

Day Two – Working Luncheon
Second Chance Act

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SUMMARY

With bipartisan support, Congress passed the Second Chance Act this term. The Act provides federal funding to serve as seed money for programs that assist individuals released from prison to successfully reenter society. Approximately 95 percent of those in prison will eventually be released into the community. Included in the Act are “demonstration grants,” or allocations of funding that must be supported by evidence-based research. Also included are “mentoring grants,” which provide financial support to non-profit organizations to mentor adults released from prison, and funding for reentry courts, recidivism evaluations, and family and individual substance abuse treatment programs.

In addition to highlighting some of the Act’s provisions—and recommending that symposium participants review its statement of purposes and findings—panelists discussed the lengthy process of conversation, negotiation, and information-gathering entailed in this legislation’s enactment. The result was a bipartisan effort to support reentry programs that are tailored to their communities, are fashioned to meet each individual’s needs, and are proven successful through evidence-based research.

SECOND CHANCE ACT

MS. RICH: In 2004, President Bush noted in his State of the Union Address that nearly 600,000 prisoners a year would be reentering their communities. That number, as we know, is actually much larger. As President Bush noted, “We know from long experience that if they can’t find work, or a home, or help, these offenders are much more likely to commit crime and return to prison. America is the land of second chance and when the gates of the prison open, the path ahead should lead to a better life.” Congress took those words to heart and introduced legislation to address the needs of offenders reentering their communities. In fact, it was the man sitting to my left, Congressman Danny K. Davis, who introduced that important piece of legislation.

It is my distinct pleasure this afternoon to divert slightly from today’s agenda and present to you Congressman Danny Davis, who has represented the seventh district of Illinois as a distinguished member of Congress, as an articulate voice for his constituents, and as an effective legislator, able to move major bills to passage since entering Congress in 1996. I don’t think anything exemplifies Congressman Davis’s ability to move legislation more than the Second Chance Act. So it is my privilege to introduce Congressman Davis and have him say a few words before we continue with the rest of the program. Congressman Davis.

CONGRESSMAN DAVIS: Thank you. Thank you, thank you very much. You know, as I was listening to Lisa, I couldn’t help but think of one of my favorite expressions. It simply says that life is but a minute, just 60 seconds in it, forced upon us; we didn’t seek it and we didn’t choose it, but each one of us can determine how we use it. Society generally suffers if we abuse it, just a tiny minute, but eternity is in it.

Let me, first of all, thank Lisa for a warm and kind introduction. Let me thank all of you for being here, and for the opportunity to stop and say hello. You are discussing one of my favorite subjects, and I want to thank the Sentencing Commission, not only for the tremendous role that it played in shaping and passing the Second Chance Act, but for the tremendous work that it does in relationship to how America is looking at criminal justice and criminal justice issues, criminal justice reform.

It was certainly good for me to meet earlier, a moment ago, Chairman Hinojosa. All of America who have read Marc’s work, Marc Mauer’s work know the tremendous job that he has done. It was good for me to see one of our very own; Chicago is very proud of Ruben Castillo who is a member of the Commission. I’ve known him since he was a young attorney, and it’s just a pleasure to know that he is here looking after not only the interests of those of us in Chicago, but all over America.

Second Chance is designed to do exactly what it says. And that is to provide opportunity for individuals who have had some difficulty, to regain a positive approach to life, to become productive, contributing members of society, and to demonstrate that we are still a nation that believes in redemption. As a matter of fact, Christianity and religion, different kinds of religion, have played a great role in the development of our nation. But undergirding much of that development has been the concept that man can fall so low, but then can reach so high. And just because you might be in a hole, it does not mean that you have to remain in that hole for the rest of your time, and for the rest of your being.

And so Second Chance is saying to America, quite frankly, that if we are willing to work with people, many of those individuals will respond in a very positive way. That those individuals will find

ways to overcome whatever it is that got them in the predicament that they find themselves in. Secondly, we know that Second Chance will find a way to help redirect some of the resources that we're currently spending for jails and prisons. And just think, if 100 individuals don't go to prison, and then you multiply that by the cost that society pays to keep them in prison, and then you add to that the job that they were able to get, add to that the taxes that they were able to pay, then you've got to say it's a benefit and it is a help for society. So I really commend all of you.

We have an excellent panel this afternoon that will go deeply into all of the meaning, two individuals who helped shape, who were part of the negotiating, part of the writing, representing the Attorney General's Office and representing the Judiciary Committee. Sometimes I felt sorry for them because we would reach a point where we thought we were moving, and then we needed to go back and renegotiate. We needed to go back and reconstruct. We needed to go back and do something different. But that's really the true essence of democracy. Is there anyone who believes that democracy is simply the distance between me and Pat Nolan? And if Pat and I can reach some point where we are in agreement, then we have shaped activity, based upon democratic principles. If we get closer to where Pat is, it means that he's worked harder than I have. If we get closer to where I am up here, it means that I've worked harder than he did. But it's a bipartisan piece of legislation. It is legislation that people from all different stripes and walks of life can be proud of, and it's a piece of legislation that says America not only believes in itself, but America believes in all of its people, even those who have been convicted of crime.

So I thank you very much. It's opening the door. I look forward to continuing to walk through those doors, not only with the inmates coming out of prison and jail, but with all of us who will know that at the end we will have helped to shape a better America. Thank you very much and have a great afternoon.

MS. RICH: As Congressman Davis noted, the Second Chance Act was bipartisan, yet it still took until 2008 to get it passed. And as the Congressman also pointed out, I have the privilege today to share the dais with two of probably the most hardworking former and current congressional staff members that I have ever had the privilege of meeting.

