

Day One

Overview of Alternative Sentencing Options in the State and Federal Systems

Moderator: The Honorable Ricardo H. Hinojosa, Chair, U.S. Sentencing Commission

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SUMMARY

This panel provided an overview of programs currently being implemented in state and federal court systems, discussed the need to continue and expand such programs, and expressed the importance of using evidence-based research to determine which programs to implement. Panelists noted that incarceration rates have increased, causing some prison systems to operate above capacity. One panelist noted that in 2006, the federal prison system was at 137 percent of capacity, and 24 states were above their capacities. In response to this, and to the costs of imprisonment comprising larger portions of government budgets, many jurisdictions have chosen to institute alternatives to incarceration. Currently, approximately 1,600 drug court programs are in operation across the country, with at least one in every state. States have taken other measures as well: Connecticut and Louisiana have expanded their diversion programs; Arizona, Wyoming, Louisiana, Oklahoma, and Mississippi have instituted several non-incarceration sanctions for technical violations of probation or parole; and Maryland and Nevada have changed mandatory minimum and mandatory enhancement schemes.

Policy changes implemented in Pennsylvania were discussed with greater specificity. Pennsylvania modified its parole guidelines after considering evidence-based research, and now supervises people differently based on risk assessment. Parole officers who supervise individuals deemed to pose a high risk of recidivism have a lower case load and are trained in new methods—such as cognitive behavioral programming and relapse prevention—which help them offer stabilization tools to those individuals. Implementation of these programs and training of parole officers have resulted in lowering Pennsylvania's absconder rate by three percent and increasing the rate of successful completion of supervision by ten percent.

In federal court in the Eastern District of Missouri, reentry programs reduced the unemployment rates of individuals on supervised release from three times *higher* than the community rate to a rate lower than the community rate. To accomplish this, the probation office teamed up with private employers, government agencies, and community- and faith-based groups to provide employment training and opportunities. Currently, approximately 53 federal districts have some type of employment program and are seeing similar results.

**OVERVIEW OF ALTERNATIVE SENTENCING OPTIONS
IN THE STATE AND FEDERAL SYSTEMS**

CHAIR HINOJOSA: We will start with our first session, which is an Overview of Alternative Sentencing Options in the State and Federal Systems. This is a discussion of what's presently being used in both the federal and state systems, both at the front end of the sentencing process as well as the back end of the sentencing process after someone has finished his or her sentence and has been released, because a lot of the work in both the state and federal systems has been done at the back end as opposed to the front end. Some of those thoughts and some of those experiences could be helpful with discussions in regards to what should be done before someone is sent to prison.

This panel is a group of experts in the field both at the state and federal level. Ryan Scott King is a policy analyst with the Sentencing Project. His research concentrates on the effects that sentencing and incarceration have on individuals, families and the community at large. Mr. King holds a B.A. degree in anthropology from the University of Pittsburgh; an M.A. degree in criminal justice from Monmouth University; and an M.S. degree in justice, law and society from American University.

Next, Catherine C. McVey is Chair of the Pennsylvania Board of Probation and Parole and has been a member of the board since being confirmed in July 2005 for a six-year term. She really learned all she knows about this when she worked for 25 years in the Texas Department of Criminal Justice in numerous positions, including as the director of Texas Reentry Services, special needs reentry coordinator, and director of institutional parole and reentry services. Chairman McVey has a B.S. degree in law enforcement and corrections administration from Penn State University, and her M.S. degree in correctional administration from Sam Houston State University.

Next is Doug Burris, probably one of the most famous probation officers in the entire country in the federal system. He is the chief U.S. probation officer for the Eastern District of Missouri, a district that supervises 2,000 federal offenders. In this position, he has brought forth a number of innovative programs, some of which are being duplicated in other districts around the country. He is a frequent speaker on community corrections strategies.

Next is Professor Stephen A. Saltzburg; he is the Wallace and Beverley Woodbury University Professor of Law at the George Washington University Law School. He founded and directs the Masters Program in litigation and dispute resolution at the G.W. Law School. Previously he taught at the University of Virginia Law School. He has also served as deputy assistant attorney general in the Criminal Division of the U.S. Department of Justice, and as the Attorney General's *ex-officio* representative on the United States Sentencing Commission. In addition, he has served as a reporter and then member of the Advisory Committee on the Federal Rules of Criminal Procedure and as a member of the Advisory Committee on the Federal Rules of Evidence.

The way we will proceed with this panel is that each of them will make a presentation. After that, we will have time for questions and answers. Hopefully this will create a dialogue between the participants, as well as the audience.

Mr. King.

MR. KING: Good morning. Thank you, Judge Hinojosa.

First off, let me start by saying that it's a real honor to have been invited to speak at a symposium organized for the benefit of an agency for whose work I hold in such high regard. I can only hope that my contributions today over the course of this event are of assistance in the Commission's work.

My name is Ryan King. I'm a policy analyst with the Sentencing Project. In that capacity, I have the opportunity to closely monitor developments at the state level regarding sentencing and corrections policy, and am frequently in contact with state-based practitioners and advocates discussing criminal justice policy.

I am here to lead off the symposium by providing a flavor of some of the steps the states have been taking in order to address prison overcrowding. I recognize this is a symposium on federal sentencing policy, but I hope that by sharing some of the encouraging efforts that have been undertaken at the state level, I can help catalyze and frame some of the discussions that will occur throughout the different breakout panels.

Justice Louis Brandeis famously referred to state legislatures as laboratories of democracy, and it's in that spirit that I share these policy developments.

First I want to start off by outlining the problem. And I use the words "policy developments" as I mentioned earlier intentionally. The growth of incarceration, the numbers a person supervises, is not the result of rising crime. There are two factors that have contributed to the growth in incarceration: more people going to prison than in the past and staying there longer. Kind of a "no duh" conclusion. But the incarcerated population is by and large a function of these tougher sentencing laws passed over the course of the 1980s and beyond—strict punitive guidelines, mandatory minimums, the abolition of parole. The results of these changes—in 1970, the prison and jail population was 300,000. By mid-year 2007, that number had increased to 2.3 million. Between 1970 and 2005, while the general population increased by nearly 40 percent, the prison population increased by 670 percent. As noted before, this tectonic shift in the use of incarceration occurred independent of changes in crime rates. Instead, it was the result of a deliberate expansion in the punitive criminalization of an ever-increasing laundry list of behaviors. An analysis of incarceration rates between 1980 and 2001 concluded that fluctuations in crime rates played no role in the growth of imprisonment. The study, by noted criminologist Albert Blumstein and BJS analyst Allen J. Beck, concluded that 53 percent of the growth in imprisonment was attributable to an increased likelihood of an arrest resulting in incarceration; 47 percent resulted from increased time served in prison.

