

*Employment - ex-offender*

The City of New York



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City Commission On Human Rights

**THE EMPLOYMENT PROBLEMS  
OF  
EX-OFFENDERS**

A REPORT ON HEARINGS HELD BY THE COMMISSION  
MAY 22-25, 1972 IN NEW YORK CITY

ELEANOR HOLMES NORTON, CHAIR

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hearings consumed four full days as well as parts of three evenings devoted to public testimony.

### The Commission's Role

Assuring equal employment opportunity is a principal function of the Commission. The Commission's special interest in ex-offenders is based on two factors. First, crime has significant racial implications. Minority citizens feel the impact of crime in its fullest force because they are more often the victims and because they also are more often, arrested, convicted and incarcerated. Second, a criminal record is a major barrier to employment. It is alleged by experts in criminology, corrections and law that much of the exclusion of ex-offenders is entirely arbitrary and without reasonable foundation. The disparate effect of such exclusion on minority citizens is the Commission's particular concern.

The Commission does not believe that employment offers a total answer to the problem of crime. The causes of criminal behavior are too complex to yield to any single solution. Given the state of current knowledge it is unlikely that all offenders can be deterred from future criminal activity by any potential measure. Not all offenders can be rehabilitated and all offenders are not potentially employable in all jobs. But if those who could become self-supporting productive citizens are arbitrarily denied the right to work, the exclusion is counter-productive as well as unjust.

The Commission is equally sensitive to employer's needs to select capable and responsible employees and to avoid undue risk. Clearly, it would not be prudent for all employers to disregard all offense backgrounds for every job. The Commission's experience with minorities, women and

the physically handicapped has shown, however, that criteria for employment are often relics of traditional viewpoints or blanket requirements that upon examination prove to be unrelated to particular jobs and, although not so intended, have the effect of excluding an entire class of applicants.

Total rehabilitation ultimately depends on the social acceptance of ex-offenders and their ability to integrate within the community as independent, law-abiding citizens. A pivotal factor in rehabilitation is the opportunity for employment that is both stable and sufficiently remunerative to afford a decent living standard. It is therefore imperative that job opportunities for ex-offenders be widened to the extent that is consistent with sound employment policies.

#### Opening Remarks by Chairman Norton

The perspective of the hearings were set forth in Chairman Eleanor Holmes Norton's opening statement :

Blatant job discrimination against ex-offenders makes prison an employment of last resort for many who return there. Yet discrimination against ex-offenders seems to many a contradiction in terms. If a person has been judged guilty of a crime, how can we expect that he will perform on a job like the rest of us? Rather than take a chance, who not simply bar "ex-cons" from most jobs and protect ourselves?

We have protected ourselves least with this philosophy. We will never know just how many men and women have been literally driven back into crime by the no-work rules we impose on ex-offenders. But this we do know. Prison in America is the kind of experience that makes most who come out want to do whatever they can to avoid going back.

Melvin Rivers, President of the Fortune Society, which is an organization of ex-offenders, has written, "I still never met a guy coming out who didn't have one thing going for him at the beginning, namely the will and determination to try and go straight . . . to get a job and settle down. . ."

But Mel found almost everything closed off to him--from construction work because he couldn't get into the union with a record, to singing with a group because he couldn't get a cabaret license to sing anywhere alcoholic beverages were sold. Most ironic of all, he could never get a license to do the one job he learned in prison--barbering. After three years of trying to go straight, Mel gave up and went back to crime and eventually to prison.

He got there with the help of us law-abiding citizens who by our laws and exclusionary practices saw to it that the only work he could get was either illegal or in prison.

It may be that we have become so cynical and uncaring that reform cannot be mobilized around the notion of fairness to those who have paid their debt to society. But surely a society incensed at rising crime rates is at last prepared to reverse the irrational process that makes us all accessories to crimes by repeaters. By denying ex-convicts lawful work opportunities, we are in collusion with the recidivists whose mounting crime rates so dismay us.

Society starts working against its own interests while men and women are still in prison. The incarcerated are shorn of every personal dignity and liberty, and then tossed out unrehabilitated and unsupported--to reintegrate into a society that is increasingly as hostile to them as it is anxious about the crime that many are driven to by joblessness.

