cared for in my parent's absence.

4 Number five, I have the right to speak
5 with, see, and touch my parent.

6 Number six, I have the right to support as
7 I struggle with my parent's incarceration.

8 Number seven, I have the right not to be
9 judged, blamed, or labeled because of my parent's
10 incarceration.

11 And, number eight, I have the right to a
12 lifelong relationship with my parent.

13 As you, many of you know, prisons
14 disappear parents from the lives of millions of
15 American children. Ten million children have
16 experienced parental incarceration in their lives.
17 And, more than two million children have a parent who
18 is in prison right now.

19 In New York State, there are more than
20 100,000 children with a parent who is in jail or
21 prison, and hundreds of thousands of children who
22 have experienced arrest, incarceration, probation or
23 parole of their mothers or fathers.

24 International human rights advocates have
25 called parental incarceration the greatest threat to

1 child well being in the United States. The needs of
2 children with parents in prison, children who are
3 innocent of any crime, are not met, and their rights
4 are not recognized. The Bill of Rights has provided
5 a useful framework for addressing a range of arrest,
6 sentencing, child welfare, and corrections policies
7 in numerous cities and states around the country, and
8 has led to changes in arrest protocols, visiting
9 policies, and several local and state legislative
10 initiatives designed to minimize trauma and increase
11 opportunity for children and families -- San
12 Francisco being one of those areas.

13 Unfortunately, the preliminary proposal
14 for reform of the Commission on Sentencing Reform did
15 not appear to take children into account when it was
16 making its recommendations. And so, I'd just like to
17 take a moment to expand on the many opportunities
18 that you missed.

19 So, the first one is that although the
20 report mentions increasing access to jobs, schools,
21 and programs, all of which are very important, it
22 fails to mention the single most important factor to
23 successful re-entry, which is family connections.
24 The sentencing recommendations did not include any
25 consideration of the impact of sentencing on

1 children.

2 Following a parent's incarceration,
3 children often lose the emotional and financial
4 support needed for positive growth and development.
5 And so, while a parent is incarcerated, the State
6 should make child support payments for parents of
7 minor children. An obligation should not accrue to
8 the parent during their incarceration.

9 In siting prisons and making prison
10 assignments, proximity to children should be taken
11 into account. Parole guidelines should explicitly
12 consider whether a parent has made efforts to
13 maintain contact with his or her children, and should
14 consider the importance of the parental role in
15 determining release.

16 In considering child support obligations,
17 the State should place higher value on the emotional
18 support that a non-custodial parent can offer.

19 Subsidized guardianship. While New York
20 does provide for kinship care for children in the
21 child welfare system who are being cared for by
22 relatives, New York has no provision that provides
23 financial support to relatives or guardians who have
24 voluntarily accepted to take care of children whose
25 parents are incarcerated, without placing them in the

1 foster care system. And so, many children are living
2 in poverty, being raised while their mothers and
3 fathers are in prison by other guardians --
4 grandparents, et cetera -- who cannot really afford
5 visitation or the other expenses related to caring
6 for these children. The costs associated with
7 helping a prisoner's family to sustain itself and
8 remain connected are outweighed by the reduced
9 incarceration costs associated with maintaining
10 family connections.

11 The Bill of Rights offers organizing
12 principles for reform in New York, where numerous
13 policies, system practices, and public attitudes must
14 change in order to meet the needs of children. Among
15 the reforms that are critical to the well being of
16 children with parents in prison are the following:

17 Arrest practices that support and protect
18 children;

19 Pre-sentence investigations and sentencing
20 and parole policy and practices that consider impact
21 on children and families;

22 Prison and jail visitation policies that
23 are family-friendly and child-centered. And, I
24 really do want to take a moment to acknowledge I have
25 worked in this state and all over the country, and

1 New York definitely is ahead of the curve, in terms
2 of visitation in its state institutions, but always
3 more could be done. And, Rikers leaves a lot to be
4 desired.

5 Training of staff at all public
6 institutions that serve or affect children, so that
7 policies and practices recognize and address the
8 needs and concerns of children.

9 Access to specially-trained therapists and
10 counselors for children.

11 Policies, practices, and services across
12 all systems that strengthen families pre- and
13 post-release.

14 Increasingly tough sentencing laws have
15 had a tremendous impact on children. Sentencing does
16 not require judges, or prosecutors, or defense
17 counsel to consider children when they are making
18 decisions that will affect their lives profoundly.

19 Ask a child with a parent in prison what
20 might have improved his life and his prospects, and
21 you are likely to get some version of the answer of
22 help for my mom. Even if they have experienced years
23 of trauma and abandonment, young people are likely to
24 see their parents as troubled and in need of support
25 rather than bad and in need of punishment.

1 The impact on children of unnecessarily
2 overlong prison sentences and repeated parole
3 denials, as well as the physical -- I'm going to skip
4 -- so, I'm just going to move on to that, okay? Just
5 going to run down.

6 Children deserve to have their needs taken
7 into consideration when individual sentences are
8 handed down. The capacity of judges to consider
9 children should be expanded, and they should be
10 encouraged to use the discretion they already have to
11 protect children's interests.

12 I'm skipping --

13 COMMISSIONER O'DONNELL: You are okay, so
14 you just finish what you have to say, okay?

15 MS. DAVIS: Thank you.

16 In New York, probation officers are
17 required to write -- to prepare a PSI -- a
18 pre-sentence investigation -- and parole officers
19 prepare an ISR -- an inmate status report --
20 traditionally aimed to helping judges and parole
21 board members to understand the background and
22 potential for rehabilitation with somebody that's
23 coming before them. The PSI and ISR should be
24 adapted and expanded to include a family impact
25 statement, which would include an assessment of the

1 potential effect of a given sentence or a parole
2 release or denial on children and families and
3 recommendations for the least detrimental alternative
4 sentence or decision. The PSI might also include
5 recommendations aimed at providing services and
6 supports to children during the parent's
7 incarceration.

8 While the Commission's report is
9 race-neutral, the reality of the criminal justice
10 system is not. Three out of a hundred American
11 children will go to sleep tonight with a parent in
12 jail or prison. For African/American children, the
13 number is one in eight.

14 I recognize that definite sentences are
15 appealing for all the reasons that were stated in the
16 report, but what would really make a difference for
17 children with parents in prison, lower recidivism is
18 important. It is very damaging to children to see
19 their parents come home, only to return back to
20 prison, but we want real parents -- parents who have
21 gotten the help that they need and parents who will
22 do more than refrain from crime, but actually be able
23 to contribute to their families and to the
24 communities that they came from and are returning to.
25 And, we want a fair parole process with guidelines

1 that reward a parent's effort to take responsibility
2 -- to reward them for the efforts, for the parents
3 who have taken responsibility for the harm that they
4 have caused, and not just repeat the serious nature
5 of the crime as a need for denial.

6 Almost every public figure recommends a
7 more Draconian sentence. They accompany it by saying
8 that they are sending a message. This, of course, is
9 a fantasy because these messages never overpower the
10 more powerful message that tells young people from
11 disinvested neighborhoods that they have no future
12 other than jail. We know that you will find money to
13 cage us, and never money to engage us, and if that is
14 your message, young people definitely have gotten
15 that message, loud and clear.

16 As you mentioned, I am the adult child of
17 a prisoner. My father has been in prison for the
18 past 23 years. They tell me not to cry. Sorry.
19 They did. They warned me. They're, like, don't go
20 in there and cry.

21 My father was incarcerated in the State of
22 Virginia, and in 1995, parole was abolished in
23 Virginia. And, even though he was eligible, we've
24 been going to the Parole Board for the past 12 years.
25 So, while I understand the desire to try to abolish

1 parole and kind of give people these sentences, the
2 evidence is showing that people are only getting long
3 sentences and that for people who were sentenced
4 before, that they're basically up against a kind of
5 no hope, no win situation at the Parole Board.

6 What I can tell you is that my father has
7 done every program that's ever been available to him,
8 and truly is the example of transformation. And,
9 when you continue to deny somebody based on the
10 serious nature of their crime, it leaves their
11 children very confused, because we're taught that if
12 we do the right thing, and if we amend and ask for
13 forgiveness, that we will be forgiven. And so,
14 watching somebody sit in the prison and go to ten
15 parole hearings, to have ten denials, I think sends a
16 very powerful message to America's children, and we
17 ultimately do not, as a nation, believe in
18 redemption, which I think that we say that we do.

19 So, thank you, so much, for letting me
20 finish. I appreciate it.

21 COMMISSIONER O'DONNELL: Well, thank you,
22 so much, for being here, and for sharing your story,
23 and it's okay to cry.

24 MS. DAVIS: Okay.

25 COMMISSIONER O'DONNELL: You did a great

1 job.

2 MS. DAVIS: Thank you.

3 COMMISSIONER O'DONNELL: Olivia Nixon?

4 I'm sorry I skipped over you before. Please come up.

5 We appreciate it.

6 And then, after Ms. Nixon, the next
7 speaker is Lisa Rappa. If you are here, you can come
8 up, and you would be next.

9 Okay. And, Vivian Nixon is here from
10 College and Community --

11 MS. NIXON: Fellowship.

12 COMMISSIONER O'DONNELL: -- Fellowship,
13 okay, that was cut off here. Thank you, and welcome.

14 TESTIMONY OF REV. VIVIAN NIXON, EXECUTIVE DIRECTOR,

15 COLLEGE AND COMMUNITY FELLOWSHIP

16 MS. NIXON: Thank you. Good afternoon.

17 As you said, my name is Vivian Nixon. I
18 am Executive Director of the College and Community
19 Fellowship, and I'll refer to that organization from
20 now on as CCF. In 2000, CCF became the first
21 organization in New York State to offer higher
22 education support to people who want to secure a
23 future for themselves and their families after being
24 involved in the criminal justice system.

25 I am grateful to Chairman O'Donnell and to

1 the members of the Sentencing Commission for this
2 opportunity to testify about the ways in which
3 increasing opportunities for people who have had
4 criminal justice involvement ultimately increases
5 public safety and improves community well being.

6 I was very pleased to learn that Governor
7 Spitzer had the foresight to issue Executive
8 Order 10, establishing this Commission, and directing
9 it to find ways to repair a sentencing system that is
10 complicated and ineffective. CCF supports many of
11 the progressive and well thought out recommendations
12 contained in the Sentencing Commission's preliminary
13 report.

14 We support recommendations that allow --
15 that will allow parolees to vote, increase merit
16 time, increase work release eligibility, reduce
17 barriers to employment, increase access to housing,
18 create seamless release procedures that include
19 necessary documentation, identification, and access
20 to Medicaid and other benefits, increased educational
21 and vocational training opportunities for people in
22 prisons, and increased access to higher education in
23 prison.

24 But I would like to focus today on how to
25 improve upon the recommendations that involve higher

1 education. The Sentencing Commission's report
2 confirms that studies show that with every year of
3 education, the risk of recidivism declines. Yet,
4 opportunities for people in prison and those who have
5 been released to pursue higher education have been
6 severely limited by reauthorization of the Higher
7 Education Act, which New York State compounded by
8 eliminating TAP eligibility for this population.

9 Until these policies are changed, or
10 creative alternatives are implemented and supported,
11 we are literally keeping people from accessing the
12 very thing that has the greatest potential to
13 permanently change their lives for the better.

14 The Justice Policy Institute recently
15 released research that shows a relationship between
16 educational attainment and the likelihood of
17 incarceration. They also found that the impact of
18 policies related to education and public safety are
19 concentrated among people of color who are less
20 likely to have access to quality educational
21 opportunities and more likely to be incarcerated.

22 Time will not allow me to discuss all of
23 the individual and public benefits of education.
24 Briefly, we know that higher education increases
25 employability, reduces recidivism, and has a positive

1 correlation with good health, overall quality of
2 life, and deep social integration. Public benefits
3 include increased tax revenues, increased workforce
4 flexibility, and decreased reliance on Government
5 financial support.