The legislative record is clear. Policy makers intentionally ushered in a "tough on crime" era really beginning in the early 1980s that has made it easier than ever for a criminal defendant to end up in prison for a long period of time. The legacy of these decisions continues to dominate the correctional landscape today.

In 1970, 96 Americans per 100,000 were incarcerated in prison or 1 in 1,042. By mid-year 2007 (this is just prison), that figure had increased to 509 Americans per 100,000 or 1 in 196. The 1 in 100 Pew Center report is specifically referring to adults.

The U.S. is the global leader in the use of incarceration both in raw numbers and controlling for population. Much of this growth has come in the prosecution of drug offenders. Drug arrests have more

than tripled since 1980 with more than 1.8 million persons arrested for a drug offense in 2005, nearly half of whom were arrested for a marijuana offense.

Drug offenders in prison and jail have increased 1,100 percent since 1980. Nearly half a million persons are in prison or jail for a drug offense compared with about 41,000 in 1980.

Lest you think these are all high-level traffickers and importers, an analysis by the Sentencing Project a few years ago of the state prisons found that 6 in 10 persons in the state prisons for a drug offense had no history of violence or high-level drug activity.

In the federal system, about half of those persons sentenced for a drug offense in 2007 fell into Criminal History Category I, and 82 percent had no weapons present during the offense.

This is not meant to suggest that every person in state and federal prison is in there for smoking a joint on the street corner. However, it does illustrate that drug offenders have been a profound engine of growth in our state and federal prisons since 1980—one in five persons in state prison and half of the persons in federal prison. And much of this expansion is the result of policing policy and sentencing laws rather than a tangible shift in the institutions of drug sales and use.

So what's the impact then in state prisons? In 2006, the federal prison system was at 137 percent capacity. In the state system, 24 states were above what was rated as the highest capacity. It sort of shifts. There's institutional capacity and design capacity. But being the most conservative, 24 states were above the very highest level of rated capacity. Many others were close to capacity. Many states have been forced to respond to over-capacity issues in light of potential federal intervention. In Arkansas, the Emergency Powers Act of 2003 permits the State Board of Corrections to deem any nonviolent person who has served at least six months of his or her term in prison eligible for parole when the prison system exceeds 98 percent for more than 30 days, or if the number of persons in local jail awaiting transfer to state prison exceeds 500.

California has probably the most widely recognized crisis currently occurring—the proverbial canary in the coal mine. The state currently has more than 170,000 persons incarcerated—roughly double the capacity. Some facilities are resorting to bunking inmates in upwards of 300 in gyms and public spaces. The state is under federal receivership due to a failure to provide adequate health care.

California is looking for \$7 billion to build 53,000 beds, and a court-appointed receiver is seeking an additional \$7 billion to build 10,000 hospital beds.

Meanwhile, the assembly cannot agree on whether it should establish a sentencing commission to examine the state's criminal code and recommend potential areas of reform.

While California may be the extreme, it does provide an alarming example of where the intersection of tough sentencing, a fundamentally broken parole system, and little preparation for injury can lead.

While I may be painting a gloomy picture, there's a silver lining. It doesn't have to be this way. It was policymakers who created the mess and, thus, it is policymakers who can help clean it up. It is for this noble goal that we are all assembled.

And so without further ado, I'd like to share a little bit of what the states have been up to.

There are five key areas that I'll touch upon in these remarks looking at state legislative efforts since 2000—drug treatment and diversion, community supervision, sentencing law, expanding good time and parole eligibility, and the establishment of oversight committees. One caveat. This list is by no means exhaustive, nor are my brief descriptions going to do justice to the local contours and complexity that many of these legislative and policy decisions involve. Moreover, it is not intended to be a list of the most important reforms.

And, finally, I'm not going to spend my brief time up here delving into outcome measures and empirical data. This session is intended as an introduction to the issues, and I can tell from looking at the agenda that much of what you're going to touch upon this morning will be fleshed out in great detail throughout the remainder of the event. Instead, these examples have been chosen as emblematic of larger trends in state-based reform that I hope will provide some food for thought in the ensuing breakout panels.

So the first area is drug treatment and diversion. Briefly on drug courts, there has been a great expansion of drug courts. A number of states have established or expanded drug court programs. There are currently 1,600, at least one in every single state in the country. And the expansion is generally either the number of persons who are eligible, so slightly loosening the restrictions for eligibility for people who participate or increasing the number of available slots. I would just say it is important to note that drug courts still remain a very, very small institution in the overall sentencing system.

Connecticut expanded diversion programs for persons convicted of crimes involving drug sale or possession by permitting persons who had been diverted in a prior case to be diverted again. So a pick-me-up on the repeat offense theme, which has often been a restriction for involvement in diversion programs.

Louisiana has implemented drug diversion models permitting the withholding of a guilty plea and a dismissal of charges upon successful completion of treatment.

In Washington State, the Drug Offenders Sentencing Alternative sentences low-level, non-violent persons convicted of a drug offense to a blended sentence: the first half of which is served in a correctional facility where the individual receives substance abuse treatment, and the remainder served in community custody. The program was expanded recently to permit judges to sentence individuals directly to community-based residential programs.

The second area is community supervision reforms.

Arizona's Community Accountability Pilot Program addresses the increasing number of probation and parole technical violations, a significant engine of a growth in the prison population. Rather than simply revoking a person for violating the terms of parole, this legislation permits the board to assign this individual to a Community Accountability Program. This program will provide intensive supervision and monitoring, substance abuse training, employment preparation, light skills training, adult education, health care management, and housing assistance. The effort again—to keep the person in the community as long as is feasible.

Louisiana capped the length of stay a person convicted of a first-time non-violent offense could be incarcerated for a technical violation of probation or parole at 90 days.

Oklahoma established what they call an Intermediate Sanctions Matrix, which establishes, which addresses technical violations. A hearing judge can determine whether a technical violation occurred; and, if so, consult the Matrix for the appropriate intermediate sanction.

Wyoming passed legislation just this legislative session permitting the DOC to establish administrative sanctions as an alternative to parole revocation; permits the Governor in consultation with the Parole Board and Department of Corrections to establish a protocol for persons to earn good time while out on parole, an area that I'll touch upon in a little bit.

And Mississippi permitted correctional field officers greater latitude to suspend the revocation of a sentence to community supervision in the event of a technical violation.

A third area is sentencing law reform, and this is one that I lament is particularly thin in terms of substantive sentencing law reform, particularly in the area of mandatory minimums, which I think is one that we would really push that needs to be addressed.

Maryland reformed some mandatory minimum provisions last year by restoring parole eligibility for certain persons convicted of a burglary or daytime housebreaking offenses prior to October of 1994.

