AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

AN EXAMINATION OF FEDERAL EMPLOYMENT PRACTICES/POLICIES IN HIRING EX-OFFENDERS

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 10, 2008

Serial No. 110–141

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

48–239 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HENRY A. WAXMAN, California, *Chairman*

EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
BRIAN HIGGINS, New York
JOHN A. YARMUTH, Kentucky
BRUCE L. BRALEY, Iowa
ELEANOR HOLMES NORTON, District of Columbia
BETTY McCOLLUM, Minnesota
JIM COOPER, Tennessee
CHRIS VAN HOLLEN, Maryland
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
JOHN P. SARBANES, Maryland
PETER WELCH, Vermont

TOM DAVIS, Virginia
DAN BURTON, Indiana
CHRISTOPHER SHAYS, Connecticut
JOHN M. McHUGH, New York
JOHN L. MICA, Florida
MARK E. SOUDER, Indiana
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, Jr., Tennessee
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. McHENRY, North Carolina
VIRGINIA FOXX, North Carolina
BRIAN P. BILBRAY, California
BILL SALI, Idaho
JIM JORDAN, Ohio

PHIL SCHILIRO, *Chief of Staff*
PHIL BARNETT, *Staff Director*
EARLEY GREEN, *Chief Clerk*
LAWRENCE HALLORAN, *Minority Staff Director*

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

DANNY K. DAVIS, Illinois

ELEANOR HOLMES NORTON, District of Columbia
JOHN P. SARBANES, Maryland
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio, *Chairman*
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts

KENNY MARCHANT, Texas
JOHN M. McHUGH, New York
JOHN L. MICA, Florida
DARRELL E. ISSA, California
JIM JORDAN, Ohio

TANIA SHAND, *Staff Director*

CONTENTS

	Page
Hearing held on June 10, 2008	1
Statement of:	
Keefe, Paul, staff attorney, Community Service Society; Mark Earley, president, Prison Fellowship Ministries; and William R. Calhoun, Jr., executive vice president, Clark Construction Group, LLC	53
Calhoun, William R., Jr.	70
Earley, Mark	62
Keefe, Paul	53
Kichak, Nancy, Associate Director, Office of Personnel Management; Major General Thomas P. Bostick, U.S. Army Recruiting Command; and Brent Orrell, Acting Assistant Secretary for the Employment and Training Administration, U.S. Department of Labor	21
Bostick, Major General Thomas P.	27
Kichak, Nancy	21
Orrell, Brent	34
Meyers-Peeples, Roberta, director, National H.I.R.E. Network	7
Letters, statements, etc., submitted for the record by:	
Bostick, Major General Thomas P., U.S. Army Recruiting Command, prepared statement of	29
Calhoun, William R., Jr., executive vice president, Clark Construction Group, LLC, prepared statement of	73
Davis, Hon. Danny K., a Representative in Congress from the State of Illinois, prepared statement of	3
Earley, Mark, president, Prison Fellowship Ministries, prepared statement of	64
Keefe, Paul, staff attorney, Community Service Society, prepared statement of	56
Kichak, Nancy, Associate Director, Office of Personnel Management, prepared statement of	23
Meyers-Peeples, Roberta, director, National H.I.R.E. Network, prepared statement of	10
Orrell, Brent, Acting Assistant Secretary for the Employment and Training Administration, U.S. Department of Labor, prepared statement of	36

AN EXAMINATION OF FEDERAL EMPLOYMENT PRACTICES/POLICIES IN HIRING EX-OFFENDERS

TUESDAY, JUNE 10, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis, Norton, and Marchant.

Staff present: Lori Hayman, counsel; William Miles, professional staff member; Marcus A. Williams, clerk/press secretary; Jim Moore, minority counsel; and Benjamin Chance, minority professional staff member.

Mr. DAVIS. The subcommittee will now come to order. Let me welcome the ranking member, Mr. Marchant, and members of the subcommittee, hearing witnesses and all of those in attendance. I welcome you to the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia's oversight hearing, examining the Federal Government's principles and policies on hiring ex-offenders.

The chairman, ranking member and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record. Hearing no objection, so is the order.

I will begin, and I thank all of you for coming.

This hearing today is about determining if the Federal Government is actually practicing the policy of giving ex-offenders a real opportunity at living the best life that they can live. As the author of the Second Chance Act, which was recently signed into law by the President, it goes without saying that I am committed to reducing crime and recidivism in America by supporting proven ex-offender reform and reentry initiatives.

Every year nearly 650,000 prisoners are released from Federal and State correctional facilities after having served their time and paid their debt to society for the crimes they committed or were convicted of. In most cases upon release from prison, many of these individuals return to communities and conditions that may not be conducive to developing a new productive and crime-free life.

One of the biggest hurdles ex-offenders face in reforming their lives is finding adequate employment, whether in the public, private or nonprofit sectors. According to the Justice Department's National Institute of Justice's 1998 Successful Jobs Placement for Ex-Offenders report, ex-offenders have great difficulty reintegrating into society not because they lack job-seeking experience or valid work history or occupational skills, but because many employers refuse to hire individuals with criminal records. Consequently many ex-offenders consistently hit a dead end on the road to work force reentry despite national efforts targeted at improving ex-offender access to permanent, unsubsidized, well-paying jobs.

Whether it's the Department of Labor's Prisoner Reentry Program or the U.S. Department of Education's Office of Correctional Education, the Federal Government has clearly taken steps to develop programs to assist ex-offenders with becoming contributing members of society. And while these initiatives are complemented by the work of thousands of nonprofit and community groups across the country that advocate on behalf of ex-offenders, the fact is that we as a country and a government continue to fall short in our attempt to eliminate barriers to employment for ex-offenders, which keeps us at the top of the world in terms of the numbers of individuals who are incarcerated. Our country, the United States of America, has more people incarcerated per capita than any other nation on the face of the Earth.

Aside from select branches of the U.S. military, there is very little evidence that the Federal Government is availing itself as a legitimate source of employment for ex-offenders. It is my hope that today's hearing will serve as a catalyst for changing this predicament by shedding light on exactly what role the Federal Government is playing in employing and hiring ex-offenders.

I look forward to today's witnesses' testimony and thank you all for coming.

[The prepared statement of Hon. Danny K. Davis follows:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING

"An Examination of Federal Employment Practices and Policies on hiring ex-offenders"

June 10, 2008

Today's hearing examines the Federal Government's policies on hiring ex-offenders. As the author of the Second Chance Act, which was recently signed into law, it goes without saying that I am committed to reducing crime and recidivism in America by supporting proven ex-offender reform and re-entry initiatives.

Every year, nearly 650,000 prisoners are released from federal and state correctional facilities after they have served their time and paid their debt to society for the crimes they committed. In most cases, upon release from prison, many of these individuals return to communities and conditions that are not conducive to developing a new, productive and crime free life. One of the biggest hurdles ex-offenders face is finding adequate employment, whether in the public, private or non-profit sectors. According to the Justice Department's National Institute of Justice's 1998, *Successful Job Placement for Ex-Offenders* report, "Ex-offenders have great difficulty re-integrating into society, not because they lack job-seeking experience, a valid work history, or occupational skills; but because many employers refuse to hire individuals with criminal records."

Consequently, many ex-offenders consistently hit a dead end on the road to workforce re-entry, despite national efforts targeted at improving ex-offender access to permanent, unsubsidized, well-paying jobs. Whether it's the Department of Labor's Prisoner Re-entry Program or the U.S. Department of Education's Office of Correctional Education, the Federal Government has clearly taken the steps to develop programs to

assist ex-offenders with becoming contributing members of our society. While these initiatives are complemented by the work of thousands of non-profit and community groups across the country that advocate on behalf of ex-offenders, the fact is that we as a country and employer continue to fall short in our attempt to eliminate barriers to employment for ex-offenders. Aside from select branches of the U.S. military, there is very little evidence that the Federal government is availing itself as a legitimate source of employment for ex-offenders.

It is my hope that today's hearing will serve as a catalyst for changing this predicament by shedding light on exactly what role the Federal Government is playing in employing and hiring ex-offenders. I look forward to the testimony of today's witnesses.

Mr. DAVIS. I would now yield to the ranking member, Mr. Marchant, for an opening statement.

Mr. MARCHANT. Thank you, Mr. Chairman, for holding this very important hearing this afternoon.

In February of this year, the Pew Center on the States issued a report which announced for the first time in history that more than one in every American adult is in jail or prison. Clearly, most of these prisoners will be released back into society and the question of whether they will be able to become a successful contributing member of society depends on something as simple as whether they can find a job or not.

In looking at the larger question of what happens to ex-offenders after they are released, it only makes sense to understand what Federal policies exist in both civilian and military services to make sure that the right persons are hired where appropriate and the need for public safety is respected in the process.

I look forward to the testimony from all three panels. And thank you, Mr. Chairman.

Mr. DAVIS. Thank you very much, Mr. Marchant.

And now I would yield to Delegate Eleanor Holmes Norton for an opening statement.

Ms. NORTON. Thank you very much, Mr. Chairman. I certainly want to associate my own remarks with those that you have made and that the ranking member made particularly concerning this important hearing.

Mr. Chairman, I must say that I appreciate that you have not rested on your landmark bill, that you're following through on your concern about the counterproductive treatment of ex-offenders. The Second Chance bill is a path-breaking bill that opens the way for the Federal Government and the States as they begin to face the fact that most people who go to prison return and that we cannot escape our responsibility for them.

It is with some irony that we note that the Federal Government funds others to train and hire ex-offenders. But before this, for this hearing, Mr. Chairman, I don't know when the Congress has looked at what our own record was in hiring ex-offenders or for that matter people only with arrest records.

I'm the very last as a member of the Homeland Security Committee to say that we shouldn't look very closely at the particular offenses; so should every private employer. And yet the Federal Government wants private employers to, in fact, hire ex-felons. What about the whole notion of leading by example?

Now, we will hear from the OPM: Of course we do not have any blanket rule against hiring ex-offenders. Of course the Federal Government will hire ex-offenders. Where's the proof? Of course they don't have any blanket rule. Title VII of the 1964 Civil Rights Act defines that as unlawful if you can show it has a disparate impact on racial and ethnic groups and those protected by the statute. Manifestly, it does. So nobody, no employer, has a rule against hiring ex-offenders. Why would they put themselves in that way? They should hire them.

[Inaudible portion. Sound malfunction in hearing room.]

Ms. NORTON. I was speaking about the fact that no employer today would have a blanket rule. But if sued, many employers

would have a hard time showing they were not in violation of Title VII because the burden will shift to you once the Department of Education was made to show by—depending on the facts why—class was not being employed.

Mr. Chairman, I have serious doubts that the Government of the United States could survive such a lawsuit today. If they can, then I think it behooves them to bring forward the evidence that they are, in fact, doing what they're asking private-sector employers to do throughout the country.

In the post-9/11 time, one might have expected that the rules would have become more stringent, and indeed it may be in the Federal Government that a great many felt that they might not be hired. One wonders if felons are employed, for example, in manual labor. One wonders if felons or ex-felons are hired in low-level positions in the government.

It's interesting to note that times have gotten hard enough in recruiting for the volunteer Army that the military issues waivers to allow people with records to come in. This was done routinely in the old armed services. Now, of course, that we have a volunteer armed services, and until the Iraq war depleted us of volunteers and I think destroyed the voluntary armed services, until then we have raised the standards, and among those excluded were people with records.

Well, I would be particularly interested—and I certainly hope I can stay, because I have a bill on the floor and another committee hearing—to hear what the armed services has to say about their experience in addition to what OPM will have to say, because the question is, are the times tough enough for the Civil Service to now be about the business of setting the example for the private sector urging them to hire ex-offenders? And it is a fair question to put to the largest employer in the United States.

I thank you again for this hearing, Mr. Chairman.

Mr. DAVIS. Thank you very much, Delegate Norton. I certainly appreciate your comments.

And one of the reasons that we have this hearing is I just don't believe you can lead where you don't go. I'm very simple. I don't believe that you can lead where you don't go. And I don't believe that you can even ask others to do things that you are unwilling to do yourself. So it's difficult for me to see how a Federal Government could ask the private sector to do things relative to the employment of certain types of individuals unless it is willing to lead by example.

So let me thank you. And let us go right to our first witness.

[Witness sworn.]

Mr. DAVIS. The record will show that the witness answered in the affirmative.

[Inaudible portion. Sound malfunction in hearing room.]

Mr. DAVIS. Our first witness is Ms. Roberta Meyers-Peeples. She is director of the National Legal Action Center National H.I.R.E. Network. The organization's mission is to increase job opportunities for people with criminal records by changing public policies and opinions and employment practices.

Ms. Peeples, we have a tradition of giving 5 minutes of summary. Your entire statement will be included in the record. The green

light means that you've got the full 5 minutes. The yellow light means that you're down to a minute. And, of course, the red light means that the time is up. And we thank you so much for being here with us. And you may proceed.

STATEMENT OF ROBERTA MEYERS-PEEPLES, DIRECTOR, NATIONAL H.I.R.E. NETWORK

Ms. MEYERS-PEEPLES. Thank you, Congressman. I want to thank the committee, of course, for holding this important hearing.

I echo many of the sentiments that you all have already expressed regarding this issue. And I particularly want to thank Congressman Davis for his steadfast leadership and commitment to ensuring people with criminal records have a fair opportunity at getting their lives back on track.

Since you did give some background about our organization, I will kind of skip down. I wanted to talk a little bit about the fact that people with criminal histories actually have to contend with being locked out of potentially thousands of employment opportunities. There are literally thousands that are connected to criminal record bars to employment, some from the State level and some that are the result of Federal regulation. But the two biggest challenges we do identify is one that Congressman Davis spoke about, one addressing the stigma of having a criminal record, and it's a huge hurdle that many individuals have to live with for the rest of their lives and the fact that many employers do have a concern about hiring people with criminal records.

But also the other is related to State and Federal statutory barriers. We're here to talk a little bit about some of the Federal regulations, and we've identified eight industry barriers that are created based on Federal regulations that have far-reaching impact in terms of exclusions and barriers to employment. And some of those industries are, I think, common, and we would initially identify in terms of finance, insurance, unions, health care, child care, transportation, particularly aviation, working on the ports, and truck drivers and also security guards.

I wanted to give a couple of examples because at the Legal Action Center, we actually help people directly who are directly affected with criminal records with overcoming some of the challenges to getting employed.

In New York there is an anti-discrimination law to protect the rights of qualified individuals with criminal histories. But even still, people are often denied access to jobs that they are qualified for and that they pose no potential risk. But I just wanted to give a few examples of individuals that have come to us over the last year that have been affected by various Federal regulations.

We had a man in Florida contact us. He's now in his thirties. He had been employed by a company doing debt collection activities for Citicorp for nearly 2 years, and his supervisor informed him that there was a customer service sales position available with Citicorp. He applied for the job, had an excellent interview, favorable response, but because of his criminal history, he had a 10-year-old debt-related conviction, he had to apply for an FDIC waiver.

So he was told to go do that. He contacted the regional office of the Federal Deposit Insurance Corporation [FDIC], to try to apply

for a waiver, and he was told that he couldn't apply for the waiver, the employer had to apply for the waiver. So we know he did not get the job.

I followed up with this regional director just to get a sense and find out how many waivers are actually applied for on behalf of applicants who are applying for jobs who have a criminal record, and he said never in his 15 years has he ever seen an employer apply.

So that immediately came in terms of how that affected me. I'm wondering, OK, why do we have this waiver process? Many employers aren't going to take the time if they have the chance to choose other applicants that are applying for these positions. And why aren't we making it easier for individuals to apply to get the clearance to provide evidence of their rehabilitation and be cleared to work in that industry, and even be limited, maybe be limited, to a certain type of job?

Another example is a 46-year-old man who was fired from his job as a baggage handler at JFK Airport in New York based on a 10-year-old conviction. The U.S. Department of Homeland Security refused to grant him security clearance due to his drug-related conviction without giving any consideration to all of his accomplishments since his conviction and successful rehabilitation. Earlier in his life he had struggled with substance abuse, but had been clean for 9 years after receiving treatment, stayed out of trouble, went to school, did everything that we would expect him as a society to do in terms of rehabilitation. He couldn't get clearance to work. And by the time he came to us, he had exhausted any appeals opportunities. And again, this is a situation where he couldn't even—he didn't even have a right to be told why—other than the fact that he had a criminal record—why he was being denied. The port director didn't want to get evidence of rehabilitation, didn't ask for it, and didn't have to ask for evidence of rehabilitation.

And that's a huge concern for us. If we put these stipulations in place in terms of what we expect people to do when they're released from prisons once they complete their sentences, we would expect that they would have an opportunity to get employment in certain positions.

One other example, we have a client who was denied a nursing position because of a Federal employment barrier that's imposed by the Department of Health and Human Services. She was convicted 6 years ago for misappropriation of Federal funds. She had been a director for a day care owned by her mother where the funds from a Federal grant that served children was used by her mother for nonbusiness purposes. After her conviction she went to college, received a bachelor's in nursing, was approved for licensing in New York and Florida, was hired at a New York hospital, but then found out that she was barred from working in any facility that received Medicaid or Medicare funds. There is noplace that she can work in the medical industry without—you know, with an entity that won't receive these funds. So she's now out of work and receiving public assistance, mind you, and has done all that we would ask her to do.

There's a number of things, and I don't have enough time unfortunately to go into a number of issues, but I do want to give some additional recommendations if you give me the opportunity. I

would ask that the Congress considers creating a standard that prohibits flat bans against hiring individuals with criminal records. It's really difficult, and I think Representative Norton did mention the fact that people, not only those with conviction records, those who have arrests that didn't lead to convictions, their records are being used against them in many industries. Most States do allow employers to consider arrests that didn't lead to conviction, let alone a conviction.

We would also like to see Congress particularly look at codifying the EEOC guidance on the use of criminal record information. Continuously there's laws being passed to open up the FBI data base and various other routes for getting criminal record information, and there's no guidance being given to employers on looking at this information, considering this information, or further guidance on looking at what the person has done in terms of determining whether they would pose a risk in that particular industry.

We would like to see all legislation that works to disqualify people with criminal histories from jobs or other benefits to include a waiver process as we see in our military service. And some other occupational licensing bars do come with a waiver process, but there are others that only allow for the release of criminal record information, but no right for the individual to present evidence of rehabilitation; and also to encourage if there is going to be a fitness determination, that it's done by an unbiased and independent body.

And on that note, I will close out. And I don't know if you have any other questions, but I'm really encouraged by the work that you continue to do. I would hope that you will continue to look at the Legal Action Center and the H.I.R.E. Network as a resource to you and keep pressing forward. We'll be at your side. Thank you.

Mr. DAVIS. Thank you very much.