Bobby Vassar is the current majority counsel for the Subcommittee on Crime, Terrorism, and Homeland Security. [Off topic.] To his left is Michael Volkov, who is now the Deputy Assistant Attorney General for Legislative Affairs.

So what we want to do this afternoon for you, since so many of you in this room actually participated in the creation, formulation, and ultimate passage of the Second Chance Act, is not so much to talk about this substance of the Act itself, but to discuss the process by which it was actually passed. If any meaningful change, if any incorporation of alternatives to incarceration, or any change to the guidelines, statutory changes at the federal level, or anything else meaningful of that nature is to get done, it has to be done in a bipartisan manner.

These two gentlemen worked tirelessly in order to get the Second Chance Act done, and I think that they will be able to provide you with the insights into the obstacles and the trials that we'll need to get through in order to see alternatives actually take place in the federal system. So I am going to gratefully sit down and stop speaking and introduce to you Bobby Vassar. Bobby?

MR. VASSAR: Thank you very much, Lisa. Good afternoon. Lisa is very kind to us, but lest you think that she's too kind, notice she didn't let us get any lunch. We have to prove ourselves first, and so we're going to have to do what we promised to be able to get lunch.

Let me just say, you heard from Congressman Danny Davis, and he doesn't need to be in the room for me to say this, but he is the soul, spirit, workhorse, foundation of why we are here today to talk about the Second Chance Act. His dedication and perseverance over three Congresses is why we have the success we do. He had some help, but he was the engine; he was the charge for all of us. He didn't let us rest for a moment in getting this work done. So he is due all of the credit you can give for seeing us through.

While we won't dwell on talking too much about the specifics of the bill, I do think it might be useful to mention a few of the very significant things that the bill does. And I encourage you all to take a look at the bill if you haven't had a chance. Look at the purpose and the finding section. I think you'll be amazed. It says more than anything else, I think, what went into that bill because it says some stuff that's probably similar to some of the things that you're hearing today. And I came over yesterday for Commissioner Steer's reception and met several people who had been at the conference yesterday, and everybody I met was really beaming with, "Wow, this is great." There have been wonderful discussions. They're very pleased to see the Sentencing Commission take this issue on and to look at the broad ramifications of sentencing policy in the U.S., so all indications are that it's been a very successful conference. And I'm hearing the same comments today.

As I was coming in, Pat Nolan grabbed me and said, "Come here, come here, you've got to hear some of this. You've got to hear some of this. The judge is up there talking about this stuff. You won't believe what they're saying." And he is really excited about it, so it sounds like you all are engaged in a great process here, and I'm really proud of the Sentencing Commission taking this on and providing this leadership, as they have done consistently for us, certainly since I've been in a position to work with them. So I'm pleased to be here to work with you.

Now on to a little something about the bill. Congressman Davis mentioned some of the key points, but the purpose of the Act, again you'll read it in detail, but we're trying to bring common sense ideas into play by providing federal funding that serves primarily as seed money. We're not creating anything with this bill. It's already happening; we're joining you. We're joining the people who are already working. We're providing some of the foundation. I heard some of the last part of the session that was in this room a little bit ago, and I think one of the last comments was the judge indicating that resources were key. And that's what I think this bill recognizes, that we all have a responsibility to make sure that we do what makes sense in a context where people are going to prison at numbers and rates the world has never seen. The U.S. leads the world, by far, in incarceration, five to eight times that of the rest of the industrialized nations that are similar to us, five to 12 times, some of the nations. So we do put people in prison in this country and for long periods of time, but yet 95 percent will come home, will come back, and we have a recidivism rate approaching 67 percent on average. So obviously, it makes sense to try to do something about this. And that's what I think the Second Chance Act represents, a modest step in the direction of recognizing a huge and growing problem in this nation, the hope that people who have been to prison, or are in prison, need. And so that's what the bill is designed to do.

One of the things that it involves is demonstration grants. This again is not new. There were existing demonstration grants to allow state and local governments to promote programs that allow safe

and successful reintegration of offenders. And so we're capturing that and trying to expand the opportunity for those demonstrations to be further set out. We require that they be evidence-based activities. Some things are promising, not quite there, but with the opportunity to demonstrate them, they will become evidence-based, and so that's one of the important provisions of the bill.

Mentoring grants, grants to non-profit organizations that can be used for mentoring adult offenders, or for offering transitional services for their reintegration in the community.

Offender reentry—substance abuse treatment while they're in prison and after they leave. There are already programs for residential substance abuse treatment. One of the little things we put into this bill was a provision to require that the in-house substance abuse treatment programs focus on services after the person leaves prison. When you're in a treatment program, then all of a sudden, now you're in the community, that's a disconnect, so you're required to follow the [people], to continue their treatment, or to work with them until they get to new treatment in the community.

We have a family drug treatment program. All of the studies, information we pull together reflects that when treatment is provided with a family-based focus, it's more successful for the person who is in the prison, as well as effective for other family members. We provide for research, knowing the importance of developing programs, approving programs that will assist reentry. And we establish a national adult and juvenile offender reentry resource center, so that once you get the research—what's already out there—pulled together, there's a place you can go to find it.