Nevada repealed mandatory sentencing enhancements, a doubling of the statutory punishment for certain offenses. So offenses committed on a school property with the assistance of a minor, for example, judges had to mandatorily provide basically a sentence that was a doubling of the statutory punishment. Nevada repealed those mandatory enhancements and gave the judge discretion to sentence an enhancement, but somewhere within the range of one to 20 years.

Rhode Island for the second straight year repealed mandatory minimums for drug offenses; and for the second straight year, the Governor vetoed the measure. The Governor argues that the bill would ease up on sentences for serious drug offenders, and there's already enough discretion in state sentencing schemes as currently constructed to permit judges to consider the relevant mitigating circumstances.

Probably the biggest area of reform has been in the addressing of good time and parole eligibility.

Nevada extended the maximum number of days a sentence may be reduced for good time on the condition that a certain percentage of the sentence had been served. Persons on probation can have their total sentence reduced by 20 days for every month of good behavior under supervision. For both persons on probation and parole, intermediate sanctions to revocation are created. And in some cases, a violation of a condition of supervision may result in an assignment to a residential community-based center for an abbreviated period rather than going back into custody.

Mississippi passed a law permitting certain persons convicted of a nonviolent offense, who have served at least 25 percent of their sentence, to become eligible for parole. That was just passed this legislative session. They had been required to serve 85 percent under the truth in sentencing provision. It's estimated this bill could impact about 7,000 individuals.

Arizona recently passed earned time credit for persons on probation, again shaving 20 days off of the sentence for every 30 days served with good behavior.

New Jersey is expanding eligibility for drug court diversion, permitting persons with two or more third-degree felony convictions to become eligible for drug court. This is under the Drug Diversion Program. And, finally, this is back to the good time thing. Kentucky is expanding good time provisions for persons who participate in certain programming like education or drug counseling. This was just passed this legislative session as well. Expanding the parole release program to permit persons convicted of nonviolent Class C or D felonies, who have served 180 days of their sentence, to be eligible for home incarceration. This permits time served on parole to be credited to sentence upon revocation, and may allow other nonviolent persons to be released on parole who have more than 180 days in their sentence. Since June 1st of this year, more than 900 people have been released from prison under the provision and another 900 have been discharged early from parole.

And, finally, oversight committees. A number of states have established oversight mechanisms for the criminal justice system through legislation, resolutions and executive orders. The committees established by these policies are charged with examining the conditions of crime and punishment within a state, conducting analyses, and making recommendations for improvement. A few examples—Colorado created the Colorado Commission on Criminal Juvenile Justice to review sentencing guidelines and annually present recommendations. The commission is charged with conducting an analysis of current sentencing practices and investigating alternatives to incarceration, with a dual mission of reducing recidivism and ensuring that criminal justice resources are allocated effectively.

Nevada created an Advisory Commission on the Administration of Justice, which will examine the consequences of mandatory minimum sentences for illegal substances, the effectiveness of these sentences in meeting intended goals, the operations of the Department of Corrections and the state board of parole, and the conditions of new specialty court models.

So what does all this mean? Well, the phrase associated with the 1990 Clinton campaign was, “It’s the economy, stupid.” And in this case, I believe that many states have taken the Clinton campaign to heart. Since 2000, state revenues have declined at the same time the prison budgets continue to skyrocket. In some cases, corrections budgets are in upwards of seven percent of the general revenue fund. States are having difficulty floating the bonds necessary to expand capacity like in decades prior. As the Pew Center noted in the report mentioned earlier, corrections budgets often come at the expense of other critical resources like education and health care, and legislatures are caught at the crossroads between unsustainable corrections budgets and the paralyzing fear of being called soft on crime should they revisit sentencing schemes such as mandatory minimums.

So for much of the 21st century, the response has been to dip a proverbial tail in the water of reform. While these developments represent a tangible shift in direction and a clear indication that the door is open to reform, the steps necessary for sustainable reduction in prison population—reforming parole and revisiting sentencing—I would argue, have failed to materialize. Unless legislatures are committed 110 percent to reducing the prison population and willing to depoliticize their decision-making process, thereby making evidence-based decisions, then the nibbling at the edges approach will do little to really change direction.

While these developments I have mentioned this morning are encouraging, and I don’t mean to

downplay their significance, you will note that notable in its absence is any ambitious reform on mandatory minimum sentencing, a significant contributor to the expanding prison population. Rhode Island is one effort that has failed two years in a row. In addition, parole remains largely absent and highly politicized when used as a means of controlling the prison population.

But in addition to the economy, I would argue that an increased profile of evidence-based best practices has been a crucial ingredient in sparking reform. No matter if a budget crisis is substantial enough for a legislator to advocate for reform, if all the evidence marshaled in support of the policy change does not support that change. Research and best practice provide the political cover to spark reform. And it is our goal as this gathered audience to continue to discuss what works, and make sure it is included in the larger policy discourse, no matter how difficult it may seem to wedge it in there. I once saw the former Governor of New Mexico, Gary Johnson, speak regarding drug policy. He stated that it is our job to make policymakers comfortable to come out of the closet and join us in the struggle for reform. He may have been charitable in his description of policymakers' acknowledgment of the need for reform, but those remarks have stuck with me for an extended period of time. Whether expanding eligibility for parole, working to reduce revocations from community supervision, or passing sentencing reform, in order for policymakers to remain good stewards of the public trust, sound research must guide the decision making process. Lucky for us there are mountains of empirical evidence and program evaluations to guide the journey. I believe this room is full of people up to this challenge, and I hope the outcome of this conference is a renewed energy and push for the greater goal of protecting public safety through the fair and effective pursuit of justice.

Thank you.

CHAIR HINOJOSA: Thank you, Mr. King. Ms. McVey.

MS. MCVEY: Good morning. It's a pleasure to be here today for this dialogue. I think it's going to be very fruitful. I think the more dialogue that we have, the more often that we confront ourselves with information, the further we advance our system.

Much of my comments will support what my colleague, Ryan King, had to say. And I'm going to give a little bit of a different twist. I'm going to talk a little bit about Pennsylvania. But I first want to do some broad framing of the situation from my viewpoint.

Don Stemen in his 2007 report, *Reconsidering Incarceration*, reported that it's questionable whether incarceration is statistically significantly related to reduce crime. There are some studies that have concluded a marginal relationship. Other studies have concluded that there is no relationship. And there are even a few studies that show an inverse relationship that increased incarceration actually results in increased crime. Supporting this, we also have research that has revealed that, as prison populations increase, there is a declining percent of return in terms of reduction of crime. There is a tipping point in incarceration, and I think the tipping point was characterized as an inflection point from a study by Rose and Clear, in which they determined that the state's incarceration rates, when they reach between 325 and 492 per 100,000 of population, you have an actual increase in your crime rate.

So as we think about the large population, I think it's important for us to look at the characteristics of the people that we're incarcerating. There are three aspects to this that are noteworthy.