The available rehabilitation or job training that does exist isn't even close to adequate to prepare inmates to function within the law on the outside. But our senseless treatment of those who go through prison doesn't stop at the prison gate. Various states have enacted a network of what can only be called crazy laws, that bar ex-offenders from scores of occupations and licenses--from veterinarian to embalmer. Even modest jobs affording stability and growth are cordoned off from the ex-offender without the slightest regard for whether his offense was in any way related to the type of work now forbidden him or his progress since release.

Private employers quickly follow the state's lead, denying hundreds more jobs to men and women with records. And all of this is done on the basis of status alone. The person's prison record is conclusive, while his record after prison counts for nothing.

And, as if to keep our stereotypes firmly intact, we have done almost no systematic studies of the job performance of former inmates that might persuade employers that their frozen image, once a criminal always a criminal, is faulty. The end result is that a prison record, even from many years earlier, excludes men and women from competition in all but menial piece-meal occupations.

This heartless and mindless exclusion from jobs has especially tragic effects on Blacks and Puerto Ricans, who go to prison in disproportionate numbers. Poorly educated and discriminated against when law-abiding,

they become pariahs once they get a record. David Rothenberg of the Fortune Society says that a white ex-offender has two strikes against him, but a Black released from prison is out of the ball game.

Over the past several years, the country has come to recognize that racial discrimination now infects American life in strange new ways. Entire institutions have become enclaves of the poor, the Brown and the Black, and nowhere is this more ominous than in prisons.

To be sure, prisons have always been repositories for society's underclasses. But because of the peculiarities of the American experience, a dangerous link between race and prison has been forged. Prisons dominated by young Black and Brown men symbolize the society's most awesome failure.

Our point this week is not to show that an ex-offender has a right to any job, or that a criminal record is always irrelevant. Rather we hope these hearings will help to spur a reformulation of public and private policies toward ex-offenders in two ways; first by providing an analytic framework for totally rethinking private and governmental attitudes toward the employment of ex-offenders, and second by developing a realistic blueprint for both short-range and long-range action.

And these four days will give long-overdue attention to the critical relationship between the high rate of recidivism and employment discrimination an ex-offender faces upon release. As prisons continue to fill and the economy continues to decline, the public has become both more fearful and less able to move toward any but purely defensive measures.

An ex-offender loses various of his civil rights, but most of the rights forfeited relate to employment possibilities. It is time we applied our much touted work ethic to these men and women who want a job more than they want anything. People closed off from decent jobs have no alternative to crime or welfare. Sanity suggests that we provide more attractive and sensible options. Let us spend this week trying to find out what they are.

### General Findings

The hearings produced a devastating portrayal of the limits within which the search for jobs is confined for anyone who has ever been convicted of any violation of the law, no matter how recent or long since its commission. The transcript is rich in testimony describing the difficulties endured by

ex-offenders in their efforts to regain self-esteem, redeem themselves in the eyes of their community and become productive and self-supporting citizens. And it records also the frustrations of those whose job it is to serve ex-offenders and who are forced to counsel concealment of offense backgrounds or to urge accepting jobs that are sheer exploitation. Whether on their own or assisted by staff of correctional or social service agencies, ex-offenders in their quest for work are circumscribed by statutory restrictions and employer policies that in combination close off all but the ragged fringes of the job market. Certainly individual-job seekers, and almost as certainly those agencies who work in the field as now constructed, have neither the resources nor the power to overcome the hostility and mistrust embodied in laws and ingrained in traditional hiring practices.

The impact on employability of both arrest records and conviction records is pervasive and enduring. Arrest information is widely used and often equated with a conviction. Convictions for offenses with no apparent relation to the job sought often are an automatic disqualification and where an apparent connection between a specific or particular job exists, consideration only infrequently is given to indications of individual rehabilitation no matter how persuasive.

The problem of ex-offender employment, as it developed in testimony at the hearings, arises out of a multiplicity of barriers and an inadequate supply of positive supportive services. The formidable network of legislative and administrative provisions that restrict ex-offender employment, including licensing laws, policies and procedures in public employment and private sector hiring, especially where hiring is contingent on fidelity insurance, or controlled by Federal, state or local laws, is not matched by

any resources available to ex-offenders. Services within the correctional system and available to offenders upon release are under-financed, understaffed, and only peripherally directed to labor market considerations, either from the viewpoint of upgrading ex-offender skills or active job development. Ex-offenders have no advocates with sufficient power to negotiate on their behalf.