[The prepared statement of Ms. Meyers-Peeples follows:]

A project of LEGAL ACTION CENTER

"An Examination of Federal Employment Practices/Policies on Hiring Ex-Offenders"

Written Testimony submitted to
Congressman Danny K. Davis
Chairman, Subcommittee on Federal Workforce, Postal Service, and the
District of Columbia

Tuesday, June 10, 2008

Presented by:

Roberta Meyers-Peeples
Director of National H.I.R.E. Network
Legal Action Center
225 Varick Street, 4th Floor
New York, NY 10014
212-243-1313 ext. 135
Email: rampeeples@lac.org

Thank you Congressman Davis and committee members for holding this very important hearing to discuss the employment barriers individuals with criminal histories face when seeking employment, particularly those barriers that are a direct result of federal legislation. We appreciate Congressman Davis' leadership in addressing the roadblocks that thousands of individuals face when seeking to successfully reenter society and become gainfully employed.

The Legal Action Center (LAC) is a non-profit law and policy organization whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, and criminal records, and to advocate for sound public policies in these areas. For over three decades, LAC has worked to combat the stigma and prejudice that keep these individuals out of the mainstream of society. We are committed to helping people reclaim their lives, maintain their dignity, and participate fully in society as productive, responsible citizens. We do this by working to eliminate discriminatory barriers to employment, housing and social services, and protecting confidentiality. The National **H**elping **I**ndividuals with criminal records **R**e-enter through **E**mployment (H.I.R.E.) Network is a project of LAC that is committed to increasing the number and quality of employment opportunities available to people with criminal records by improving employment practices and public policies, and changing public opinion.

Unlike other countries, in the United States, the stigma that individuals with criminal histories face is essentially life-long[i]. As of December 2003 there were as many as 71 million Americans with arrest records on file in state repositories[ii], many of which may have never resulted in a conviction. Only 10 states (CA, HI, IL, MA, MI, NY, OH, RI, UT, and WI) prohibit public and private employers and occupational licensing agencies from using arrests that never led to conviction.[iii] There are only 14 states that have laws that prohibit employment

discrimination against qualified applicants with criminal histories. In some states, these laws only apply to public employers and occupational licensing agencies—AZ, CO, CT, FL, KY, LA, MN, NM, and WA. In only 5 states, these anti-discrimination laws pertain to public and private employers—HI, KS, NY, PA, and WI.[iv] Now that addressing reentry is a policy priority of this nation, Congress needs to seize the opportunity and put protections in place so that qualified individuals, who benefit from the programs that are now authorized under the Second Act, actually have a fair opportunity to get employed and earn a living wage.

In states around the country, individuals with criminal histories are barred from obtaining hundreds of occupational licenses, even if their conviction(s) is not related to the work of the profession or if their record is old, or in some cases, minor. In addition to these state occupational licensing barriers, we also know of at least eight industries that are federally regulated that prohibit or limit the employment of individuals with criminal records.

- ***Finance:*** Convictions for offenses involving dishonesty, breach of trust, or money laundering disqualify an individual from working for institutions that are insured by the Federal Deposit Insurance Corporation, even if the job does not relate in any way to the handling of funds.[v] Visit ***http://www.hirenetwork.org/FDIC.html*** for information about the waiver process, "*People with Criminal Records Working in Financial Institutions: The Rules on FDIC Waivers.*"

- ***Insurance:*** Federal law bars certain classes of felons from working in the insurance industry without having first received permission from an insurance regulatory official.[vi]

- ***Unions:*** Certain classes of felons are barred, for 13 years after conviction (or the end of imprisonment if sentenced for a term of longer than 13 years), from holding any of several positions in a union or other organization that manages an employee benefit plan, including serving as an officer of the union or a director of the union's governing board.[vii]

- ***Healthcare:*** Federal law prohibits those convicted of certain crimes from providing healthcare services for which they will receive payment from Medicare, [viii] or from working for the generic drug industry.[ix]

- ***Childcare:*** Federal law requires criminal history background checks for those individuals who provide care for children.[x] In addition, the Federal Child Protection Act[xi] authorizes states to institute mandatory or voluntary fingerprinting of prospective employees in childcare fields in order to facilitate criminal background checks and exclusionary policies.

- ***Prisoner Transportation:*** Prisoner transportation by public or private agencies is federally regulated[xii] and federal law sets "minimum standards for background checks and pre-employment drug testing for potential employees including requiring criminal background checks to disqualify persons with a felony conviction or domestic violence conviction from employment."

- ***Aviation, Port, and Ground Transportation Workers:*** Since September 11, 2001, numerous efforts have been made to increase security in our nation's transportation industry. As a result, federal laws now require workers in the transportation industry to undergo a criminal background check and, in varying circumstances, to be disqualified for having a criminal record. Individuals who work in airports must be fingerprinted to get clearance to have unescorted access to airport security areas.[xiii] All truck drivers have to undergo a criminal background check to qualify for a "hazmat material endorsement" (HME).[xiv] The Maritime Transportation Security Act (MTSA) requires a criminal background check for all port workers to identify those who pose a "terrorism security risk."[xv] Port workers have to qualify for a Transportation Worker Identification Credential (TWIC) in order to have unescorted access to a secured area of a port facility or vessel. For more information on port worker TWIC requirements:
  Visit ***NELP's TWIC Guide:***
  http://www.nelp.org/docUploads/TWICGuide%5F011708%5F170606%2Epdf
  TWIC Know-Your-Rights Fact Sheet: http://www.nelp.org/docUploads/TWIC%2DEnglish%2Epdf.

- ***Private Security Guards***: The Private Security Officer Employment Authorization Act of 2004[xvi] authorizes a fingerprint-based criminal history check of state and national criminal history records to screen prospective and current private security.

The Legal Action Center has represented or advised several individuals who have been barred from working in many of the industries listed above and each of these individuals, in their own right, have done all that we as a society would expect them to do: remain crime free, change the course of their lives through education and work, and to be contributing members of society.

Some examples of individuals that have contacted the Legal Action Center for assistance include:

- A man in Florida, now in his thirties, who had been employed by a company that did debt collection activities for Citicorp for nearly two years was encouraged to apply for a Customer Service/Sales position at Citicorp for which he was qualified. He did apply and had an excellent interview with favorable response, but because he had a criminal conviction that was over 10 years old but theft related, he had to receive a Federal Deposit Insurance Corporation (FDIC) waiver to get the job. He contacted the regional FDIC office that was responsible for reviewing waiver applications and was told he could not apply. He had to get the prospective employer to apply for the waiver on his behalf. Needless to say, he did not get the job.

  According to the director of the regional FDIC office that was responsible for receiving and reviewing waiver applications, they have never processed an application from an employer on behalf of an applicant with a criminal record and probably never would. This is an example of legislation that offers a waiver process that is essentially useless to any job seeker that may be qualified and capable of working in the financial industry without posing any real risk to a business. 12 U.S.C. § 1829 should be amended to allow individuals to apply on their own behalf for clearance to work in an FDIC regulated entity.

- A forty-six year old man was fired from his job as a baggage handler at John F. Kennedy airport in New York based upon a 10 year old conviction. The U.S. Department of Homeland Security refused to grant him security clearance due to his drug-related conviction without giving any consideration to all of his accomplishments since the conviction and successful rehabilitation. He struggled with substance abuse earlier in his life, but was clean for 9 years after receiving treatment and had no further contact with the criminal justice system. The airline company hired him with full knowledge of his conviction because of his strong work history and qualifications for the position. He was able to work for the airlines while his security clearance application was pending, and during that one year period he received glowing evaluations from his employer.

  Nonetheless, the port director denied his application without stating any specific reasons for the denial and without acknowledging his amazing story of recovery and tremendous success in turning his life around. Unfortunately, he came to the Legal Action Center after all administrative appeal rights were exhausted, and we could not assist him. However, it brought to our attention the unfair screening practices of the Department of Homeland Security.

  Under 19 C.F.R. §122.183 (which regulates the background screening process for airport workers), the port director may deny security clearance to people with certain offenses, that include but are not limited to interference with air navigation, carrying a weapon aboard an aircraft, theft, violent offenses, bribery, fraud and drug offenses "for a 5-year period, or any longer period that the port director deems appropriate for the offense in question." Currently, Homeland Security has unfettered discretion to deny people security clearances based on their criminal record for an indefinite period, and there is no statutory provision that requires Homeland Security to consider the rehabilitation of the

individual. This statute should be amended to require the consideration of rehabilitation and successful reintegration when considering security clearance applications. In addition, the Department of Homeland Security should develop a user-friendly application process that provides instructions to individuals with criminal records on how to submit supportive evidence of rehabilitation. Most applicants can not afford legal counsel when going through this process, and thus the application should be simple and easy to understand.

- Another client was denied a nursing position because of a federal employment barrier imposed by the Department of Health and Human Services. She was convicted six years ago of misappropriations of federal funds. She was the director of a daycare owned by her mother, where funds from a federal grant that serves disadvantaged children was used by her mother for non-business purposes. After her conviction, she attended college and received her bachelors of nursing. She was approved and licensed by the state nursing agencies in both New York and Florida. She was hired by a hospital in New York and was later informed that she could not start work because she was listed on the *Inspector's General ("I.G.") List of Excluded Individuals* for ten years because of her conviction. Any person listed on the I.G.'s exclusion list can not work for employers who receive Medicaid and Medicare payment – which in essence includes all medical providers.

  With the assistance of LAC, she is in the process of appealing her exclusion to an Administrative Law Judge ("ALJ"). Fortunately, the statute does permit her to request a hearing before to determine whether the exclusion period is reasonable based upon the facts in her case; however, the ALJ's scope of review is severely limited based upon the statute and evidence of rehabilitation can not be considered by the Judge. This statute should be amended to expand the scope of review by the ALJ and allow individuals to present evidence of rehabilitation to overcome this employment barrier.

Additional Recommendations

- Congress should create a federal human rights standard that encourage employers to hire qualified applicants with criminal histories and prohibits flat bans against hiring individuals with criminal records.

- Congress should prohibit employers and other non-law enforcement agencies from inquiring about or using information about arrests that did not lead to conviction or missing dispositions on criminal record reports issued by the Federal Bureau of Investigation.

- Congress should enact a federal standard based on recommendations outlined in the Equal Employment Opportunity Commission guidance on the use of background checks for employment purposes when screening applicants with arrest and conviction records. While we believe that assessing all applicants on individual bases serves the best interests of employers, applicants and the public, it may be determine that using a matrix or categorical rules to screen applicants is preferable. In such cases where categorical bans are recommended, there should be time limits based on the severity of the criminal history and how old the conviction record. Suitability criteria also should only include disqualifying offenses that are related to the job.

- Congress should require that all current and future legislation that authorizes the disqualification of individuals with criminal records includes a waiver/appeal process whereby the applicant can challenge inaccuracies in criminal record reports, present evidence of rehabilitation and other mitigating information relevant to their criminal history and rehabilitation. The applicant should always be able to present this information even if they fall within categorical time limits on eligibility.

- Congress should require all current and future legislation that authorizes the use of criminal background checks for employment related purposes to include a provision that designates an independent body to make fitness determinations rather than individual employers.

Thank you for hearing and considering our testimony. We are encouraged by your willingness to forge ahead in the spirit of the Second Chance Act to address the employment needs of individuals with criminal histories who are seeking to become contributing members of society. Please do not hesitate to consider us a resource to the committee on these matters.

[i] Other countries, for example the United Kingdom, have created policies that limit how long information about a person's conviction history can be used against him/her, which they call "spent convictions" (see the Rehabilitation of Offenders Act of 1974). And, other countries have also provided anti-discrimination protections to this population through its national human rights laws, for example in Australia (see the Commonwealth Consolidated Acts, Human Rights and Equal Opportunity Commission Act 1986) and Canada (see the Canadian Human Rights Act, R.S., 1985, c. H-6).
[ii] See Bureau of Justice Statistics, Background Checks for Firearms Transfers, (2005). Criminal Record Systems Statistics. http://www.ojp.usdoj.gov/bjs/crs.htm.
[iii] Legal Action Center, *After Prison: Roadblocks to Reentry*. (2004). www.lac.org/lac.
[iv] Id.
[v] *See* 12 U.S.C. § 1829.
[vi] *See* 18 U.S.C. § 1033(c) (2).
[vii] *See* 29 U.S.C. §§ 504, 1111.
[viii] *See* 42 U.S.C. § 1320a-7.
[ix] *See* 21 U.S.C. § 335a.
[x] *See* 42 U.S.C. § 13041.
[xi] *See* 42 U.S.C. § 5119(a).
[xii] *See* 42 U.S.C. § 13726(b).
[xiii] Aviation and Transportation Security Act of 2001, 40 U.S.C. § 44936.
[xiv] US Patriot Act of 2001, 49 U.S.C. § 5103a.
[xv] Maritime Transportation Security Act of 2002, 46 U.S.C. § 70105.
[xvi] Pub. L, No... 108-458, Tit. VI (E) § 6402.

Mr. DAVIS. And I'll just go to Mr. Marchant for questions.

Mr. MARCHANT. Ms. Meyers-Peeples, in your testimony you seemed to equate requirements for criminal record checks or fingerprint checks as a barrier to employment for ex-offenders. Most of these programs are very popular with citizens. So we have to find some way of balancing the public's demand for security with a desire to give each applicant a fair chance. How would you suggest that we do this?

Ms. MEYERS-PEEPLES. We're not opposed to criminal record checks. I think there's a number of things that have to happen. We know that there are a lot of inconsistencies and inaccuracies that show up on credit records, particularly within some of the State repository records. And we're finding that more and more legislation is being introduced to open up the FBI records as well, and there are a lot of incomplete records and things of that nature.

And we're not opposed to employers having a right to consider criminal record and conviction information; however, they often don't have any further guidance beyond seeing the information and making their determinations, you know, based on their own individual bias on whether or not to hire that individual.

And only a handful of States have actually issued guidance or have a State anti-discrimination legislation that actually offers additional guidance, where an employer in New York is one of those examples. And I believe there's a panel that's following me that will talk more about New York State law. But they're giving guidance to say, OK, yes, you can look at the person's criminal history; yes, you can determine if that person could potentially pose a risk and work in this particular job; but you should also look at how old the conviction is, the age the person was at the time that they committed the crime, how old is their record, what have they been doing since then, do they have any evidence of rehabilitation.

And I would imagine it's nothing different than determining, you know, if the person is qualified to do the job. You want to check whether or not they have gone to school, that they have adequate skills. But the problem is many people with criminal records, they don't get to the point of being judged on the merits and their qualifications. They check off a box saying that they have a criminal record, and that's where it stops.

And actually there are a number of localities and even in Massachusetts where they're looking to remove the criminal record question from job applications so that the person can be judged based on their education, skills, work experience, up front; and later in the hiring process their criminal record is checked, verified, and then the risk assessment is done at that point. So it actually makes it a lot easier to identify and isolate but—whether or not it is the criminal record and is the employer doing due diligence in looking at other factors beyond whether the person has a criminal record or not.

Mr. MARCHANT. So you would argue that the timing of the check should be later in the process?

Ms. MEYERS-PEEPLES. Absolutely. Absolutely.

Mr. MARCHANT. But you would not argue that it's legitimate to check. It just shouldn't be—it should not be the first thing?

Ms. MEYERS-PEEPLES. It shouldn't be the first thing. The person should be cleared based on—in terms of moving forward in the hiring process, they should be identified as someone who's qualified, the way that they're identified and the way to determine that they're being judged on the merits of their abilities, skills, education or whatever requirements are necessary beyond the criminal record, if it's not asked on the initial job application. That's been one way to kind of isolate whether or not it's just the criminal record. And some localities are actually looking at that. Chicago has opted to remove that question off of the city government application. Governor Patrick in Massachusetts is moving in that direction. Boston has already moved in that direction and removing the question of criminal records off the initial job application. So it's easier—so it's already determined that, yes, this person is qualified based on their education, skills and abilities to do this job. Later in the process the criminal record is checked, and if that person poses a risk, then it's a whole other story. But it gives the person an opportunity to actually get through the front door and make the case that they can do this job and are equipped to do this job and don't pose a risk.

Mr. MARCHANT. Thank you.

Ms. MEYERS-PEEPLES. You're welcome.

Mr. DAVIS. Thank you very much, Mr. Marchant.

Ms. Meyers-Peeples, let me ask you, do you know any ex-offenders who actually work for a Federal Government agency? Have you come into contact with anybody?

Ms. MEYERS-PEEPLES. No, I haven't. My understanding, I believe, and this—I was just thinking. I know that the post office has been an issue. I know that this has been an issue. Years ago we've had clients who have indicated on their job applications for the post office that they have a criminal record, and they were stopped out. I had a couple of clients, and even a friend of mine, who didn't get through the front door because she had a criminal record.

Mr. DAVIS. This question of rehabilitation, what evidence, I guess I would want to know, of rehabilitation would you think that a potential employer might look at if they were trying to assess whether or not one was hirable?

Ms. MEYERS-PEEPLES. Well, first and foremost, how long it's been since there's been any criminal activity. In many cases we have people coming to us where they've had long stretches of not being involved in any criminal activity, meaning they haven't been arrested ever again, have not had any police contact over a certain amount of time. Other evidence, some people's criminal activity was connected to substance abuse history or some type of addiction for which they've been in recovery and have successfully completed recovery. Evidence of completing treatment is evidence of rehabilitation.

The fact that someone has come out of prison, and has gone to college, and has successfully or is successfully going to college, has attained various occupational skills, has worked in other types of jobs, is taking care of their family, have been paying their taxes, stable housing, all the things that we know act as challenges to someone having a successful reentry experience, when people manage to go through the reentry process in getting some type of job

and holding down a job, it all serves as evidence of rehabilitation. And this is information that I think should play a major role in an employer determining whether or not this person could be a loyal employee on top of having the skills and the education that are necessary to do that particular job. And that's something we just ask that employers do. They need to do that for any applicant that comes through their door.

Mr. DAVIS. And finally, let me just ask you, do you see any connection between an individual who was convicted of passing a bad check and being able to wash windows here at the Capitol?

Ms. MEYERS-PEEPLES. Absolutely not. There is no connection. That person can obviously do the job. And it's interesting that you mention that, because that is one of the—in terms of New York's laws, employers can determine whether or not there's a connection between the person's criminal history and the job that they would be doing. And I have to say, in many cases employers are sometimes kind of far-fetched or far-thinking in terms of trying to connect certain types of histories with certain jobs.

But absolutely not. Passing a bad check, the employer may want to question that person about what was going on in their life; it was a financial burden or what have you. But in many cases there isn't a relationship. And I think there are clear relationships. And we hope that employers have determined the type of individual and the type of skills that person would need to have in terms of doing the job. But there's no way they can connect someone with check-writing fraud or credit that, you know, should be prohibited from washing windows or vacuuming or what have you. They don't have access to money or anything like that.