First of all, offenders come in different risk levels. They come in low, medium, and high, in terms of their risk of reoffending. They shouldn't be treated the same. They shouldn't be managed the same. And they should not be incarcerated the same. We also have to look at the issue of whether they're violent or nonviolent. We practitioners know that there are violent offenders who are actually low risk, but we also know, those of us who have to make the hard decisions of who to release and not to release, that when the violent offenders get out, even though they're low risk, the stakes are very high because it involves victimization.

Finally, there has been some research that's been done that concludes that the longer people are incarcerated, the more likely they are to recidivate. There is a point in time, there is a window of opportunity for those offenders who are incarcerated when they've completed their programs, they've made behavioral changes and they're ready to be released. Over-incarceration exacerbates recidivism.

So the issues for us are: Who should we incarcerate? How many people should we incarcerate? For how long should we incarcerate them? And when we think about that, we want to think about what are the objectives of incarceration? The alternatives to incarceration is in part an outgrowth of our focus on outcomes. As we focus on outcomes, the emphasis begins to recede from an issue of pure punishment objective, and we begin to then transition to the thoughts of what works to change offender behavior. What has advanced this discussion is the realization of the cost of incarceration. As was previously mentioned, in the 1970s and the 1980s, sentencing reforms were driven by perceived system failures. The cost of incarceration in those days having been in a state which has one of the highest rates of incarceration, in Texas, for many years we didn't feel the impact, the fiscal impact in the '70s and '80s of incarceration as we feel now. Our systems were not driven by outcomes. They were simply driven by an era of "nothing works." The Vera Institute in a report in 2007 concluded that today's conversation is less about equity and certainty of punishment and more about effectiveness of programs and outcomes. Today's focus is on reform, on solutions for prison overcrowding through improved outcomes. Just as we have been stretched financially, fiscally, in agencies to a breaking point, we practitioners have been forced to reexamine what we do, how we do it, what our desired outcomes are, and ultimately how successful are we in really improving public safety. With our steadily shrinking budgets for public criminal justice agencies, we've been forced to reconsider our entire approach, and we've begun to look at how we have to direct our resources to maximize a reduction of recidivism. Fortunately for us, we have social scientists, we have behavioral scientists, we have criminologists, and they have been hard at work. So far from the body of work historically of "nothing works," we now have a rich, robust research that tells us what does work. For me in my profession and my commitment, that's my lifeline.

Many state systems of corrections and parole are now partnering in a way, and I can certainly tell you in Pennsylvania we are working hard together. We've created alternatives to reincarceration. Often times we don't think of parole as an alternative or a diversion from prison. But what we need to know is that one-third of prison admissions nationally, and certainly this has historically been true in Pennsylvania, are parole failures. And of the one-third of parole violators who contribute to the prison growth, two-thirds of those have been technical violators. In my parole vernacular, that's low-picking fruit. That's what we should be focusing on.

So what are we doing in Pennsylvania? Very, very briefly, I'll give you a couple of comments about a prison reform package. I think we have another speaker tomorrow who will be speaking a little bit more about this, from our Pennsylvania Sentencing Commission. So in Pennsylvania, we're following suit of what other states are doing. We have a reform package, which has bipartisan support both in the

House and in the Senate; and that package is focusing on differentiating our violent and our nonviolent offenders. It looks at giving time credits. And I will tell you, many states historically have given good conduct time credits. States are now moving away from the word “good conduct,” and they’re focusing on incentivizing offenders with time credits to program completion that’s linked with the reducing the risk of reoffending.

We also have a minimum and a maximum sentence in Pennsylvania, and part of the reform package will create a risk reduction alternative minimum. So that offenders come into the Department of Corrections, if they’ve completed their programs, they’ve completed their services, they have a reentry program plan developed, then we will have a presumptive model of parole that they will be paroled at the risk reduction minimum.

I have supported the concept and the development of this legislation because it’s based on research. It’s based on that new body of literature and research that shows us what works. It also creates for us a system of administrative parole for this nonviolent drug and property offender that once they are released for one year, if we got them stabilized in the community, then we’ll put them on reduced reporting. So what does that give us? It allows me to direct my some 550 parole agents in the field to commit to high-risk offenders.

My journey in the Pennsylvania Board of Probation and Parole has been fun actually. It’s been a job. It’s been a lot of work, but it’s been fun for me. And my commitment over my six-year term is to take the evidence-based practices and apply them to every segment of our parole system.

Parole, as I said before, has not been considered as a diversion. I see it as a major diversion in our prison system. I have applied the evidence-based practices to the decisional process. While Pennsylvania has always used parole guidelines, those guidelines needed to be refined. So we have now aligned our guidelines to the low risk principle; again, low-picking fruit. Individuals who are low risk need to be moved through the prison system as quickly as their sentence allows and get them out on parole. Elongated periods of time in prison only enhance the likelihood that they will reoffend. I’ve bolstered our reentry process that didn’t even really exist in the board. There was no Bureau of Offender Reentry Coordination. I created that, and I created two categories of parole agents. So that when offenders are released, if they are mid to high risk, they’re going to go on a 1 to 50 ratio, and our agents are going to work intensely with them for the first three to six months, which is the highest period of time the likelihood that they’re going to reoffend. And we’re going to get them stabilized. We’re going to draw in the family support, the community support system, activate the continuity of care plan, get them stabilized in work, and work with them in a balanced way. If I had one criticism of my parole system for supervision it’s that we weren’t balanced. And I would dare say many states are in the same position. They are very good about supervision, surveillance and monitoring. You violate a condition of parole, you go back in prison. We don’t do that anymore in Pennsylvania. I’ll give you a couple of statistics in a moment that illustrate that. My mantra to my agents is, “You keep them in the community as long as you can safely and effectively manage them. They are not going to be rearrested. But if they pose a threat to public safety, I want them immediately off the street.” So this requires our use of assessment. This requires us quarterly analyzing if the factors, the criminogenic factors are on the rise that show an increasing risk of reoffending. And, if they are, if we do have a decompensating parolee, we still don’t arrest them right away. We have another agent category called an Assessment Sanctioning and Resource Agent, who we use to bring in those decompensating parole violators and begin to work with them. We created a massive amount of program capacity within the Board. We had a budget of about \$1.2 million

for our agency, which is large, just for training. And I used every penny of it this year, and I think I'm about 300,000 in the hole as of June 30th, but that's okay because we're training our agents, we're getting a nationally-certified and cognitive behavioral programming, relapse prevention, violence prevention, domestic violence. Many of these programs you can't find in many of the communities in rural Pennsylvania. So our agents now are balancing their group supervision with effective case management that is problem solving.