The major focus of the hearings was on the negative factors and the bulk of recommendations were addressed to opening up employment potential by repealing or amending existing legislative controls and introducing a variety of new legal measures to protect those with criminal records against unjust discrimination. But equally important are the changes proposed to increase, strengthen and re-direct the services provided to them. Ex-offenders probably need more in the way of positive intervention than many other groups, but appear to receive the least.

Even if all statutes and controls that inhibit ex-offender employment were removed, and the stigma of wrongdoing somehow eradicated, ex-offenders probably would still fare poorly in a competitive labor market. They are unskilled, inexperienced and undereducated, and alienated by negative experience with authorities. Rehabilitation obviously demands intensive vocational and educational programs beginning in prison and continuing post-release, plus systematic counseling, placement and job development services.

#### The Commission's Guidelines

The immediate and direct outcome of the hearings was the promulgation by the City Commission on Human Rights on January 4, 1973, of

Guidelines on the use of Arrest and Conviction Records as Job Selection  
Criteria.\*

To the extent permitted by the Commission's jurisdiction the Guidelines declare the use of arrest information in any employment decision (referral, hiring, or promotion) to be an unlawful discriminatory act. Similarly, the use of conviction records also is unlawful and discriminatory unless it can be shown that the particular record has a clear relation to the demands of a particular job or the safe and efficient operation of the business in question. The Guidelines apply to both public and private employment except where a state or local law or regulation prohibits employment of an ex-offender.

Although in force for only slightly over one year the Guidelines already have had an effect. Claims have been filed and are being processed, and as more arrestees and ex-offenders become aware of this protection it is to be expected that more will apply for jobs they, in the past, have considered closed to them. The impact of the Guidelines extends beyond their value to individual complainants. Employers, especially large sophisticated and prestigious companies, probably will take cognizance of their provisions and reappraise for conformance, their personnel policies.

Recommendations :

Countless recommendations were offered by witnesses addressed to all aspects of the ex-offenders employment problem. The Commission has singled out those that, after careful analysis of the testimony appear to be

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\*Copies of the guidelines may be obtained from the City Commission on Human Rights, 52 Duane Street, New York, N. Y. 10007.

fundamental and most urgent. The Commission's recommendations are discussed in full in the appropriate section of this report. Summarized in brief they are :

#### State and City Legislation

- To prohibit denial of licenses solely on the basis of a prior criminal record and restricting denials to those instances where there is either a clear relation of a prior offense to the license (or job) sought and insufficient evidence of rehabilitation.

- To amend New York State Civil Service Law so that it enunciates a positive policy toward ex-offenders, limits exclusion to job-related offenses and instances of insufficient rehabilitation, provides review procedures and requires an annual statistical summary of ex-offender applications and action taken.

- To amend Human Rights Laws to include ex-offenders as a protected class, restricting questions that may be asked or information acted on by employers.

- To amend statutes governing issuance of Certificates of Relief from Disabilities and of Good Conduct to provide automatic issuance, a shorter waiting period and mandatory acceptance by licensing authorities and public employers.

#### Federal Legislation

- To provide close control over arrest and conviction data and their dissemination and to place a time limit on the availability of criminal records.

### Program Re-Design

- Re-design of prison work experience, education and training to develop a coordinated system throughout city and state facilities, emphasizing work and educational release, with all vocational rehabilitation directed toward current New York City labor market trends.

- Establish a job analysis and development capacity within the correctional system.

- Develop close working relations between the correctional system and business and labor to assure relevance of training and secure commitments for work-release and post-release employment.

- Provide a centralized city-wide ex-offender employment service to bridge the gap between imprisonment and job placement upon release.

- Utilize available manpower funds (Federal, state and local) to develop large-scale public employment programs aimed at permanent civil service status.

- Organize all existing public and voluntary programs into a comprehensive system to coordinate job development activity through pooled resources.