6 The Commission's report reminds us that
7 only a limited number of people in prison have the
8 requisite high school diploma or GED that make them
9 eligible for higher education. Nevertheless, if
10 higher education opportunities had continued after
11 1994, New York State would have seen more than 14,000
12 more people leave prison with college degrees between
13 1994 and 2007, as opposed to the 500 who might get
14 college degrees over the next 14 years if access does
15 not increase. We need only consider how higher
16 education would have expanded opportunities for those
17 14,000 people, their families, and their communities
18 to understand the impact of the elimination of
19 college programs in prison.

20 Furthermore, research has shown -- and I
21 think Michelle Fine mentioned this in her testimony
22 -- that the number of people -- that the number of
23 people in prison who will successfully pursue GEDs
24 increases when the opportunity for college is
25 available as an incentive.

1 The report makes a strong case for
2 increased access to higher education in prison.
3 Future recommendations must include support for
4 higher education opportunities as an integral part of
5 re-entry on the outside, as well. College and
6 Community Fellowship has found that community-based
7 programs that use higher education strategies can
8 help to focus people on long-term goals while they
9 deal with the basic issues of reintegration,
10 including employment, housing, substance abuse, and
11 medical treatment, and family reunification.

12 In today's high-tech labor market, where
13 creativity and advanced knowledge are in demand, a
14 high school diploma is no longer the acceptable
15 standard. People need documented vocational skills,
16 or post-secondary education in order to compete for
17 jobs that are not only lawful -- which is the
18 language used in the report -- lawful employment --
19 but provide living wages, rather than wages that
20 thrust them into the ranks of the working poor.

21 In conclusion -- how much time do I have?
22 I won't conclude yet.

23 [Laughter]

24 MS. NIXON: Here are my if I have time
25 left notes. You know, I recommend strongly that the

1 Commission find a way to put resources into the hands
2 of existing higher education programs, both in prison
3 and out of prison. Education has proven not only to
4 produce better citizens upon release from prison, the
5 people that I know and work with who have had access
6 to education in prison and after prison are really
7 better citizens than most people I know who've never
8 been to prison. Case in point, many of the people
9 who have testified before you here today.

10 In conclusion, I would like to remind you
11 that the Executive Order served as the Governor's
12 mandate to construct an equitable system of criminal
13 justice. The Commission's response to that mandate,
14 by virtue of its refusal to offer even a passing
15 mention of the disparate racial impact of current
16 sentencing laws, and by virtue of its lack of
17 recommendations that might begin to repair the damage
18 caused by mass incarceration, is disappointing in
19 that regard.

20 Those of us who live and work in New
21 York's low income communities of color are waiting
22 for a response that acknowledges that cumulative lack
23 of access to jobs, education, and resources on the
24 front end, as well as policies and laws that have had
25 a grossly disproportionate impact on our communities,

1 require broad and profound changes in the way we
2 think and talk about people with criminal justice
3 involvement, and the way we implement policies that
4 impact their lives.

5 We look forward to a final report that
6 shows how public safety is better served by reducing
7 reliance on incarceration, enhance victims' rights,
8 and expanded opportunities for people and communities
9 that have been victimized by the disproportionate
10 representation in the criminal justice system.

11 Having been a beneficiary of college in
12 Bedford Hills Correctional Facility, and being able
13 to complete my degree upon release as a member of the
14 College and Community Fellowship, and then becoming
15 Executive Director of that organization, has changed
16 my life in ways that I cannot articulate. Freeing up
17 a person's mind opens doors that no one can lock.
18 And, I hope that this Commission will give us some
19 recommendations that open those doors for many more
20 people.

21 Thank you.

22 COMMISSIONER O'DONNELL: Thank you, very
23 much, for sharing that with us. I'm glad I didn't
24 steal your thunder.

25 [Laughter]

1 COMMISSIONER O'DONNELL: Okay. Our next
2 speaker is Liza?

3 MS. RAPPA: Lisa.

4 COMMISSIONER O'DONNELL: Lisa Rappa, who
5 is going to speak to us as a private citizen, or are
6 you representing a group?

7 MS. RAPPA: No, as a private citizen,
8 part of --

9 COMMISSIONER O'DONNELL: As a private
10 citizen.

11 MS. RAPPA: -- part of -- I'm part of the
12 Coalition for Women in Prison.

13 COMMISSIONER O'DONNELL: Great, okay.

14 MS. RAPPA: But, I'm a private citizen.

15 COMMISSIONER O'DONNELL: Okay.

16 TESTIMONY OF LISA M. RAPPA

17 MS. RAPPA: Good afternoon. My name is
18 Lisa M. Rappa. I am a formerly incarcerated woman.
19 I am an advocate, and I am a member of the Coalition
20 for Women Prisoners.

21 From my experience in the system, I can
22 tell you that DOCS current programs dealing with
23 re-entry are inadequate. Please allow me to explain.

24 I believe that preparation for re-entry
25 should begin upon entering the system. Education and

1 vocational training during incarceration is only one
2 way to prepare for a successful re-entry. It is true
3 that when a woman enters DOCS, she is screened and
4 placed on waiting lists for vocational training.
5 However, in DOCS, ASAT and CASAT programmings have
6 taken priority over training needs that will aid
7 women in a successful reintegration.

8 ASAT and CASAT programming alone, with few
9 other productive activities during jail, will not
10 help us gain employment. Better training and
11 educational programs that help women gain productive,
12 substantial employment upon release will reduces
13 DOCS' high rates of recidivism.

14 Lack of coordination and communication
15 between DOCS and workforce assistance is another
16 obstacle for women gaining employment upon release.
17 Although employers can gain many benefits from hiring
18 formerly incarcerated people, including tax credits,
19 not all employers have positive views of ex-cons.
20 DOCS could smooth this relationship by facilitating
21 certificate programs hosted by outside organizations
22 or agencies, so that women can leave with
23 certificates or degrees and training from
24 community-based agencies.

25 DOCS should improve contacts with

1 community agencies to maintain correct information
2 about their agencies, and non-profits and the
3 services that they offer. Phase 3 provides only one
4 opportunity for women to prepare for re-entry, yet
5 inmates have little control over the process and it
6 comes too late in the incarceration to let women
7 establish contacts for themselves. One simple
8 suggestion to improve this program is to allow women
9 to give written requests to Phase 3 staff to be sent
10 out to these agencies.

11 Another important part of successful
12 re-entry that often does not get addressed in release
13 preparation is physical and mental health. While it
14 is well known that inmates have higher rates of
15 chronic and communicable diseases, and mental health
16 issues, DOCS suffers from ineffective screening and
17 identification of illnesses. The failure to diagnose
18 illnesses leads to poor and unsuccessful treatment.
19 Many people leave prison with various health and
20 mental health problems that are barriers to
21 employment. For example, people leave without proper
22 medication and fall into depression and are unable to
23 find or maintain a job. Mental stability is very
24 important to positive functioning.

25 Failure to properly diagnose also leads to

1 inaccurate medical discharge papers that do not
2 reflect most important factors of an inmate's medical
3 needs. In addition, inmates are unable to raise
4 these issues with staff.

5 Finally, DOCS should facilitate Medicaid
6 applications so inmates are able to quickly take care
7 of their medical issues upon release and move on to
8 the difficult task of finding and securing housing
9 and meaningful employment.

10 Cognitive behavioral therapy -- CBT --
11 groups would be another productive addition to DOCS'
12 programming that would have a positive impact upon
13 women's release. Cognitive therapy is about
14 understanding negative thought patterns and their
15 relationship to emotional and behavioral actions.

16 CBT will help inmates become conscious of
17 irrational thought that might have led up to their
18 incarceration, and learn to challenge old beliefs,
19 and learn healthier ways of living. Prison time,
20 with its isolation and slow pace, provides the
21 opportunity for women to change their thoughts and
22 behavior, reducing new crimes and recidivism for the
23 future.

24 DOCS fails to provide productive
25 activities during incarceration, building

1 constructive community ties, properly diagnosing and
2 treating illnesses in prison, ensure a real valuable
3 continuum of care, and providing behavioral therapies
4 to shape positive thinking during their
5 incarceration. These are major areas that require
6 significant reforms in policy.

7 I hope the issues of improvement that I
8 have addressed are taken into strong consideration
9 for improving policies and procedures.

10 Thank you very much for your time and
11 attention.

12 I'd just like to touch on this cognitive
13 behavioral therapy group. They were giving that at
14 one time, through OMH at Bedford. And then, when
15 that particular staff member left, our group fell
16 apart, and there was about 15 of us in it. And, we
17 learned a great deal about ourselves and about how to
18 change your thought and change your behavior. And,
19 this is not something that DOCS offers, you know,
20 normally. And, it would be real important, because,
21 you know, you change your thinking and you change
22 your behavior, we don't have to come back. Then, we
23 learn to understand the system.

24 And, I would just like to touch on
25 education. It is very, very important for a woman's

1 self-esteem. It gives us a place. It makes us feel
2 empowered. And, when we feel empowered, and when we
3 feel self-worth, it makes things better for us in
4 society. It's real important that the Commission
5 recommends stronger education areas in jail, because
6 if a woman has self-worth and a woman is empowered,
7 then we can be mothers to our children and we can
8 partake in society as positive role models, and we
9 don't have to become a statistic any longer.

10 Thank you.

11 COMMISSIONER O'DONNELL: Thank you, so
12 much, --

13 COMMISSIONER FISCHER: Thank you, Lisa.

14 COMMISSIONER O'DONNELL: -- for sharing
15 that with us.

16 Felipe Vargas, from The Doe Fund, and
17 Beatrice Lozada, after Felipe.

18 Good afternoon.

19 TESTIMONY OF FELIPE VARGAS,

20 DIRECTOR OF CRIMINAL JUSTICE PROGRAMS, THE DOE FUND

21 MR. VARGAS: Good afternoon. Thank you
22 for inviting me in.

23 My name is Felipe Vargas, and I direct
24 criminal justice programming at The DOE Fund. We're
25 an organization that provides paid transitional

1 employment to homeless people, probationers, and
2 parolees.

3 I'm going to testify today about the need
4 for comprehensive discharge planning while a person
5 is still incarcerated, to reduce the possibility of
6 recidivism once released. I'm also going to advocate
7 that programming to address the needs of anyone
8 convicted of a crime and sentenced to a term of
9 imprisonment be focused on the development of
10 marketable skills, both in prison and when the person
11 is released.

12 In society, when we hold someone for at
13 least one overnight to provide a medical or
14 behavioral practice, best practice dictates that we
15 provide adequate discharge planning for that person
16 upon release from care. Such is the case for things
17 such as chemical abuse, medical, or mental health
18 treatment. The goal of discharge planning is to
19 prevent the person from returning to the previous
20 state in which treatment was needed. Certainly, we
21 would all agree that that makes practical sense.

22 Incarceration is both one of the
23 punishments and the treatments that we prescribe for
24 individuals who violate our rules. In short,
25 imprisonment is intended to punish the person and

1 prevent them from returning to the previous
2 condition, unlawful behavior, upon release.
3 Incarceration is utilized, then, as a form of
4 behavior modification. However, despite our advances
5 in behavioral sciences, we have not followed the best
6 practice concept for discharge planning when
7 discharging formerly incarcerated individuals
8 post-treatment. I believe this is so because of our
9 historical need to focus on retribution.

10 I think we owe ourselves -- society, that
11 is -- and the individual more than just punishment.
12 We should use the best at our disposal to increase
13 the probability that someone who has been
14 incarcerated has the best possible change of not
15 re-offending. The vehicle for this is discharge
16 planning, and it is in the public interest that we do
17 it effectively. Discharge planning before release is
18 not a new concept, and one that has reaped benefits
19 here in the City of New York.