The other thing that we're doing specifically in terms of alternatives is realistically we do have parolees that have to be moved off the street. And when we do that, they don't always have to be back in prison to intervene successfully in their criminogenic behavior. So in a partnership with the Department of Corrections, who has all the money, so we use that money happily, we've created a number of community-based alternatives. We have secured facilities in the communities in which we remove the offenders from their community, from their home, if they're still in their local community, and they receive programming and support and an opportunity, quite frankly, to chill out. I was in a conference call one time with Ed Latessa, and he cited research, which I had never heard before, that just moving some parole violators into a secured facility in the community can reduce their recidivism by 12 percent because they know they've got one foot back in prison. Of course, that doesn't work for every parolee, but it does work for some. We have programs that target their substance abuse, where they go in for a four-month intense parole violator substance abuse program. We have four-month cognitive behavioral programs. Primarily, the issues for them are their criminal thinking errors. And so the sustained recidivism rate of this population, and keep in mind six, seven years ago 100 percent of these people were back in prison, our sustained recidivism rate is 39 percent. That's remarkable. That means 60 percent of the people are going out, being continued under parole supervision and are now successfully completing it.

Let me give you a couple of statistics that I think would be helpful. And keep in mind, we are still in the process of becoming. We, as an agency, are still in the process of transforming. And this is the hard work, to have the cultural change to approach how you manage parolees differently and thinking of ourselves as diversion. NIC put it, the transformation, they defined it actually in a report that came out, I believe, in March, the Comprehensive Framework for Paroling Authorities, as the organization and its staff must change the way they view themselves and their roles within the organization and redefine the organization role and processes. This is no easy task. But we have done this a couple of ways. We've invested a tremendous amount of dollars, as I said, in training. We have reduced the parole agent-parolee ratio overall to about 1 to 66. We've created alternative management options for our parolees who are beginning to decompensate. And we are creating with our parole agency our own programmatic capacity to address a portion of the offenders' criminogenic problems.

So statistically let me just run down a couple of things that I think will illustrate where we are. One-year recidivism rate in 2005 was 30 percent for the first year, 15 percent for the second year, six percent for the third year. Our one-year recidivism data now is 23 percent. So we've gone from 30 percent to 23 percent. We anticipate that our three-year recidivism rate will have gone from 50 percent down to 45 percent, but we're still studying that cohort to work them through the three-year period. So we don't have that final data. Our technical parole violator rate, this is one that I'm most proud of, has dropped by 21 percent. This, in real numbers, is 100 fewer technical violators who coming back to prison every month. Annualizing that, that's 1,200 parolees, that's one prison. Now, so how does this affect the DOC population? In Pennsylvania a couple of years ago, the net rate of monthly growth in the Department of Corrections was between 150 to 175 per month. This year our sustained net growth into

the Department of Corrections is 65. You see the direct reduction of the 21 percent of technical violators. Now, anybody here a pessimist? Nobody? We're all optimists? Okay. So anybody here been a parole agent? What would parole agents say? If you're not locking up your technicals today, they're going to be convicted violators tomorrow. Well, let me share with you. We have no statistically significant increase in the number of convicted parole violators over the last three years. That number has remained relatively flat. And it fulfills my personal experience with working with offenders for 36 years. Offenders have sloppy lifestyles. They're not going to turn into us, not many of them. They're sloppy in what? Their personal relationships. They're sloppy in their work habits. They're sloppy in their social interactions. They just don't live always the way we live, you know. And but that doesn't mean when they're sloppy they are going to be violating. They're going to be changing residences without permission. That's a violation. They're going to quit their job when they shouldn't. That's a violation. They're going to get a couple hot urines. That's a violation. But that doesn't mean that tomorrow they're going to go out and rob a bank. Looking at our reduction of TPVs without the increase in our convicted violation rate, I think demonstrates that that theory is true.

Interesting information on our absconders. The national average of absconders is about 10½ percent of any parole population. When I came on the Board in July 2005, the absconder rate was seven percent, still well below the national average. Today it's four percent. Why is it four percent? It's four percent because when we get those offenders most of them were absconding within the first 100 days. We're working with them. We're problem solving with them. We're intervening. We're assessing when their risk level is going up. So some of those people who would have absconded aren't absconding anymore. So we've greatly reduced that rate.

Our successful outcomes have in last year increased by ten percent of successful case closures. And our parole rate has increased from 57 percent to about 61 percent. A modest increase, but a three or four percent increase in parole rates sustained over a period of time is, is very significant. And I attribute that to something that's important. Our parole board members when I came onboard there were board members who were there for up to 12 years who had not gone to any conferences, no professional development. So I instituted two years ago a mandatory monthly in-service training where they may get one hour, two hours, or three hours of training. And in that, we have worked to teach them the principles of effective intervention, the low risk principle in making parole decisions. So I think the parole rate has edged up ever so slightly where they can better identify people who are less likely to recidivate.

In closing, I would like to say that the parole systems, the diversion of certain violating offenders through the use of alternatives to reincarceration is not about being easy on offenders. It's about being smart, and it's about being effective. I would like to say that for those of you who represent parole boards, I would urge you to affiliate your board members with a professional organization. For example, the Association of Paroling Authorities International, which focuses on parole boards releasing authorities for their professional development to help move them along to help in our struggle as we work to divert more and more parolees from reincarceration.

Thank you.

CHAIR HINOJOSA: Thank you, Ms. McVey.

And since we have no self-declared pessimists, I'm sure you'll enjoy hearing from Mr. Burris.

MR. BURRIS: Good morning. That's going to be a tough act to follow. Especially all that talk about picking the low-lying fruit because I thought we were going to have bagels here this morning and I'm a little hungry.

I'm Doug Burris. I'm the chief probation officer for the Eastern District of Missouri, and I have a district that supervises over 2,000 federal offenders. Eighty-five percent of those have served time in a federal prison. And those percentages mirror the rest of the federal system. About 15 percent are on probation, and the rest have served time in prison.

My district supervises one of the toughest caseloads in the system. We rank in the top ten in crack and meth cases. In fact, more meth labs have been closed in Missouri than in any other state in the nation for the last five years. And we are also really up with our guns. Our caseload is 18th as far as size of the 93 districts, yet we rank sixth as far as the number of people convicted of a federal firearms offense. There are more people on supervision in St. Louis for a federal firearms conviction than in Los Angeles, New York City or Chicago or even Washington, D.C.

This has been a really exciting time for us because of the pendulum starting to swing back and not just looking at punishment. And one of the largest changes that we've faced in the federal system has been the retroactive application of the crack cocaine guideline. Initially, 20,000 prisoners were thought to be eligible for a possible reduction, but this number is thought to be even more. It may be delusional, but I like to think that I played a small role in this retroactivity taking place. When the Sentencing Commission asked the United States Judicial Conference if the retroactivity should take place, the Conference in turn asked the Criminal Law Committee. The Criminal Law Committee asked a group called the Chief's Advisory Group, which is eight chief probation officers elected by their peers to advise the Administrative Office and provide consultation on policy. We were asked our opinion about the retroactivity, and we just didn't say yes, we said absolutely, yes. We could handle the workload, and it was the right thing to do. The Sentencing Commission voted on December 11th to make the law retroactive, with an effective date of March 3rd. By the end of January, two summits took place, one in North Carolina and one in St. Louis. We're going to see a real quick clip on the one in St. Louis.