We provide for state and local reentry courts. This isn't the set-up of a new operation, or hiring new judges and court personnel, and what have you, but uses the existing structure to be able to devote time of the court to working with the issue of reentry, relative to the needs of offenders who are coming back into the community. We have prosecution-based drug treatment alternative-to-prison programs. And I imagine you all may be talking about some of that here as well, to recognize that if prosecutors are looking for an opportunity to work with an offender in a way other than having to go to prison, or to remain in prison, then we certainly want to support that.

We provide grant funds to evaluate educational methods at local prisons and jails, as well as at federal prisons. We have a program for federal [prison], and we provide the same thing to look at what we're doing in terms of the education processes for jails, prisons, and juvenile facilities. And we have a technology careers training/demonstration program to suggest that with a more and more technology-based economy, we can't leave our prison training programs out, relative to that activity.

There are several other programs, but I just wanted to give you a sense of some of the things. One other is grants to study the parole or post-incarceration supervision violations. So many of the people who end up back in prison are reincarcerated on sometimes technical violations of probation and parole, to a growing extent, and so we want to take a look at that to come up with more ways to prevent that, and to avoid people going back to prison needlessly.

And we have a program to address the needs of children of incarcerated parents, a growing number, somewhere in excess of 2,000,000 now and continuing to grow. So these are some of the programs that are in the bill. I'll have to admit, while I'm proud to be a part of this effort, I'm disappointed that it took three Congresses to pass a bill that was wired. The President was in support of it. It was bipartisan from the beginning, strong leaders who pushed hard, and yet it took three Congresses

to do it. It's no small feat, or small point of note, that it was a Democratic Congress that delivered on it, but I'm not taking anything away from the bipartisan nature of this. It was fully bipartisan. No, that's just a joke. Really, it was bipartisan from the beginning, hardworking people worked hard on it. I think it's safe for me to do this. I'm going to take the chance anyway, but I want to actually acknowledge Mike Volkov for his contributions to that, to this effort.

MR. VOLKOV: Wait, wait, this is a first. This is a first, okay?

MR. VASSAR: I couldn't tell you about this before. Mike was concerned, I think justifiably so, that he needed to show that he was not working too closely with the other side, that it wasn't representing all of his members' positions, and he did that quite well. But we came to an impasse as Congressman Davis mentioned, where the bill just was not moving. The chairman of the committee was not willing to move it without the ranking member of the committee being on board. And Mr. Conyers, who was then ranking member, has been an advocate for, and had filed bills for years, calling for reentry programming. And he felt that the provisions of the first couple of bills we filed were just too meager to warrant his support. And we weren't getting anywhere with that.

And it was his insistence that caused us to have to continue to think about this, and so Mike and I got together and we talked about ways to look at what Mr. Conyers was looking for, through his assistant, Keenan Keller, who was working with us. And we came up with a novel idea. We decided to co-opt him by giving him everything he was seeking. And it worked like a charm.

MR. VOLKOV: It's funny how that works, you know that?

MR. VASSAR: Yes, but it was only because Mike Volkov was willing to work with us and to actually look at the provision and come up with ways to do what Mr. Conyers was seeking, in a way so that his side could accept it. And so if we couldn't actually do something, then we could study it. We could get ready to do it. And we finessed it and came up, until Mr. Conyers was willing to endorse the bill, and that's what broke one of the logjams that developed. And I give full credit to Mike Volkov for that.

The room is full of people who should get credit. Pat Nolan, time and time again, helped us move this along. Jessica Nickel was just tremendous. I don't think she's here, but her perseverance, her dedication. She left the Congress and still led the effort from her new position. There is no one who contributed more than she did. Ron Weich, he is the one who brought us together, kind of initially, as a coalition, to begin to talk about how we pull everybody together to get this idea going, to get the foot in the door kind of approach. [Inaudible] a number of people, you always get into trouble when you start mentioning names, but these are folks who were just instrumental in terms of being there. I mentioned Keenan Keller earlier, who had a tremendous impact, and, as I say, this took three Congresses, and we could tell you war stories all day long about how, even with everything going for us, there was always this little glitch that would develop. Somebody didn't like the way something was worded. As I say, go in and read those purposes, and read those findings, and you will be amazed at how things are. You can't provide services to someone for more than a year unless a medical or other professional says more than a year is necessary. Well, you wouldn't believe how long the bill was held up until we could get that finessed. And so the history is replete with those kinds of little nudgings of what needed to be done. But dedication and perseverance is what moved us along to this point.

We see this as a foot in the door. As a matter of fact, it could mean very little, as tremendous an accomplishment as it is, it could mean very little unless we get some money appropriated to implement the provisions of this Act. So we're working feverishly. Mr. Davis again is tirelessly working, and others in the coalition, my boss, Bobby Scott, my other boss, Mr. Conyers, are working with congressional appropriators to say, "We've got to have money. We've got to have money; we've got to do this." And we're encouraged to believe that there will be something appropriated. We're encouraged to believe it will be significant. I'm not able to say, I don't know what it will be, but it will certainly be a great step in the right direction, beyond where we are now.

But there is still much work to be done, and so any chance you get to emphasize to your congressional representatives how important it is to provide funding for this, it's still very much necessary, because those decisions have not been made yet.

Now this is, again, a great step in the right direction. There is a lot more that needs to be done. You're talking about all of those things here, and we certainly want to be a part of it. At the same time, I'm working, through the efforts of Bobby Scott, my direct boss, to look at another end of the spectrum. And that is on the end of people coming into the criminal justice system, in terms of prevention and intervention. Our belief is that we can have the most impact on individuals, on victims, on society, on the whole criminal justice process if we can reduce the number of people coming in in the first place. So we're focusing on prevention and intervention. We have a bill, the Youth Promise Act is the acronym for it, that will provide substantial resources to local communities to make assessments of what's needed, what they have to work with, what's missing, and then to apply for grants to implement an evidence-based prevention and intervention program to work with at-risk children who would otherwise be coming into the system. The Children's Defense Fund has shown that we have, in some communities, a situation where children are born on a cradle-to-prison pipeline. Young black boys born today have a one-in-three chance, as the figures show, of ending up in prison.