20 Several years ago, a population labeled
21 "frequent flyers" was identified. These individuals
22 were people who literally spent their lives, often
23 decades, alternating stays in New York City jails,
24 treatment facilities, and shelter systems. Through
25 investigation, it was uncovered that one of the main

1 situations that fed the frequent flyer population was
2 the Rikers Island lack of adequate discharge
3 planning.

4 At the time, there was a practice where
5 people were being released into the late hours of the
6 night, directly into drug-infested and crime-ridden
7 Queens Plaza, with little to no money or linkages to
8 appropriate services. Many of these individuals had
9 histories of mental illness and chemical abuse.
10 Needless to say, once those guys arrived, most
11 quickly became involved with the negative elements
12 there.

13 A plan was put together through a
14 collaboration between the New York City Department of
15 Corrections, the Department of Homeless Services, and
16 service providers, to identify these individuals,
17 assess their needs, and provide services immediately
18 upon release to break the cycle. This collaboration
19 has proven successful in decreasing recidivism among
20 this population, and due to its successes,
21 comprehensive discharge planning is done on a must
22 larger scale in the City's jails today.

23 On a State level, since August of this
24 year, the New York State Department of Correctional
25 Services, in collaboration with the Division of

1 Parole, has set up a re-entry unit at the Orleans
2 Correctional Facility for comprehensive discharge
3 planning. I read that this is a 60-bed unit where
4 state prisoners from Erie County are transferred 90
5 days prior to release. While there, inmates meet
6 service providers from the community, prospective
7 employers, and reconnect with family and loved ones.
8 The prisoners are also assisted with public benefit
9 applications. Moreover, linkages are made so that
10 these inmates can go straight from prison to service
11 providers that they have already met on their day of
12 release.

13 DOCS has also reached an agreement with
14 the New York State Department of Motor Vehicles to
15 underwrite, for \$10, providing non-driver I.D. cards
16 to newly-released persons.

17 These efforts will certainly help to ease
18 the transition of formerly incarcerated individuals
19 as they adjust to society and, in this way, have a
20 significant impact on reducing recidivism. Even more
21 encouraging is the fact that DOCS has plans to reopen
22 re-entry -- to open re-entry units at several other
23 facilities. We urge you to support these efforts,
24 through funding or through legislation.

25 Actually, we have seen some excellent

1 developments at DOCS under the leadership of
2 Commissioner Brian Fischer. In addition to the
3 re-entry units, I also read recently that DOCS is
4 expanding educational and vocational programs that
5 have been shown to be effective in equipping
6 prisoners with marketable skills. This includes
7 re-establishing funding for college education.

8 Studies have shown that obtaining a
9 meaningful education while incarcerated reduces
10 recidivism. In fact, the more education one receives
11 while in prison, the less likely they are to
12 recidivate. In 1991, DOCS conducted research to
13 study whether college programs had an impact upon
14 recidivism, and found that a college degree was tied
15 to reductions of recidivism of 55.7 percent.

16 According to a report by the New York
17 State Bar Association Special Committee on Collateral
18 Consequences of Criminal Proceedings, research from
19 both academics and practitioners suggests that the
20 chief factor which influences the reduction of
21 recidivism is an individuals' ability to gain
22 employment. College programs give people the skills
23 to gain employment. Moreover, the Independent
24 Committee on Re-entry and Employment reported that 89
25 percent of the people who violate the terms of their

1 parole or probation are unemployed at the time of the
2 violation.

3 We believe that all of the programming
4 intended to reform people sentenced to terms of
5 imprisonment should focus on developing their
6 employability. In addition to discharge planning, I
7 urge this panel to invest in programming for the
8 formerly incarcerated that focuses on the attainment
9 of gainful employment. Certainly, we acknowledge
10 that many individuals are released with certain other
11 needs, such as chemical abuse treatment, anger
12 management, health issues, and housing, just to name
13 a few.

14 What we are suggesting is that all needed
15 services, but that the focus be on the inclusion in
16 the work force. With the exception of those who are
17 disabled or otherwise challenged, the majority of
18 formerly incarcerated individuals can benefit most
19 from workplace re-entry strategies.

20 We believe, together with discharge
21 planning, programs that prepare the formerly
22 incarcerated with job skills training and job
23 placement services can have the most positive impact
24 on the rehabilitation of those who served time in our
25 state prisons and jails. Most importantly, we

1 believe that it can work to lower the recidivism
2 rate.

3 In short, full inclusion in our economic
4 system should be the centerpiece of successful
5 re-entry. I'm not talking about creating new models
6 here. I'm talking about supporting and expanding
7 existing initiatives. Certainly, I would like to
8 offer my program as an example of a successful
9 re-entry model.

10 And, as I stated before, my program is The
11 Doe Fund. We have been providing homeless men and
12 women the chance to rebuild their lives through hard
13 work for over 17 years. We offer a simple yet highly
14 effective formula. The men and women who come
15 through our doors make a commitment to work hard,
16 abstain from drugs, alcohol, and criminal activity.
17 And we, in turn, make a promise to offer them an
18 opportunity through transitional employment to earn
19 above minimum wage, establish savings, obtain
20 suitable housing, and a private sector job.

21 While the individual is in our programs,
22 we also offer wrap-around services, such as training
23 and education, relapse prevention groups -- AA and NA
24 -- drug testing, job development, placement, and
25 retention services. We also offer all graduates

1 lifetime assistance. Anyone who graduates from our
2 program leaves job and alcohol free, with a private
3 sector job, savings, and independent housing.

4 Throughout our history, by extension, we
5 always served the criminal justice population,
6 because nearly 70 percent of the people who went
7 through our doors have felony convictions. So, in
8 2001, we opened our first criminal justice program
9 specifically targeted to people on parole or
10 probation. We started with a small 30-person
11 capacity program. Now, we have over 225 people in
12 the program, including a transitional housing
13 program.

14 I would like to share with you some of the
15 numbers, just to give you an idea of the scope of our
16 work. In 2006, we were able to place 426 people in
17 jobs. We have an employment retention component to
18 our services, which has resulted in trainees
19 retaining their jobs at a rate of 70 percent after
20 six months of employment.

21 Currently, in our criminal justice
22 program, we have a success rate of 84 percent of our
23 capacity. And, of course, I could go on and on about
24 my agency, but it is just one example of a program
25 whose goals are to place a person in gainful

1 employment. There are other programs who are
2 successful in placing the formerly incarcerated in
3 jobs, such as CEO, The Fortune Society, The Osborne
4 Association, and the Exodus Transition Community,
5 again, just to name a few.

6 Again, I want to emphasize, for closing,
7 that the best way to work towards successful re-entry
8 is to give the person the entry for an inclusion in
9 our economic system. It is in the public interest
10 and the best way -- the best thing that we can do
11 with our tax dollars.

12 I'd like to just summarize the three
13 points here. We believe:

14 One, that comprehensive discharge planning
15 prior to release is essential for successful
16 re-entry. We urge you to mandate it through
17 legislation; that is, to create legislation that says
18 that before someone is released, they're entitled to,
19 legally, comprehensive discharge planning, and to
20 delineate exactly what that is and what that entails.

21 We believe the prisoners should have all
22 of their bio/psycho/social needs met while
23 incarcerated, but that the focus should be on
24 developing marketable skills. And, we believe that's
25 the most important thing, that someone can come out

1 and actually become a full member of our economic
2 system.

3 Upon release, the formerly incarcerated
4 should be linked to all human services; but here,
5 again, the focus should be on securing gainful
6 employment.

7 I thank you for your time, and I will take
8 any questions, if you have any.

9 COMMISSIONER O'DONNELL: Okay. Thank
10 you, very much, Mr. Vargas.

11 MR. VARGAS: I would like to, on a
12 personal level -- I think I have a minute, right?

13 UNIDENTIFIED: Yeah, twenty seconds.

14 MR. VARGAS: Okay. I have twenty
15 seconds.

16 [Laughter]

17 MR. VARGAS: I would like to talk about
18 the issue that was brought here before, about
19 lifetime parole, and a few speakers spoke about it
20 here. Chairman Dennison spoke about it.

21 And, that is the issue -- the issue that
22 has not been brought up is the fact that the way this
23 law came about, or this rule, is it was done so in an
24 unconstitutional way. Our sentences were -- I'm a
25 formerly incarcerated person. Our sentences were

1 changed at the end of our term.

2 For example, I was out three years. My
3 parole officer and I put a package together to be
4 discharged from parole. We put the documentation in.
5 We were later informed that I was no longer eligible.
6 This was not part of my sentence. This was never --
7 I -- out of nowhere.

8 And then, both he and I had to do the
9 research to find out what had happened? What was
10 259-j? How did it come about? And, as Chairman
11 Dennison said, many of the legislators involved with
12 that didn't -- it was a rider on a bill. They didn't
13 even know that this thing was on the bill.

14 So, what you have now is everyone that's
15 -- by the way, everyone that's subjected to this law
16 was sentenced before the law was even enacted. So,
17 what you're doing is you're creating legislation
18 after the fact. And the little that I know about law
19 says that there should be no ex post facto laws,
20 meaning there should be no laws after the fact. And,
21 what we did here was we created a law after the fact,
22 right?

23 And, in order to be -- in order to be
24 subjected to this law, you've got to serve at least
25 15 years, and it has to be for an A-I felony. If you

1 follow that, anyone that's subjected to the law now
2 was sentenced before that law was enacted. So, it's
3 being applied illegally.

4 COMMISSIONER O'DONNELL: Okay. Thank
5 you.

6 MR. VARGAS: Thank you.

7 COMMISSIONER O'DONNELL: I appreciate
8 that, very much.

9 Okay. Our next person is Beatrice Lozada,
10 who is from -- well, you can tell us where you're
11 from -- to speak on parole reform.

12 MS. LOZADA: Prison Families Anonymous.

13 COMMISSIONER O'DONNELL: Okay. It was
14 just cut off on my sheet here. I'm sorry about that.
15 TESTIMONY OF BEATRICE LOZADA,

16 PRISON FAMILIES ANONYMOUS

17 MS. LOZADA: Okay. Good afternoon,
18 everyone. Thanks for coming here.

19 I'm actually going to read what I wrote,
20 because I'm extremely emotionally attached to it.
21 So, I'll try to contain myself, okay?

22 So, I'm here today as a concerned citizen,
23 regarding the current state of the judiciary. My
24 name is Beatrice Lozada. My father, Carlos, has been
25 incarcerated for more than 32 years, and has appeared

1 before the Board of Parole on five separate
2 occasions.

3 You have heard all of the stats already,
4 so I'm talking to you from my heart. It is not my
5 position to judge my father, only to talk about the
6 man he is today. Today, my father is a gentle,
7 humble man, who will assist anyone and everyone in
8 need of help.

9 I say this not as his daughter, but as
10 someone who has read many of the letters that have
11 been written by others who are with him on a daily
12 basis, including corrections officers. Whatever the
13 judiciary believes my father did 32 years ago, he is
14 not the same person today.

15 I might add that it is unlikely that any
16 of us are the same people that we were 32 years ago.
17 We grow, we mature, and most of all, we learn from
18 our life experiences. Clearly, it is difficult for
19 me to believe that anyone in this room is the same
20 person they were 32 years ago.

21 I have never been with my father, other
22 than in the controlled environment. We have never
23 shared a moment together without correctional staff
24 being present. This greatly saddens me that after
25 all the time he's spent incarcerated, I am very

1 frustrated. I have begun to ponder the same
2 questions daily:

3 How much time is enough?

4 When do we, as a society, take a good hard
5 look at how we treat offenders in our society?

6 At what point is enough enough?

7 And, how can we, the world's superpower,
8 coin such phrases as democratic, forgiving, or even
9 better yet, compassionate conservatives?