(Clip playback.)

MR. BURRIS: As we discussed, the retroactivity took place March 3rd, the effective date. And as of the close of business on June 12th, 8,251 cases had been acted on for the motion for reduction, and 78 percent were granted. My district had processed on that snapshot date 258 motions, which was the eighth most in the federal system, and we granted 236, which was the sixth most. In the four weeks since then, my district has increased the total to 419, which is a 62-percent increase. Close to 100 individuals in my district have been released to the street. I have met with each one of these people as they've been released, and I tell them the story about how I voted for the retroactivity application, and that I had stuck my neck out for them, and that I had hoped they would prove that I was a smart man. I've been really impressed with what's happened since then. Of the 100 people we have, we've had two people who have had some minor problems, but no arrests, no seeking revocation or anything like that. When I meet with these people, I discuss barriers. And by far the number one fear that they have is a job that they can make a living wage at. And we'll talk more about that here just real shortly. When I'm done talking to these people, I always stand up, go over and shake their hand and say, "Welcome home." One of the things that the timing is perfect for is the Second Chance Act. At the federal level, the federal probation, we can now contract for transitional services for people even if they do not have a drug or mental health problem.

Previously, we could only contract for services for these people if they had one of these problems, but now we can contract for all people. This is a thrilling event for me because I always used to tell people we could contract for guns and ammo, but we couldn't contract for bus passes so someone could get to work, but now we can do that.

Employment has been one thing that there's been real concentration on at the federal level, and the results have been just absolutely amazing. When we started our employment program in my district eight years ago, the unemployment rate of our caseload was 12 percent, more than three times higher than the unemployment rate for the general community. But because of employers willing to give people a second chance, teaming with the Department of Labor, the National Institute of Corrections, community and faith-based groups, our unemployment rate dropped drastically. And, in fact, 40 months ago it dropped to a rate lower than that of the community. And for 40 consecutive months now, our offender caseload unemployment rate, one of the worst caseloads in the federal system, the unemployment rate has been lower than that of the general population of the community and the state.

There are now 53 districts in the federal system that have brought forth employment programs and are producing similar results. We have not forgotten treatment programs. And, in fact, last year over \$55 million was spent on drug and mental health programs in the federal system. Of those that received these services, between 68 and 77 percent successfully completed supervision.

You're going to hear a little bit later about the 500-hour drug treatment program in the Bureau of Prisons program system, which I think is an outstanding program. It has been shown to reduce recidivism by 16 percent. However, vocational training programs in the Bureau of Prisons, those that successfully complete vocational training programs, their recidivism rate is—the success rates are more than twice—33 percent in recidivism rate [reduction] compared to the 16 percent of the drug treatment programs.

There's one program that one of my heroes, who is in the audience, is developing. That's Art Beeler from the Bureau of Prisons, who is the warden at FCI Butner. He is bringing forth a program that's teaming with the Department of Labor, Meineke Car Care, and his own organization, in which they are going to have an automotive training program. Meineke has promised to hire all the graduates of this program, and these are high-paying jobs with benefits and possibility for advancement. This is a program we hope to expand elsewhere.

The federal system is also bringing forth evidence-based practices. This includes cognitive skills programs, motivational interviewing and employment like we talked about.

What we're going to do now is show one more video of one person that went through all of these various programs, and he tells the story better than anyone else. This man on paper should have never succeeded. He was removed from his parents' house when he was five years old. Actually never knew his father. He bounced around in group homes until he was 16. He ran away, dropped out of high school, and then joined a gang. And at 17, he robbed a post office, got \$300 in cash and \$350 in stamps, and this is his story.

(Video clip playback.)

MR. BURRIS: Whenever I see that video, I think two things. One is that, this was aired shortly after my birthday. My wife had bought me a high definition TV, and we watched it on the news that night, and I was appalled at myself, and I turned to my wife and I said, "When did I get so fat?" And she turned to me and said, "And old." The other thing I think of is how proud I am of Clark. Since that was aired, he did obtain his Masters of Social Work, and because of a relationship we have with University of Missouri, St. Louis, we were able to get him a full-ride scholarship, including a living stipend for his PhD. So this person that had no hope is going to be Dr. Clark Porter, hopefully, in about three years.

There are other programs federally being developed, including reentry courts, which are based on the drug court method. You're going to hear about these later as well, including from Judge Ann Aiken, another one of my heroes in the system. But it is true what I said, even though I said it looking old and fat, the carrot does work better than the stick. And it is amazing the results that we can produce, if we just give help and hope.

I thank the Sentencing Commission for having me, and even more importantly, I thank all of you for being here. Thanks.

CHAIR HINOJOSA: Thank you, Doug. Professor Saltzburg.

MR. SALTZBURG: Chairman Hinojosa, members of the Commission, and fellow attendees. I was looking around the room. It's especially nice to be here to see so many old friends and experienced people who care about sentencing.

I'm going to shorten my remarks so we have time for questions, but I wanted to recall a day that meant a lot to me because it surprised me and gave me hope that this meeting might take place, and the conversation would begin. Before I forget, by the way, please mark on your calendars October 24th. The conversation will continue on October 24th in the Marvin Center at George Washington University, when there will be another program on sentencing and sentencing alternatives, co-sponsored by the Sentencing Commission.

But I call your attention to August 9, 2003, when Justice Anthony M. Kennedy came to the American Bar Association meeting in San Francisco to give the opening address. Justice Kennedy looked out on the mass of lawyers who were there and said we incarcerate too many people in this country for far too long, in demeaning ways, and among the then 2.1 million people who were in prison, he said more than 40 percent were African-American, and later he mentioned that more than 20 percent were Latino. And he called our attention to the fact that our incarceration policies not only hardly make us the land of the free, but they have resulted in the destruction on a large scale of communities of young men in particular. In certain cities, 50 percent of the young male population end up in jail or prison. And something is terribly wrong in a country that ends up with numbers like that. It's not that we can escape avoiding the real problems of crime, but we have to figure out, as this meeting is intended to do, how to deal with criminal acts and people who commit them in a more enlightened way. You've heard statistics. You've heard a remarkable story in Pennsylvania of how reason and judgment and compassion can work together with tough sentencing policies to lock up the right people and to provide some more humane sentencing alternatives for those who warrant them. What I have to tell you is when Justice Kennedy gave his speech, the president of the American Bar Association, Dennis Archer, the first African-American president, appointed what was called the ABA Justice Kennedy Commission. To my knowledge, it is the only time in the history of the United States Supreme Court that a sitting justice

allowed his or her name to be used on an entity that had nothing to do with the Supreme Court. And the charge of the commission was to make recommendations to improve criminal justice, and that included sentencing. The commission worked for a year and took its recommendations to the governing body of the ABA, the House of Delegates, which approved them. And then a successor commission—I chaired that Commission, the Kennedy Commission that I continue to co-chair—the Commission on Effective Criminal Sanctions, has been working for three years to build on the work of the Kennedy Commission. We reached out to the National District Attorneys' Association, reached out to the National Association of Criminal Defense Lawyers. And we actually, believe it or not, came up with resolutions and policies that all of those groups could support.