And you can look back at the people who end up in prison and see where they came from, what circumstances they were in. You can pretty much predict people in those like circumstances today will go in the same direction, and so we think something can be done about that. Along that trail we believe that you can intervene and redirect. So what we're constructing through the Youth Promise Act is what you could refer to as a "cradle-to-college" pipeline. All of us are here because we went in a different direction. And so we're trying to construct that pipeline alongside the cradle-to-prison pipeline so that, at any point, a person at risk or already involved in the criminal justice process can be pulled over. And you have to have resources. You have to have evidence. You have to have science. You have to have people who understand what needs to be done and are dedicated to do it. And it has to be done on a community basis, so the bill calls for each community seeking funds under this program to establish a council made up of the people who are working with at-risk children—from education, criminal justice, social service, mental health—the gamut, the non-profit sector, the faith-based sector, to say what do we need to do and what resources do we need to do it with, and science, what programs, what tools do we have to work with in doing that. And that's what becomes the plan. We're trying to do that as an alternative to approaches out there that essentially wait until kids develop as criminals, commit serious crimes, and then have the hardware crack down on them and show them how tough we are on crime.

We've been doing that for over 25 years now, and it's resulted in us being the highest incarcerator the world has ever seen, by far. And you know what, we still have crime. We're going to have crime even if we adopt and implement the Youth Promise Act, but I guarantee you it will have a lot

[fewer] victims, crimes, police actions, judge actions, and the other kinds of things that we have to do, once you wait until crime is already committed.

So it's common sense to us. It's where I think we need to put a lot more emphasis, because far into the future we're going to have people in prison and coming out, so we certainly need to continue our efforts on the Second Chance and the incarceration programming side. We think the most bang for the buck is going to happen when we put a lot more emphasis on preventing kids from getting into trouble in the first place, and being successful in pulling those out who already are in trouble. I know you've heard some of the ways that we can effectively do it. It's being done all over the place, and we need to support those efforts and create more of them.

I'll stop there and hopefully get to some of your questions after Mike.

[Off topic.]

MR. VOLKOV: Thank you very much. Thank you, Judge Hinojosa and the other members of the Sentencing Commission. I think it's prophetic that I started out to the left of Bobby up here, and then moved to the right. But from your perspective, I started on the right, but moved to the left.

But, in any event, let me echo a few things, and I'm going to speak as a former congressional staffer. We get to pontificate and people listen to us. My kids never listen to me, but at least you guys are forced to listen to me. I used to like being a prosecutor. For 16 years, I was a prosecutor here in the U.S. Attorney's Office, and the jury was forced to listen to me, so that was great. Even when they started to fall asleep, I'd speak louder to make sure they heard.

But let me give you some thoughts. Obviously, I have to pay kudos to Bobby Vassar. We have become great friends, great intellectual debaters—we like to think of ourselves as having intellect, but we do debate a lot. And, you know, my perspective is a lot different. I was a prosecutor here in D.C. for 16 years, doing local crimes, as well as federal crimes. And then I got to work for five years on the Hill. And my motto for the Hill, as people may hear me say sometimes, is, "Pay no attention to the man behind the curtain," just like the *Wizard of Oz*. There is a lot of hard work that goes on. There are a lot of funny stories that go on, but underneath there are people who are legitimately committed to some issues and who try to get changes done.

I have to say several things. One is, there are a lot of thanks that go to a lot of people. Bobby let me come into this process after I begged and pleaded to work with him on this. And we got to work with a coalition of people that were just truly amazing. These are people who are not making a ton of money. None of us are, okay—except when I get a white-collar defense practice in two weeks, I'll be trying to make a lot. But I think a reentry program for white-collar criminals is definitely the way to go.

Let's back up for a second. It really was an amazing group of hardworking people, people who came to this from a different spectrum. Believe it or not, the message comes through from people all in this room. Eventually it comes up and it's presented to us, and if it makes sense, it's going to move because there are people legitimately who care about these issues.

And I'm going to tell you that I think we are at the beginning stages of something truly, truly big in terms of reforming the criminal justice system. I'll tell you, the only way it's not going to work is if it

doesn't work. If Second Chance isn't proven, or reentry programs are not proven to work, it's not going to work. If they don't get the money and they don't get the chance, we're going to lose the ability to move this coalition further. Because this coalition, in my view, can work in every aspect of the criminal justice system. It can start where Bobby was talking about—and Bobby, by the way, feel free to interrupt me, because you used to do it all the time, and feel free to interrupt me whenever you have any thoughts about it.

But really, I'm talking not just about the intervention; what about in prison? What's happening to the guy who is going to serve 20 years, in year three? What help is that person getting?

And the reason that I think the coalition came together is—I know, and I'm never going to use “kinder, gentler,” because we know where that leads to. Kinder, gentler doesn't work. What is happening is that the right wing is all of a sudden now concerned about costs and money. And the left wing has always been concerned about doing the right thing, the idealists. And the two positions are now merging in this sense, and rational criminal policy is coming up. Meaning, what does the research show? When are most violent crimes committed? When people are 16 to 42. What's the biggest predictor for murder? Guess what, simple assault arrests are the biggest predictor of murder, the evidence-based research shows. Bobby Scott has injected into the dialogue the notion of evidence-based assessments, so it's gotta work.