- Give special consideration to the employment of ex-offenders in job-development, placement and training of inmates and other ex-offenders and to staffing special units within the State Employment Service and the Department of Social Services for ex-offenders.

### Areas for Study and Research

- The problems of bonding, preferably by involving the insurance industry directly in assessing the methods best suited to permit bonding of ex-offenders.

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- The relationships between offense records and particular jobs or industries, preferably by a consortium of business representatives and correctional experts.

- Evaluation of ex-offender job performance by monitoring those placed through program auspices.

#### Develop Citizen Support

- To secure necessary legislation and increase attention to ex-offenders in funded programs a broader basis of support is needed. A new coalition should be formed to include correctional personnel, lawyers and Bar associations, business organizations and major labor unions.

#### Preliminary Comments

Before turning to the substance of the hearings, a few preliminary comments concerning this report are appropriate. First, although the hearings were addressed to the problems of those with conviction records, the impact of an arrest record on employment entered again and again into testimony and has been embraced in the Guidelines. However, the problem of arrest records demands special attention, and the Commission intends to work in collaboration with other groups to develop additional strategies for dealing with arrest information.

Second, because of the range and calibre of witnesses, the testimony is believed to reflect the current state of knowledge. In the main, such gaps in data and research findings as exist are largely symptomatic of the insufficient attention this problem has received heretofore.

For example, to get the employer view and experience the Commission was forced to rely primarily on employer associations because most employers

do not knowingly hire ex-offenders, and those who do are reluctant to testify to their experience in public for fear of stigmatizing their employees. The often related problem of drug abuse, was deliberately omitted from the hearings. Although crime and drugs are too often almost synonymous in the public view, and although there is considerable overlap among offenders and drug abusers, the Commission views a conviction record and a history of drug abuse as related but intrinsically different problems. The impact of a drug history on employability and employment warrants special consideration. Therefore, the Commission held a separate hearing on the employment of the rehabilitated addict, in January 1973. That hearing succeeded in attracting employers to discuss their experience and viewpoints.\*

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\*A report of the hearings on the rehabilitated addict will be published in 1974 by the Drug Abuse Council.

## 2. THE CURRENT STATUS OF THE EX-OFFENDER

### Characteristics and Employment Experience

A substantial portion of the testimony at the hearings focussed on the basic characteristics of ex-offenders, their age, sex, racial origin and socio-economic status. Professionals in correctional services and manpower programs consider that it is these essential characteristics that first give rise to the special employment handicaps of ex-offenders as a group. According to many expert witnesses, ex-offenders have all the negative employment characteristics of the ghetto population from which the majority come. They are educationally deficient, and have few if any work skills and only sporadic work histories. Their negative experiences, in school, work, and in contact with authority figures leave them with low frustration thresholds, and high expectations of failure.

The magnitude of the problem of ex-offender employment is apparent at first from sheer numbers. According to Benjamin Malcolm, Commissioner of the New York City Department of Correction, over 100,000 persons annually in New York City are released from prisons, paroled or placed on probation, and sizeable additional numbers come into the city from other communities.

### Characteristics of Inmates in City Correctional Facilities

Deficiencies in educational attainment and in work skills or experience were apparent from the data presented by Dr. Michael Liechenstein of the New York City-Rand Institute. Several studies conducted from 1970 onward by the Institute, sponsored by the New York City Department of Correction, show less than 3% of male inmates of city correctional facilities had attended college. Only 55% had attended high school, and 40% had only an elementary school education.

Only 20% possessed any semblance of work skills. Fifty-three percent (53%) of the men and 61% of the women were totally unskilled. Two-thirds were unemployed at the time of arrest and one-third had been unemployed for at least one full year preceding that arrest. A further problem is that 62% of men and 89% of women sentenced were drug users.

Because those in New York City correctional facilities serve a maximum sentence of a year, there is little likelihood that such gross educational and vocational deficiencies could be remedied during their incarceration. In New York City today as in many large American cities the difficulties of ex-offenders are compounded by racial factors. Of those emerging from the city's correctional system 60% are Black and 25% are of Hispanic origin. Moreover, their average age is 26 and they are preponderantly men. Women commit few felonies. Therefore only 2-3% of inmates of state facilities are women. They are more often convicted of misdemeanors or violations. The proportion of women in city correctional institutions is higher, but still a minority.