Mr. DAVIS. Well, thank you very much. We really appreciate you——

Ms. MEYERS-PEEPLES. You're very welcome.

Mr. DAVIS [continuing]. Coming to testify.

Ms. MEYERS-PEEPLES. Thank you.

Mr. DAVIS. We will go to our second panel, and while they are coming, I will introduce the panelists.

Ms. Nancy Kichak was named Associate Director for the Human Resources Policy Division of the Office of Personnel Management [OPM], in September 2005. Ms. Kichak leads the design, development and implementation of innovative flexible and merit-based human resource policies.

We also have Major General Thomas P. Bostick. Major General Bostick assumed command of the U.S. Army Recruiting Command on October 12, 2005. He is responsible for overseeing more than 13,000 recruiting soldiers and civilians assigned throughout the United States and Europe and the Far East, with the primary mission of meeting the Army's recruiting goals.

And we have Mr. Brent Orrell, who is the Principal Deputy Assistant Secretary for Employment and Labor at the Department of Labor. Prior to this appointment he worked at the Department of Labor on the President's faith-based and community initiatives.

Thank you all for being here. And if you would stand and be sworn in.

[Witnesses sworn.]

Mr. DAVIS. The record will show that the witnesses answered in the affirmative.

Again, let me thank all three of you for being here and being willing to come and help us explore this serious issue. Of course, your entire statement is in the record. And if you would take 5 minutes and summarize, then we would go into a question and answer.

The green light indicates that the full 5 minutes are available. The yellow light means you've got a minute, and, of course, the red light means that the time is up.

Ms. Kichak, we'll begin with you. And it's good to see you again.

STATEMENTS OF NANCY KICHAK, ASSOCIATE DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; MAJOR GENERAL THOMAS P. BOSTICK, U.S. ARMY RECRUITING COMMAND; AND BRENT ORRELL, ACTING ASSISTANT SECRETARY FOR THE EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR

STATEMENT OF NANCY KICHAK

Ms. KICHAK. Thank you. Chairman Davis and Representative Marchant, thank you for inviting me here today to discuss the employment of ex-offenders in the Federal Government.

The Federal Government supports the employment of rehabilitated offenders who have the knowledge, skills and abilities needed to accomplish the work of the government. We recognize that in addition to helping the Federal Government meet its staffing needs, employing rehabilitated offenders can contribute to the national effort to prevent crime and enable these individuals to become productive citizens.

Under the merit system principles, agencies must consider applications from rehabilitated ex-offenders to see if they are the best candidate for the position and can comply with the requirements for the job.

At the same time, we need to carefully balance providing employment opportunities for ex-offenders with our responsibilities to the public, including our fiduciary obligations to taxpayers. Not all jobs will be open to individuals with the kinds of backgrounds some ex-offenders have. It may be inappropriate to place certain ex-offenders in positions related to national security or in positions involving access to financial data or personally identifiable information. Consequently the principal issue for agencies as they consider hiring ex-offenders involves making suitability determinations and determinations of eligibility for security clearances.

Applicants for employment in the executive branch, including ex-offenders, must undergo a background investigation and determination as to whether they are suitable for Federal employment based on their character and conduct relative to governmentwide standards. While there is no general bar against ex-offenders, Congress has determined that some types of criminal conduct would render an individual ineligible for Federal employment generally or for work in certain types of positions. Most of these provisions are in Title XVIII of the United States Code. For example, an individual convicted of a misdemeanor crime of domestic abuse is barred

from being hired for a position requiring the incumbent to possess a firearm.

In other cases involving criminal conduct, agencies would consider each applicant on a case-by-case basis. Among other things, agencies may consider how recently the criminal conduct occurred, the age of the individual at the time the conduct occurred, the relationship of the conduct to the position in question, and the evidence or lack of evidence of rehabilitation including the individual's own efforts at rehabilitation.

It is important to keep in mind the fact that an individual is considered unsuitable—that if an individual is considered unsuitable for a particular job, that does not necessarily mean he or she is unsuitable for all Federal employment. Federal agencies must consider qualified rehabilitated ex-offenders to fill appropriate vacancies that are not otherwise restricted. Therefore, we believe current human capital practices provide adequate opportunities for employment, and that no special appointing authorities for hiring ex-offenders in the Federal Government are needed. Our current array of appointing authorities and flexibilities provides all the tools we need to bring qualified ex-offenders into the government.

In addition, there has been a long accepted Schedule A appointing authority available to agencies for employing individuals who are on work release programs, these individuals who have not yet been released from custody, but who have an opportunity to gain work experience to prepare them for employment upon completion of their sentences. This authority allows agencies, with prior approval from OPM, to employ inmates of Federal and State correctional institutions when a local recruiting shortage exists for positions being filled.

Thank you for inviting me to discuss the issue with you today, and I'd be happy to answer any questions.

Mr. DAVIS. Thank you very much.

[The prepared statement of Ms. Kichak follows:]

STATEMENT OF
NANCY H. KICHAK
ASSOCIATE DIRECTOR FOR STRATEGIC HUMAN RESOURCES POLICY
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

FEDERAL EMPLOYMENT POLICIES AND PRACTICES
REGARDING EX-OFFENDERS

JUNE 10, 2008

Chairman Davis, Representative Marchant, and Members of the Subcommittee:

Thank you for inviting me here today to discuss employment of ex-offenders in the Federal Government.

It is the policy of the Federal Government to employ rehabilitated offenders who have the knowledge, skills, and abilities needed to accomplish the work of the Government. We recognize that, in addition to helping the Federal Government meet its staffing needs, employing rehabilitated offenders can contribute to the national effort to prevent crime and enable these individuals to become productive citizens. Under the merit system principles, agencies must consider applications from rehabilitated ex-offenders to see if they are the best candidate for the position and can comply with the requirements for the job.

At the same time, we need to carefully balance providing employment opportunities for ex-offenders with our responsibilities to the public, including our fiduciary obligations to taxpayers. Not all jobs will be open to individuals with the kinds of backgrounds some ex-offenders have. It may be inappropriate to place certain ex-offenders in positions related to national security or in positions involving access to financial data or personally identifiable information.

Consequently, the principal issue for agencies, as they consider hiring ex-offenders, involves making suitability determinations and determinations of eligibility for security clearances. Applicants for employment in the executive branch, including ex-offenders, must undergo a background investigation and determination as to whether they are suitable for Federal employment, based on their character and conduct relative to Governmentwide standards. While there is no general bar against ex-offenders, Congress has determined that some types of criminal conduct would render an individual ineligible for Federal employment generally, or for work in certain types of positions. Most of these provisions are in title 18 of the U.S. Code. For example, an individual convicted of a misdemeanor crime of domestic abuse is barred from being hired for a position requiring the incumbent to possess firearms. An individual convicted of willful and unlawful concealment, removal, mutilation, or destruction of public records and materials is barred from all Federal employment. Anyone who is convicted of theft or unlawful concealment of money, or other property of value, from a bank or safe in a bank that is a Federal Reserve member or is insured by the Federal Deposit Insurance Corporation

(FDIC) is statutorily barred from employment as a national bank examiner or FDIC examiner. Title 18 also requires the removal of anyone currently working in the Federal Government as a collection or disbursement officer and who is convicted of carrying on any trade or business in the funds or debts of, or in any public property of, the Federal Government or any State government. The individual would also be permanently barred from any Federal employment. Finally, Congress has specifically barred anyone convicted of crimes of violence, sexual assault, molestation, exploitation, and certain similar offenses, from employment in a position involving regular contact with or control over Indian children.

In other cases involving criminal conduct, agencies would consider each applicant on a case-by-case basis. Among other things, agencies may consider how recently the criminal conduct occurred, the age of the individual at the time the conduct occurred, the relationship of the conduct to the position in question, and the evidence – or lack of evidence – of rehabilitation, including the individual's own efforts at rehabilitation. It is important to keep in mind that the fact that an individual is considered unsuitable for a particular job does not generally mean he or she is unsuitable for all Federal employment.

Federal agencies must consider qualified, rehabilitated ex-offenders to fill appropriate vacancies that are not otherwise restricted. Therefore, we believe current human capital practices provide adequate opportunities for employment and that no special appointing authorities for hiring ex-offenders in the Federal Government are needed. Our current array of appointing authorities and flexibilities provides all the tools we need to bring

qualified ex-offenders into Government. In addition, there has long been an excepted (Schedule A) appointing authority available to agencies for employing individuals who are in work-release programs. These are individuals who have not yet been released from custody but who have an opportunity to gain work experience to prepare them for employment upon completion of their sentences. This authority allows agencies, with prior approval from OPM, to employ inmates of Federal and State correctional institutions when a local recruiting shortage exists for the position being filled. These appointments are limited to one year.

Thank you again for inviting me to discuss this issue with you. I would be happy to answer any questions you may have.

Mr. DAVIS. General Bostick.

STATEMENT OF MAJOR GENERAL THOMAS P. BOSTICK

General BOSTICK. Chairman Davis, Congressman Marchant and other distinguished members of the committee, thank you for the opportunity to appear here today on behalf of the U.S. Army.

I take tremendous pride in saying that we are maintaining a high-quality volunteer force that is proudly serving this great country. We're the best equipped, best trained, best led Army in the Nation's history.

In this era of persistent conflict, the Nation and the Army have the toughest recruiting challenge during the all-volunteer history, which dates back 35 years now. Having said this, we can be very proud that 170,000 Americans raised their right hand last year to serve in an Army at war. That's the size of Newport News, VA; Brownsville, TX; and a little bit bigger than Springfield, MO and Dayton, OH.

The Army has always been an American institution that provides opportunity. We remain so today. We continue to transform civilians from all walks of life into quality soldiers, leaders and heroes imbued with a warrior ethos and the Army values.

We do not actively recruit prior offenders, and they are not part of our targeted recruiting market; however, this does not mean that we completely exclude those who have made mistakes and demonstrated good behavior from the opportunity to serve their country. The Army leadership is committed to providing a quality force and will not accept the lowering of our standards. We thoroughly screen each volunteer who wants to serve the Nation as a soldier. Many never make it past the recruiter's office.

The Army applies a rigorous waiver process which looks at the whole person. We examine their performance at school, at work, in their personal life and in their community before making a decision to allow individuals to enlist in our Army with a conduct waiver. That process requires review and action from 10 different leaders for serious misconduct waivers from the local recruiter to an Army General. The process is designed to identify those that have the potential to meet the high Army standards. We don't accept soldiers with waivers because we have to, but because we assess them as qualified and deserving of an opportunity to serve. The number of those with waivers remains relatively low, at about 18 percent, and serious misconduct waivers only account for approximately 1 percent of all accessions.

And from those recruited with waivers, we are seeing positive trends reported in a recent 3-year study comparing the performance of soldiers with conduct waivers to those without. We found that soldiers who had enlisted with waivers had higher education and aptitude, reenlisted at higher rates, advanced to sergeant faster, and had a higher ratio of valorous awards with only a marginally higher misconduct rate.

The willingness to serve in the Army during a period of persistent conflict highlights a unique aspect of quality that cannot be measured with a high school diploma, test scores or waivers alone. A special quality exists in the heart of a well-trained, well-equipped and well-led soldier who serves in harm's way for his country.

I'm proud of the soldiers entering our Army. They are America's heroes. Young soldiers like Corporal Angelo Vaccaro, a two-time Silver Star recipient, and Specialist Ross McGinnis, who recently received the Medal of Honor, both entered the Army through our waivers process. They, like all of our soldiers, became heroes the day they enlisted.

Thank you for the opportunity to address the committee this afternoon, and I look forward to your questions.

Mr. DAVIS. Thank you very much, General.

[The prepared statement of General Bostick follows:]

STATEMENT BY

MG THOMAS P. BOSTICK

COMMANDER, UNITED STATES ARMY RECRUITING COMMAND

UNITED STATES ARMY

BEFORE

FEDERAL WORKFORCE SUBCOMMITTEE

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

HOUSE OF REPRESENTATIVES

SECOND SESSION, 110TH CONGRESS

JUNE 10th, 2008

NOT FOR PUBLICATION

UNTIL RELEASED BY THE

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

Chairman Davis, Congressman Marchant and other distinguished members of the Committee, thank you for the opportunity to appear before you today on behalf of the America's Army. I take tremendous pride in saying that today's All-Volunteer Force is actually an "all-recruited" force and they are proudly representing our Nation throughout the Army.

America is about opportunity – not about denying opportunity. The Army has always been a vehicle for advancement in America. For the last 35 years the Army has been an All Volunteer Force. It has welcomed America's sons, daughters, mothers, fathers, sisters and brothers willing and qualified to serve our country. The Army continues to transform people from all walks of life into quality Soldiers, leaders and heroes imbued with a warrior and winning spirit. These volunteers, whether serving a tour or a career contribute to a more capable and better America.

FY 2008 is another challenging recruiting year. We are working harder than ever to achieve the FY08 mission of 80,000 recruits for the Regular Army, 60,600 recruits for the Army National Guard and 26,500 recruits for the Army Reserve. These missions allow us to grow the Army to the size needed to defend the Nation. We believe we will meet our mission in all three components.

Recruiting Environment

On July 1st of this year we will mark the 35th anniversary of the All-Volunteer force. While celebrating this milestone we continue to recruit during a period of protracted combat. Today's recruiting environment is incredibly challenging. Less than 3 out of 10 of our Nation's youth are fully qualified for service in the Army due to disqualifying medical conditions, criminal records, lack of education credentials or low aptitude test scores.

Additionally, the Army competes aggressively with industry and the economy. Fewer and fewer parents and influencers encourage their family members and other young adults to join the military. The desire to enlist in the Armed Forces is at its lowest point in two decades.

Despite these challenges in the current environment, 170,000 Americans stepped forward to enlist in the Regular Army, Army Reserve, and Army National Guard last year. In our conversations with commanders throughout the Army, it is clear that our Soldiers proudly serve. Our volunteer Soldiers are re-enlisting in large numbers, particularly those in combat. Money alone does not convince them to stay on the team; they realize the importance of what they do. They are committed to each other, their mission and our great Nation. We have the best trained, best equipped, and best led Army in the world. Each of these Soldiers became an American hero the day he or she decided to enlist.

Enlistment Policy

We do not actively recruit individuals with prior criminal records – however, we do have a process that works well to screen those who do seek to enlist. We carefully consider those with criminal histories who have demonstrated they have overcome their past mistakes and now have a desire to serve our Country. The Army operates within authority of Federal law regarding the enlistment into the Armed Services of individuals with prior criminal records. Federal law prohibits those convicted of a felony from entering any armed force. However, it does provide the secretary of a military department to authorize exceptions. In this case, the Secretary of the Army has specifically delegated his authority to grant exceptions for enlisting an individual to the Commanding General United States Army Recruiting Command. Additionally, certain individuals are ineligible for military service based on possessing criminal records that make them ineligible to carry a firearm.

Waivers

All Soldiers serving in our Army are qualified to serve. We have a solid process for reviewing and approving all waivers. We carefully screen applicants who have been charged with a felony. Conduct waivers for applicants with felony charges are approved at the General Officer level. These requests are reviewed by 10 different decision makers to determine whether or not it is in the best interests of our Army to allow the applicant the opportunity to serve. In FY07, only approximately 700 of the over 170,000 Soldiers (less than one-half of one percent) who joined the Regular Army, Army National Guard and Army Reserve were ever convicted of a felony.

The Army has a rigorous waiver process that works, enabling it to meet its manpower goals and provide the nation a quality force. Within each case, a General Officer reviews the entire chain of command recommendation and makes the final determination of each case. In considering a waiver, we look at the whole person. For applicants who made a mistake earlier in life and want to serve their country, we examine their performance at school, at work, in their personal life, and in the community. This thorough examination of the facts, circumstances and the legal disposition of the charges provide a total person review prior to making a decision to allow individuals to enlist in our Army with a conduct waiver.

These men and women are raising their hand, asking for a chance to serve their Country. They are asking for a chance to be a productive member of society. They fully realize they are signing on to defend the Constitution of the United States on behalf of their fellow citizens. They enter our Army, grow and mature as a result of Army training, teamwork, exposure to Army Values and to the Warrior Ethos. I am confident that

our process is sound and in the best interest of the applicant, the Army and our Nation.

In our continuing efforts to define what constitutes a "quality" Soldier, the Army is evaluating whether Soldiers enlisting with waivers perform on par with non-waivered recruits over time. A recent three year (2003-2006) Army study comparing the performance of Soldiers without waivers to 17,000 Soldiers admitted with conduct waivers, found that those with conduct waivers reenlisted at a higher rate, advanced to sergeant faster, and had a higher ratio of valorous awards. Soldiers for whom waivers were granted did have somewhat higher misconduct rates. These Soldiers had slightly greater numbers in losses to the Army in some categories of misconduct, but had lower loss rates in entry-level performance and unsatisfactory performance. Our conclusion based on this study and the results attained is that these Soldiers serve the Army in the same capacity as all other Soldiers and further, gain back personal achievement that is rare in their civilian lives.

Conclusion

I am confident in the quality of the Soldiers entering our Army today. I am confident in the processes and leadership in place for recruiting for our Army.

Thank you again for the opportunity to appear before you today and I look forward to answering your questions.

Mr. DAVIS. Mr. Orrell.

STATEMENT OF BRENT ORRELL

Mr. ORRELL. Chairman Davis, Ranking Member Marchant, distinguished members of the subcommittee, I'm pleased to have the opportunity to testify today on the Prisoner Reentry Initiative. I wish to begin by thanking you, Mr. Chairman, for all of your leadership and securing the enactment of legislation authorizing the Second Chance Act, culminating in the President's signature on April 9th.

Over the past 6 years, the Department of Labor under President Bush's leadership has sought to fundamentally change the way it approaches prisoner reentry programming, which previously had two main focuses. The first of those focuses was an extensive partnership with the U.S. Department of Justice to assist with funding and programming around the Serious and Violent Offender Reentry Initiative. The second was its implementation of a number of incentive programs, which is the Work Opportunity Tax Credit, which provides employers with subsidies for hiring a variety of hard-to-employ populations, and the Federal Bonding Program, which provides businesses with insurance for high-risk employees.

During conversations with employers in 2002, it became clear that the Work Opportunity Credit and Federal Bonding Program by themselves were insufficient to help ex-offenders overcome employment barriers. The bond was not received as a benefit to employers as it tended to brand applicants as high risk without actually protecting employers against liability actions in the event an ex-offender committed a crime against a customer or employee.

Since these conversations, the Department has redesigned its prisoner reentry activities to make them more responsive to employer concerns about hiring ex-offenders, while at the same time improving supports for ex-offenders when they return to their communities. Both elements are critical to successful reentry.

Rather than relying only on a combination of employer incentives and training, the Department's reentry approach today is community-based, mentor-supported and employment-focused. Our programs reflect the belief that work force development and employment placement services need to be done in concert with efforts to connect returning offenders to community institutions. These groups help returnees navigate the full range of reentry barriers from psychological and emotional issues to housing, child care and substance abuse treatment.