So Second Chance is going to be judged on, “Did it work?” And if it works, the Republicans are going to be there. If it works, the Democrats will be saying that we should give it more money because state after state, congressman after congressman, senator after senator, hears about the budget problem in each state.

So I think this is a huge moment. What happened in this process for a lot of the policymakers on the Hill was, it was like the top of a cesspool was lifted up, and the people finally started to say, “Wait, why are we doing it like that?” Let me give you an example. Let's just assume that, for the sake of argument, I'm a heroin addict. I go to prison, right? I need drug treatment. Can I get Naltrexone or Methadone in the prison? How many prisons do you know of that provide Naltrexone, which is, by the way, a pill that sometimes works for people who are addicted to heroin. If it works with them, they take one pill and they don't crave the drug for 30 days. Where's Naltrexone? Bobby and I looked at each other and said, “Where's Naltrexone?” No, we can't bring that into prison. Methadone? No. We're just going to do talk therapy. Well that doesn't make sense, okay?

Here was another one, and I remember this as a prosecutor in D.C. A mentally ill offender was arrested and released—for urinating, whatever—released. Brought in the next day, stole a radio from a construction site, arrested, released. What is going on? This person is mentally ill. What treatment is he getting in prison?

How many drug treatment programs include a mental health component where the co-morbidity rate is huge, between mental illness and drug treatment? Every time we peeled a layer off the system, it looked dysfunctional. What is going on? The probation and parole officers—and I know there are several here from probation departments—it is incredible the task that you have, when you're not given resources, when you're not given the tools, when you're not given everything that is available through evidence-based resources.

So one of the things Bobby and I talked about was, “Where is this going to go, what does the research show is the biggest predictor for the success on reentering?” The relationship between the prisoner and the probation officer. If they have a good relationship, if they work in a productive way, that’s one of the biggest predictors of successful reentry. And what are we doing about that? What resources are we making sure get out? What training is given? And I know there are probation and parole officers with huge caseloads, and having to do their jobs. This has been an enlightening experience to me. Drug treatment in this country is dysfunctional. You have SAMSHA, this place that’s supposed to have been reauthorized 15 times in the last 20 years, and it’s dysfunctional. I think what’s going to happen is, keep the Republicans involved by saying, “Look, let’s get in the programs that work and fund them. And here’s why we know it works. And by the way, at the same time, we’re going to stop what doesn’t work, and take that money and put it into what does work.”

So I hate to sound dramatic, but you may look at the Second Chance Act and think, okay, it’s incremental. We’re acknowledging what the states did. But there is a mindset now that has to be taken. The Sentencing Commission ten years ago would never hold a session like this, or a program like this. It reflects the political mood on the Hill. It reflects the political mood in the country as well.

I have a couple of other ideas. One, there are some limits as to this coalition. I hate to tell you, I know somebody is going to walk up and say, “That’s ridiculous, Mike. You’ve gotta change that, blah, blah, blah.” Believe me, if I had a magic wand, I’d change it, but I’m just telling you the political realities.

On the right, you will never, ever get the right for felons to vote. You will have a hard time getting convicted felons to be able to do certain jobs, or not be disqualified from certain jobs. That’s just the way the right thinks. When we walked into a room before—and I hate to use a war story—we had come up with this new version of the Second Chance Act. I thought all our Republicans were on line. There’s a meeting before you come out for the markup where all the members get together. And lo and behold, one member, who shall remain nameless, [inaudible]. You know, you just sit there nervous to make sure that this thing is going to go through. I’m just sitting there, you know, anybody have any questions, trying to just act relaxed, like I’ve got everything under control, like when I was a trial lawyer. And then he comes in, he says, “Has anybody read this? They’re giving them the right to Social Security; they’re giving them the right to food stamps. They’re treating them better than our veterans.” And I’m going, “Oh, damn, oh damn.”

And all of a sudden—you know, I’m sitting at the end—the room turns and looks at me. And I’m like, “Well, no, it doesn’t really say that.” But actually there were a lot of things that this person said that it didn’t say. But, nonetheless, they were freaked out about it. And believe me, I could talk to the wall until I was blue, and I’d probably have a better chance of persuading the wall than persuading that person. But it was a rabble-rousing moment and it was, “These felons are going to be voting.” There was not a word in there about it. Bobby warned me, right up front, we’re ducking certain issues, because it’s the only way we can do this through this political climate.

On the left, I would say there are certain issues that I [inaudible], the district, knew; the hot button to push was faith-based groups. And whether or not faith-based groups can “discriminate in their hiring practices,” meaning Catholic groups can hire Catholics or whatever. Bobby Scott—I’ve never seen him get more rabid in my life than when these amendments started to come up. And he knew what he was doing, this sponsor of these amendments. And this again is an issue that you just have to steer clear of.

What did we do? We said, “Let the states decide this.” If a faith-based group wants to apply for a grant, if it’s legal under the state law, let them go do it. The states can decide; they’ll still get a chunk of money, and they can decide how to administer that. Pat Nolan was very helpful in negotiating that compromise.

So I’m just saying, there’s going to be a limit, and I see there’s on the program “Collateral Consequences of Convictions.” I think it’s worthwhile to pull all that. Chairman Leahy from the Senate Judiciary Committee insisted on that provision. And we were fine with it. I have no idea; I have no problem in gathering what the political consequences are, and getting the information. But it’s a hot button issue, and so there is going to be a limit as to how far we go.