The heavy concentration of ex-offenders within those groups experiencing the greatest current employment difficulties irrespective of criminal records, the young and non-white minority males, immediately delineates ex-offender employment as a problem with no obvious or easy solutions.

### Race and Crime

The apparent nexus between race and crime is a factor that demands careful analysis. Particularly illuminating was the evidence from "self-reporting" studies presented by Dr. Terence V. Thornberry of the Center for Studies in Criminology and Criminal Law of the University of Pennsylvania. These studies elicit anonymously information concerning unreported violations and offenses among various social, ethnic and occupational groups. They constitute admissions

of criminal acts that have gone unnoticed by law-enforcement agents. According to Dr. Thornberry such studies conducted in many countries characteristically show rates of violation of the law among all groups, especially in the commission of the type of petty crime that constitutes the majority of first offenses that are similar to the actual incidence of arrest and conviction among the poor, or the minority poor. The implication is that poverty and the disrupted family life in a city ghetto do not necessarily result in more crime, but rather that when those who violate the law are poor they are more likely to be apprehended.

Comparative studies show that groups characterized by low arrest and conviction rates engage in a degree of delinquent activity equal to or higher than those with high arrest rates, and second, that the proportion of those arrested who are convicted is higher among the poor. Careful comparison of data derived from self-reporting studies with actual arrest and conviction records reveal that the incidence of arrest conforms first with class distinctions rather than with race, and with race only when the minorities are also poor. Because of the disproportionate rate of arrest for minorities Dr. Thornberry stated,

In relation to topics such as employability we can only conclude that the official use of police statistics operates in a dysfunctional way for Blacks in American society. It is dysfunctional in the sense that using an arrest record as a criteria for employability fails to recognize the facts as we know them — that many persons who are not Black commit crimes for which they are not arrested; and that the rates of criminal activity, as measured by self-reporting techniques, are not appreciably different for Blacks and whites. Both races are equally likely to commit offenses but Blacks are more likely to be arrested.

The validity of criminal records as a predictive factor is challenged further by the added finding that adjudication differs by class and race, especially in the case of juvenile offenses. Blacks and the poor more often are referred to the courts for adjudication than whites or middle-class youth for identical types and numbers of offenses. Minority and lower-class youth more often have

a court record as well as a police record. Given the fact that criminal history frequently begins with pre-teen behavior and that a sizeable proportion of juvenile adjudications concern behavior not considered criminal in adults--truancy, running away from home, or being declared unmanageable by parents -- juvenile court records clearly are a discriminatory index, largely to be discounted as a measure of inherent individual or group characteristics. Moreover, self-reporting studies confirm the general knowledge that there is a strong tendency to outgrow delinquent behavior. Those who admit to violations for which they were not apprehended or if apprehended left in custody of their family, seldom re-commit illegal acts.

#### Evidence from a Study of Police Appointments

The evidence from another study presented at the hearings is also pertinent. The New York City-Rand Institute conducted a study in 1972 to develop selection criteria for police officers\* and toward this end compared background characteristics of approximately 2,000 Police Officers appointed to the New York City Police Department in 1957. Available measures of performance on-the-job were used to determine the type of candidate likely to display specific patterns of performance. The sample size was large enough to study such sub-groups as Black officers, detectives, and college-educated men (but not officers of Hispanic origin). All data was collected at least eleven years after the subject's initial appointment, thus providing a substantial period of time over which to measure performance.

Dr. Bernard Cohen, director of the study, focused his testimony on the relationship between a prior arrest record and subsequent job performance.

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\*Bernard Cohen and Jan Chaiken, Police Background and Characteristics and Performance. Lexington Books. D.C. Heath Co. Boston, 1973.

The study revealed that 8% of the sample group and 11% of Black applicants had been arrested prior to joining the force, differences in themselves not statistically significant. The offenses for which applicants had been arrested were primarily offenses against property.

Two significant findings relate to the validity of arrest records as a selection criterion. According to Dr. Cohen,

An extremely interesting and important difference was found between the officers who had been arrested prior to joining the force and those who had not. The difference occurred for the variable harassment, which measures the number of times an officer is accused by a civilian of unlawfully or illegally issuing a summons or making an arrest. . . Those officers who themselves had been arrested at one time scored significantly lower on this variable than other officers, which means they were more careful about the rights of arrested persons.