10 Thirty-two years is a very long time. My
11 father has done everything that has been asked of
12 him. He has participated in and completed every
13 program mandated by the Department of Correctional
14 Services. And, he has amassed 140 credits along the
15 way. He would have graduated with a degree in
16 behavioral sciences, but the college program was
17 discontinued in 1995 before he could qualify for his
18 required courses.

19 In sentencing a person, I think it's time
20 that we take a fresh approach, and not just to impose
21 a number of years from a person's life, and then
22 forget that person until years later, when that
23 period of time is up, only to create a new standard
24 to further incarcerate people. We need a fresh
25 approach, and I ask each of you to think long and

1 hard about the effects of lengthy incarceration.

2 My father's incarceration has devastated
3 my family. While my father was serving his time on
4 the inside, we were serving our time on the outside.
5 I am one out of my father's seven children. The
6 effect this has had on my family and myself was, and
7 is still, years of emotional struggle. Not having my
8 father around has caused all of us sadness and the
9 feeling of being incomplete.

10 As a result, there was a lot of fighting
11 amongst us growing up. My mother had to do
12 everything she could to provide for us. This
13 included working two jobs and going to school at
14 night, just so she can get us the finer things in
15 life, like good food, good education, and a roof over
16 our heads.

17 We were raised by my grandparents, and on
18 my mother's only days off, she would take a few hours
19 to drive to see my father.

20 As his 25 years approached, we were
21 excited to know that he was coming home, only to be
22 disappointed when he was denied parole. Since then,
23 his father has passed on, and my mother divorced him
24 because she suffered from depression. Some of the
25 siblings even chose not to go anymore to visit

1 because it was too emotionally draining to go to the
2 prisons and deal with the unprofessional treatment by
3 the corrections officers, as well as the feeling of
4 guilt and anger that we couldn't take our father home
5 with us.

6 Oh, God, I hold my tears in every time I
7 go see my dad, because I don't want him to see me
8 cry. But, it breaks my heart that he's not free.

9 I drew up a petition before his last
10 parole hearing in May, 2007. I sent over 117
11 petition letters to the Division of the Parole Board
12 and Governor Eliot Spitzer, elected at that time,
13 right -- and with the hopes that he would be set
14 free. Unfortunately, my dreams were crushed when I
15 found out that his parole was denied, and he was
16 given another two years. Again, this is his fifth
17 time that he's been denied.

18 I was completely devastated, and I gave up
19 all hope. I am here before you now because I'm
20 committed to having my dad set free, and I'll stop at
21 nothing to have this happen.

22 On my 25th birthday -- well, at the age of
23 25, after my 25th birthday, I got to dance with my
24 father for the very first time in my life at a
25 festival held at Otisville Correctional Facility.

1 He's been denied five times. I beg of all of you to
2 do anything you can to have him set free, as well as
3 others and other children that are in my position, 28
4 years old, and it's still really hard.

5 I just want to enjoy the simple things
6 with my dad, like Thanksgiving dinner, a walk in the
7 park, a movie, and dancing. My father is 55 years
8 old. He had surgery on both his shoulders. He can't
9 even do simple activities like weight lifting or
10 sports. Just, please allow him to be home with his
11 family. He's got seven children, three
12 grandchildren, and one grandchild on the way, and a
13 very sick mother.

14 Unless we are a nation of revenge,
15 unrealistic sentences serve no purpose. As my father
16 ages, his medical problems will increase, and the
17 cost of health will be felt by the taxpayers. Are we
18 as a society better off with that person locked up,
19 out of our lives for 25, 30, or more years? And, is
20 the system really addressing the needs of the
21 offender?

22 I thank you all for allowing me to share
23 this with you.

24 COMMISSIONER O'DONNELL: Thank you for
25 doing it.

1 Andrew Conn? And, following -- well,
2 we'll have Andrew come first, and then we have two
3 people to follow Andrew, who is a concerned citizen,
4 to speak about the judicial system.

5 TESTIMONY OF ANDREW CONN

6 MR. CONN: I am a well known research
7 mathematician, U.S. citizen, and resident of New
8 York. I have never personally had any friends or
9 family incarcerated.

10 With reference to repeating concerns of
11 not deprecating respect for the law, based on my own
12 experience, nothing could engender less respect for
13 the law and our penal system than knowledge as to how
14 it works today. As a concerned citizen, I'm ashamed
15 of our penal and judicial system.

16 I think one could judge a country best by
17 how it treats its disadvantaged. Here, when one
18 thinks of those imprisoned, of how racially and
19 economically biased the system is, and in particular
20 how vindictive, inhuman, and excessive it is,
21 compared to almost any other western society, I feel
22 compelled to address this Commission of what we've
23 heard people talk about today.

24 In this testament, I intend to raise some
25 of the issues that particularly offend me. Much of

1 my knowledge is generally within the U.S.A., rather
2 than specific to New York State, but nevertheless I
3 believe that the overall sentiments apply.

4 Capital punishment, I call this judicial
5 murder, and I consider it barbaric. I realize that
6 New York State no longer has executions, but from to
7 time people argue for its reinstatement. I'm not
8 sure how widely this is known, but for example, no
9 country can join the European Union without ending
10 executions first.

11 Plea bargaining has everything to do with
12 expediency, and nothing to do with justice. In fact,
13 its daily misuse in the U.S. is nothing short of
14 horrific. A significant catalyst to my outrage in
15 this arena was the PBS Frontline program on "The
16 Plea." Everyone involved in our justice and penal
17 system should watch it.

18 One of the six parts concerned Kelly
19 Jarrett, who spent 28 years in Bedford Prison because
20 she wouldn't plea bargain for something she did not
21 do. She is now out on parole.

22 What purpose is served by locking up so
23 many people as we do for an excessive number of
24 years? Far too frequently, I have the impression
25 that serious criminals are able to considerably

1 reduce their incarceration by trading crimes for
2 information. And, we saw examples of that today,
3 too.

4 Evidence of sentencing disparity visited
5 on those who exercise their 6th Amendment right to
6 trial by jury is today stark, brutal, and
7 incontrovertible. Criminal trial rates in the United
8 States are plummeting due to the simple fact that
9 today we punish people -- punish them severely simply
10 for going to trial.

11 Parole. There is something wrong with a
12 criminal justice policy that looks only to lengthy
13 imprisonment as the answer to crime, and a criminal
14 justice system that blithely follows along. Indeed,
15 in the last 30 years, the United States has created
16 something never before seen in its history, and
17 unheard of around the globe -- a booming population
18 of prisoners who will die in prison.

19 Western Europeans regard 10 or 12 years as
20 an extremely long term, even for offenders sentenced,
21 in theory, to life. A survey by the New York Times
22 found out that about 132,000 of the nation's
23 prisoners, or almost one in ten, are serving life
24 sentences. The number of lifers has almost doubled
25 in the last decade, far outpacing the overall growth

1 in the prison population. Of those lifers sentenced
2 between 1998 and 2001, about a third are serving time
3 for sentences other than murder, including burglary
4 and drug crimes.

5 Our insistence on denying parole because
6 of the nature of the original crime is a key
7 contributor to these statistics. If one thing is
8 crystal clear, it is that the perpetrator could do
9 absolutely nothing about the nature of the original
10 crime. However, if the original sentence was, for
11 example, 15 years to life, that original sentence, in
12 spite of the nature of the crime, it's not
13 unreasonable for the criminal to be granted parole
14 after 15 years. In fact, a reasonable person would
15 say that, all things being equal, a model prisoner
16 would indeed be granted that parole as soon as
17 possible. But, that is far from the case today and,
18 to my mind, that is not reasonable, and it is not
19 justice.

20 For the record, I strongly disagree with
21 most of the statements of G.B. Alexander in
22 Appendix B. It's most unfortunate that this is a
23 statement of the Chair and Chief Executive Officer,
24 New York State Board of Parole. I believe that many
25 of us could make a compelling argument that unless it

1 is the role of the Parole Board to keep inmates
2 incarcerated for as long as possible, the Board has
3 been far from stellar over several decades.

4 Life without parole, the most severe form
5 of life sentence, is theoretically available for
6 juvenile criminals in about a dozen countries. Human
7 Rights Watch and Amnesty International found
8 juveniles serving such sentences in only three
9 countries besides our own. Israel has seven, South
10 Africa has four, and Tanzania has one. The U.S. has
11 2,225, of whom 59 percent of the convictions were for
12 first-time offenders. Black children are sentenced
13 to life without parole ten times more often than
14 white children.

15 An estimated 26 percent of child offenders
16 were convicted for felony murder. Every jurisdiction
17 in the United States incorporates some form of felony
18 murder rule as a part of its definition of "murder."
19 It was abolished in the United Kingdom in 1957. The
20 Convention on the Rights of the Child, ratified by
21 every country in the world except the United States
22 and Somalia, forbids this practice, and at least
23 132 countries have rejected the sentence of life
24 without parole altogether. How could one not be
25 ashamed of such statistics?

1 To its credit, New York does not have life
2 without parole for juveniles. Nevertheless, this
3 serves to indicate how vindictive, inhuman, and
4 unjust our system in the U.S. really is, and to
5 varying degrees, New York State is adversely affected
6 by the climate and not least by the politics.

7 In addition, New York State does have life
8 without parole for non-juvenile offenders. This
9 raises the issue of defining juveniles as adults.
10 "If they're going to commit an adult crime, then they
11 have to pay an adult price" is the phrase that one
12 hears. This is akin to re-defining what is torture.
13 These terms were defined for very specific reasons
14 and cannot be re-defined for expediency. Once again,
15 this seems to be an almost uniquely U.S. aberration.
16 Juveniles in most jurisdictions were defined as such
17 because it was felt they could not be held criminally
18 responsible until they reached a certain age.
19 Clearly, such a decision cannot depend upon the
20 nature of the crime.

21 Some comparisons with other countries in
22 sentences for life. Since 1878, after the abolition
23 of the death penalty in The Netherlands, life
24 imprisonment has always meant exactly that. The
25 prisoner will serve their term in prison until they

1 die. The Netherlands is one of the few countries in
2 Europe where this is the case. Since 1945, only
3 34 criminals have been sentenced to life
4 imprisonment, excluding war criminals, in The
5 Netherlands.

6 In Portugal, life imprisonment is limited
7 to a maximum of 25 years. But, the vast majority of
8 long-term sentences never exceed 20 years served.

9 In Norway, the maximum sentence that can
10 be given is 21 years. It's common to serve
11 two-thirds of this, and only a small percentage serve
12 more than 14 years. The prisoner will typically get
13 unsupervised parole for weekends, et cetera, after
14 serving a third of their punishment, or seven years.

15 In February, 2007, the European Court on
16 Human Rights announced a review on whole life
17 sentences on the grounds that such sentences amount
18 to a violation of human rights.

19 Under general philosophy, the U.S. has one
20 of the most repressive and vindictive prison systems
21 in the world. We have to find ways to consider
22 incarceration as the last resort. Most of those
23 incarcerated must be incarcerated for shorter terms.
24 Alternatives to incarceration must be the norm for
25 genuinely non-violent first offenders, and we must

1 reintroduce better education programs and effective
2 treatment for the mentally ill and drug addicted.

3 We must also make it much easier for
4 released prisoners to re-enter normal society and
5 become productive citizens. Of course, this is not
6 easy, but the prevailing sense of revenge and
7 unwillingness to help ex-felons makes it almost
8 impossible, especially when one considers that many
9 of them, for a variety of reasons, have much more to
10 cope with, irrespective of their crime than most of
11 us.

12 The administration of American justice is
13 not impartial. The rich and the poor do not stand on
14 equality before the law. The traditional method for
15 providing justice has operated to close the doors of
16 the courts to the poor, and has caused a gross denial
17 of justice in all parts of the country to millions of
18 persons.