Well, I’m going to leave it at that. Bobby and I are free to banter. I will say one thing—I’ve heard good news on the money side that we’re looking at close to 60 to 70 million dollars right now that may be appropriated, but obviously there’s not going to be much of an appropriation process this year. At least it’s a marker to say we’re committed to the Second Chance Act and to try to get money out from that.

Again, I thank all of you for the support you gave us, for the ideas that you gave, for everything. Oh, by the way, since I am still at the Department—I have to say a few things about the Department. The Department supported it. It was the President’s initiative. [Off topic.] It was still his initiative and frankly, the signing ceremony was very moving in the sense that there was a lot of hard work, and it was a really great group of people to be there at that moment.

Anyway, we’d love to banter with you and any questions you have would be great.

MS. RICH: Are there questions from the audience for Bobby or Mike? No. I actually have one before I let you go. [Off topic.] Mike, you talked about the coming together of the right wing and the left wing, and the right wing was focused on fiscal concerns. A lot of what we’re seeing on the state level, in terms of moving away from mandatory minimums and mandatory incarceration, is based on budget concerns of the states. We don’t really see as much of that, in terms of prison impact and what beds are going to be costing at the federal level. Does either one of you see a change to this, more of a focus on what a piece of legislation, for instance, is going to do if 5,000 beds are required over the next three years at \$25,000 a person?

MR. VOLKOV: Not to take the wind out of your sails, but I don’t see a lot of movement in terms of considering that at the federal level. I’d like to say that there’s going to be a more rational crime policy. And by that, I mean, there’s going to be better assessments of risks of dangerousness of people and offenders, and reserving and prioritizing bed space for those who need to be incapacitated. I don’t see it in the federal system, although Bobby and I tried to work on, and we did, I think, get a provision in the methamphetamine bill to look at drug courts for federal court.

Now the argument against it is that most of the offenders that you have in federal court—and everybody in this room knows it is somewhat true and somewhat false—are large traffickers who aren’t necessarily users and who are addicts. But on the other hand, in terms of what I saw in D.C. over 16 years, there were a large number of people who were addicts and you also had large traffickers. Drug court may work very well for those people who were addicts. That was my feeling, and I think that there is a little bit of a move in that in the federal system. I think there may be a move towards reentry courts,

as long as Bobby remembers to put that provision in the next bill. I'd like to say that there's going to be some move on the federal side, but keep in mind, hopefully, prosecutors are doing more wiretap cases. We were going to push on this in doing bigger cases, and really focus on what they call the drug trafficking organizations.

MS. VASSAR: I think it's a question of amount. I mean, this sounds strange, but if it's just hundreds of millions, it's not a problem in the federal system. You've got to get to billions before it's a problem. I've seen that demonstrated. We were trying to protect federal prison industries, which all the studies show is a benefit to all concerned, except unions and businesses who compete for federal contracts and who say that it's an inconvenience to them. So there's been an effort all the time I've been here, to destroy federal prison industries. We had a bill, and the CBO estimate of the impact of the bill that would essentially eliminate federal prison industries was that over ten years, it would cost about four billion dollars, and added security, and other costs, to deal with the inmates who were idle for not having jobs. And the bill stopped dead in its tracks. A gang bill that was going to cost \$400 million passed the House overwhelmingly. So it depends on whether it's billions or not; so far, it has an impact on Congress.

MR. VOLKOV: Can I just take one moment if there are no questions? One pitch that I would make, in terms of something that should be looked at—and I saw the note made here—which is federal criminal code reform. If I had stayed on the Hill—because Bobby fired me—I had started the process of rewriting Title 18 [inaudible], and I think there's a real move and a mood on the Republican side at least, to streamline and to say that the Federal Criminal Code is over-federalized. For example, I know that you are very familiar with the fact that the use of the Four-H Club insignia is a federal crime. Now that's critical, obviously, to public safety. Or Hootie the Owl you can't use, you know, whatever. There are so many crimes like that that are the crime du jour, that get passed by Congress just to act like they're doing something, or to [off topic] do something in response to somebody.

And I think that the seeds can be put in again, to put in ideas of alternatives. To try to give the authority somewhat to the courts and to judges sometimes to deviate, because I think the guidelines, obviously as advisory, people are more and more comfortable with judicial discretion, and then they want to go from there. But I really would urge that that's the next logical step that I see. And there's sort of a coalition on the right, that with certain organizations on the left, is starting to get interested in that idea.

MS. RICH: I actually do have questions. Kara?

MS. GOTSCH: I'm Kara Gotsch with the Sentencing Project, and I want to get back to the issue of political feasibility and talk about two issues. One, I'd be remiss if I didn't challenge you on the felony disenfranchisement issue, because in the last ten years, 16 states have really moved to expand voting rights for people with felony convictions. And in half of those states, the governors were Republican and approved it, including George W. Bush when he was governor of Texas and the governor of Florida, Charlie Crist. Just in the last year, 115,000 people in Florida who had previously been barred from voting with felony convictions can now vote in November. And I think those are significant accomplishments, and Republicans have embraced restoring voting rights.