In other words, an arrest background had a degree of positive value as an indicator of potential sensitivity. The principal finding is, however, that,

Arrest history was not found to be significantly related to any other performance variables, such as career advancement through Civil Service, promotion or appointment to the Detective Division, the incidence of absenteeism, injury disapprovals, removal of firearms for cause, or termination by the Department . . . .

Thus, the men who were appointed to the Police Department despite an arrest history, appear to be at least as satisfactory in performance . . . . In conclusion, it appears that a previous arrest history for a petty crime has virtually no bearing on later job performance of nearly two thousand police officers appointed to the Police Department in 1957.

These findings led to a major recommendation by the Rand Institute that,

Candidates for the New York City Police Department should not be discouraged from continuing their application on the basis of negative information not related to later performance such as an arrest for a petty crime.

As to whether arrest and conviction records of minority groups have less predictive validity than for the society at large Dr. Cohen commented, that although the study did not focus on that particular hypothesis,

Generally speaking from the growing body of literature in this area it seems to be the case that minority group members are more accessible to being arrested. They have a higher probability of being exposed to that kind of experience just by living in Black areas usually saturated by police operations and controls. For this reason the arrest record of a minority person probably means somewhat less than for others.

#### Effect on Minority groups of the use of Criminal Records

The implications of this study extend beyond police recruiting and confirm Dr. Thornberry's view of the dysfunctional effect of using past criminal records as a selection criterion. For if a past record is found to have no bearing on performance in a sensitive post when other attributes of candidates are acceptable, then it is unlikely to operate in other occupations and professions. Criminal records can only be used as one factor and not in isolation, because of evidence that behavior patterns do not differ as much between classes or ethnic groups as do the social responses to behavior.

What is clear is that employment decisions based on arrest and conviction records have a disproportionate effect on members of minority groups. And although all ex-offenders fare poorly in the job market, there is evidence that minority ex-offenders suffer even more than their white counterparts. This fact emerges from studies of the employment experiences of ex-offenders both nationally and locally, and the syndrome of crime, minority status and poverty are clearly the critical considerations.

## Attitude Toward Ex-Offenders

Negative public attitudes toward ex-offenders were cited by many witnesses as a particular problem. The public, on the one-hand, sympathizes with those who are stigmatized by criminal records, but on the other, doubts the feasibility of full rehabilitation.

John Wallace, former Director of Probation for New York City, said that ambivalence towards rehabilitation is prevalent not only in the general public opinion but among professionals in the correctional field itself. He cited a 1969 Harris Poll finding that 72% of the general public believed rehabilitation should be the primary emphasis in correction and that the majority also considered employment to be the major post-release problem. Yet when asked to evaluate the potential employability of ex-offenders for a range of occupations, the responses were increasingly negative as the status of the job increased. Experienced personnel within the correctional system are equally reluctant to consider hiring those with prior records, and resistance varies also with job status and rank.

The cliché that a prison sentence constitutes repayment of a debt to society, has become a hollow phrase. The sentence is the beginning and not the end of punishment. This was effectively the view of witness after witness. An offender's obligation can remain forever unpaid and the cruelest punishment is the denial of the opportunity to earn a decent living. To expect the public at large or employers in particular to disregard prior conduct entirely, is unrealistic. Both personal and personnel judgements operate against a view of past history.

What sophisticated law-enforcement officials have learned about the differences among offenders has never permeated public sentiment.

Whitney North Seymour, former U.S. Attorney (Southern District), from long experience of observing first-hand those who pass through the criminal justice system, said :

There is no such thing as the criminal mind. A small minority of persons convicted of crime have psychotic personalities, given to irrational, uncontrollable or dangerous conduct but most are not much different from you and me. There is no logic to the generalization that a man who has committed a crime must not be permitted to move freely in law-abiding society, live freely among law-abiding neighbors, or work freely among law-abiding employees.