Our approach has embraced partnerships with both religious and secular nonprofit organizations that serve as the front door of reentry to the community. The vision for the Prisoner Reentry Initiative built upon earlier successes of the Ready for Work demonstration program launched in 2003. This joint effort between the Department of Labor—the Department of Labor's Employment and Training Administration and Center for Faith-Based and Community Initiatives was designed to leverage the trust and leadership of faith-based and community groups to help ex-offenders build better lives. It not only increased ex-offender access to stable employment, it also strengthened the participants' social bonds in the community, a factor that's important both in persuading employers

to consider ex-offenders for jobs and helping them navigate non-work-related problems after they are employed.

Across the 11 Ready for Work sites, 60 percent of participants became employed, and recidivism rates for the program were 40 to 50 percent below the national average. About half of the Ready for Work participants took part in mentoring or life coaching, and those participants fared much better in terms of employment outcomes and avoiding recidivism than those who did not participate in mentoring.

The Prisoner Reentry Initiative, key elements of which were recently authorized under the Second Chance Act, seeks to expand on the Ready for Work model. It's a collaborative model between the Departments of Justice and Labor, with Justice providing grants to State agencies for prerelease services. By June 30th of this year, DOL will have provided $59 million in 30 3-year grants and 20 1-year grants. In 2008, we plan to award new grants in 15 to 20 cities.

PRI Chicago is a good example of how this initiative can strengthen the capacity of community and faith-based organizations to serve returning prisoners. The Safer Foundation is using its grant to build the capacity of neighborhood-based churches to serve released prisoners in some of the poorest communities in the city. Safer trains case managers at each of its three faith-based subgrantees. Mentoring of returning prisoners occurs through the assistance of many community groups across the neighborhoods. Ex-offenders are provided work force, development services, life coaching, employment referrals and linkages to a wide variety of social services programs, including drug and alcohol treatment and housing assistance.

We've established a rigorous performance tracking system for our grantees which allows us to determine the employment outcomes and recidivism rates for participants. Sixty-three percent of the PRI participants have been placed in jobs with an hourly wage of $9.41, and the program has a 1-year postrelease recidivism rate of only 15 percent, almost two-thirds below the Department of Justice national benchmark.

In conclusion, Mr. Chairman, I think it's vital that Congress and the administration continue its partnership in improving outcomes for ex-offenders. This is not just about the needs of returning offenders; reentry outcomes are critical for families, communities and the Nation. If we are to avoid the very large and growing costs of adjudication and incarceration as well as the staggering costs in lost productivity and wasted lives, government at all levels needs to examine how to provide effective transitions for ex-offenders. I believe the policies developed by the administration over the past 7 years are an important step in that direction.

This concludes my prepared testimony, and I'm pleased to respond to your questions.

Mr. DAVIS. Thank you very much, Mr. Orrell.

[The prepared statement of Mr. Orrell follows:]

TESTIMONY OF
BRENT R. ORRELL
ACTING ASSISTANT SECRETARY
FOR THE EMPLOYMENT AND TRAINING ADMINISTRATION
U. S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
UNITED STATES HOUSE OF REPRESENTATIVES

June 10, 2008

Chairman Davis and distinguished members of the Subcommittee, I am pleased to have the opportunity to testify today on the Prisoner Re-entry Initiative. I wish to begin by thanking you, Mr. Chairman, for all your efforts to secure enactment of legislation authorizing this important initiative, culminating in President Bush signing the Second Chance Act on April 9 of this year. In my testimony today, I will describe the Department of Labor's (DOL) approach to prisoner re-entry and share with you DOL's successes with the President's Prisoner Re-entry Initiative.

DOL, under President Bush's and Secretary Chao's leadership, has sought to fundamentally change the way it approaches prisoner re-entry programs.

The efforts to find more effective ways to serve the ex-offender population was driven by the great need in this country for programs to assist prisoners returning home to their communities. Each year more than 650,000 inmates are released from Federal and State prisons and return to their communities and families. Without help, a majority of ex-prisoners do in fact return to criminal activity. For example, according to the U.S. Department of Justice (DOJ), almost three out of five inmates returning to society will be charged with new crimes within

three years of their release from prison and two out of five will be re-incarcerated. Unemployment among ex-prisoners has been estimated at between 25 and 40 percent. Studies also show that joblessness among ex-prisoners has been broadly linked to recidivism rates.

Prior to 2002, DOL prisoner re-entry programming and supports had two main focuses. The first was an extensive partnership with DOJ to assist with funding and programming around the Serious and Violent Offender Re-Entry Initiative. The second was its implementation of a number of incentive programs, such as the Work Opportunity Tax Credit (WOTC) and the predecessor Targeted Jobs Tax Credit, which provide employers with subsidies for hiring from a variety of hard-to-employ populations, including certain ex-offenders, and the Federal Bonding Program, which provides businesses with insurance for high-risk employees, primarily ex-offenders.

During conversations with employers in 2002, it became clear that the WOTC and the Federal Bonding Program, by themselves, were insufficient to help ex-offenders overcome employment barriers. In the case of the Federal Bonding Program, a number of employers commented that the bond, by itself, sometimes actually constituted a barrier. The bond alone was not perceived as a benefit to employers as it tended to brand applicants as high-risk without actually protecting employers against liability actions in the event an ex-offender committed a crime against a customer or employee.

Since these conversations, DOL has redesigned its prisoner re-entry activities to make them more responsive to employer concerns about hiring ex-offenders, while at the same time improving supports for ex-offenders when they return to their communities. We are finding that both elements are critical to successful re-entry.

Rather than relying only on a combination of employer incentives and training, the DOL re-entry approach today is community-based, mentor-supported, and employment-focused. Our programs reflect the belief that workforce development and employment placement services need to be done in concert with efforts to reconnect returning offenders to community institutions that can help them navigate the full range of re-entry barriers, from psychological and emotional issues to housing, child care and substance abuse treatment. Our approach has embraced partnerships with both religious and secular non-profit organizations that serve as the front door of re-entry into the community. These organizations provide case management and other services, and help link returnees with mentors and life-coaches to provide personal support during readjustment to life outside prison.

Ready4Work

The vision for the Prisoner Re-entry Initiative (PRI), as introduced by President Bush in his 2004 State of the Union Address, built upon the promises of the Ready4Work (R4W) model, which was a joint effort between DOL's Employment and Training Administration (ETA) and Center for Faith-based and Community Initiatives. The R4W program was a pilot program launched in 2003 in 11 sites in response to the increasing national re-entry challenge. The program was designed to leverage the trust and leadership of faith-based and community organizations to help ex-offenders build better lives. Based on a strategy of utilizing every willing partner, and recognizing the unique and invaluable strengths of community and faith-based groups, the R4W program helped change the lives of ex-offenders. R4W not only increased ex-offender access to stable employment, it also strengthened participants' social bonds in the community. This attribute was especially important to employers participating in the program, as employers viewed connections to community organizations as a sign of stability

for an ex-offender hire. By creating a program that was not only supportive to returning offenders, but also responsive to employer concerns, the R4W program was able to provide numerous opportunities not only for offenders, but also for their families and the communities in which they reside.

The R4W proved to be very successful. Across the 11 R4W sites, 60 percent of participants became employed, and 63 percent retained their jobs for three or more consecutive months. Recidivism rates for R4W participants were 40 percent to 50 percent lower than the national average for one year after release.

Fifty-five percent of the participants at the 11 R4W sites were involved in mentoring or life coaching, and those participants fared better in terms of program retention (59 percent more likely to stay in the program), job placement (twice as likely to find jobs), job retention (43 percent more likely to retain jobs for three months), and recidivism (39 percent less likely to recidivate) than those who did not participate in mentoring. Mentoring harnesses the power of social capital by helping formerly incarcerated persons develop relationships. Building a network of caring relationships that surround an individual is key to keeping people out of prison and on a productive path. Mentors can be among the most important of these relationships.

The President's Prisoner Reentry Initiative

PRI was born out of the promise of the R4W program, and seeks to expand on the successes of the R4W model. PRI works to strengthen urban communities impacted by large numbers of returning prisoners through community-based, mentor-supported and employment focused programs. PRI is also a collaborative effort between DOJ and DOL. DOJ grants are awarded to State agencies for pre-release services to partner anti-recidivism efforts with those of faith-based and community organizations. Twenty state departments of corrections align with the

DOL grantees and provide services and referrals to the DOL PRI programs once offenders are released.

As compared to the U.S. offender population, PRI is serving a population that is more female (23 percent), has a greater proportion of African-Americans (54 percent), is slightly older (55 percent age 35 or older), and is less educated (47 percent with less than a high school degree or GED). In addition, 85 percent of PRI participants have some type of supervision requirements (probation, parole, or other), 57 percent have had a drug offense, 57 percent report a history of substance abuse, and 7 percent are veterans.

DOL will have, by June 30 of this year, provided $56 million in funds over three years to support 30 PRI grants in 20 states and $3 million to support one-year PRI grants in 23 states. In 2008, DOL plans to award new PRI grants in 15 to 20 cities.

It is important to note that PRI program participants are not placed in make-work jobs. The skilled trades, such as plumbers, carpenters, welders, and electricians, is an example of an industry sector that currently has an acute need for workers and that can provide career pathways for ex-offenders. But many of these jobs require more education and more skills than in the past. That is why programs like PRI are so essential. They provide skills training so these men and women can access good paying jobs back in their communities.

About 28 percent of PRI participants participated in some type of education or training, which ranges from GED and literacy instruction to occupational skills training. Examples of fields in which participants receive occupational training include: forklift operating, commercial truck driving, welding, carpentry, pipefitting, culinary arts, plumbing, building maintenance, and electrical trades. Such occupational training is sometimes supported by WIA formula funds, but more typically is paid for outside of the WIA system through funds that are leveraged by the PRI

projects from adult vocational education, community colleges, trade schools, and faith-based and other community-based organizations.

The Chicago PRI project is a good example of how this initiative can strengthen the capacity of community and faith-based organizations to serve returning prisoners. The Safer Foundation is using its PRI grant to build the capacity of neighborhood-based churches to serve released prisoners in some of the poorest communities in the city by training case managers at each of their three faith-based sub-awardees. Mentoring of returning prisoners occurs through the assistance of many neighborhood congregations. To date, the Safer Foundation has 554 participants in its PRI program, with a 50 percent entered employment rate, 53 percent retention rate and a 6 percent recidivism rate. The Safer Foundation shows that providing key transitional services through sustained involvement with community and faith-based partners greatly improves participant job readiness, job placement, retention and reduced recidivism.

DOL has established a rigorous performance tracking system for our grantees, which allows us to determine the employment outcomes and recidivism rates for participants. After two full years of PRI implementation, the results are very promising in terms of increasing job placement and retention and reducing recidivism rates of participants, compared to the national average. Of the 12,890 participants, 63 percent have been placed in jobs, with an average hourly wage of $9.41 an hour. In addition, over 1,100 participants have entered post-secondary education, 1,267 have entered long-term occupational skills training, and 6,677 have received mentoring. Of those participants employed upon exit from the program, 66 percent are retained in employment six months post-program. Perhaps most significantly, PRI has a one-year post-release recidivism rate of only 15 percent, which is less than half of the of the Bureau of Justice Statistics' national benchmark of 44 percent.

DOL has begun an 18-month outcome evaluation in order to determine the initiative's effectiveness and to analyze the extensive program data being collected. The evaluation will also look at the implementation of an employment-centered re-entry approach in order to gain further insights into successful re-entry practices.

The Second Chance Act of 2007

On April 9, 2008, President Bush signed into law the Second Chance Act of 2007. The Act authorizes important parts of the PRI to help America's prisoners by expanding job training and placement services and helping newly released prisoners get mentoring from community and faith-based groups. Section 212 of the Act will allow the Secretary of Labor to award additional grants to non-profit organizations to provide mentoring, job training and placement services, and other comprehensive transitional services to assist eligible ex-offenders in obtaining and retaining employment. The Act authorizes $20 million to be appropriated in fiscal years 2009 and 2010 for this effort.

DOL was very pleased to have worked closely with Congress on this important milestone in the PRI and the nation's efforts to improve outcomes for ex-offenders. This program's success demonstrates it warrants the separate and specific authorization provided by the Second Chance Act. By relying on faith-based and community organizations to provide critical services, and establishing effective partnerships with the workforce investment and criminal justice systems and other programs, this grant program gives important opportunities for offenders to obtain the support that will help them find and retain employment, and avoid return to criminal activity. The Second Chance Act will ensure that DOL can continue its important work in seeking opportunities for every worker.

Conclusion

In conclusion, Mr. Chairman, I think it's vital that Congress and the Administration continue and extend its partnership in improving outcomes for ex-offenders. This is not just about the needs of returning offenders. Re-entry outcomes are critical for families, communities and the nation at large in terms of adjudication and incarceration costs as well as the staggering cost in lost productivity and wasted lives. As Secretary Chao stated at the White House National Summit on Prisoner Re-entry, "The heaviest cost is the loss of human dignity when people are living lives of poverty, addiction, and despair. We must – and we can – break that cycle....Working together, we can continue to ensure that everyone in our society has a second chance, and the tools they need to build lives of independence and dignity."

Mr. Chairman, this concludes my prepared testimony. I will be pleased to respond to your questions.

Mr. DAVIS. And again, I want to thank all three of you for your testimony.

Ms. Kichak, let me ask you, how long have you been associated with personnel activity within the Federal Government?

Ms. KICHAK. I've been with OPM for 35 years, but for personnel activity, I would say 8 years.

Mr. DAVIS. Have you ever come into contact with any individuals who work for the Federal Government who are ex-offenders or that you knew as an ex-offender?

Ms. KICHAK. I have never asked anyone that question in the process of employing an individual, and I have never been asked to determine whether that has mattered for any employee under my management, so I am not aware of any working for me. But I don't think I would be.

Mr. DAVIS. The city of Boston, I guess, could be thought of as being progressive relative to the question of letting individuals know that just because they may have a conviction, that they're not barred from employment with the city. And I've been very pleased that the mayor of the city of Chicago issued an executive order indicating that a felony conviction did not necessarily bar one from seeking employment with the city, and that they could be evaluated like any other applicant. And, of course, that has given hope to some individuals.

Does the Federal Government have anything on job applications that would ask an individual of their status relative to criminal conviction?

Ms. KICHAK. The Federal Government on the standard request for information submitted through USAJOBS does not ask that question. We do not have a governmentwide application form in use anymore. I can't assert that question is never asked at specific agencies for specific applications. For example, Customs and Border Patrol, I don't know what their application looks like.

Mr. DAVIS. So if an individual completed a job application, until they reached a certain level where there was a background check or something of that nature, whoever is doing the reviewing or maybe even the initial interviewing may never know whether or not the individual has any kind of criminal background?

Ms. KICHAK. Right. If they didn't volunteer that information in the drafting of their resume, the reviewer would not know.

Mr. DAVIS. General Bostick, I was very intrigued and pleased to hear your testimony relative to individuals who have performed in an outstanding way who did, in fact, receive waivers. And I guess my question becomes, have you seen any—and you did cite some instances and some statistics. But have you seen any underperformance of these individuals?

And I also appreciated the standards that the military uses, that this is not something that's done willy-nilly . I mean that if individuals come and apply, and it's discovered that they have something in their background that merits taking a hard look at or other looks at; but my question becomes, have you noticed or has the military found any underperformance or anything to suggest that these individuals who were granted waivers did not perform as well as individuals who did not find it necessary to get a waiver to come into the service?

General BOSTICK. Mr. Chairman, first let me say that we have ongoing studies that are reviewing this very point. We have had limited studies in the past, one in 2003 that looked at misconduct of soldiers with felony waivers. And in that particular study, there was no significant difference between those with waivers and those without waivers. We then did another study of a larger cohort group from 2003 to 2006. About 17,000 of that group needed waivers, conduct waivers, and another population of 250,000-plus that did not need waivers. And in that group we found that reenlistment was a bit higher in those that needed waivers. Education and aptitude was a bit higher, and higher valorous awards. Where they were a bit underperforming against that population was in misconduct. Marginally higher in misconduct.

But I think in any group, whether with a waiver or without a waiver, you're going to find some level of challenge in any organization. And what we're doing now is taking another hard look at this with different analytical organizations to look at the downstream effect in Operations Iraq and Afghanistan and throughout the Army of the impact of those that have received waivers. And we expect some of those studies to be coming out in the next fiscal year.

Mr. DAVIS. Have you found any undue burden or hardship on the military or great expense to go through making these assessments, evaluations and determinations? And I guess my question is, is it too costly to try and make this kind of determination as to whether or not individuals are eligible to come into the service?

General BOSTICK. It's difficult for me to answer from the recruiting commander perspective of the cost of these studies. I know the Department of the Army is looking at that. I'm certain that it will take some time, and it will take some cost, but we believe that's important.

We know that we have increased the number of waivers over the last several years. We know that we have more GEDs today than we did in past years. And we think it's important to go out and make sure that our Army is sound, that the soldiers that we've brought in for any type of waivers or challenges in any other area—in fact, a lot of the waivers are in the medical area. So we're looking at each of those areas to ensure that the Army is in good shape and can serve the Nation well.

Mr. DAVIS. Thank you very much.

Mr. Orrell, let me just ask you, I'm a real fan of faith-based initiatives and the faith-based approach to trying to assist individuals to a get a handle or a better handle on their being—although I am a trained psychologist, and some of my associates when it comes to behavior don't necessarily buy into some of the faith-based activity. But there appears to be something that sometimes happens that it's difficult to determine scientifically what that might have been. And these individuals come away from those experiences really prepared to function at a different level.

When the Department evaluates faith-based initiatives in a generic sense and across the country, what have you found? I mean, what is it——

Mr. ORRELL. I guess I'd respond by saying, first of all, I think that the most important element in this project I've been talking

about is the role that faith factor plays is probably in the motivation of volunteers that stepped forward from the community to work with the returning offenders. The volunteers and the organizations are—operate under DOL restrictions with regard to the mingling of religious and social services activities, and mentors are supposed to be briefed on this as what you can and cannot do in this relationship in terms of discussions around religious topics.

So that's pretty well, I think, separated, but I do think it's an extremely important motivating factor for the organizations and individuals within those organizations who are stepping forward to try to address this problem. And I think that's true across the country and all sorts of initiatives in which faith-based organizations are active. I think that it's a very important motivating factor.

What happens in the lives of individuals happens in the lives of individuals. I think it's very difficult to quantify, to know what's happening in the lives of an individual ex-offender who's taking part in those—or somebody who's going through, say, a faith-based drug rehabilitation program. But it's an extremely important factor in terms of motivating them.