MR. VOLKOV: Well, let me say, I have no problem as a policy matter, I'm just telling you the political reality, the paranoia that sets in. I think that there's a limit as to how far it's going to go. Believe me, I saw just knee-jerk reaction after knee-jerk reaction, and it was, "Okay, Mike, I'll sign on to this as long as there's nothing in here about felons voting, is there?" I said, "No, there isn't." I agree

with you, it's an educational issue, and like reentry, it starts with the states, folks, and then it bubbles up to us. And maybe there is room for education on that issue and, you know, Chairman Leahy thinks the first thing to do is to grab, to identify what the consequences are, so that people have a reality check of what, in fact, this conviction means to somebody's ability to reenter.

MR. VASSAR: I have to add a concurring opinion with Mike for a different reason. The problem is not the merits. People who would be very much in favor of felons voting, such as Bobby Scott, are stuck because the political way to do it at the federal level would either be a constitutional amendment or a bill that would condition funding to states on their doing something that they are permitted under the Constitution to do. And the political feasibility becomes a problem; trying to get a handle on it at the federal level is where the problem is. So we are very pleased to see that states are making progress. I don't think it's a merits problem, I think it's a mechanism problem.

MS. GOTTSCH: And then if I can ask this second part: If both of you could comment on the political feasibility of crack cocaine sentencing reform.

MR. VOLKOV: Can you explain to me that subject again? I've never heard of that. Well, the Commission will probably never invite me back again after I say this. Bobby and I were both in agreement and wanted to push for a one-to-one change to the sentencing structure. My best guess is that at some point, some Senate solution will come over to the House. Meaning, you have different ratios—you know, 10-to-1, 20-to-1, 30, whatever, in terms of ratios. But I think, at some point, it will come to the House, and I really think it's going to run into a tough road. And Bobby knows better than I do, in terms of that. I just find no merit in the argument for any difference in the treatment of crack cocaine and powder cocaine. You know, I'd like to say it was the Republicans who did it, but Bobby acknowledges it was the Democrats who put in that sentencing structure and pushed it. And frankly, I think it should be changed. At the long side it should be changed to one-to-one and I'm not speaking for the Department, let me make that clear, because I have two weeks till I retire, and if I get fired today it may affect that, so you didn't hear—

MR. VASSAR: We think you're in jeopardy, because I told on you and now you're telling on yourself.

MR. VOLKOV: That transcript needs to be buried. But as a personal matter, I've tried to work on it. It is very difficult to try to explain to a lot of the members in the House, in particular, why this is wrong and why it's needed. I just think we're back to the politics of crime again, which the Republican party has used very successfully.

MR. VASSAR: I think it's possible and I think it's evolving. I think the only thing that can pass is one-to-one and we're not there yet. It's getting closer, but we just don't have enough of a consensus to do it yet, but I think another Congress could make a difference. There's obviously a desire to resolve it. It is one of those issues, like Second Chance, prison rape elimination, where everybody agrees what we have now is not acceptable. The solution is the problem, trying to come up with the right solution that you can get enough of a consensus around to actually pass something. The problem is that some things start out in the wrong place, and people get to the end believing that you can't get to the right place because of where you're starting. So I think what may be useful is for House and Senate folks to get together before they start filing bills, and try to work it out. If there is a way to come up with a one-to-one solution, I don't know how you can do it if there's somebody that's opposed to that, but if you can

come up with it in a way so that you get buy in. And again, Pat and I were talking, and language is sometimes the problem. But if you can come up with a solution where you can get buy in for one-to-one, I think that can pass.

MS. RICH: We had one more question.

MR. CRANE: My name is Richard Crane, and I'm a criminal defense lawyer. It was a pleasant surprise to see in the Second Chance Act a provision eliminating the limit to six months in community corrections, and I thank you gentlemen for that. I know what the Bureau is saying, or is going to say, that they don't have the money for those beds, which they buy and large contract for. What are the chances of that being funded starting in October?

MR. VASSAR: I didn't understand that there was a funding issue until the provision was changed in about 2002 or whatever, by a policy decision in the Department of Justice. The Bureau of Prisons was already using the six-month limitation. It didn't mean that everybody went in for six months, but it meant that there was no restriction on them being able to place people. You didn't have that ten percent incremental imposition, so that if a person comes in, by the time they get into the Bureau, they have four months left on the sentence, and they could be put in a halfway house for that last four months. The policy could be implemented, and I thought that the Bureau was implementing it until the restriction was placed. So if it's a funding issue, I'm not clear on that at this point.

MS. RICH: Bobby, Mr. Crane, Harley Lappin, the director of the BOP is here so—

MR. LAPPIN: I'll help answer the question if I can also ask a question.

MS. RICH: I think that's fair.

MR. LAPPIN: Is that a deal? It's a combination of a couple things. First of all, our research that we've done for many years reflects that many offenders who spend more than six months in a halfway house tend to do worse rather than better. The six months seems to be a limit for most of the folks, at which time if they go much beyond that, they tend to fail more often than offenders that serve up to six months. And we're thrilled with the changes that were made, because we really wanted more flexibility to give offenders, on a case-by-case basis, as much opportunity to spend in a halfway house, up to six months, unless, on a case-by-case basis, there were offenders who came along that we believed would benefit from more than six months in a halfway house. And that's probably going to happen.