Former New York City Police Commissioner Patrick V. Murphy said,

The greatest obstacle (to ex-offender rehabilitation) is the attitude of the public which in turn perpetuates statutory restrictions, under-funding, and a lack of rehabilitative programs. This vengeful attitude which perceives of the criminal as a diseased individual has motivated legislative and administrative bodies to enact a multitude of restrictions which effectively ban an ex-offender from many positions.

Commissioner Malcolm said,

Can anyone really expect that there can be meaningful change in the behavior of an ex-offender when he is faced by a hostile public which refuses to give him an opportunity to earn a decent living and to support his family? How can correction succeed if the community fails to give the ex-offender a chance?

#### Employment Experience of Ex-Offenders

No comprehensive documentation of the actual employment experience of ex-offenders exists. Once the term of a sentence or of parole or probation has been completed, the ex-offender generally disappears from official view. One recent major national study has been conducted, a study of the employment experiences of released male Federal prisoners under parole and mandatory release provisions as of June 1964.\* The author

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\*George A. Pownall, Employment Problems of Released Prisoners. A Report prepared for the Manpower Administration, U.S. Department of Labor, Washington D. C. 1969.

of this study, Professor George A. Pownall, appeared at the hearings and testified to its major findings.

In the mid-1960's, according to this study, only 63% of the sample were employed in full-time jobs and 17% were unemployed, or five times the then prevailing national unemployment rate. Many of those who were employed, however, were underemployed, working in low-paid and dead-end jobs, characterized by a high degree of instability. Many were employed only sporadically and for short periods, suggesting either that their prior record was discovered, or that they were employed in marginal, seasonal, or temporary jobs. For example, over half experienced one or more periods of unemployment since release and for those employed the median for the longest job held was eight months. Median earnings for all employed releasees was \$256 a month and one-third received only \$200 or less. The national median earnings during the period was 82% higher than the ex-offender sample, indicating the financial hardships faced by released prisoners, even when employed.

Ability to find full-time work appeared to correlate positively only with a stable and significant pre-arrest employment history, and displayed no significant relationship to prison work-experience or vocational training.

It is important to note that Federal ex-offenders are in many ways the "elite". Because of the nature of Federal offenses those convicted generally are older than those sentenced to state, county or municipal institutions, better educated, and more often have some solid pre-arrest work history. Perhaps the most significant difference is in ethnic

composition, for only 24% of the Federal sample were members of minority groups.

Ex-offenders, in this sample, secured jobs largely through their own efforts and contacts. The young and the non-white ex-offenders generally had unfavorable employment experiences. They tended to have fewer contacts and more limited prior work experience. Those under 20 years of age experienced a higher unemployment rate than the sample average and far fewer were employed full-time.

When race was added to age the disparity in employment success widened markedly. Of non-whites under twenty years of age, 58% were unemployed. The importance of race is underscored by the fact that although educational achievement displayed a degree of relationship to employment experience for whites, for non-whites it was not significantly related. The stigma of a conviction when added to minority status, virtually nullified the advantage of above average schooling.

Race emerged from this study as the most crippling handicap and the most insuperable. Taking together the study's major findings — a positive relation between employment prospects and past work history, the correlation of recidivism and unemployment, the diminishing job opportunities for repeated offenders, and the lesser opportunities for non-white ex-offenders, — the self-perpetuating dynamics of race and crime emerge. The minority ex-offender is less likely to be employed prior to conviction, and, therefore, handicapped upon release. And because his job opportunities are limited he is more likely to be rearrested and reincarcerated. Therefore, his original unfavorable position is continually worsened, and vocational education as well as

general education in prison are equally unlikely to make any important difference to him. Thus the average employment experience presented by this study, poor though it is, represents a level of employability far exceeding the prospects of ex-offenders returning to the New York City labor market from state and local institutions, who are predominantly Black or Hispanic.