Mr. DAVIS. Well, thank you all very much, and I'll yield to Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

General Bostick, are there other branches of the military or the Department of Defense that use the same process to take soldiers in and employees under waivers?

General BOSTICK. I can't speak to the specifics of the other services, but they do have a waiver process that they consider at each level, somewhat similar to what the Army does.

Mr. MARCHANT. So the Army is not the only one of the services that's involved in this?

General BOSTICK. Correct. But each service has the ability to decide based on their requirements at what level they will make the determination on what waivers they will accept.

Mr. MARCHANT. So that in any given situation, there will be—will there be marines that are operating under waivers? Will there be members of the Navy or the other branches have the same approach to this.

General BOSTICK. I would say each service has a very rigorous approach to how they make the decision on whether a soldier, sailor, airman, marine would come into the Army or their service.

Mr. MARCHANT. Or they just have a plain, if you are a felon, you cannot receive a waiver program. Do they?

General BOSTICK. Some are very restrictive. And I would say that there are very limited felony waivers in some of the services. And some have more. I can't say what their specific rules are. I would rather not speak on their behalf. But I can say that they have a very rigorous process. They look at the conduct waivers in a very similar fashion that we do, and to a higher degree or to a lesser degree, the service that you are talking about.

Mr. MARCHANT. But you are not the only service that's involved in this.

General BOSTICK. Correct.

Mr. MARCHANT. Ms. Kichak, Texas has its share of incarcerated individuals, as does California and, I am sure, Illinois. The Sunbelt attracts a lot of young men and women looking for work and then looking for lots of other stuff. We have every year, in the Dallas area, a very aggressive—our police chief in Dallas is very aggressive at having job fairs for people that have served their sentences and have been released. The disappointing thing is that very few companies, and I know of no governmental agencies, that attend those job fairs. Now, would this be something that each individual regional area or each individual government entity would have to make a decision on whether they would actually go.

There is the step of receiving an application. There is another step that is taken many times in government, and that is to go to a job fair and actually look for levels of employment.

Ms. KICHAK. We have learned, in order for a job fair to be effective, the agencies who have positions need to go and discuss the specific positions they have available. So those decisions have to be made on an agency-by-agency basis as to whether they have positions available for people who might be at that job fair.

Mr. MARCHANT. The job fair being only attended by people that would generally need a waiver.

Ms. KICHAK. There are no waivers needed for Federal employment. There is no strict bar for an ex-offender. Ex-offenders are another segment of society that are welcome to apply and compete for Federal employment. They don't need a waiver. They go, they compete.

Very few selections are made at job fairs. That is where you learn about the job. Then you submit your application. The application—or at least—the application that is generally filed through USAJOBS, where all of our jobs are required to be posted, does not ask a question as to whether the person is an ex-offender. The application then goes back to the agency, and the person competes against other people who applied. And it is only when they are selected and then the final suitability for employment decision gets made that it is likely to be found out whether or not they have a record. And the record does not necessarily bar them from employment. It depends upon the nature of the job, with the exception of the statutory bars, you know, that Congress has levied.

Mr. MARCHANT. Thank you, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Marchant.

Ms. Norton.

Ms. NORTON. Thank you, Chairman.

And I want to thank all of you for your very helpful testimony. Also, the first witness, I was in the other room, I heard her testimony as well, the first witness.

I want to especially thank you, General Bostick, for your service to our country. And I want to thank the armed services of the United States for the many, many young people who went into the service sometimes on order of a judge. And to this day you will hear veterans, the prevolunteer Army, talk about how the best rehabilitation they ever got was in the armed services in the United States.

And I fully understand the requirements of the volunteer Army, but having heard about this all my life, I cannot help but note it

and am grateful to the armed services, which, after all, in many, many of the important policies of our country has been way ahead of the private and the public sector, integration of the armed services. Today, the record of the Armed Forces promoting people like yourself is to be envied by the Civil Service, where we have just had hearings on the SES, for example, and for that matter the private sector.

You indicated that there were not many people who had, quote, serious misconduct. You mean felons?

General BOSTICK. We call it serious misconduct because within that group we include more than just felonies. For example, in our process that goes all the way up to a general officer, if you have had two DUIs, for example, or two possessions of marijuana, those are not felonies per se, but we put them in that category of seriousness.

Ms. NORTON. Two small possessions of marijuana?

General BOSTICK. Correct. And two arrests for marijuana. We would ask——

Ms. NORTON. A kid who comes out of college and wants to join the Armed Forces of the United States and use his college degree and did what every other kid does now but got caught, he couldn't join the Armed Forces of the United States today? Maybe he could get a waiver.

General BOSTICK. We are not saying that they could not join. In terms of those that have used marijuana in the past, we look at it as a medical condition. We look at—our doctors would look at that person and see if they have any dependency on drugs or alcohol that would preclude their ability to serve as a soldier. If they have been arrested——

Ms. NORTON. I understand. I just want to make sure that we are not talking about—we are not talking about disqualifying every other kid going to college or high school today.

Now, what percentage of those are ex-felons, people who have a felony record?

General BOSTICK. Of those that we assess into the Army, it is less than one-half of 1 percent that are convicted of a felony.

Ms. NORTON. What kinds of felony, examples of felonies that waivers have been granted for in the Army, where you have, of course, the largest number of men and women serving today?

General BOSTICK. If you look at the FBI data base, in the last couple years there has been about a 14, 15 percent increase in crime in the areas of burglary, robbery, larceny, drug use, those sorts of crimes. And aggravated assault. And we see some of that as we are recruiting America's sons and daughters, and we've got to make a decision on whether that offense is one that would preclude them from serving in the military.

So, for example, aggravated assault. I have seen a case where two teenage girls, one that we are recruiting, get into a fight. Mom calls the police, the police comes. Because she kicked her sister with a shoe, it is a deadly weapon, aggravated assault, and she is charged with a felony. Several years later she has demonstrated good performance in school, in her community, and from her supervisors. And we would make the decision in a case like that, probably to bring her in.

Ms. NORTON. That kind of individualized consideration is precisely what we would expect of the Federal Government and of any private employers. So I understand it.

In your testimony, you cited 2004. Is that when the policy of waivers grew or changed or became more active, from 2004 on?

General BOSTICK. I am sorry, I am not following the question.

Ms. NORTON. The volunteer Army was known for not, in fact, encouraging. You say, of course, they have always been allowed. Is it not so that the number of waivers began to grow beginning in 2004?

General BOSTICK. I understand now.

Yes. The waivers have grown about 2 percent to 3 percent every year since 2004.

Ms. NORTON. Why is that, sir?

General BOSTICK. For a number of reasons. First, I would say that the felony convictions are still very low, less than one-half of 1 percent of all that we bring in. The other reasons for changes in society, changes in our process.

Ms. NORTON. Weren't those changes going on before 2004?

General BOSTICK. Some of them are recent. Some of the changes in policy, for example.

Ms. NORTON. I am talking about changes in society. For example, we have the greatest crime wave in the early 1990's when crack came on the scene, so that I am interested in 2004, why 2004 sees an increase in waivers.

General BOSTICK. And, again, going back to the FBI data base and the information we are able to review, this is in 2005 and 2006, it's been about a 14 percent increase in burglary, robbery, larceny, aggravated assault——

Ms. NORTON. So you are saying because of increase in crime, you have an increase in waivers?

General BOSTICK. That's part of it. Part of it is an increase in crime overall. And the military is a subset of society; in many ways we reflect society, our youngsters do. And if crime is at an increase, then some of those we would look to bring in would——

Ms. NORTON. So we would, from your testimony, understand that as crime goes up you are inclined to give more and more waivers of that kind to reflect what you see going on in society; that this is going to continue to increase if that is the reason.

General BOSTICK. I wouldn't say that. The other part that has changed is we have had a change in our process. We've automated our process. So this 10-step process for conducting waivers used to take 90 days, and this was just a short time ago. Certainly in 2004 this process would take 90 days, and we have streamlined that process down to about 2 weeks.

So a recruiter's most valuable resource is his time. And if he has someone that comes in that needs a waiver, and, for example, he comes in and says, I have lived in 10 States, and I have been in trouble of 5 of them, that recruiter must go work with those 5 States in order to make sure what he is telling is accurate.

Now we have electronic background checks, we are Internetted, we are connected through automation, we have e-mails, so the whole process of getting someone through the waiver process is a lot faster. So that recruiter is much more apt, if he knows that he

has a valid case here that he knows all of the details on, on this young man or woman, to submit that file for a waiver, where in the past he would just say, I don't have time to work with you, and I have to go to another high school or college to look for another recruit.

Ms. NORTON. But, General, particularly since, if anything, the Army has developed a model process for waivers, I mean no criticism of the Army, but is it not the case, sir, that it has been harder to recruit people to the volunteer Army in the last few years? And that would make any military person think that they ought to look at all of their policies, including the number of waivers granted in the past, and perhaps grant more today, take a greater risk today since there are fewer people just willy-nilly coming forward as they were, I don't know, say, 10 years ago before the Iraq war?

General BOSTICK. As I said in my opening statement, this is the toughest period of time in the history of the all-volunteer force for recruiting for a number of reasons. Some of it has to do with economy and the low unemployment rate. Some has to go with the ongoing conflict and persistent combat operations. Some has to do with the youngsters and their background today. A lot has to do with education across America and obesity. Less than 3 out of 10 of the 17 to 24-year-olds are qualified to join the Army.

So there are a number of issues that are out there, but there is no question that it is a more challenging time to recruit. But there is also no question that we are not going to lower our standards in order to meet the needs of the Army.

Ms. NORTON. Of course, it is considered a lowering of standards, and I would consider it a lowering of standards and a greater risk, to take people you wouldn't have taken before. And I am not criticizing you for that, but I do criticize you for saying you are doing enough because you have to. I expect that is a boilerplate that the Army comes forward.

But I think it important to note, though, for example, the National Guard has had to pay people like they were going to strike it rich, and they have had some success in recruiting. What began as a volunteer Army has become increasingly an Army that either you become more and more mercenary, therefore going to those who most need money, or—or should I say and/or—you look at other policies.

The Army, the great thing about military campaign is people come back, and they don't say what we did right; they want to know what we did wrong, or what can we do to improve it. It does seem to me that there is no getting away from all the statistics we are aware of are the difficulty of recruiting to a volunteer Army in the middle of a controversial and tough war, that has something substantially to do or at least significantly to do with looking at the waiver process. What is interesting to note is you find that the waiver process is so careful, you say that at least the study that you referred to doesn't see any particular difference in those who receive the waiver and those who do not. That is important data.

The Army is known for studies and data. And I would ask you, General Bostick, if you would submit that study to this committee so that we may look at that study, because I think it would be important for the Federal Government to see. I think it would be im-

portant for private employers, Mr. Orrell, to be able to use that. Given the rigor of your process, it might say that you have a rigorous enough process, you may get comparable results.

Now, Ms. Kichak, I understand that decentralization of hiring, we've had some very important aspects to it. Have you ever done a survey of any kind to see what the actual practice is of Federal agencies who have any knowledge, since you have decentralized this matter, along with thousands of others—have you any knowledge of what the actual process is, and do you know of any attempt by the OPM to find out what the actual practice is?

Ms. KICHAK. The practice for hiring ex-felons?

Ms. NORTON. That is right.

Ms. KICHAK. No. We have not done any survey, and we do not ask for that question in the hiring process.

Ms. NORTON. Well, of course, you do in some agencies. What are you talking about? You know good and well that some agencies do, but you seem not to know which agencies do and which agencies don't. We are just trying to find out.

Look, we can't deal with policy unless we know what is happening. Now, we know good and well that some agencies for good and sufficient reason ask that question, and better ask it, or I want to know the reason why. So, we can even guess at what they would be. But I am asking you about—and I know you don't have that. So all the disclaimers will be noted for the record. Do you have any idea which agencies don't ask that question? Do you have any idea what jobs—for what jobs this question might be considered irrelevant?

Ms. KICHAK. We at OPM, in hiring HR specialists, claims examiners, and all the personnel we hire at OPM for our own use, do not ask that question. The question as to whether anyone is a felon is not part of the USAJOB application process for applications that come in through USAJOBS. It would have to be asked when an application is made at the agency level.

Ms. NORTON. Do you believe it would be appropriate for OPM to offer advice on this matter either by giving examples or giving case examples from agencies that you learn have, in fact, hired ex-felons? Do you believe that would be an appropriate function of OPM?

Ms. KICHAK. I believe that, No. 1, we give advice on the suitability process. I heard the first witness that talked about someone who was not found suitable because of a previous drug conviction. And our regs specify that a rehabilitation must be considered when reviewing previous drug convictions for jobs. So in that process we already give advice.

Ms. NORTON. Is that on a case by case?

Ms. KICHAK. No. That is in our regulatory process, and it is available to agencies governmentwide. It is not on a case-by-case basis. Those decisions are made at——

Ms. NORTON. So you have—you have guidelines of some kind that say——

Ms. KICHAK. Rehabilitation should be considered.

Ms. NORTON. Would you submit those guidelines to the committee?

Ms. KICHAK. Yes.

Ms. NORTON. Could I ask you if you think it would be appropriate, given the rising number and—as the gentleman testified, the rising number of people committing felonies, some of them with vastly different—for vastly different crimes, do you think it would be appropriate for you to find out what agencies are doing in the post-9/11 period?

Ms. KICHAK. I think we could ask agencies if they ask questions about offenders in their application process.

Ms. NORTON. I am going to have to ask you to do—Ms. Kichak, I am a member of the Homeland Security Committee, and you leave the impression that you leave everybody to his druthers. And, of course, I can depend upon the judgment of most of the agencies that come before my own committee, but after I leave those agencies, I don't know what the others do. Could I ask you to submit any materials you have on questions agencies ask—and to ask agencies what questions they ask concerning this subject? Just to find out. We are not here to criticize agencies. After all, nobody's told them. Congress hasn't held any hearings on this matter. So we are in the blind here. We have an idea, so we just want to find out what agencies—if you went down the agencies—for example, I know, because there are so many parks in the District of Columbia, that agencies hire, quote, temporary—the National Park Service hires temporary workers during peak periods. Now, there are parks and there are parks. But I wonder if they ask that question.

Do you know about arrests? What does the Federal Government say on arrests?

Ms. KICHAK. The Federal Government does not—again, as we've said, it is agency-specific.

Ms. NORTON. So could you also ask that question of agencies with respect to arrests? Again, and the last question would only tell you where there is more to ask. You know, most people who put an arrest down would want to explain it.

I was arrested in the city movement. I had to go before the bar. You can bet your bottom dollar I wrote down all I could about that arrest. I was even arrested when I was in law school, because they rounded up everybody when the head of one of our—this is in New Haven—one of our groups in the city had difficulties. So they brought all of us in. Law school saw to it that the couple of us who were brought in, because we were involved in the movement, that we—and I think others ultimately also—were released. We were questioned. But, hey, and while I think the arrest probably didn't take place, I think I revealed it on my bar, however.

So I understand that, you know, agencies ought to look behind anybody who has said he has had any encounter with the law. What would bother me, though, in this period, particularly given the important work the Federal Government itself is doing, you heard the testimony of the Department of Labor, if we just continued, in light of what the general said, to operate in an atmosphere of ignorance. And that is why I am asking you to do that. See, I am not going to ask you whether or not, for example—and I gave as an example whether—a temporary worker at the National Park Service. You know, I don't know enough about it. I really don't. Also, there may be lots and lots of people who want these jobs. I have no idea. But it is because I have no idea that I think it would

be foolhardy of us to simply try to legislate in the blind and tell the Federal agencies what to do. I do know that post-9/11, I don't fool with without knowing what I am doing.

Ms. KICHAK. We will survey the agencies and ask them that question.

Ms. NORTON. I would very much appreciate that.

Thank you very much, Mr. Chairman.

Mr. DAVIS. Let me thank all three of you for your participation and for your answers. And we will go to our next panel.

And while we are changing panels, let me just introduce the third panel of witnesses.

Mr. Paul Keefe is a staff attorney with the Community Service Society. He trains individuals with criminal histories and organizations that assist ex-offenders with employment discrimination.

And Mr. Mark Earley became president of Prison Fellowship on February 1, 2002. Prison Fellowship works with thousands of churches and volunteers across the United States and prepares ex-offenders to reenter their communities.

And our third witness is Mr. William R. Calhoun, Jr. He is corporate executive vice president for Clark Construction Co., and in this capacity Mr. Calhoun is responsible for Clark Construction's acquisition work and for overseeing the company's strategic focus on major projects. Gentlemen, let me thank you very much. And if you could stand and be sworn in. If you would raise your right hands.

[Witnesses sworn.]

Mr. DAVIS. The witness—the record will show that the witnesses answered in the affirmative. And we will begin with you, Mr. Keefe. Of course, your full statement is in the record. You have 5 minutes in which to summarize. The yellow light indicates you have a minute left, and the red light indicates that the time is up.

We want to thank all three of you for being here with us, and we will begin with you, Mr. Keefe.

STATEMENTS OF PAUL KEEFE, STAFF ATTORNEY, COMMUNITY SERVICE SOCIETY; MARK EARLEY, PRESIDENT, PRISON FELLOWSHIP MINISTRIES; AND WILLIAM R. CALHOUN, JR., EXECUTIVE VICE PRESIDENT, CLARK CONSTRUCTION GROUP, LLC

STATEMENT OF PAUL KEEFE

Mr. KEEFE. Good afternoon, Chairman Davis and committee members. Thank you very much for the opportunity to appear before you today.

As you mentioned, I am a staff attorney at Community Service Society, a 160-year-old antipoverty organization in New York City. On a daily basis, I help people who are encounter employment and licensure discrimination because of their criminal record, even after years of employment, education, sobriety, civic engagement, and lack of involvement with the criminal justice system. I thank you on their behalf for examining an issue vital to their individual self-fulfillment, our neighborhood safety and stability, and the fairness of our society as a whole.

My full remarks discuss three federally regulated industries that provide jobs accessible to people of limited education and work history, but unavailable to people with criminal records. Many of these were discussed by Ms. Meyers-Peeples. I will also discuss New York State laws that require individual determinations and sometimes a hearing before someone can be denied a job or license because of a criminal record.

These remarks distill to two points: First, giving Federal agencies discretion to deny employment based upon any criminal conviction or requiring denials for certain misdemeanors disproportionately impacts poor and nonwhite individuals.

Second, the Federal system lacks a uniform accessible process for individuals to demonstrate their rehabilitation and fitness for a job when they encounter a statutory barrier.

As to my first point, some blanket bars are rationally related to the employment sought. Permissive bars, like those in the health care field and those based upon misdemeanors, however, are not. Overly aggressive policing and stops-and-frisks in New York City, for example, among other localities, have resulted in increased convictions for low-level misdemeanors.