It's interesting when Ryan goes back to the data in 1970. In 1970, everybody thought the states were the backwaters and that enlightenment came at the federal level. What the federal government was doing was taking the leadership in so many ways. And today the pendulum has swung. It's very clear the states are indeed little laboratories, and that they are doing things that I think the federal government can learn from. It doesn't mean that any government gets it right all the time. It means that in this federalism dialectic, which we still benefit from, the genius of the framers of the Constitution, we can continue to learn from the states, from the federal government and vice-versa. And what we know is if there are going to be meaningful alternatives to incarceration, that we have to have three things: a new way of thinking about incarceration and why we incarcerate people; we need changes to the statutory framework at the federal level, if there are going to be alternatives; and we need changes to the federal sentencing guidelines, both structurally and substantively, if alternatives are actually going to be meaningfully available.

By the way, as I speak here today, I may mention the ABA. I don't speak as an ABA person or as a George Washington spokesperson. But the ABA came back with essentially seven things that really are important if you're going to have a sensible sentencing policy that allocates incarceration alternatives in appropriate ways.

First, and probably most important, and this is one in which the DAs, by the way, the National District Attorneys Association, that's 24 out of 2,400 elected prosecutors, supported, was that the number one determination that one has to make is, who should be incarcerated and who should be eligible for alternatives? And the judgment was that lengthy periods of incarceration should be reserved for offenders who pose the greatest danger to the community, commit the most serious offenses. Not rocket science, but it's the principle that they all bought into. And that alternatives to incarceration should be provided when offenders pose minimal risk to the community and appear likely to benefit from rehabilitation efforts. That's principle number one.

Principle number two is that [inaudible] where people should be eligible for alternatives, community supervision of the kind that Chairman McVey talked about. Community supervision can work. We need to make sure, however, that ratios of probation and parole officers to those undergoing supervision make sense.

Three, and you've heard her talk about this, that we have evidence-based practices that can be used to establish penalties and rewards. She said there were rich and robust data, and there are. We didn't have these years ago. And they really do support alternatives in a way that years ago you would have had to do it on faith. There ought to be a standard application of good time and credits that we've heard about from several speakers. I mean basically what we know is that people who actually get

education, get treatment, take advantage of prison programs, as Doug said, they are just less likely to recidivate. Just makes sense. They are beginning to change their lives.

There ought to be a second look of one sort or another of offenders once they're sentenced. Whether we call it parole or have to invent a new name for it in the federal system because Congress probably won't want to admit it made a mistake when it abolished parole, that it does make sense to take a look at people after they've served some time and ask whether they need to continue to serve time.

One of the things that I think Chairman McVey said, I've heard former Commissioner Chasanow of Maryland say, is from the day you lock somebody up, day one, you should be thinking about the day you're going to release them, and you ought to be working on making sure they're able to reenter society; and when they're released, they ought not to be released with the assumption they're ready to go and do it on their own.

It's a continuum where corrections officials work with probation and parole officials to make sure that there is that supervision that she described that's particularly important in the short period immediately after release. It's important that we change the measure of success in the criminal justice system. What do I mean by that? For years, probation and parole officers were judged by how many offenders they could send back to prison. It was, trail them, jail them, bail them, you know. That was the system. And now, and this is another one that the DAs joined the American Bar Association in recommending this, that probation and parole officers should be judged on whether they are revoking the right people and whether they're able to keep those who don't need to be in jail, in prison, out. And that's really important. So at the federal level, what's necessary if we're going to actually be able to have meaningful change? What do we need to do in terms of the statutes? Well, one thing we have to do, but this is such a big enterprise that we won't do it probably ever, is reform the federal criminal code. Our framers who believed in federalism wouldn't believe that we're here where we are. In fact, the Sentencing Commission is probably responsible more than anything for having a sensible system federally. If it weren't for the guidelines, the federal criminal code would make no sense at all. The guidelines actually, at least, give it some explanatory rationale. But the code needs to be reformed.

But putting that aside, the American Bar Association has said the 25-percent rule, which Congress imposed at the beginning, and that drove the 43 offense levels of the guidelines, should be repealed. The Sentencing Commission should be as free as state commissions to decide for itself how many offense levels are necessary and what ought to be in those offense levels. We ought to increase eligibility statutorily for this, a safety valve for allowing people who have committed offenses that would otherwise result in imprisonment to be eligible for alternatives. We ought to adopt diversion and deferred prosecutions in a uniform, transparent manner. We ought to consider giving judges more opportunities under rules like Rule 35 of the Federal Rules of Criminal Procedure for a second look at ability to reduce sentences. Although it's not really an alternative to incarceration, one would be remiss if one didn't say we've got to change the cocaine sentencing policy that the commission has worked so hard to get Congress to change. It may not be an alternative, but if you didn't have these draconian crack sentences, at least people would serve less time and that is something different from something that's necessary. I think we need to provide more good time—sentence like Pennsylvania does for people who are in prison to get that job training that Doug Burris talked about—and automatic training. That's the thing that holds off the promise of jobs. Jobs hold out the promise of being able to support yourself, the ability to have housing and the ability to have a life other than a life of crime. And we need to expand programs for offenders under 18 U.S.C. § 3582. But what changes do we need in the guidelines? Well, I believe the

Commission was right on when it considered adopting a new criminal history category of zero. That would permit greater flexibility in sentencing first offenders the Practitioners Advisory Group proposes, and I think the Commission ought to consider, expanding the zones to allow more access to alternatives for a greater number of federal offenders. The Commission needs Congress's help to do some things. The Commission could work with Congress on recommendations with respect for compassionate release under 18, U.S.C. § 3582, and pre-judgment probation under 18 U.S.C. § 3607. And, of course, the Commission probably can't do any more other than remind Congress of the importance of dealing with federal cocaine sentencing, and to change it in a way, either reduce the penalties or equalize as the Commission once called for, the crack and powder cocaine penalties.