19 For some, free counsel comes at a high
20 cost. Stephen Bright, who teaches law at Yale and
21 Harvard Universities offers this caution: "No
22 constitutional right presents a greater divide
23 between promise and reality." Approximately 16
24 months ago, the Commission on the Future of Indigent
25 Defense Services concluded that the New York State

1 indigent defense system was in crisis. That finding
2 came as no surprise to anyone even remotely familiar
3 with the criminal court. Those facing charges in the
4 criminal courts of this state are overwhelmingly and
5 disproportionately people of color. They are usually
6 represented by lawyers with limited funds and
7 enormous case loads. Is there any surprise that
8 guilty pleas rule the day?

9 The listing is almost endless and
10 evidences to the inequity of our system is
11 everywhere, yet it seems to concern only a few. Of
12 course, there are some inequities in all systems, but
13 with the proclivity of our system to give long
14 sentences, the effect is much, much worse than, say,
15 in Western Europe. Consequently, we should be making
16 much more effort to do something about it. Instead,
17 we seem to be making much less.

18 I'll try to finish. Victim impact
19 statements. Victim statements are rarely objective,
20 and I fail to understand why they have a role in
21 justice and sentencing. Such statements are
22 relatively recent, even in the U.S., first becoming
23 law in California in 1982, but they are not a part of
24 the sentencing in almost every other country. Victim
25 impact statements do little to further the

1 traditional goals of sentencing -- deterrence,
2 incapacitation, rehabilitation, and retribution. It
3 furtheres none of the historically considered
4 ambitions of punishment.

5 Registered sex offenders. I consider that
6 many aspects of registered sex offenders laws amount
7 to modern witch hunts. There is little evidence that
8 the general public needs to know. They mostly are
9 promoted by those -- by -- and by themselves, promote
10 fear. I think it's fine for such lists to be
11 available for those who have the need to know, which
12 is standard in Europe. But, I've seen it to be the
13 case far too often in the U.S.A. we go overboard,
14 promoted mostly by politics and not science or even
15 intelligent thought.

16 Public lists are almost unheard of outside
17 the U.S.A.. We have over 600,000 offenders listed
18 publically. There are many reasons to not only
19 question their use but also to question how many
20 should be on there.

21 I'm almost finished. Okay. I should
22 finish.

23 Finally, I would like to like to express
24 my appreciation of what we are trying to do -- of
25 what you are trying to do. Sorry. I was genuinely

1 very impressed with the content of the preliminary
2 report. And, I hope you succeed in making the
3 Commission permanent.

4 However, we need to say the New York
5 sentencing system certainly is not in a state of
6 crisis. This is a relative assessment. In my
7 opinion, relative to most of the Western world, our
8 sentencing system is in the state of crisis.

9 Thank you for giving me the opportunity to
10 speak.

11 COMMISSIONER O'DONNELL: Thank you for
12 being with us.

13 COMMISSIONER FISCHER: Thank you, sir.

14 COMMISSIONER O'DONNELL: And, my staff
15 tells me I omitted Lisa Rappa. I thought Lisa did
16 speak with us, but --

17 UNIDENTIFIED: She did.

18 COMMISSIONER O'DONNELL: -- she did,
19 right? All right. Pay better attention out there,
20 guys.

21 [Laughter]

22 COMMISSIONER O'DONNELL: Okay. We're
23 next going to move to Ms. Edie Beaujoin.

24 MS. BEAUJOIN: Edie Beaujoin.

25 COMMISSIONER O'DONNELL: Okay. And,

1 Alberto Oliva. Sorry about the names. They are
2 joining us from Mentoring a Prisoner?

3 MS. BEAUJOIN: Yes.

4 COMMISSIONER O'DONNELL: Okay. Welcome.

5 TESTIMONY OF EDIE BEAUJOIN, MENTORING A PRISONER

6 MS. BEAUJOIN: Thank you for the
7 opportunity to speak. I want to say at the time that
8 I was -- I had come -- I had put my application in
9 and was not -- did not get it in on time, and so I
10 had come, sitting here hoping for the opportunity to
11 speak, because this is such an important issue to my
12 heart.

13 I am an educator, and I have -- I have a
14 company now, an organization called Mentoring a
15 Prisoner. I have my Master's in Social Work, and my
16 Master's in Divinity. And, for four years, I taught
17 at the NYTS Master's program at Sing Sing, where men
18 get their Master's in Professional Study.

19 Alberto Oliva was one of my students, two
20 years ago, and he just got out of prison after
21 serving 31 years of being incarcerated. And, I just
22 want to say he will -- please, could you give me the
23 six-minute time, because I'd like for Alberto to be
24 able to speak.

25 He is the cream of the crop, one of the

1 cream of the crop with his Master's. And, he's been
2 out three months, and has still not been able to get
3 a job. I'll just put that out.

4 I want to talk first about sentencing. I
5 had the opportunity to live in Aruba for 20 years,
6 and know quite well the European sentencing. I just
7 want you to think for a moment. I just was privy to
8 reading two newspaper articles that I picked up.

9 One, the other day, was from USA Today.
10 And, it talked about a man in Spain who had just been
11 released after eight years and serving two-thirds of
12 his sentence. He had been sentenced for murdering
13 two air traffic controllers who he was enraged with
14 grief and killed these two air traffic controllers
15 after they had made a mistake and his wife and
16 children had mistakenly crashed in a plane due to
17 their mistake. He was sentenced under that country's
18 law to 14 years in prison -- 12 years in prison, and
19 was released for good behavior after eight years.

20 Another article which I read just this
21 morning, from the Daily News, about another one of
22 our graduates from the Sing Sing program, who I
23 taught last year -- Richard Winkler -- who was just
24 released, I believe, after 27 years. Richard's crime
25 was, as a teenager, he was enraged with his father

1 and attacked his father and killed him. I do not
2 know the circumstances of that attack.

3 Had Richard been in a European country he
4 probably, possibly would have been treated and not
5 incarcerated. Had the person in Spain been in our
6 country, he would still be in prison, probably for
7 life.

8 So, I just want to point out, as the
9 person before me has said, I think it's really
10 important to look at the other countries. We have
11 one of the most violent crime rates in the world for
12 the free countries, and yet our incarceration
13 sentencing are the longest of many of -- most of the
14 European countries, that 20 years is considered a
15 life sentence. And so, this man was released after
16 eight years for murder, and good behavior.

17 So, that's one of the things that I wanted
18 to point out and suggest to the committee that they,
19 perhaps, gather information of what the sentencing
20 policies are for other countries and how they handle
21 that. I think if we know that, that might be
22 helpful.

23 And, excuse me, because I just had to
24 write this today, because I didn't know I was going
25 to testify. I would have written something out and

1 given it to you.

2 We looked at the parole issue, and the
3 former Parole Commissioner spoke of the people being
4 on parole forever. Many of our men and women who are
5 paroled and have to be sent back to other countries,
6 they're automatically deported -- I'm sure you all
7 know this -- if they have a sentence and they are not
8 an American citizen but they have lived in America
9 for 20 years, and have their families here, and all
10 their connections. They are automatically deported
11 to their country of origin.

12 However, in many cases, they do quite
13 well, and there is no parole for them when they go
14 back. A case in point, one of our graduates who
15 graduated two years ago from the Master's program,
16 was sent back to Jamaica, and was under no parole,
17 and he now owns, with a friend, a phone company
18 there, and is doing quite well. So, just to -- just
19 to point that out, as far as other countries and how
20 they handle parole.

21 Having taught approximately 60 men in the
22 Master's program, I must tell you from my heart that
23 these were all long term -- almost all were long-term
24 incarcerated men who had 15 years plus. I would
25 consider all of them transformed and ready to go out

1 and make a difference. In fact, many of them said
2 that's what they wanted to do. They wanted to give
3 back to the community. However, many of them are
4 still in prison. And, when they do get out,
5 oftentimes there is not a place for them to give
6 back. It's very difficult to get a job, even with a
7 Master's degree. So, you can imagine, with the cream
8 of the crop, what it would be like for those without
9 having college.

10 Some mis-perceptions that I think the
11 public has. Before I went into teaching at prison, I
12 was told to be careful. Everyone will tell you
13 they're innocent. Of all the 60 men that I taught,
14 only two actually said they were innocent. They each
15 -- most of them described a journey which I know
16 Commissioner Fischer is -- I know Commissioner
17 Fischer is familiar with. And, that journey is they
18 came into prison, and many of them say that prison
19 saved their life, that they were grateful for prison,
20 because if it hadn't been for prison, they would be
21 dead. Now, I think there might have been other ways
22 to save their life.

23 However, they say that in the first six to
24 eight years, they were very angry. And then,
25 something happened along the way, and either a

1 program came about or a person who had been a
2 long-termer came and mentored them and said go this
3 way, not the way of the gangs. And so, after eight
4 to ten years, they entered education, and that seemed
5 to be the thing that changed most of their lives.

6 However, as Alberto will tell you, he
7 received his education after 11 years. That was 20
8 years ago. He stayed in prison 20 years after
9 receiving his four-year college education.

10 I have much more to say, but one thing I
11 do want to say before I give it to Alberto, is I
12 think it's very important to have a public awareness
13 campaign, educating people, as Commissioner Fischer
14 has said so beautifully, that 95 or 98 percent of
15 these people in prison are coming home. They're not
16 in there for life. And, unless we rehabilitate them
17 through education and through programs they are going
18 to come home perhaps angrier than when they went in.
19 So that it's important, I think, to have a public
20 education campaign, because that's how laws change.
21 People fuel the laws.

22 Thank you.

23 TESTIMONY OF ALBERTO OLIVA

24 MR. OLIVA: Thank you. I'll be brief.

25 I'm a resident from the South Bronx, born

1 and raised. From the ages of 13 to 18, in the South
2 Bronx, I was exposed to drugs and alcohol, and gangs
3 were predominant in the neighborhood. I found myself
4 having to join gangs because I needed protection.
5 Every time I came back from school, I was put up
6 against a wall. They were police officers, and
7 patted me down. And, I had felt a need to fight
8 back, and I think that was my reason -- one of my
9 reasons for wanting to join gangs, for protection.

10 At 16 years old, I experienced
11 incarceration for reasons of committing assault on
12 someone, and that's when I began to become involved
13 with anti-social behaviors, which was never addressed
14 when I was arrested and sent to Rikers Island
15 momentarily.

16 So still, I was -- I was released and I
17 was still in the gang culture, and with a drug
18 addiction. I eventually became responsible for
19 committing another felony, which caused the death of
20 the owner of an establishment, while seeking money to
21 support my addiction. I have no excuse for what I
22 committed. I took full responsibility for the crimes
23 that I committed.

24 But, during the time of my incarceration,
25 I found that there was something lacking in my life.

1 And, that part that was lacking in my life was
2 education.

3 I entered the system with no GED or
4 general education, and I'll wrap it up quick, because
5 I only have one minute.

6 So, in 1979, I received my GED. In 1982,
7 I received my Associate in Science degree. In 1987,
8 I pursued a Bachelor's in liberal arts. And, in
9 2005, I received my Master's in Professional Studies
10 with New York Theological Seminary.

11 This is one of my transformation moments.
12 I changed. I became a different person. My focus
13 was different. Education helped me establish new
14 goals and objectives in my life.

15 Now, I've been paroled after 31 years. In
16 July, they released me, finally, after three parole
17 hearings that I attended.

18 Now, I've been asked to attend drug
19 programs and anger management sessions, something
20 that I have attended while I was incarcerated. I
21 think that I got my drug problem pretty well licked,
22 but I know that it's a lifetime situation, and I
23 still address it. But, the need to attend a drug
24 program once I'm released, for a period of six --
25 three to six months, four times a week, for three

1 hours, I think is in excess.

2 Nevertheless, I applaud all the agencies
3 for what they have offered to the ex-offenders. But,
4 my need right now is employment. And, even with the
5 education that I have, it's difficult. So, I can
6 imagine those individuals who don't have my
7 education, how difficult it would be for them.