While there is no excuse for breaking the law, we know that police encounters happen more often in poor and nonwhite neighborhoods. That is, in fact, the reason why blanket policies against hiring people with criminal records violate Title VII. Certain protected classes are stopped, charged, and convicted at a rate disproportional to their representation in the population. It is not fair to perpetuate discriminatory practices by adding barriers.

As to my second point, again, the Federal system lacks a uniform and easy way to access this process by which individuals can demonstrate their rehabilitation and fitness for a particular job. Such policies ignore the reality of the reentry population today, many of whom can demonstrate significant personal accomplishment, growth, and stability.

New York law, in contrast, requires employers and licensing agencies to make individualized determinations before a person can be legally denied, usually following statutory factors: First is the State's expressed public policy in favor of employing the formerly incarcerated; the job's necessary duties and responsibilities, and the convictions bearing on the applicant's fitness and ability to fulfill them; how long ago the offense occurred, how serious it was, and the applicant's age at the time; evidence from the applicant of rehabilitation and good conduct. The employer of the agency is allowed to consider their interests in protecting people and property. And the employing agency must also consider a certificate of relief from disabilities or certificate of good conduct, which are creatures of New York State law that create a presumption of rehabilitation and remove statutory bars to employment.

As a result, I urge this committee to push for a top-down executive review of conviction barriers to Federal employment and determine whether they actually increase public safety, are based on real data on recidivism, and do not negatively impact the employment of nonwhite persons. The review should also consider ways in which to routinely consider individuals' rehabilitation, ensure fair employment decisions, and incorporate State mechanisms whereby

people demonstrate rehabilitation, such like the certificates I mentioned earlier.

The underlying concern for all laws and regulations hindering the employment of people with criminal records is the risk of recidivism and the resulting damage to persons and property. That is, given someone's record, we should have known that they would recidivate working at a job related to their record. While there is certainly room for limitations based upon rational public safety justification, when individuals are unable to find a job and recidivate, we can similarly say we should have known. Thank you.

Mr. DAVIS. Thank you very much.

[The prepared statement of Mr. Keefe follows:]

Statement of

Paul Keefe, Staff Attorney, Community Service Society

Before the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia Subcommittee of the Committee on Oversight and Government Reform

"An Examination of Federal Employment Practices/Policies Towards Hiring Ex-Offenders"

Tuesday, June 10, 2008

Good afternoon Chairperson Davis and Subcommittee members:

Thank you very much for the opportunity to appear before you today. I am a Staff Attorney at Community Service Society, a 160-year-old antipoverty organization in New York City. On a daily basis, I help people who encounter employment and licensure discrimination because of their criminal records, even after years of employment, education, sobriety, civic engagement, and lack of involvement with the criminal justice system. I thank you on their behalf for examining an issue vital to their individual self-fulfillment, our neighborhoods' safety and stability, and the fairness of our society as a whole.

Today I will discuss three federally regulated industries that provide jobs accessible to people with limited education and work history but unavailable to people with criminal records, and I will also discuss New York state laws that require individual determinations—and sometimes a hearing—before someone can be denied a job or a license because of a criminal record.

Employment of people with criminal records serves a dual purpose: It dissuades the individual from re-offending, and it improves both the economy and safety of the communities where they reside. A large number of low-income individuals and families support transitional jobs for people released from incarceration so that they may gain the work experience necessary for regular employment.[1] The question is,

---

[1] ELISABETH BENJAMIN & JEREMY REISS, 2007 UNHEARD THIRD SURVEY OF LOW-INCOME NEW YORKERS: HEALTH, INCOME INEQUALITY, LOW WAGE WORK, AND POLICIES TO ADVANCE ECONOMIC SECURITY 35 (2008), http://www.cssny.org/pdfs/UT_Press_Release_Data.pdf. *See* The Unheard Third, 2007: Annual Survey of Low-Income New Yorkers, http://www.cssny.org/research/unheardthird/. The Unheard Third is CSS's annual survey of

however, from where will those regular jobs come? The federal government has a role in providing the answer.

I. Three federally regulated agencies with conviction-related barriers.

A. Banking

Nearly all positions in FDIC-insured institutions, including bank tellers and administrative staff, are subject to conviction history barriers.[2] Generally, disqualifying crimes are those where an element involves dishonesty, fraud, larceny, or money laundering; but the FDIC has also decided to include all controlled substances crimes as well. The FDIC can, except for some enumerated federal bank fraud crimes, waive these bars if the banking institution petitions on behalf of the individual, but certain crimes cannot be waived for ten years after conviction unless the FDIC itself seeks court approval. The FDIC considers the following factors when determining whether to issue a waiver:[3]

1. The conviction and the underlying facts;
2. Evidence of rehabilitation, including how long ago the conviction was; the person's age at the time; and her "reputation" since;
3. The position to be held or the level of participation by the person at an insured institution;
4. The position's influence and control over the institution's management or affairs;
5. Management's ability to supervise and control the person;
6. How much of the institution the person owns;
7. Whether the institution's fidelity bond coverage applies to the person
8. The opinion of applicable federal and state regulators; and
9. Any other relevant factors

Although the FDIC's statement of policy recognizes that waivers should be granted "without extensive review" if the person will occupy clerical, maintenance, service or purely administrative positions, the waiver must first be sought, and only the

---

low-income New Yorkers and the only public opinion poll in the nation to regularly chronicle issues facing such individuals and families.

[2] 12 U.S.C. § 1829

[3] Federal Deposit Insurance Corporation, FDIC Statement of Policy for Section 19 of the FDI Act (Nov. 16, 1998), *available at* http://www.fdic.gov/regulations/laws/rules/5000-1300.html.

banking institution, absent yet another waiver, can do this. Understandably, banks have little motivation to do this for low-level positions when locating a qualified applicant without a criminal record is easier.

B. Healthcare programs

All healthcare programs and health insurance plans funded directly, in whole or in part, by the federal government[4] have both mandatory and permissive conviction bars.[5] Most mandatory bars last for five years. In addition to convictions for program-related crimes, patient abuse or neglect, and health care fraud, people convicted of felony-level controlled substances offenses are also mandatorily barred. The permissive exclusion list is much longer, but the bars typically exist for three years. The list includes misdemeanor convictions for controlled substances and any license revocation—even licenses unrelated to health care.

There is unfortunately no statutory or regulatory guidance regarding when a permissive ban should be imposed. While regulations allow mitigating circumstances to reduce the length of exclusion,[6] they only apply to health-related fraud. Therefore, the law provides no way to acknowledge, for example, someone with a misdemeanor-level drug conviction who has been sober and employed or in school for two years.

An administrative appeal process is available to people who are terminated or refused employment under this law,[7] but some entities in the health care field are implementing these regulations without informing individuals of appeal procedures or distinguishing between mandatory and permissive bars. CSS has learned this first-hand when it was asked to screen current employees in its programs to increase community access to information about Medicaid and managed care.

C. Airline industry

All potential and current employees who work in secure areas of airports must undergo a fingerprint-based criminal background check. This includes screeners, mechanics, flight attendants and pilots, cleaning crews, service workers, and baggage

---

[4] 42 U.S.C.A. § 1320a-7b(f).
[5] 42 U.S.C.A. § 1320a-7.
[6] 42 C.F.R. 1001.
[7] 42 U.S.C.A. § 1320a-7(f).

handlers. Similar to the healthcare regulations, a number of industry-related crimes and felonies are disqualifying, but the list also includes misdemeanor convictions.[8]

Although only convictions within the past ten years automatically disqualify someone from unsecured access, convictions outside that time period may be considered.[9] Because there is no opportunity to seek a waiver or show evidence of rehabilitation, a credentialing authority has wide discretion to deny an applicant solely upon her or his criminal record, which could be for a misdemeanor-level weapons possession conviction.

CSS has also observed this first-hand in dealing with a local, state-funded job training program—which largely focuses on moving people from welfare to work—that will not send anyone with a criminal record to an airport job because they never get hired.

II. Legal protections against employment discrimination for people with criminal records in New York.

Of all the federal employment discrimination laws, only Title VII of the Civil Rights Act of 1964 protects people with criminal records; even then, only blanket policies against hiring people with criminal records, absent a business justification, are illegal.[10] In contrast, New York Corrections Law Article 23-A[11] and the State[12] and City[13] Human Rights Laws require individualized determinations for each employment decision. These laws evidence New York's strong public policy in favor of employing these individuals.

Employers cannot fire or refuse to hire someone solely because that person has a criminal record. A criminal conviction is only relevant if a *direct relationship* exists between the conviction and the prospective job or granting the license would pose an *unreasonable risk* to persons or property.[14] Before denying a license under either

---

[8] 49 C.F.R. § 1542.209(d)(20).
[9] Transportation Security Administration Office of Chief Counsel, Legal Guidance on Criminal History Records Checks 5 (May 28, 2004), *available at* http://www.tsa.gov/assets/pdf/CHRCMay04.pdf.
[10] Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment (EEOC July 29, 1987), http://www.eeoc.gov/policy/docs/convict2.html.
[11] N.Y. CORRECT. LAW §§ 750-55.
[12] N.Y. EXEC. LAW § 296(15),(16).
[13] N.Y. CITY ADMIN. CODE § 8-107(10),(11)
[14] N.Y. CORRECT. LAW § 752

the direct relationship or unreasonable risk exceptions, however, the employer must consider the following factors:

a. New York's public policy in favor of employing the formerly incarcerated;
b. The job's necessary duties and responsibilities and the conviction's bearing on the applicant's fitness and ability to fulfill them;
c. How long ago the offense occurred, how serious it was, and the applicant's age at that time;
d. Evidence from the applicant of rehabilitation and good conduct;
e. The legitimate interest of the employer in protecting people and property; and
f. A Certificate of Relief from Disabilities or Certificate of Good Conduct, which create a presumption of rehabilitation.[15]

Over one hundred occupations require a license in New York; over half of those have a conviction-related barrier.[16] State agencies must also follow Article 23-A when deciding whether to issue a license. Some agencies provide a hearing process to denied applicants; this affords the individual an opportunity to demonstrate her or his rehabilitation.

III. Conclusion

From my remarks, two concerns emerge. First, some blanket bars are rationally related to the employment sought. Permissive bars, like those in the healthcare field, and those based on misdemeanors, however, are not. Overly aggressive policing and stops-and-frisks in New York City, among other localities, has resulted in increased convictions for low-level misdemeanors. While there is no excuse for breaking the law, we know that police encounters happen more often in poor and non-white neighborhoods. That is, in fact, the reason why blanket policies against hiring people with criminal records violate Title VII: certain protected classes are stopped, charged, and convicted at a rate disproportional to their representation in the population. Is it fair to perpetuate discriminatory practices by adding employment barriers?

---

[15] *See* N.Y. CORRECT. LAW §§ 700-06.
[16] *See generally* Legal Action Center, New York State Occupational Licensing Survey (2006), http://www.hirenetwork.org/pdfs/Occupational%20Licensing%20Survey%202006.pdf

Second, the federal system lacks a uniform and easily accessible process by which individuals can demonstrate their rehabilitation and fitness for a particular job. Blanket policies ignore the reality of the reentry population today, many of whom can demonstrate significant personal accomplishment, growth, and stability, but nonetheless are denied, either by law or because the agency has unfettered discretion. As a related concern, the automatic bars in each industry cannot be based upon social science and criminal justice research about recidivism because each one lasts for a different period of time. Why is someone rehabilitated enough to work in the healthcare field but not the airline industry?

As a result, I urge this committee to push for a top-down executive review of conviction barriers to federal employment to determine whether they actually increase public safety; are based on real data on recidivism; and decrease the employment of non-white persons. The review should also consider ways in which to routinely consider individuals' rehabilitation; ensure fair employment decisions; and incorporate state mechanisims whereby people demonstrate rehabilitation, like certificates of relief and good conduct in New York.

The underlying concern of all laws and regulations hindering the employment of people with criminal records is the risk of recidivism and the resulting damage to persons and property. That is, given a person's record, "we should have known" a person would recidivate if working at a job related to their record. While there is certainly room for limitations linked to a rational public safety justification, when individuals are unable to find a job and recidivate, we can similarly say "we should have known."

Thank you.

Paul Keefe
Staff Attorney
Community Service Society
105 East 22nd Street
New York, NY 10010
pkeefe@cssny.org

Mr. DAVIS. And we will go to Mr. Earley.

STATEMENT OF MARK EARLEY

Mr. EARLEY. Mr. Chairman, Ranking Member Marchant, distinguished members of the committee, we thank you for paying attention to this issue, and thank you all for your leadership on the Second Chance Act.

If I could for just a moment, I think it is important to recognize the environment that brings us all here. Chairman Davis, you mentioned this. The United States not only has the highest rate per capita of incarceration, but we have more people in prison today than any other Nation in the world. We have 2.3 million behind bars. China only has 1.5 million. The population has grown 600 percent in the last 25 years. We have 700,000 almost coming out of prison every year. And the really bad news for us as governmental agencies is that 50 percent of those individuals are back in prison within 3 years.

So the issue of jobs, ability to get a job is really critical, because so many of the studies have shown that getting a job postdischarge from prison is one of the really critical factors in being able to stay out of prison.

I come at this maybe somewhat differently than others. I came from being involved in the State government for 15 year during a time when all of the States and the Federal Government were getting tough on crime. And all of those things we did to get people off the streets, we had a bit of an imbalanced approach, I think. We were very successful in getting them off the street; but what we weren't paying attention to is what could we do when they were in prison to get them ready to come back out on the street. And that is really the key public safety issue today.

The key public safety issue is not how do we get more people off the street, but how do we get those who are in prison and get them ready to come back on the street, because they are all going to be our neighbors. And in this issue of job barriers, barriers to employment is critical, and that is the context in which we come here today.

The importance of a job, I think, is common sense to everyone. It gives a financial base, it gives a stable base, and it gives structure. For former prisoners these things are acutely necessary, even more so than they are for someone who has never been in prison. Inmates coming out of prison have no means to support themselves unless they can get a job. Most have unstable family environments. They are going to have transient housing environments. And the job is often that first rung on the ladder that enables them to be successful.

I categorize the barriers into three categories. One is personal, the other a prison-generated, and the third are legal and governmental, which we're really to talk about here today. But I don't think we can forget the other two.

The personal barriers are that for many, many people in prison today, they suffer from educational accomplishment, no work environment, and very little job training. So they are at a disadvantage day one when they walk out of prison.

Second, they have a prison barrier, and that is if you are a convicted felon, it is very difficult to get a job anywhere, I don't care who asks the question when. Sooner or later, you are going to be climbing a pretty steep staircase.

The third are legal and governmental barriers, and they are probably the easiest to do something about, which is why I think it is so important that you are addressing them. There are direct and indirect legal and governmental barriers. On the direct ones, they take the form of basically disqualifying a felon out of the gate. For example, in most States today, of all the occupations that are licensed, from locksmith to barber, you can't have a felony conviction and get that license and get that job. It is interesting, for many, many years barber schools were one of the great trade schools in prisons, and yet today almost every State does not allow anyone to be a barber or a cosmetologist with a felony conviction.

You all probably know that the Court Security Act that was passed last year asked the Justice Department to look at all of the barriers in the Federal Government in all 50 States to employment such as these. That has yet to be done. That would be a great first step to move forward, because once these barriers are identified, then you can ask what is a really important question, and that is, do they have any substantive and direct relationship to the job in question?

I serve on the ABA Committee for Effective and Criminal Sanctions, and what we have said there is that any prohibition ought to have a direct and substantive relationship.

Finally, I just want to say that indirect barriers, you cannot rent a motel room today, you cannot rent almost anything without a job, without a personal ID, either a DMV or a State ID. If the Federal Bureau of Prisons would require any inmate who is discharged to be given an ID by the Federal Bureau of Prisons, that would be a huge step.

Finally, Mr. Chairman, I would say that after all these barriers are removed, it's kind of like you can lead a horse to water, but you can't make them drink. We have found in all of our work that unless there is someone who can walk a former inmate through all of these barriers and into the opportunities, you will have built something, but nobody can get to it, which is why we feel so strongly about mentors and why it is so important that both on the Federal and State sector there be continuing partnerships with nonprofits who have their finger on the pulse of the community for volunteers who are willing to provide that mentoring.

Thank you, Mr. Chairman.

Mr. DAVIS. Thank you very much.

[The prepared statement of Mr. Earley follows:]

Changing Lives, Minds, and Communities through Jesus Christ

Mark L. Earley
President/CEO
44180 Riverside Parkway
Lansdowne, VA 20176
703.554.8402 main
703.554.8658 fax
www.pfm.org

Testimony of
The Honorable Mark L. Earley, President of Prison Fellowship
to the
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
June 10, 2008

Mr. Chairman and members, I am Mark Earley, and I serve as President of Prison Fellowship, a ministry to prisoners and their families.

Thank you for holding this hearing today. This follows up on the important step Congress took in passing the Second Chance Act, which will focus our prisons on preparing inmates for their release. I applaud you Mr. Chairman and all the members who worked so hard to pass that historic, bi-partisan legislation, and I thank you for holding this important hearing today. A good job is an essential element in the successful return to the community from prison. Finding a stable and adequate income upon release could well determine whether an offender makes a successful transition or not. Holding a job lessens the chances of re-offending.

Finding employment has a direct and positive impact on the viability and stability of ex-offenders, their families, and communities. Jobs provide ex-offenders with money for rent, food, and support of their family. Jobs often include medical coverage for the worker and their family – not to mention the dignity and self-worth any job imparts.

Unemployment makes the returning prisoners a financial drain on their family and often leads to resentment of those who have to contribute to their support. It leaves the ex-offenders feeling inadequate, and further lowers their feelings of self-worth, already very low as a result of their incarceration.

Work also fills the day with productive activities and puts ex-offenders in contact with people in the mainstream of society. Idleness is destructive, particularly for former inmates, who leave the strict control of prison life to suddenly confront unending hours of unstructured time. A job gives them the structure they need and helps them stay out of trouble.

Even if a prisoner held a job before their incarceration, they are confronted with many barriers to employment when they return. Some impediments are longstanding: for instance, poor job skills; low education levels; unstable family situations; histories of substance, physical and sexual abuse; and medical and mental health issues. Other impediments result directly from their crime and imprisonment, such as lost time in the labor force and the social stigma of being an ex-con.

In addition, returning inmates face a significant number of systemic barriers to employment. The federal government and most of the states have laws that prevent ex-offenders from holding jobs in certain environments such as schools, nursing homes, and hospitals.

Many states even exclude ex-offenders from being barbers or cosmetologists, the very skills many inmates develop inside prison. These "invisible punishments" may make sense for offenders whose criminal history would pose a threat in particular types of work, but blanket prohibitions needlessly limit the job prospects of returning inmates. Should someone who passed bad checks be prevented from cutting hair?

On the other hand, the Transportation Security Administration has taken the right approach by only disqualifying offenders with serious felonies from working as maritime, air, and rail transport workers, or as truckers.