When we look at where we are as a nation, we now incarcerate 25 percent of all people in the world who are imprisoned or jail, or in jail or imprisoned in the United States. Now there are statistics we want to basically boast about, but I don't think we want to boast about that anymore than you want to boast about, St. Louis, you know, having more people, you know, with gun offenses than Washington, D.C., Los Angeles, New York, and other cities. There are certain statistics you live with and try to change. We don't need to keep 2.3 million people in jail or prison in the United States. We need to figure out who needs to be there. We need to figure out who needs to be there for a long time, and we need to figure out how to get the other people away from crime. The interest, by the way, it's not an interest of prosecutors or defense lawyers. Judges, prosecutors, defense lawyers, corrections officials, parole officials. They all have the same interest in the end. It's to reduce crime, reduce the number of victims by breaking the cycle of recidivism and giving people a chance, a second chance to get on with their lives.

I may be an optimist like the rest of you in the room, but I'm a realist. This is an uphill fight because there hasn't been an election that I know of in which somebody who was tougher on crime didn't do well. Tell you the truth, the best thing about this presidential election is that neither of the major candidates is talking about crime. You know, thank God, because when they do, it's never good news, right? It's always ratchet this up, lock that more. If you scare people, you usually do well in elections. And it may be a terrible thing that presidential candidates have to be talking right now about war and the economy. You know, I wish the economy were better. I wish we weren't at war. But if there's any silver lining, it's they're not talking about crime, and we have therefore hope. Thank you.

CHAIR HINOJOSA: Thank you. And we'll open up for questions. Before we do that, on behalf of the Commission, I do want to thank everyone in this room that was supportive of the Commission's actions with regards to the crack amendment as well as the retroactivity decision. There are so many people in this room that were very supportive and very helpful, and the Commission appreciates that.

Do we have any questions?

Yes. If you would come to the microphone and just identify yourself.

MS. GILL: My name is Molly Gill. I'm with Families Against Mandatory Minimums, and my question is for Ms. McVey. You had mentioned a window of time at which after a person has been incarcerated, for that period of time the risk of recidivism actually goes up, and I was hoping that you could elaborate on that, and what is the window? What's the magic number?

MS. MCVEY: Well, for low-risk offenders, the window of time is to get them out as quickly as you statutorily can. And so because low-risk offenders need to get through the prison, they need to rejoin their families. They typically, we can have the support system that we need for them in the community, and they serve [inaudible] are served better. When you mix your low-risk and your high-risk offenders, you actually are kind of contaminating your low-risk offenders and increase the likelihood, number one. The other piece that I mean to that is once offenders, and I'm trying to remember the report that I read this in the research, but the indication was that it's not for offenders the severity so much of the offense as it the certainty. So when offenders go to prison, they're there, they do their programs, they do their treatment, behaviorally they've started to change. That is the window of opportunity that I was talking about. That moment is right before they are so disconnected from whatever support they have in the community. You want to get them out. They've done their programming. They're not over-institutionalized, and you want to get them back out in the community. That's the window of opportunity.

MS. GILL: Thank you.

CHAIR HINOJOSA: Any other questions? Yes.

MR. MONTES: Jorge Montes, chairman of the Illinois Prisoner Review Board. Given what Professor Saltzburg has mentioned today about the popularity of using crime to bolster your votes. To Chairman McVey, where do you find the courage, the political courage? You know that there's always an underlying factor of politics. Where do you get your direction or do you have any direction? In Illinois, I know that I can get away with a lot of things because nobody's watching. It seems to me nobody is watching. But how, where do you get your courage to be able to pull this off? And, one and two, how has been your experience with the culture change with parole agents who have thought about parole in different ways historically?

MS. MCVEY: Well, I got my courage, I think, because I'm 57. I'm retiring in three years, and I can pretty much do what I want. That's part of it. But seriously, we have an administration in Pennsylvania under Governor Rendell, who is very supportive of forward thinking. The administration demands its agency heads and leadership to be research-based. And so there's a climate there of expectation that you're going to do better than has ever been done before. And for my own courage, I know what works. I've worked with offenders for, you know, 35, 36 years. I know offenders. I've lived offenders. I've worked in prisons. And I believe what I believed a long time ago. Give people the opportunity to change, give them the environment, and a portion of them will go on to get out and be successful. So I just have a real strong personal belief in the right way to change lives.

CHAIR HINOJOSA: Yes.

MS. BARRETT: Hi. My name is Denise Barrett. I'm assistant defender in Baltimore, and I have a question for Mr. Burris.

Could you describe in a little bit more detail the Employment Reentry Program that your office and the other 53 districts operate?

MR. BURRIS: Are we about out of time? I'll make it very quick.

CHAIR HINOJOSA: She wants to know how the Employment Reentry Program operates in Missouri as well as in the 53 other districts that have it.

MR. BURRIS: It's a team with the National Institute of Corrections who developed a formalized training called the Offender Workforce Development Specialist Training. It's a two- to three-week training program that they put on. And I have instructors on my staff. We've trained other districts throughout the nation—what works as far as getting them the job, interviewing skills, maintaining the job, how do you address the issue with a five-year gap on your resume or something along those lines? Also on how to approach employers with the tax credit that was referenced in the video or the federal bonding program. NIC has done this at the state level as well, including in Missouri, and it's just an outstanding program. I'd be glad to give business cards to anyone who would like some formal information on it.

CHAIR HINOJOSA: It's a great program. It also involves the courts with regard to speaking to employers. The Second Chance Act, I think will be a good opportunity to even enhance these types of programs. But there's a lot of reluctance on the part of employers to hire people with prior convictions. At the same time, this program tries to place and give the success stories to employers as well as the benefits under certain tax situations that are helpful, and it is a program that has caught on and actually started in Missouri.

Are there any other questions?

If not, I hope you all will agree that this is a good starting point. Many of you, as I, noticed that a lot of the discussion centered around the programs that we have after someone has finished his or her sentence and hopefully trying to make sure that they don't either violate parole or supervised release. And I hope, and we hope that this conference within the next two days will have even more discussion and expansion of these programs with regard to the front end—in those cases where it might be appropriate and might be worth considering this at the front end of the sentence. And we hope that the next two days will give us a discussion as to which, if any, of the cases that might [fit] the situation.

At the same time, it was also appropriate for Professor Saltzburg to give us the political realities of where we are because I think it's important for us to be realistic when we discuss these matters. And as we all are hopeful and certainly feel that everyone feels that the best sentence is what's best for the individual defendant and for the public at large with regards to public safety. In many cases, the rehabilitation and the work with the defendant is important for public safety and in many cases they converge. In some cases, they don't, and that's what these two days are about, trying to discern in which cases this would be helpful and in which cases it would not. People have brought different expertise, and I think it will be that way for the next two days.

Again, on behalf of the Commission, thank you so much for participating in these two days that hopefully will be the start of a national discussion with regards to sentencing policies not only at the state level but also at the federal level.

It is now time for a break, and we will be back here at 10:30 for the plenary session.