8 COMMISSIONER O'DONNELL: Thank you, very
9 much. I just want to explain about the process. I
10 think the staff allowed you to enter and speak to us
11 today because someone canceled in your slot. So, I'm
12 glad you had an opportunity to join us and to
13 present. Thank you, very much.

14 MR. OLIVA: Thank you for your times.

15 MS. BEAUJOIN: Thank you.

16 COMMISSIONER O'DONNELL: And, we actually
17 have five remaining speakers here today. So, we'll
18 finish just about on time. We actually have to leave
19 the room at five o'clock. So, if I have seemed tough
20 on the time limit, it's only because we wanted to
21 afford as many people as possible the opportunity to
22 present here today.

23 So, our next speaker is Sundiata -- if I'm
24 pronouncing it right -- Sadip? Sundiata Sadip?
25 Here?

1 William Waters, if you could join us.

2 Eric Marsh --

3 MR. MARSH: Here I am.

4 COMMISSIONER O'DONNELL: -- is after
5 Mr. Waters. Okay, if you could come up, and take a
6 seat, as well.

7 And, Mr. Waters is from the Osborne
8 Association. Thank you for joining us today.

9 TESTIMONY OF WILLIAM E. WATERS,
10 PROGRAM DIRECTOR, THE OSBORNE ASSOCIATION

11 MR. WATERS: Thank you for having me.
12 Actually, I have waited, like, 31 years for an
13 opportunity such as this.

14 I would like to begin by sharing a dream
15 with you -- no, actually, it's a nightmare. It's the
16 year 2030. I'm 70 years old. I call Access-A-Ride.
17 I grab my walker, go down, and I access
18 Access-A-Ride, and I make my monthly parole
19 supervision appearance.

20 I'm currently on lifetime parole. And, I
21 have a long story to tell, but I only have ten
22 minutes, so I have to try to get a lot of things in.

23 I went to three Parole Boards and an
24 Executive Clemency Parole Board hearing. At my third
25 Parole Board hearing, the third one was the charm for

1 me, when I was released.

2 I didn't have an epiphany or anything, but
3 I had this great revelation. And, I couldn't
4 understand why I was continuously denied parole. I
5 committed the crime, and I deserved to be punished.
6 And, I knew that. And, I needed to tell the
7 Commissioners that I committed a crime, I deserved to
8 be punished. Nothing I can do can undo the crime
9 that I committed, which was a felony murder.

10 I was involved with two other people in a
11 robbery, and one of my co-defendants killed someone.
12 And, there were no words for me to express my deep
13 remorse. But, I said, you know, I can't express how
14 deeply remorseful I am about that. And, I know I
15 deserve to be punished. And, if this hearing is just
16 about punishment, and how much time you want me to
17 do, let's just go off the record and tell me what you
18 want from me, because I need to pay for my crime.

19 But, I was told during all of that time in
20 prison -- I spent 24 years in prison -- that it
21 wasn't just about isolating me, but it was also about
22 providing opportunities for rehabilitation. And, I
23 did take advantage of those things. But, I had this
24 fundamental understanding that there was this other
25 side of the fence, and I didn't hear much of that

1 here today. And, I'm practically changing my script,
2 you know, the harm that people have done when
3 committing crimes, and especially when you talk about
4 a homicide-related offense, and you're taking a life,
5 and, you know, if somebody spends 20, 25, 30 years in
6 prison, you have denied somebody 20, 25, 30 years of
7 their life, and we don't take that lightly.

8 And, when people spoke here today, and you
9 didn't hear that, it's because their pain is so great
10 that it just overcomes their need to talk about that
11 other side of the criminal justice fence. And, I
12 just needed to say that. And now, I'm going to try
13 to segue into my script.

14 I work for the Osborne Association, a
15 non-profit organization, and there were many people
16 here today representing from the Osborne Association.
17 I'm a Program Director of various community-based
18 services.

19 At the Osborne Association, we work with
20 people, as we say, who have been in conflict with the
21 law, people who have a current open case, people in
22 prison, people who have been in prison, and of
23 course, their families and their children. And, we
24 believe that people can change. And, we talk about
25 transforming lives, communities, and the criminal

1 justice system.

2 So, I want to talk about parole today, the
3 process of going to the Parole Board under Executive
4 Law 259-i(c), and the process of being under parole
5 supervision, as well as being discharged from parole,
6 Executive Order 259-j. So, I served 24 years in the
7 New York State prison system. And, as I said, I went
8 to three Parole Boards and an Executive Clemency
9 Parole Board hearing.

10 Attached to my written testimony is
11 something I wrote. I'm a writer. And, after I went
12 to my first Parole Board hearing, after 20 years, and
13 I was denied for the maximum of 24 months, the only
14 thing that I knew to do was to write about that
15 experience. So, I wrote an autobiographical novel in
16 20 chapters, and the 20th chapter is leading up to
17 that first Parole Board appearance.

18 And, I know you guys have a lot of reading
19 to do, but I guarantee you that's going to be the
20 best reading in this collection of stuff that people
21 have provided.

22 So, I wrote this autobiographical novel.
23 I did not write it for publication. I wrote it for
24 myself, for my own sanity. And, shortly after
25 writing that, I made another Parole Board appearance,

1 and I was denied again for the maximum of 24 months.
2 And, as I said, I went to my third Parole Board
3 appearance, and I was released.

4 But, in going to the Parole Board -- and,
5 I need to say this -- I had two co-defendants. One
6 was adjudicated a juvenile, under the law. This was
7 1976, prior to 1979, with the Juvenile Offender Law.
8 And so, he was given 18 months. My other
9 co-defendant, we had separate trials. We had the
10 same judge. He was also given 20 years to life. So,
11 both my co-defendant and I, after 20 years, we made a
12 Parole Board appearance at different prisons, before
13 different Parole Boards. And, he made his first
14 Parole Board appearance, I was denied, and I was
15 denied again after that.

16 And, we had the same judge, and when the
17 judge sentenced him -- I was sentenced a month later.
18 And she said, "Well, I gave your co-defendant 20
19 years, and I'm going to give you 20 years, also."

20 About five years into my sentence, I wrote
21 my judge, and I told her what I had been doing. And
22 she said, "Look, if you keep your nose clean and you
23 take advantage of educational programs, and
24 vocational programs, you know, you'll still be young
25 after you do this 20 years." I was 16 when I went

1 into the prison system. She said, "You'll still be
2 young. You'll have your life ahead of you."

3 And there's this law, and it became
4 effective in 1978, Executive Law 259-i(c). And when
5 then Governor Carey signed it into law in 1977, he
6 said people would have a reasonable expectation of
7 being paroled, assuming that they did all of the
8 right things that the judge sentenced you for, in the
9 instant offense, the crime you committed and were
10 convicted of, as well as looking at the criminal
11 history, if there was any.

12 So, the judge gave me this feedback in the
13 letter that I wrote to her, and we had a little
14 correspondence going back and forth. And she
15 encouraged me to take advantage of educational
16 opportunities.

17 I went into the prison system as a young
18 man who was in the 11th grade. And, I got my GED,
19 two Bachelor's degrees, and a Master's degree. And,
20 Edie was talking earlier about the New York
21 Theological Seminary Master's in Professional Studies
22 program, which was at Sing Sing, when Commissioner
23 Fischer was the Superintendent there.

24 How am I doing on time?

25 UNIDENTIFIED: You've got three and a

1 half minutes.

2 MR. WATERS: Three and a half minutes.

3 This is actually longer than two of the Parole Board
4 hearings that I went to.

5 [Laughter]

6 MR. WATERS: So, in 2004, my Parole
7 Officer -- I've been on parole seven years, six days.
8 In 2004, my Parole Officer said, "You're doing well.
9 I'm going to submit this paperwork for you to be
10 discharged from parole supervision."

11 And, in 1998, as I believe this Commission
12 knows, Executive Law 259-j was amended, and 259-j was
13 the law that allowed the Division of Parole to
14 consider discharging someone from parole. My
15 co-defendant, who got out four years before me was,
16 in fact, discharged from parole supervision after six
17 years in the community. Now, you know, my 2030 dream
18 -- you know, I'll be in my walker, accessing a ride,
19 going to make my monthly report.

20 But, when you look at Executive Law 259-j,
21 and what happened with that -- and I spoke to the
22 former Commissioner, Robert Dennison. He said that
23 Parole actually knew that the law had been changed,
24 and they just were not applying it retroactively, and
25 then they were told to apply it retroactively, to

1 people who had been on parole even prior to the
2 effective date. And, I said, "Oh, parole didn't even
3 know." But, that's neither here nor there.

4 But, the point that I want to make is that
5 there was no public hearing, there was no
6 transparency in this process. It just happened, and
7 people on the front lines and people on parole didn't
8 even know that this law had been changed. So, I'm --
9 as I said, you know, I've waited 31 years for this
10 opportunity, and I'm glad that, you know, we're
11 talking about it in the report, you know, fairness in
12 this process, as well as transparency, and having
13 hearings, and hearing people out on these issues.

14 A minute and a half. So, I want to read a
15 letter from someone who's here today. I hope she
16 doesn't mind me stating her name -- Diana Ortiz. We
17 work together at the Osborne Association.

18 And, she says: "My name is Diana Ortiz.
19 I was 18 years old when I was arrested for murder in
20 the second degree. I was not the shooter, nor was I
21 present during the attempted robbery or the shooting
22 of the victim. The shooter served five years before
23 his sentence was overturned, and he was released.

24 "I was released from prison two years ago,
25 after serving 22 and a half years. I had appeared in

1 front of my first parole hearing in 2000, after
2 serving 17 years. The parole political climate had
3 changed, and everyone convicted of a violent crime
4 was being held. I expected to be held at my first
5 hearing, because of the seriousness of the offense.

6 "I had already believed that none of the
7 mitigating circumstances -- my age at the time, my
8 role, or any of my accomplishments -- would be taken
9 into serious consideration."

10 I'm going to skip a little.

11 "I had always believed that the Parole
12 Board hearing was going to be a fair process for all
13 parties. The trial judge considered all the evidence
14 and sentenced me to what he believed was appropriate
15 for my role in the crime. I didn't know that I would
16 be judged and re-sentenced as each Panel felt fit.
17 The Parole Board decisions for people convicted of
18 violent offenses were being categorically denied
19 parole release.

20 "I was not the same young, naive woman
21 that I was 22 and a half years ago. I am educated
22 and mature. I had hoped that these factors would be
23 considered. There should be specified guidelines for
24 each crime, so that politics and emotions would have
25 little to do with decision making.

1 "My family always wondered, 'Why aren't
2 they letting you out?'"

3 Also attached to my recommendations are --
4 attached to my written testimony are recommendations
5 from this Ad Hoc Committee on Long-Term Incarceration
6 that I've had the privilege of being a member of.
7 And we talk about, you know, specific guidelines.

8 And, when we looked at the parole decision
9 making process, it was pretty much, we would say --
10 those affected -- arbitrary and capricious. And, if
11 you had a sense of me and my co-defendant, and people
12 who knew us would say "Why did they let him go and
13 not you?"

14 And, it seemed like it was just the luck
15 of the draw, depending on which Parole Commissioners
16 you got. There were no risk and needs assessments.
17 And, you know, politics had weighed heavily in the
18 equation, when the bottom line was, at the time that
19 I appeared before the Parole Board, was do we think,
20 at this moment, that if we let you go, you will be
21 able to live and remain at liberty without violating
22 the law.

23 Now, after 20 years, I could say yes, they
24 could have made that decision. After 22 years, yes.
25 After 24, they made that decision. And, quite

1 frankly, you know, I was no more of a threat to
2 public safety after 20 years, after 22 years, and
3 when the Parole Board finally decided to let me go,
4 it was just a matter of maybe enough time is enough.