It would be good if these flexible standards that were developed for transportation industries also applied to other work regulated by the federal government, such as education, health care, and financial institutions. And certainly the federal government should revise its rules so that only criminal activity related to the job would disqualify an ex-offender.

Even in government positions, there are barriers to employment that have no relation to the offender's crime. To the extent that such issues prevent an offender from finding a job, they also present serious risks—and lost opportunities—for the communities to which large numbers of prisoners return.

Earlier this year, Congress enacted as part of the Court Security Act a requirement that the Justice Department compile and study the collateral consequences of conviction in all 50 states and in federal law. Despite this statutory mandate, the Department of Justice is not proceeding with the study.

The American Bar Association takes the position that each person should be given fair consideration, and disqualified only if their criminal conduct bears a direct and substantial relationship to the opportunity or benefit at issue. It has urged jurisdictions to repeal laws having sweeping exclusionary effect, and to consider each person on his or her own merits. It has also urged jurisdictions to inventory their collateral consequences, and repeal those laws that are overbroad and unfair. Finally, it believes that every jurisdiction should provide a way of avoiding or mitigating the harsh consequences of these exclusionary laws.

The underlying, but unstated philosophy behind many restrictions on employing ex-offenders is a vague fear that because the offender once broke the law they can never turn their life around and be trusted to make moral decisions. The fact is, though, that there a many inspiring stories of formerly incarcerated people who have made great contributions to society after their imprisonment. And there are many businessmen who

have hired ex-offenders and found them to be among their most loyal and trusted employees.

Just one example is John Sheehan, a former member of the Federal Reserve Board of Governors. He owns Korns Galvanizing in Pennsylvania, and over half of his employees are ex-offenders. He wrote to us that they are loyal and hard working. One of his employees did 17 years for armed robbery, and is now the manager of Korns' floor operations. He says hiring ex-offenders can make good business sense and promote justice in the community.

If it makes good sense for a private sector firm, it also makes sense for the government. It would be very helpful for this Subcommittee to examine federal laws and regulations to catalogue the positions that prevent a person with a record from working for the federal government, and consider removing all prohibitions that don't relate logically and directly to the crime committed.

Not only direct but indirect barriers make getting a job extremely difficult. Many offenders are released without a driver's license or state-issued ID card. Today it is virtually impossible to open a bank account, rent a motel room, or board a bus without a picture ID. Identification papers are also needed to cash a check and access medical services and employment assistance. Without an ID, the ex-prisoner is stranded. It would be very helpful if the Bureau of Prisons as a matter of policy ensured that each prisoner had a valid ID card prior to release.

The general lack of job-placement assistance and other follow-up after release from prison is one cited reason that job training has not been more effective in reducing recidivism. This follow-up is particularly important for employers who indicate a willingness to hire former prisoners if someone is available to work with the new hire to help avert problems.

Because companies are not equipped to help inmates deal with the many non-job related problems confronting them, employers are far more willing to hire ex-offenders if they know that a system is in place to hold them accountable for their actions and help with problems that may arise. That is one of the reasons mentors are so important for ex-offenders to get and keep a job. Mentors not only help the returning offenders think through the choices that confront them, but also act as an intermediary if problems arise on the job.

I cannot stress too emphatically the role of mentors for returning inmates. For over thirty years Prison Fellowship has worked with prisoners and their families. We have found that matching inmates with a mentor is essential to their successful return to the community. They can "meet them at the gate" and help them make choices immediately after release that ensure success and not failure. Of prisoners released over half are re-arrested within the first six months. That is not much time to turn their lives around. As we all know, of the 700,000 inmates released in the U. S. this year, two-thirds will be re-arrested and one-half will return to prison within three years.

If an offender gets off the bus alone, they face several critical decisions: Where will they live, where will they be able to find a meal, where should they look for a job, how will they get from one place to the next, and where can they earn the enough money to pay for these necessities? These returning inmates are also confronted with many details of personal business, such as obtaining various identification cards and documents, making medical appointments, and working through the many everyday bureaucratic problems that occur during any transition. These choices prompt feelings of intense stress and worry over the logistics of their return to the outside world. To someone who has had no control over any aspect of their lives for many years, each of these problems can be vexing. In accumulation, they can be overwhelming.

In our experience, it is during their difficult first days on the street, that returning prisoners are most at risk for re-arrest and need relationships with loving, moral adults who will help them reenter society successfully. A mentor provides stability and companionship at a time of acute vulnerability.

Programs are helpful, but a program cannot love these former inmates; only people can do that. Local faith communities can provide these men and women with the love, encouragement, and assistance that they so desperately need.

By linking returning offenders with mentors from their community, churches can partner with government to help offenders get and retain a job. Here is Washington D.C. the Court Services and Offender Supervision Agency (CSOSA) has made a priority of working with local churches to assist offenders in making the transition from prison to the community. Their success is a tribute to their vision, and also their hard work, in building excellent relationships with local churches. CSOSA has knit churches into the fabric of their services; so that there is a seamless delivery of assistance to the ex-offenders they supervise.

In St. Louis, the Chief Probation Officer of the U.S. District Court has forged a partnership with local businesses and churches to prepare, match and place inmates with jobs. The unemployment rate among the offenders they supervise is one-fourth of the unemployment rate of St. Louis as a whole. That is truly remarkable.

The importance of mentors to returning prisoners was stressed by Dr. Byron Johnson, Professor and Co-Director of the Institute for Studies of Religion at Baylor University, in his recent study of the Texas InnerChange Freedom Initiative (IFI), the reentry program operated by Prison Fellowship under contract with the state. Dr. Johnson's study, at the University of Pennsylvania, found that IFI graduates were two and a half times less likely to be reincarcerated than inmates in a control group. The two year post-release reincarceration rate among IFI graduates in Texas was 8 percent, compared with 20.3 percent of the matched comparison group. Indeed of the inmates matched with mentors, the recidivism rate after two years was only four percent.

Dr. Johnson emphasized that mentors were "absolutely critical" to the impressive results. The support and accountability provided by mentors often make the difference between a

successful return to society and re-offending. As these offenders make the difficult transition back into the community, they need relationships with caring, moral adults. The greater the density of good people we pack around them, the greater the chance that they will be successfully replanted back into the community.

A mentor can help the ex-offender think through employment options and tell them what their employer will expect of them on the job. Many offenders have never had someone in their lives who has held a steady job. They have no model for being a good employee. A mentor can teach them that they need to get up on time, go to work each day, and call their supervisor if they must be late or absent. The offender may find it difficult to take direction or may lack skills to cope with a difficult boss or fellow employees. A mentor can help them with these and other everyday difficulties of the workplace and teach them the importance of punctuality, politeness, and diplomacy on the job.

Mentors can also help the offenders learn decision-making skills and teach them how to keep track of bills and pay them on time. In prison, inmates do not have to deal with any of this. On the street such details may quickly overwhelm them. In short, offenders need to be taught how to make good choices, handle responsibility, and be accountable—to make the right choice even when no one is looking.

Mentors also help returning inmates deal with many of the personal problems they typically encounter upon leaving prison: no reliable friends outside their former gang network, marital problems, and no easy way to get on with life. While mentors provide a much-needed emotional safety net for returning felons, they should not taken in by "poor me" stories. As one of the mentors working with a member of the IFI program in Houston said, "When a guy tells me his boss is mean or that his sister is going to kick him out of her house if he doesn't get a job, I tell him to deal with it. I point out that he has made a lot of mistakes and that he's going to have to do whatever it takes to change his life."

Mentors teach returning inmates their responsibilities as an employee. Many prisoners have never had a job. And in many cases they have never lived with an adult who holds a steady job. Few inmates engage in any type of meaningful work experience or vocational education while in prison. In a 1997 survey, just over half of all soon-to-be-released prisoners had a work assignment in prison, only 35 percent had participated in educational programs, and only 27 percent had received any vocational training.

Mentors also teach them what their employer will expect of them: They need to show up on time, put in a day's work for a day's pay, and inform their employer if they will be absent or late. They teach them to be honest, not to pilfer from the storeroom or the cash register. They need to know that character is what you do when no one is looking. To us these seem obvious standards of employee conduct, but to someone who has never had a working adult as a role model, it is new territory.

In addition, mentors educate offenders about the "job of getting a job:" helping them develop their sense of purpose with daily lists of things to do to find a job; and, providing

resources such as computers for writing résumés and cover letters. Mentors can help them prepare to explain their criminal background and their desire to restructure their lives, plus help them overcome the procrastination, fear of rejection, and discouragement that can sabotage any job search process.

I want to emphasize that removing barriers to employment is very important, but it is just the first step. We also must make sure that the returning inmates have a person to help them prepare for their job and provide them guidance on making good, moral decisions. We can all remember a teacher, coach, or neighbor who believed in us and helped us believe in ourselves. That is exactly what returning offenders need, yet most have never had someone like that in their lives. Mentors can fill that void. A loving mentor lets returning inmates know that the community is invested in their success. Mentors provide the love that St. Paul asked Philemon to give to his returning cellmate, Onesimus: "So if you consider me a partner, welcome him as you would welcome me."

Again, thank you Mr. Chairman and members for your leadership in helping ex-offenders turn their lives around and become contributing members of our community.

Mr. DAVIS. And we will go to Mr. Calhoun.

STATEMENT OF WILLIAM R. CALHOUN, JR.

Mr. CALHOUN. Thank you, Mr. Chairman, and thank you, Ranking Member Marchant, for inviting us to be here today. My name is Bill Calhoun, I am executive vice president for Clark Construction Group, locatedor headquartered in nearby Bethesda, MD.

Founded in 1906, our construction group LLC today is one of the Nation's most experienced and respected providers of construction services with over $2 billion of annual revenue and major projects throughout the United States. In 2007, we ranked 13th in the United States based on Engineering News Record Top 400 list.

We perform a full range of construction services throughout the United States, from small interior renovations to some of the most visible architectural landmarks in the country, such as the Washington Nationals' ballpark, FedEx Field, the D.C. Convention Center locally, to the McCormack Place Convention Center in Chicago, Los Angeles County University of Southern California Hospital in Los Angeles, and Brooke Army Medical Center in San Antonio, TX.

The foundation of all of our construction work is a solid relationship with both public and private clients who have the confidence to rely time and again on our experience, our financial strength, and our in-house expertise to make their vision a reality and to the commitments we make to the communities within which we work.

We approach each project with a cooperative mindset, working with clients, architects, owners, and the community to the common goal; that is, successful project delivery. Our diverse construction portfolio and specialized divisions and subsidiaries ensure that each project is matched with the appropriate resources and expertise. Through technical school, preconstruction know-how, and self-performance capability, we anticipate project challenges, we develop solutions that meet clients' objectives, and ultimately deliver award-winning projects. In this way, our work today continues to meet the stringent standard of quality, safety, integrity that have been the company's core values since their founding in 1906.

In the Washington, DC, area, Clark self-performs concrete and foundations work. That means we hire direct hourly labor to perform the work. In addition, Clark's subsidiary, Shirley Contracting, self-performs highway and bridge work in the Washington, DC, metropolitan area. Other work disciplines for the most part are subcontracted.

This subcommittee requested that Clark address the issue of our experience hiring ex-offenders as part of our work force. As I just mentioned, we set and maintain stringent standards for quality, safety, and integrity. These apply to our entire work force. As a result, ex-offenders do not get a pass for poor behavior or poor work. They must meet the same high standards for doing the job as every other employee in our company.

Having said that, I would like to use the Shirley Contracting Co. as an example of why and how we began employing ex-offenders and how that process has evolved into a successful program over the past 7 or 8 years.

The highway and bridge division of Shirley encompasses the roadways and bridges we travel on in the Washington metropolitan

area, but nowhere more so than in Fairfax County, VA, home of Shirley Contracting. From a simple turn lane on the Fairfax County Parkway, to the more complex Springfield interchanges, Shirley Contracting has been a key player in helping improve Virginia's roads and bridges. Shirley Contracting maintains a field labor force that varies from 300 to 700 depending upon its workload.

Fairfax County is a very competitive labor market, especially for unskilled, physically demanding work such as road and highway construction. We compete for these unskilled jobs against companies such as McDonald's, Wal-Mart, Costco, jobs at the mall, other unskilled employers. While we pay more, our work is physically demanding, typically outside in the heat and cold. Today is a great reminder of what it takes to be out in the heat. In a very competitive job market with low employment, maintaining a full work force complement can be difficult. It is these set of challenges such as this challenge that initially led us to hire or look at ex-offenders as another potential labor source.

When we first started working with a ex-offenders, I cannot say the program was a roaring success. Just 1 out of every 10 ex-offenders stayed more than 60 days. You should note that we do not just hire someone and say, go to work. Applicants must complete an application, pass a fitness for duty and a drug test, and provide proof of eligibility to work. We provide safety training, job training, orientation, safety equipment, work equipment, supervision, and oversight. We also provide health insurance, dental insurance, life insurance, 401(k), additional training, and opportunities for promotion. The first 30 to 60 days involve a substantial amount of time and money in our part in each of our employees. Beyond the poor retention initially, we were also using a substantial amount of our HR personnel time to run the ex-offenders program.

However, we did not give up after our initial poor results. Our HR staff and highway and bridge supervisors sought to understand why the retention level was so poor. We learned a few things about the ex-offender employees. Sometimes it was as simple as giving them an alarm clock to ensure they got up in the morning. Sometimes it was more complicated. For many, if not most, they no longer had a valid driver's license; a vehicle to drive to work was even a greater challenge. This simple ability of getting transportation to the job site in a manner that did not violate parole presented a challenge for many.

Additional problems we discovered were many of the ex-offenders had their first paycheck garnished for court costs, fines, back child support, and other liens. As a result, they may have earned a good wage, but ended up with only $15 or $20 after taxes and garnishment. Working hard for 2 weeks for $15 or $20 was not motivating to these ex-offenders.

Yet, as we began to understand some of the challenges, we started to work with the ex-offenders and the courts to come up with the solutions to these and other challenges so they could continue to meet their legal obligations and also have enough money to live.

Much of our success can also be credited to several outstanding programs, such as VASAVOR, Skill Source, and OAR. Each of these programs have done a great job referring qualified applicants to us who are willing and able to work hard and follow the rules

that all of the Shirley and Clark employees must abide by. They have worked with the ex-offenders to come up with ride sharing, and even provided vehicles to get to job sites. VASAVOR has even started provided bonding for some ex-offenders, a real benefit from our perspective. In addition, we work with the Alexandria Seaport Foundation, which is a group that works with at-risk youth.

In Virginia, all prisoners to be paroled or released back to Fairfax County must go back to the Fairfax County Jail within 45 days of their release. During these 45 days, they are assessed and determined if they are VASAVOR qualified. If so, they are assigned a number of services, including a caseworker that determines their skills. VASAVOR then may contact us regarding potential applicants. In recent years we have even gone into the Fairfax County Jail to hold a job fair with VASAVOR-qualified applicants.

As a result of these programs and our becoming more skilled at working with the offenders, the ex-offenders, our retention rate has improved from 1 in 10 from when we first started to 6 in 10 today. This 6 in 10 mirrors the general number of our employment at large. We still have to monitor which job sites ex-offenders are working at. We need to make sure, as an example, that sex offenders are not working on road projects near schools. These are liability issues that you would not be concerned with, yet it becomes with the territory of being a responsible employer and a good citizen.

As with any construction work force, the total number of ex-offenders rises and falls with the workload. Currently we have about 35 ex-offenders employed in our highway and bridge division. I should note, they have been employed for more than 1 year. This is not a constant number. This summer we expect to add more ex-offenders as our highway and bridge division work picks up in the coming months. We expect it to be in the 6 to 10 percent or 7 to 10 percent range.

Today we have a number of ex-offenders that have been with our companies for 3 or more years. Some have moved into skilled positions. At least one is a supervisor. At Clark we believe that all of our employees can and do contribute. In a few cases we have placed an ex-offender on leave of absence and held that job open for the person for when they returned to work because the violations, the parole violations, may have been unrelated to the work.

We have learned to work with our ex-offender employees just as we would work with any of our employees. Our employees have good jobs, they pay taxes, they work to vest in the company's retirement system and vest in their future.

As I said at the beginning, all of our employees work today to meet the stringent standards of safety, quality, and integrity, the company's core values.

Thank you for the opportunity to tell you what we at Clark and Shirley have been doing. I will be happy to answer any questions that you may have.

Mr. DAVIS. Thank you very much.

[The prepared statement of Mr. Calhoun follows:]

TESTIMONY OF

WILLIAM R. CALHOUN, JR.
EXECUTIVE VICE PRESIDENT
CLARK CONSTRUCTION GROUP, LLC

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA

HEARING ENTITLED:
AN EXAMINATION OF FEDERAL EMPLOYMENT PRACTICES/POLICIES ON
HIRING EX-OFFENDERS

June 10, 2008
2:00 P.M.
Room 2154 Rayburn House Office Building
Washington, DC 20515

Chairman Davis, Ranking Member Marchant, Members of the Subcommittee,

My name is Bill Calhoun and I am Executive Vice President for Clark Construction Group LLC.

Founded in 1906, Clark Construction Group, LLC is today one of the nation's most experienced and respected providers of construction services, with over $2 billion in annual revenue and major projects throughout the United States. In 2007 we ranked thirteenth in the United States on the Engineering News Record Top 400 list.

We perform a full range of construction services throughout the United States from small interior renovations to some of the most visible architectural landmarks in the country, such as the Washington National's ballpark, FedEx Field, and the DC Convention Center locally, to the McCormick Place Convention Center in Chicago, the Los Angeles County/ University of Southern California Hospital in Los Angeles, and Brooke Army Medical Center in San Antonio, Texas. The foundation of all of our construction work is a solid relationship with both public and private clients who have the confidence to rely, time and again, on our experience, financial strength and in-house expertise to make their vision a reality and a commitment to the communities within which we work.

We approach each project with a cooperative mindset, working with clients, architects, subcontractors and the community toward the common goal - successful project delivery. Our diverse construction portfolio and specialized divisions and subsidiaries ensure that each project is matched with appropriate resources and expertise. Through technical skill, preconstruction know-how and self-performance capability, we anticipate project challenges, develop solutions that meet clients' objectives and ultimately deliver award-winning projects. In this way, our work today continues to meet the stringent standards of safety, quality and integrity, which have been the Company's core values since its founding in 1906.

In the Washington, DC, area, Clark self performs concrete and foundations work. That means we hire direct hourly labor to perform the work. In addition, Clark's subsidiary, Shirley Contracting Company self performs highway and bridge work in the Washington, DC, metropolitan area. Other work disciplines are, for the most part, sub-contracted.