The other side of the coin is is a funding issue, because it costs us, on average, about seventy-some dollars a day, Jerry, for halfway house? Thank you, Jerry. So about sixty-some dollars per day on average to put somebody in a halfway house, whereas we can actually keep them in a minimum, low security institution for far less than that per day. We're struggling right now financially, so believe you me, I'm going to divert as much of that money to hiring more people to watch the inmates in prison, rather than spend more money to put some offenders, who I don't know need as much time in that halfway house just to shove them out the door faster when, in fact, it's going to cost us more money. So it's a little bit of both, but I think what we've relied on most in the past is the fact that we've seen many, many offenders who spend beyond six months in halfway houses who are actually more negatively impacted than positively impacted by that experience. Again, we're going to be looking at it on a case-by-case basis and that would warrant more than six months—

MR. VOLKOV: And that was our intent with the provision, merely to give the flexibility to be in a situation to say, this person does need more than six months, in the few cases that might come up, but we didn't want them to be hamstrung.

MR. VASSAR: And to even add home incarceration as a part of the mix if it's there. But I think I misunderstood, I thought you were saying the fix of not being able to spend at least six months in there, or up to six months, was the problem, but you were saying more than six months?

MR. LAPPIN: Yes, now they can spend—

MR. VASSAR: What we were primarily trying to correct was the inability of the Bureau to be able to place a person in for a period of time that would be beneficial to the person and the program, in the sense of, if you can only put a person in for two months, it may not be sufficient. So that's primarily what we were trying to fix.

MR. LAPPIN: Well you did do that, but you did also give it more flexibility in terms of a year. But as long as I have you all here, if I could quickly mention, and this has to do with the inmates who are over 65 who have served ten years or 75 percent. There is going to be a pilot project, and I guess I have two questions. What are we studying and how long is it going to take?

MR. VOLKOV: Well I think the idea behind the provision was, once again, sort of rational crime policy—why are we using bed space up? But of course, for older defendants who have not committed violent acts, that was a very contentious provision. I think the idea is, it's limited to a pilot project, and I may be wrong, at one site or two sites—I can't remember.

MR. LAPPIN: I can't recall.

MR. VOLKOV: And I guess the way you start in controversial things, just like Second Chance started with demonstration projects, is you start with a demonstration. Nobody gets let out who commits a murder, no judge is looking bad, no official is looking bad. Then you start to expand the program out, I think, and to try to get buy in from people. Like I said, in terms of rational criminal policy, I think it's a reflection of the mood of people to use these bed spaces in the most effective way.

MR. VASSAR: We're simply doing what we could get away with. We would have done a lot more if we could have, but that's all we could get.

MR. VOLKOV: We wouldn't go to Sheila Jackson Lee who wanted to let 45-year-olds out, but we were willing, we went down to like 50 at some point, but when I turned 50 I decided, "Forget it, we've got to raise it."

MS. RICH: All right. Last question.

MR. LAPPIN: I'm thrilled to be here and listen to some alternatives to incarceration because I'm always looking for how we can bring that population down a little bit. Without a doubt our research has reflected that inmates who get involved, those who participate in programs—education, literacy, vocational work, psychology, drug treatment, other initiatives—tend to do better upon release. The

Congress and the administrations over the last ten or 15 years have done some things to leverage more inmates into those programs. If you don't participate, you don't get as much time off your sentence.

MR. VOLKOV: Right, you get one year off.

MR. LAPPIN: If you participate you get some time off your sentence. What can we do—because they need more than just us standing here saying, “You need to do this.” What can we do to urge more of that type of opportunity and leverage those folks into those programs?

MR. VOLKOV: I think there's going to be support for that. We just need more assistance given, and ideas floated to congressional staffers, to start to put this into more bills and ideas. We need incentives for people to participate in this. You know, one thing that Bobby and I found out was that the federal system's recidivism rate is at 40 percent, okay? Why is the recidivism rate better there? Because, in comparison to the states, they've got more resources, I think, more programs, and they're more attuned to the issue in comparison to the states. That's not to say that the feds don't need a lot more resources, because they could do even better in my view. I think the more of these programs that are opened up—there's a prison, San Quentin, there's a story I listened to. Their constitutional law class is filled or their history classes are filled to capacity by many of whom have life without parole. So what does that say about the best treatment and the best opportunities for people that can be given in prison? I think that there are lots of great things that can come from education, and I think we had a provision in there at some point to give a credit for participation in educational programs, but that got nixed out through the Senate. The Senate is more far to the right than the House.

MR. VASSAR: Unfortunately, we're still fighting to even preserve what's there, and that's part of the problem. I mentioned one of the greater educational incentive programs, because the Bureau requires that to participate in the program you have to have a high school diploma or GED, or show that you're making progress toward it to be on the waiting list. To earn more than 40 cents an hour you have to have a high school diploma or GED; you have to have it before you do that. Those are great incentive programs. The only problem is less than 20 percent of the inmate population is able to participate in the program because of restrictions and, unfortunately, that's diminishing because of the effort of those to destroy the program. So we've got to try to divide our forces first, in trying to prevent it from getting worse, the good things that you're able to do, and then to try to build. There are a lot of ideas about incentives. People are trying to bring back good time credits. There's even the effort to try to reinstitute parole. Obviously that's a long-term effort, but we definitely want to try to work with you. It's hard to say, but one of the problems in the federal system is they are too good. They absorb the crowded facilities. They try to make it work, and they're at a crisis point now and hopefully Congress will start to recognize that. There was some indication with the emergency funding to try to close a hole in staffing that was brought to our attention. But somehow or other we've got to get the message to Congress that we have a critical situation in order to stop the bleeding. Once we do that, we can put more emphasis then on trying to develop programs, but we have a very serious developing problem, I fear, in our prison system. It has nothing to do with the ability and the great work that the folks there are doing, but it's just too much and it's growing, unfortunately.

MS. RICH: Well, Bobby and Mike, I'd like to thank you very much for sharing this afternoon.