5 Thank you for hearing me today on this.
6 Thank you, very much.

7 COMMISSIONER O'DONNELL: Thank you for
8 speaking to us today.

9 And now, we're going to go to Mr. Marsh,
10 --

11 MR. MARSH: Yes, Eric Marsh.

12 COMMISSIONER O'DONNELL: -- from New
13 Spirit, Inc.?

14 MR. MARSH: New Spirit, Incorporated.

15 TESTIMONY OF ERIC MARSH, NEW SPIRIT II, INC.

16 MR. MARSH: New Spirit II, Incorporated.

17 It's a chemical dependency and family services
18 program. Although, I'm really not here to talk about
19 alternatives to incarceration and helping people.

20 Let me get the statement out of the way
21 first. It will take about eight minutes.

22 Let me begin by saying thank you to the
23 Sentencing Commission for allowing me to testify at
24 this hearing. If not the opportunity to testify
25 here, rather than at one of the other forums, I

1 wouldn't have been able to attend, because I am
2 currently on parole, again, but I'll get into that in
3 a minute.

4 I'll spare you the percentages, ratios,
5 and numbers because you've probably heard them all,
6 but I will tell you that, to my mother, I was a
7 hundred percent of her world that was locked away for
8 a crime that, at best, relied on shaky evidence, the
9 withholding of exculpatory evidence, and the
10 testimony of an admitted drug dealer that received
11 not a day in jail or prison for his truthful -- and I
12 use that term loosely -- testimony.

13 You see, on February 24th, 1992, I was
14 convicted in Nassau County of Penal Law 220.43, for
15 aiding and abetting in the sale of 2.21 ounces of
16 cocaine, and was sentenced to a
17 legislatively-mandated 15 years to life in prison. I
18 was told that it's a mandatory minimum, but to me,
19 that means nothing, because I got the mandatory
20 minimum, but my co-defendant never got a day. His
21 sentence was probation, and he was caught at the
22 scene of the crime. I was arrested six months after
23 the crime, when after numerous attempts were made to
24 set me up in a new drug deal.

25 In December of 2002, I was fortunate to be

1 granted clemency by Governor Pataki. I have been at
2 liberty, somewhat, since January 16th, 2003, after
3 serving 4,083 days or, if you prefer for me to do the
4 math, 11 years, 2 months, and 3 days.

5 When I made the final cut, I appeared in
6 front of the Board of Pardons. They unabashedly were
7 interested in what I had lost while I was in prison.
8 Let's see. I worked for my father in a multi-million
9 dollar business. I was -- and I was the heir
10 apparent to that business. My younger brother died
11 of AIDS ten days before my co-defendant's crime. I
12 owned two apartments that were foreclosed on. My
13 father died in 1999, and I wasn't allowed to go to
14 his funeral. I'm Jewish, so they buried him very
15 quickly. And, my mother died in 2000. I was -- I
16 kind of got the feeling that the reason that I didn't
17 go to my father's funeral was because they didn't
18 want to pay overtime to the correction officers.

19 Incidentally, because I was in prison with
20 a question as to when and if I would be released, my
21 father disinherited me. I should also state that I
22 spent more tens of thousands of dollars than I care
23 to think about in an attempt to seek justice.

24 I had sent a letter to Governor Pataki on
25 March 18th, 2005, asking why I wasn't being

1 considered for merit time, as per his reform of the
2 Rockefeller Drug Laws. The law says specifically
3 that all first-time, non-violent A-I felonies are to
4 be considered for termination of their parole after
5 two years, if there are no violations during that
6 period and must be terminated after three years. I
7 had been on parole for two years and two months.

8 I called an official in Governor Pataki's
9 Clemency Bureau six weeks later, and the conversation
10 went like this:

11 I said, "I wrote a letter to Governor
12 Pataki asking why I wasn't being considered for early
13 termination of my parole obligation, according to
14 Executive Law 259-j."

15 The person on the other side said, "Well,
16 he's just going to pass the letter on to me, anyway.
17 What's the matter? You're not happy you're out?"

18 I said, "Of course I'm happy I'm out, but
19 what does that have to do with being considered for
20 merit time?"

21 At this point, the party on the other side
22 of the conversation said, "Shut up and do your time."

23 And then, I was hung up on.

24 This just goes -- this just gives you an
25 indication of how inmates are treated because this

1 conversation was enough to give me a flashback on how
2 I was spoken to for those 4,083 days. I thought I
3 could stop walking on eggshells. Wrong.

4 Since the two-year termination of parole
5 was discretionary, and three years must be automatic
6 termination, the advice from my attorney was to wait
7 until three years was served. During January of
8 2006, a petition was made by my attorney to the
9 Nassau County Court which subsequently was withdrawn
10 when I was terminated from my parole obligation on
11 February 9th, 2006. The reform doesn't exclude those
12 that received clemency. So much for Governor
13 Pataki's reform of the Rockefeller Drug Laws.

14 Since my release, I earned my Master's
15 Degree from Hunter College in rehabilitation
16 counseling and passed all the stringent requirements
17 for my certification as a Certified Rehabilitation
18 Counselor, and have been employed at New Spirit II as
19 a vocational services coordinator and drug and
20 alcohol counselor since December of 2003.

21 However, when I was asked by the State
22 Education Department of New York, after applying for
23 my mental health license, to supply a certificate of
24 relief, I was directed to call the Director of
25 Executive Clemency. When I called, I was told there

1 was no way I was finished with my parole, and if I
2 wanted a certificate of relief, I would have to wait
3 a few years before being granted one, because it
4 requires a mountain of paperwork.

5 On April 6, 2006, I was served with a
6 letter that explains that terminating my parole was a
7 mistake, and that I was put back on parole. Needless
8 to say, this was a complete shock after believing
9 that I was now able to get on with my life. With the
10 help of my attorney, we re-submitted the petition and
11 the addendum of determination.

12 After a reply from the Attorney General,
13 Judge David Sullivan decided that I should be kept on
14 parole. He stated that I was not able to benefit
15 from Executive Law 259-j, adding that having been
16 granted clemency was reward enough and my release
17 pre-dated the reform of the Rockefeller Drug Laws.

18 I have been fortunate to make some major
19 accomplishments since my release, and also realize
20 that I am an anomaly of those that are released after
21 such a long time behind bars. However, I still face
22 the same frustrations and continue to try to help
23 others in an attempt to gain things that most people
24 at liberty take for granted.

25 While I'm not here to speak specifically

1 about re-entry, the discharge planning in prison
2 stinks. When I was released, while not in the
3 typical fashion, I had no proof of who I was except
4 the prison I.D. I was given. I went to the Motor
5 Vehicle Bureau and was told that I need six points of
6 identification. When I showed them my prison release
7 I.D., I was told, "Okay, now you need seven points."
8 No health insurance. No direction except "You've got
9 to do this, and you've got to do that."

10 I've learned to laugh when I think that
11 you should automatically be given a certificate of
12 relief of disabilities. When I asked for help, I get
13 a "you figure it out." You see the result.

14 The Rockefeller Drug Laws should be
15 repealed; or, in the alternative, they should be
16 reformed to reflect the real need of New York. I
17 know you've heard all the numbers, and you've heard
18 all the percentages, and everything else on how they
19 work. Okay?

20 I met many others that have stories to
21 tell of their circumstances under which they were
22 convicted and sentenced. I am certainly not naive
23 enough to think that there aren't any people without
24 guilt of dealing drugs or other crimes. However, few
25 if any of the real kingpins -- and I use that term

1 loosely -- are prosecuted and sentenced to life
2 sentences dealt out to the lowest players, usually
3 the chemically dependent, in the drug law enforcement
4 game that is played with peoples' lives and the
5 breakup with their family.

6 And, as an example, and I just wanted to
7 point this out, pardon the sarcasm here, but the only
8 way, I believe, to get out of this is to take the
9 politics out of the decision to sentence someone
10 based on the crime rather than the Zeitgeist, being
11 the political whim. Okay. As an example, the recent
12 case of Robert Chambers. He's looking at life
13 sentence for making a few drug sales, but meanwhile,
14 on manslaughter, he only got a five to fifteen.

15 And, that's just to show you the
16 disproportionate sentences. The disproportionate
17 sentence in my own case is my co-defendant never did
18 a day in jail, got caught at the scene of the crime.
19 And, when he took the stand, he said that he wasn't
20 going to jail because he helped the police set up ten
21 other people in unrelated crimes.

22 Addiction is a disease, not a law
23 enforcement issue. If an addict commits a crime,
24 that crime should be prosecuted and the sentence
25 should be proportionate sans the politics and

1 rhetoric that the media can pressure on our judicial
2 system. Those that are chemically dependent should
3 have available treatment outside of the threat of a
4 system that has a punishment only mentality.

5 A few lessons that I've learned when I was
6 incarcerated is that the legal system doesn't know
7 reward, only punishment. And, with as many people as
8 are incarcerated in New York with such limited
9 ability for release, even after they've done all that
10 they could to be granted parole, the system will
11 continue to debase a person's dignity until there is
12 nothing left except a tired of beating your head
13 against the wall, useless shell of a person.
14 Treating addiction with incarceration is tantamount
15 to curing dandruff with decapitation.

16 COMMISSIONER O'DONNELL: Thank you, very
17 much, for being here and for sharing that with us.

18 MR. MARSH: I hope I added a little
19 levity to my horrible situation.

20 COMMISSIONER O'DONNELL: You did. Thank
21 you.

22 Now, Judith Greene? And, John Culpepper,
23 if you want to come up here? And, Sundiata Sadip?
24 Are you here? Okay. So, we'll end with you, then.

25 Okay, thank you.

1 MS. GREENE: Good afternoon.

2 COMMISSIONER O'DONNELL: Hello.

3 TESTIMONY OF JUDITH GREENE, JUSTICE STRATEGIES

4 MS. GREENE: Thank you for the
5 opportunity to speak to you this afternoon.

6 I'm an independent criminal justice policy
7 analyst, and founder of Justice Strategies, with
8 expertise on corrections and sentencing reform. Over
9 the past decade, I have served as a senior research
10 fellow for the University of Minnesota Law School,
11 research associate of the RAND Corporation, and I'm a
12 Senior Soros Justice Fellow at the Open Society
13 Institute.

14 Before that, I spent many years as
15 Director of Court Programs at the Vera Institute of
16 Justice here in New York. And, I'm currently a
17 research associate for the Brennan Center for
18 Justice, the Drug Policy Alliance, and the
19 Mississippi ACLU.

20 And, I've come today to talk to you about
21 justice reinvestment, which is an innovative strategy
22 developed at the Open Society Institute some years
23 ago for reducing spending on corrections, increasing
24 public safety, and improving conditions in the high
25 stakes neighborhoods from which most people go to

1 prison and return once they are released.

2 The idea of justice reinvestment springs
3 from a realization that mass incarceration impacts
4 many urban neighborhoods in ways that serve to
5 perpetuate cycles of crime and incarceration.
6 Millions of dollars are spent each year to imprison
7 large numbers of people from impoverished
8 neighborhoods in places like Brooklyn, and Albany,
9 and Buffalo. And, these investments yield relatively
10 little in terms of public safety, when compared with
11 the benefits of providing substance abuse, housing,
12 education, and jobs in those neighborhoods.

13 Proponents of justice reinvestment urge
14 that steps be taken to reduce spending on prisons,
15 and invest a portion of the savings into betterment
16 of the infrastructure and civic institutions in these
17 high impact neighborhoods, in order to empower
18 residents and improve the quality of their lives.

19 The concept of justice reinvestment has
20 its roots in research findings that show how the
21 policies of mass incarceration itself are a generator
22 of crimes and the very problems that policymakers
23 intended to reduce with their get tough laws, such as
24 the Rockefeller Drug Laws here in New York.
25 Groundbreaking research has documented the effect of

1 sending so many young people to prison, in places
2 like Tallahassee. Dina Rose and Todd Clear examined
3 crime statistics some years back in Tallahassee and
4 found that in neighborhoods where incarceration rates
5 shot up the most, the following year the crime rates
6 increased the most. And, when crime dropped in
7 Tallahassee overall, it fell the least in these high
8 incarceration, high stakes neighborhoods.