This Subcommittee requested that Clark address the issue of our experience hiring ex-offenders as part of our workforce. As I just mentioned, we set and maintain stringent standards for safety, quality and integrity. These apply to our entire workforce. As a result, ex-offenders do not get a pass for poor behavior or poor work. They must meet the same high standards for doing the job as every other employee of our company. Having said that, I would like to use Shirley Contracting Company as an example of why and how we began employing ex-offenders and how that process has evolved into a successful program over these past seven or eight years.

The Highway & Bridge construction division of Shirley Contracting encompasses the roadways and bridges we travel on in the Washington metropolitan area, but nowhere

more so than in Fairfax County, Virginia, the home of Shirley Contracting. From a simple turn lane on Fairfax County Parkway to the complex Springfield Interchanges, Shirley Contracting Company has been a key player in helping improve Virginia's roads and bridges. Shirley Contracting maintains a field labor force of 300 to 700 depending upon its workload.

Fairfax County is a very competitive labor market, especially for unskilled, physically demanding work such as road and highway construction. We compete for unskilled job applicants against companies such as McDonalds, Walmart, Costco, jobs at the mall and other unskilled job employers. While we pay more, our work is physically demanding and it is out in the heat and the cold. In a very competitive job market with low unemployment, maintaining a full workforce complement can be difficult. It was this set of challenges that initially led us to look at ex-offenders as another potential source of labor.

When we first started working with ex-offenders, I cannot say that the program was a roaring success. Just one out of every ten ex-offenders stayed more than 60 days. You should note that we do not just hire someone and say go to work. Applicants must complete an application, pass a fitness for duty or drug test and provide proof of eligibility to work. We provide safety training, job training and orientation, safety equipment, work equipment, supervision and oversight. We provide health insurance, dental insurance, life insurance, 401K, additional training, and opportunities for promotion. The first 30 to 60 days involve a substantial investment of time and money on our part in each of our employees. Beyond the poor retention rate we were also using a substantial amount of time of our HR staff to run the ex-offenders program.

However, we did not give up after our initial poor results. Our HR staff and Highway and Bridge Supervisors sought to understand why our retention level was so poor. We learned a few things about our ex-offender employees. Sometimes it was as simple as giving them an alarm clock to ensure they got up in the morning. Other times it was more complicated. For many, if not most of the ex-offenders, they no longer had a valid driver's license. A vehicle to drive was an even greater challenge. The simple ability of getting transportation to the job site in a manner that did not violate their parole presented a challenge for many. Additional problems we discovered were many of the ex-offenders had their first paycheck garnished for court costs, fines, back child support or other liens. As a result, they may have earned a good wage but ended up with only $15 or $20 after taxes and garnishment. Working for two hard weeks for $15 or $20 was not very motivating to these ex-offenders. Yet, as we began to understand some of the challenges, we started to work with the ex-offenders and the Courts to come up with solutions to these and other challenges so they could continue to meet their legal obligations and also have enough money to live.

Much of our success can also be credited to several outstanding programs, VASAVOR (Virginia Serious and Violent Offender Re-Entry Initiative), Skill Source and OAR (Opportunities, Alternatives and Resources). Each of these programs have done a great job of referring qualified applicants to us who are willing and able to work hard and

follow the rules that all of our Shirley and Clark employees must abide by. They have worked with the ex-offenders to come up with ride sharing and even provided vehicles to get to job sites. VASAVOR has even started providing Bonding for some ex-offenders, a real benefit from our prospective. In addition, we work with the Alexandria Seaport Foundation, a group which works with at-risk youth. In Virginia, all prisoners to be paroled or released back to Fairfax County are returned to the Fairfax County Jail 45 days before release. During these 45 days they are assessed and determined if they are VASAVOR qualified. If so, they are assigned a number of services including a case worker that determines work skills. VASAVOR then may contact us regarding potential applicants. In recent years we have even gone into the Fairfax County Jail to hold a job fair with VASAVOR qualified inmates.

As a result of these programs and our becoming more skilled at working with ex-offenders, our retention rate has improved from one in ten when we first started hiring ex-offenders to six in ten today. This six in ten number mirrors our general employment retention rates. We still have to monitor which jobsites ex-offenders are working at. We make sure that sex offenders are not working on road projects near schools. These are liability issues that you would not normally be concerned with, yet it comes with the territory of being a responsible employer and a good public citizen.

As with any construction workforce, the number of total employees as well as ex-offenders rises and falls with the workload. Currently we have about 35 ex-offenders employed in the Highway and Bridge Division. This is not a constant number. This summer we expect to add more ex-offenders in our Highway and Bridge division with somewhere between seven and ten percent of our workforce of that division to be made up of ex-offenders, including violent and long term ex-offenders.

Today we have a number of ex-offenders that have been with our companies for three or more years. Some have moved into skilled positions, at least one is a supervisor. At Clark we believe that all our employees can and do contribute. In a few cases we have placed an ex-offender on a leave of absence and held the job for that person because due to reasons unrelated to his employment he was returned to jail for a minor parole violation. We have learned to work with our ex-offender employees just as we would work with any other employee.

Our employees have good jobs, pay taxes, work to vest in the company's retirement system, vest in the future. As I said at the beginning, our employees, all of our employees, work today to meet the stringent standards of safety, quality and integrity, the company's core values.

Thank you for the opportunity to tell you what we at Clark and Shirley are doing. I will be happy to answer any questions you may have.

Mr. DAVIS. And I will go directly to Mr. Marchant.

Mr. MARCHANT. Thank you, Mr. Chairman.

Mr. Earley, do you find that the general public's attitudes about ex-offenders prevent them from giving the offenders, the ex-offenders, a fair chance to succeed in the workplace?

Mr. EARLEY. Well, I think there is some bias in that regard, and I think there always will be a bit. But I have seen a radical change over the last 10 years in particular. I think the reason is, once you get up to a level, as we are today, where 1 out of every 32 adults are either behind bars or on probation or parole, the idea of having been incarcerated is not something that is foreign to everybody anymore. So almost everybody today literally has had either a member of their family or a friend or someone they know who has been behind bars, and they know those individuals, the vast majority of them, have some redemptive possibilities, both in the workplace.

In addition to that, a Zogby poll was done in 2006 that showed that 76 percent of voters in America thought that something other than a punish model in prison was appropriate, i.e., rehabilitation; and 80 percent thought that rehabilitation ought to continue postprison. So I think those are positive signs in terms of what we are talking about today.

I do think that for many employers in the private sector, the issue of liability is a very constraining issue, and so they tend to take a super cautious position even when the crime doesn't have necessarily a direct or substantial relationship to the job.

Mr. MARCHANT. And when you are talking to ex-offenders, when you are talking to prisoners about their prospects, has the general attitude of the prison population improved with their prospects of getting a job on the outside? Are they aware yet that there are jobs available?

Mr. EARLEY. I think most of the prisoners in prison coming out feel like they have a very difficult, steep hill to climb to get employment. Even those who have training, even those who are going to come out with some things like IDs, they know there's going to be difficulties.

I will give you two quick examples. I got a call this week for someone who has been out of prison for 6 years now. They got their college degree, they were actually a Colson Scholar at Wheaton University. They got their degree in counseling. They were employed in a nearby State in an eating disorders clinic giving counseling. They disclosed their felony conviction up front, they were hired, and 4 months later were told that the company has a blanket prohibition against hiring any felons who are counselors or they would lose their licensing from the State. So it is those sorts of things that make it very difficult.

Construction jobs are one of the best fields around. So we spend a lot of time trying to interface with companies that are very forward-looking, I think like Clark, in trying to push employees in that direction. But not every company is as enlightened in their approach as Clark Construction Co. is.

Mr. MARCHANT. So the chances of recidivism taking place in an employee that finds their place in a company like his, the recidivism rate will go way down?

Mr. EARLEY. Absolutely. Absolutely.

Mr. MARCHANT. And is most of your work in State prisons, or is it Federal?

Mr. EARLEY. State and Federal. The majority would be in State prisons just because there is more of them.

Mr. MARCHANT. And I suppose the Federal, there are employees that are not going to be near their place where they are going to go back to work.

Mr. EARLEY. As with a lot of State prisons, most people who get released from prison, whether it is the Federal or State prison, they are not getting released to somewhere near the prison. They are coming back from where they were sentenced. And there has been a deliberate policy, another negative factor over the last 15 to 20 years, to incarcerate people away from where they live. So that means they are coming back to communities from which they have had very little contact with, even in terms of visitors, in many cases their families, because they couldn't get to them. So, again, that makes it more difficult.

Mr. MARCHANT. And are you finding that the job programs inside the prisons are relevant to their possibility of employment on the outside?

Mr. EARLEY. I would say it is very spotty. I served in the Legislature of Virginia for 10 years. Correctional budgets that have to do with job training and education are the first to be cut; they are the last to be restored. So it really depends on what prison you are. If you have a very entrepreneurial warden, even if there is not a lot of money available from the State, he makes a way or she makes a way. But I would say, generally speaking, rehabilitation efforts including any job efforts are very, very spotty across the U.S. prison system today.

Mr. MARCHANT. Do you find that most groups that come into prisons are coming in on a spiritual—trying to make some kind of a spiritual impact in lieu of a practical job training? Would a prison allow a ministry to come in and focus primarily on job training instead of the spiritual aspect?

Mr. EARLEY. I would say yes. Part of the problem historically, and it is still an evolving issue, is for many prison systems they want to own everything they do. The idea of partnering with a nonprofit, be it faith-based or nonfaith-based, in a very integral way inside of the prison, even if it is very close to pre-release, is a relatively new thing. And when a prison system administrator is told your first priority is security, they are not necessarily all that eager to open up the doors to let volunteers come in, whether it is life transformation on a spiritual level, a mental level, an intellectual level, or job training.

But that is changing, too, because all of the States, as well as the Bureau of Prisons, everybody is choking on this financial drain of the policies we have adopted over the last 20 years and the high recidivism rates. So they are looking for a way to accomplish this without spending more money, and the nonprofit community is stepping forward. And, quite frankly, from our standpoint, to the extent there is a line at the door of people willing to help inmates, many of them are coming from the faith community because there

is something in their DNA that is compelling them to reach out and love people that other people don't want to love.

Mr. MARCHANT. And are you finding that the actual job training, I guess the actual job training that is taking place, does it relate to the actual jobs that they can get when they walk out the door?

Mr. EARLEY. Just to give you a ballpark, I would say maybe 50 percent of the time.

Mr. MARCHANT. Thank you very much.

Mr. DAVIS. Thank you very much, Mr. Marchant.

Let me ask Mr. Keefe, are you familiar with Federal Government agencies that routinely deny ex-offenders work opportunities?

Mr. KEEFE. Some of them I am personally. The main one would be people who have trouble getting jobs at airports. As I mentioned in my testimony, I work with a State-sponsored job development organization that provides one-stop services to people, many who are exiting incarceration, and they put up on their boards job postings for all these places. And they say—they write on the job postings for the airports, if you have a record, don't apply. And, of course, they shouldn't be doing that, but that is—based upon their experience, no one with a record gets hired at the airport because of the security clearances.

Mr. DAVIS. You were here when we heard testimony from the Office of Personnel Management. Are there any partnerships that perhaps you can think of or any recommendations or suggestions that you might have for them relative to how they may view this issue and this problem?

Mr. KEEFE. I have a few. First of all, I think that when Federal policies reach down to the misdemeanor level and start barring people at that level, nationwide you end up catching lot of people that are sort of casually involved with the criminal justice system. And as I said before, there is no excuse for doing anything wrong, but I have sat in drug court with a client for 3 hours, and I hear four or five people get a misdemeanor drug conviction, and then for some of these agencies that pretty much shuts the door for them.

So when you go—I think we can all agree that felony convictions involve much more serious activity. When you have these policies that affect things on the misdemeanor level, I think you end up catching a lot of people that, given the opportunity to have a steady job and show their rehabilitation, would not be involved with the criminal justice system anymore.

I also think that a review of the policies that the Federal Government has to make sure that they are connected to real data on recidivism will make sense to make sure that the bars that do exist are rational from a public safety perspective.

Mr. DAVIS. How effective, I guess I would say, would you say that the work being done in New York relative to looking at the whole issue of discrimination—would you say that work is progressing that would protect, I guess, an individual's right to employment or an opportunity for employment?

Mr. KEEFE. Our biggest problem in New York is lack of education on the behalf of employers about what the law requires, and we do have a lot of work to do about that. My colleague here mentioned that employers are often concerned about negligent hiring, and the city bar has just come out with a report that says if you

follow article 23(a), which is the part of the corrections law that contains the protections that I've described, that you should be immune from negligent hiring liability. And I think that is more education we need to do on that perspective.

As a lawyer it gives me something to hang my hat on when I go into court for someone who has been illegally denied a job, and I think that is a great boon for us. But there aren't really—more could be done as far as making processes accessible to people without a lawyer to come and enjoy the rehabilitation.

So I think a combination of creating those processes and also doing education amongst employers and agencies about what the law actually requires and how to properly evaluate evidence of rehabilitation still needs to be done.

Mr. DAVIS. Thank you very much.

Mark, I'm struck by the fact that much of the leadership coming out of Prison Fellowship, individuals have also had legislative and governmental experience. I think of yourself, I think of people like Pat Nolan and others. How helpful has that been in terms of helping promote the effectiveness of Prison Fellowship in terms of getting people to listen to you?

Mr. EARLEY. Well, I think it has been helpful, particularly if you look at Pat Nolan, who's also here with me today, who is president of Justice Fellowship at Prison Fellowship. You know, both of us when we served, Pat in the California Legislature and then I in the Virginia Legislature, in the attorney general's office, I mean, we were part of the tough-on-crime movement. And, you know, when I say today that, OK, we were successful in getting people off the street, but we had an imbalanced approach, it's not working now the way we constructed it, we need to go back and take a look at it; that the real public safety issue today is what are we going to do with people getting out of prison, not how many more people we can put in. I do think that helps set a different tone. And we have found that today in the United States, whether it's in the State legislature or here on Capitol Hill, people on both sides of the aisle from every political spectrum understand that the real issue today we need to focus on is how do we as legislatures and policymakers—help these individuals that are in prison, who the vast majority of them are coming out, get ready to return and return successfully, otherwise we're going to have a significant crime problem on the back end.

And so I think it has been helpful. And I think we've seen some significant movement. I do think there's still some reluctance on many people in office to go back and rethink some of these things or bring a more balanced approach, but I think it's changing.

Mr. DAVIS. And you would agree that unless we find—no matter how difficult it appears to be, that unless we do a better job of finding employment opportunities for these individuals, that—I mean, our crime problem and criminal justice problem and cost is just going to be beyond anything that we can almost imagine.

Mr. EARLEY. No question about it. I agree with you completely. I was in California last week. California's an example of a State that's being swallowed up by its correctional budget and the recidivism rate that's going on in the prisons there. In all of the States in the United States, the average between 1985 and today, the in-

crease in higher education spending was 25 percent; the increase in correctional spending has been 125 percent. And a great deal of it has been refueled by recidivism, and a great deal of that has been fueled by people who have not been given an opportunity to change their lives and to get meaningful employment when they come out.

Mr. DAVIS. Mr. Calhoun, I am struck by the fact that Clark, one of the largest construction companies in the country, and, from everything that I hear, one of the best construction companies——

Mr. CALHOUN. Thank you.

Mr. DAVIS [continuing]. In the country, is able to have a program where you hire individuals who've obviously had problems, yet you maintain your standards. You're able to bid successfully on projects and continue to get work. How did this happen? I mean, how——

Mr. CALHOUN. Thank you for your comments, your favorable comments.

I think if you think back to the year—6 or 7 years ago when Shirley Contracting, in my example, first started, it was a time where there was high employment, there was a lot of work, there was a need for manpower in the construction business. We didn't know where we were going to get all the manpower to execute all the work that was out there; that if we had the manpower, we could go build. So they were looking all over for viable sources of manpower to hire and train. And that's how the initial—start hiring of ex-offenders.

I think one of the organizations—it may have been SkillSource or OAR reached out to us, I think was probably the first contact. And it begun a long relationship that we found has been very helpful. And as I said in the testimony that we find now statistically at least with the Shirley Contracting Group that 6 of 10 of the ex-offenders generally stay with us longer than 60 days, which mirrors the general work force that we have.

So the marriage with the nonprofit or governmental agencies that help do some screening and placement, they've come into our organization enough to understand what kind of individuals and skill sets and trades that we're looking for so that their ability to place qualified applicants that have a higher likelihood of staying with us and that are trainable has increased. And then our ability and knowledge of how to work with each of these organizations has improved as well.

I can't say enough how these organizations help with the identification, training, employment, and then during that first couple of months while the individual comes out of incarceration and overcomes the basic life hurdles of transportation, driver's license, getting to work, getting up and those sorts of things, the agencies help nurture through that time where we can actually train people and create long-term good employees.

Mr. DAVIS. As you bid on projects and look at opportunities, have you ever had any governmental agencies to express any concerns that you may be hiring individuals who have been convicted, and that some of these may be funded—some of these projects may be funded with public money or government money, or it's for a government agency?

Mr. CALHOUN. Sir, if I understand your question, sir, it's has the potential contracting—government contracting agency expressed a desire that we should or should not be hiring ex-offenders?

Mr. DAVIS. Yeah.

Mr. CALHOUN. Only in the sense of classified work where there's different levels of regulation with regard to the background and background checks for the Confidential, Secret, Top Secret type of work. But other than that, I'm not aware of any governmental agencies having expressed any desire at all that we should or should not do it. I think there are—it's not infrequent when we obtain or are awarded a job in a particular municipality that agencies such as those that deal with ex-offenders would contact us and ask us to open our doors or consider hiring ex-offenders, much like other groups that represent other labor sources. And we typically do open our doors to—in any local that we've worked or anyone who has an interest in providing labor—to learn what that market has to offer and how we can help and try to match our needs with their skill sets.

Mr. DAVIS. Well, gentlemen, let me thank all of you. I think there is a realization that there are no simple solutions to very complex problems, and that this is one of the most perplexing problems and issues that face our country, quite frankly, today. And I'm of the opinion that every time we get a little progress—I come from the school of thought that says if you want to go south, the first thing that you do is turn and face that direction. And every time you take a step, you get a little bit closer to Richmond. But if you you're headed up toward Baltimore, chances are you're not going to get down in the Shenandoah Valley. You just won't get there.

So every bit of this is a little bit of movement, a little bit of change, a little bit of possibility, a little bit of hope for those millions of people, quite frankly, when you consider the individuals on probation, the individuals on parole, the individuals who came out last year, the individuals who came out the year before last, the individuals who not only are impacted themselves, but, quite frankly, everybody with whom they have any kind of intimate relationship are also seriously impacted.

And so I thank all of you for being here this afternoon, and I thank all of those who have come to listen to the testimony, and we'll keep plugging along.

Mr. EARLEY. Thank you, Mr. Chairman.

Mr. DAVIS. This hearing is adjourned.

[Whereupon, at 4:17 p.m., the subcommittee was adjourned.]

○