9 Dina Rose theorizes that when too many
10 young people are pulled from their neighborhoods,
11 incapacitation reaches a tipping point that can send
12 crime rates spiraling up. Networks of informal
13 social control and social capital are disrupted by
14 the churning of young people from these neighborhoods
15 in and out of the prison system, and each person
16 represents a net financial loss to their families, as
17 well as social capital to their neighborhoods.

18 Now, a pilot project of justice
19 reinvestment was introduced in Connecticut in 2004, a
20 year after the state discovered that it had the
21 highest rate of incarceration increase in the
22 country. Planning efforts have since been undertaken
23 in Rhode Island, Kansas, Arizona, and Texas.

24 In Connecticut, the Council of State
25 Governments commissioned a report that was written by

1 James Austin, Michael Jacobson, and Eric Cadora,
2 three experts on parole and re-entry. The "Building
3 Bridges" report called for sweeping changes to the
4 state parole and probation systems in order to reduce
5 admissions to prison for technical violations.

6 Eric Cadora produced maps that vividly
7 illustrated the impact of incarceration on specific
8 neighborhoods in cities like Hartford, New Haven, and
9 Bridgeport. In Hartford, for example, almost half of
10 the flow of prisoners into the state system came from
11 neighborhoods such as Northeast, Asylum Hill, Barry
12 Square, and Frog Hollow. Incarcerating Hartford's
13 prisoners was costing the state \$64 million each
14 year.

15 Now, in responding to this call for
16 reform, lawmakers embraced a comprehensive approach
17 to reform of probation and parole. And, at the same
18 time, they appropriated \$13.4 million to a justice
19 reinvestment strategy that focused primarily on
20 expanded supervision and program services. More than
21 \$7 million of this amount was provided for contracts
22 for housing for people in the criminal justice
23 system, including \$2.4 million for 130 drug treatment
24 beds targeted to people diverted from pre-trial
25 incarceration, half a million dollars for people

1 enrolled in alternative to incarceration programs,
2 and \$4.4 million for 310 new half-way house beds for
3 returning prisoners.

4 The appropriation also funded probation
5 and parole staff positions, 68 new probation
6 officers, 12 new community release officers, and new
7 job development coordinator to work with people
8 nearing release from prison, and a \$1 million
9 earmarked for creation of Building Bridges Pilot
10 Projects in New Haven and Hartford.

11 More recently, in Kansas, interest in
12 justice reinvestment has also been spurred by the
13 fact that two-thirds of the people admitted to prison
14 are sent for violations of conditions of supervision
15 in the community. State officials, as part of a
16 justice reinvestment strategy started in 2005, are
17 making a concerted effort to cut these violations in
18 half. And, they key stakeholders appear to be coming
19 to a realization that lasting reductions in
20 recidivism will depend on neighborhood
21 revitalization. Maps provided again by Eric Cadora
22 and the Justice Mapping Center are helping them to
23 understand the problems in high stakes communities.

24 Nearly a third of those released from
25 prison in Kansas are homeless or lack appropriate

1 housing options. The effort in Kansas is focusing on
2 Council District 1 in Wichita, where a total of
3 \$11.4 million each year is spent on prison
4 commitments. A re-entry specialist is now working in
5 Wichita to expand access to affordable housing
6 opportunities for these people.

7 A collaboration between the Kansas Housing
8 Resources Commission and the Department of Social
9 Service and Rehabilitation is working to address
10 housing and related needs.

11 A Community Advisory Committee has been
12 formed and includes members of the City Council, the
13 state legislature, along with local Housing
14 Department and Police Department representatives.
15 The committee is charged with the development and
16 implementation of a neighborhood-based housing
17 development project. They plan to target a
18 neighborhood in Council District 1 that is currently
19 peppered with hundreds of abandoned, boarded-up
20 houses and blighted properties.

21 The Kansas Justice Reinvestment Project
22 would focus on redevelopment of this neighborhood,
23 particularly on housing and education. Prison labor
24 will contribute to improving the housing stock, while
25 prisoners learn construction skills.

1 Richard Baron, a partner in McCormack
2 Baron Salazar, who is an experienced developer of
3 economically integrated urban neighborhoods around
4 the country, traveled to Wichita last year to meet
5 with local officials. Plans are underway in Wichita
6 over the creation of a city redevelopment authority
7 empowered to acquire abandoned properties and prepare
8 them for development.

9 So, what could this mean for New York?
10 Efforts such as these are stirring interest around
11 the country, but what are the prospects here in New
12 York City?

13 If the Rockefeller Drug Law reform so many
14 New Yorkers are urging you to embrace were enacted,
15 many millions of dollars could be reinvested in such
16 high stakes neighborhoods in this state over the next
17 decade. Even without major reform of the Rockefeller
18 Drug Laws, New York is already experiencing a
19 remarkable decline in the number of state prisoners.

20 The New York State Department of
21 Correctional Services managers have been able to
22 downsize prison capacity by taking down beds and
23 closing housing units. The remarkable degree of
24 savings to New York taxpayers is largely resulting
25 from declining crime rates and shifting police

1 priorities in New York City, but a significant
2 portion of savings is derived from the very modest
3 changes to the Rockefeller Drug Laws enacted in 2003
4 and 2004.

5 For example, as part of the modifications
6 to the Rockefeller Drug Laws enacted in 2004, drug
7 offenders serving indeterminate sentences are able to
8 earn an additional one-sixth credit against their
9 minimum sentences. According to Paul Korotkin,
10 Assistant Director of Program Planning and Research
11 and Evaluation of the Department of Correctional
12 Services, through September of 2007, there have been
13 2,375 prisoners released through this reform, with an
14 average savings of 6.6 months, and the estimated cost
15 savings has accrued almost \$38 million saved and
16 lower demand for DOCS bed space by 366.

17 An associated savings is derived from the
18 re-sentencing of A-II drug prisoners, also part of
19 the 2004 reform package, and it's also having a
20 significant effect on the DOCS budget. As of
21 September 30th, 2007, a total of 138 Class A-II
22 prisoners, including 11 women, has been released.
23 This reform has won \$4.4 million of savings for the
24 taxpayers of New York State.

25 I've collected budget figures -- or,

1 rather, expenditure figures -- not budget figures --
2 for the Department of Corrections here in New York
3 from the National Association of State Budget
4 Officers records, and was able to determine that in
5 the year 2000 alone, savings to the DOCS budget by
6 downsizing totaled \$107 in 2004.

7 As you hold these hearings, New Yorkers
8 from every part of our state are calling for
9 Rockefeller Drug Law reform. And, as you listen to
10 their arguments, please also consider that enactment
11 of these reforms might result in many, many millions
12 of dollars in budget savings that could be reinvested
13 in targeted community development efforts, with a
14 particular focus on housing, job creation, education
15 at the neighborhood level, and that these are
16 investments that could produce long-term gains in
17 reduced level of crime and safer neighborhoods for
18 all New Yorkers.

19 Thank you for the opportunity to speak
20 here.

21 COMMISSIONER O'DONNELL: Okay. Thank
22 you, very much.

23 And, John Culpepper, from the Washington
24 Heights Neighborhood Association?

25 MR. CULPEPPER: Yes.

1 change them? What did we -- me, in particularly --
2 risk my life out in the street creating the TNT.

3 I'm sure everyone here know what the TNT
4 was. It was an organization that was created in the
5 Police Department, from the Criminal Justice Service
6 Department, the community, and the Police Department.
7 We risked our lives because we could not walk the
8 streets. Our mothers, our fathers, our children, no
9 one could walk the street, unless you lived in
10 Washington Heights. And, I'm talking about from '87
11 until it was cleaned up by these three organizations,
12 agencies, and groups.

13 Now, you're talking about early release.
14 We are not against early release, because everybody
15 deserves a chance. But, more pressure should be put
16 on the ones that are asking.

17 For instance, what is this person bringing
18 out of prison? He went in with nothing, evidently.
19 What is he bringing out? This is the reason he go
20 back in.

21 The Citizen Police Academy was created so
22 that the public could understand what the police was
23 about, and that the public could understand what the
24 District Attorney was about. The three agencies came
25 together, and this is how we got Washington Heights

1 somewhat cleaned up. Your predecessor was also with
2 us during this time.

3 Again, we are not against people getting
4 out early. I don't want you to understand that. We
5 are not against it.

6 But, more pressure have to be put on them
7 coming out, because the same ones that is coming out,
8 the majority go right back.

9 And, how do I know? Because I'm one of
10 the people in the streets. I'm in the trenches, and
11 I would hate to see someone that we helped put there
12 come back out and do the same thing.

13 So, what we are saying is more pressure
14 have to be put on the people that's asking to come
15 out. Certainly, everyone reforms in some way or
16 form. But, you have those that don't. So, why
17 should we have to suffer and go through this same
18 thing again?

19 And, you talk about early release? So, I
20 mean, I'm talking this way -- if you notice, I didn't
21 bring any paper, any form. I'm talking from what I
22 know, from what I know.

23 I have been in Washington Heights since
24 1938 -- 1938. I am 77 years old. My mother had
25 23 children. I am the last. And, you want to tell

1 me about early release? What could I have had with
2 23 children? How much could I have had, a black
3 family?

4 But yet, I never went to jail. I only had
5 two jobs in my whole life. That's the Air Force and
6 the sea. I retired from the sea with 25 years as
7 Second Assistant Engineer.

8 At present, I have a degree in engineering
9 about air quality, which Senator Schneider is
10 sponsoring me, because the air and asthma is so bad
11 in this City. And, you think we want these bad
12 people to come out to breathe my good air? No.

13 So, again, we are not against parole,
14 early release. But those that go in should earn it.
15 Because, you're not going to tell me in the last 20,
16 30 years no one knew what drugs were. You had little
17 kids, six or seven years old, they knew. So, choices
18 was made. You make bad choices. I made bad choices.

19 I was too afraid to go to jail. Afraid.
20 And, I guess that's one of the reasons I have never
21 been. But I'm saying, being on the front line, in
22 the trenches, seeing what has happened, seeing what
23 is happening, a little bit more consideration should
24 be given to those that is asking for parole. What is
25 he bringing out? What did he take in? What is he

1 going to do while he is out here?

2 You say you can't find jobs. Well, that's
3 neither -- again. Well, what did you bring out to
4 find a job?

5 So, everybody deserve a second, third
6 chance. And, I'm quite sure there is people here
7 know there is those that don't. So, are you going to
8 endanger those that is trying to live a good life?
9 You're going to endanger those children, the ones
10 that we so-call say that we love?

11 And, I'm speaking from my heart. I'm
12 speaking from what I know. I'm not asking anyone to
13 think the way I do. Think for yourself. Do what you
14 think and what you know is right.

15 Thank you, very much.

16 COMMISSIONER O'DONNELL: Thank you, very
17 much, for being here today.

18 Okay. And, I couldn't see before whether
19 Mr. Sadip is here? Yes? No?

20 All right. Then, our hearing is closed.

21 I want to thank everyone who appeared
22 before us today to testify, and those of you who came
23 to observe. I want to thank everyone for observing
24 the time limit that enabled us to hear from everyone
25 that came today.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

And, I want to thank the Commissioners for your undivided attention today, as well.

Thank you. And, thank you to our timekeeper.

[Time noted: 4:30 p.m.]

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, June Accornero, do hereby certify that I typed the preceding transcript of the proceedings of the New York State Commission on Sentencing Reform, Public Hearing, held on Tuesday, November 13, 2007, at New York City Bar Association, 42 West 44th Street, 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