### Jobs In New York City

The job experience of those with conviction records was presented by parole and probation agency officials and representatives of the major voluntary associations serving ex-offenders. The only pertinent statistical data presented at the hearings was based on a review of qualifications for jobs open to trainees under Federally-funded training programs during 1971. This survey, conducted by the Manpower and Career Development Agency (MCDA)\* of the City of New York found that 29% of occupations embraced by manpower programs disqualified anyone with a conviction record. Examples of jobs excluded are clerks, key-punch operators in insurance companies, messengers in health centers, and building service and maintenance workers. Assistant Commissioner Gary Lefkowitz, in discussing these findings, said

Based on our experience, we found employment disqualifications applied to specific types of companies and industries rather than cutting across the whole employment market. Small companies, one hundred employees or less, have a more lenient hiring policy for ex-offenders. They are more flexible, personalized and informal in their procedures, and these qualities seem to create a more favorable climate for the ex-offender. Employers in manufacturing and blue-collar occupations are also more

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\*Now the Department of Employment.

receptive to employing the ex-offender . . . The real problem rests mainly with large corporations particularly in the following industries: Wholesale and retail trade, finance, insurance, banking services, health, transportation, utilities, and government.

New York is the nation's financial capital and a corporate headquarters town, a commercial and service center, rather than a manufacturing center. Manufacturing, once the largest employer has moved to a poor second place and continues to decline. White-collar occupations, particularly in finance and government, total an approximate 3,000,000 jobs and have been the increasing sectors. Moreover, the number of small businesses continues to decline. Given the likelihood that these trends will continue, intensified by a shrinkage in white-collar jobs if large corporations shift their headquarters from the city, the search for jobs for ex-offenders will be further restricted if it continues confined to blue-collar jobs in small companies. The recent slack in the local labor market exacerbates the longer range trends.

Against this backdrop it is not surprising that both official and voluntary agencies serving ex-offenders have grave difficulties in finding jobs for ex-offenders.

The following excerpts of testimony from professionals who endeavor to assist ex-offenders reveal job-finding to be little more than scavenging the labor market.

The most successful place for jobs has been in the restaurant industry. Such jobs require very little skill. They are the left-over jobs. You always have these types of jobs, deadend jobs. The person is not going anywhere. He is a short-order cook today. He will be a short-order cook tomorrow and not making any more money than he is now. Therefore, there is always a heavy turnover in these jobs and employers are always looking for someone who will do menial work at low pay.

My experience has been in the factories. This is not necessarily a referral on the part of the probation officer because the probationers know there are certain companies in the garment district where they can go and work a day at a time. They are not investigated.

I have had some success with temporary employment. They go on their own to 80 Warren Street. At the agencies there are jobs that are temporary. They go on standby. A guy may have a truck to load that day. You get paid by the day \$10, \$12, \$15 a day. They go often. It is not the kind of meaningful employment that I try to motivate them towards.

I have found a few temporary jobs in the City Parks Department, - not Civil Service.

The job for the ex-offender is a big order. The lack of a job probably means welfare, idleness, frustration and parole violation. The lucky one who gets the all important job is likely to be paid minimal wages. He works on a rotating schedule in a factory or plant. He spends eight hours in non-skilled repetitious mindless tasks. He endures deafening human and mechanical noises. He is constantly overseen by a foreman. He is told where, how, and when to station himself, and he knows he must walk a tightrope, day after day. More importantly, this job is nightmarishly reminiscent of prison life.

I stay away from the big companies and employment agencies. My clients are most important to me and I use my efforts in the small companies where I can hope to find a job.

It's a tall order to place minority males with a tenth or eleventh grade education at best in a competitive job market.

Pushers in the garment industry, unloading a truck, distributing flyers, day to day work, that's what I can find.

For those of us who work in the field, our biggest problem in the rehabilitation process is to find the man a job. It is extremely difficult.

...The lowest level of employment, the last to be hired and the first to be fired. They generally get paid very minimal wages and sometimes are exploited by employers who know that they have a record and their chances of finding suitable employment is slim.

In the testimony of numerous witnesses a dismal picture emerged of a struggle to locate marginal, casual, temporary work, paying bottom-level wages, all virtually deadends. Particularly dismaying is the fact that even relatively undesirable jobs are difficult to find. The many ex-offenders who testified confirmed this picture. Most ex-offenders who testified had not been recently released. They had managed to survive on the streets for years. And they found that their job prospects failed to improve with the passage of time. Living was a continual struggle for them, save only for the fortunate few who work in organizations serving ex-offenders, The Fortune Society, The Urban Coalition, or special projects within correctional services designed to employ ex-offenders. Although the personal narratives given by ex-offenders focused on the many jobs denied to them, most who testified ultimately succeeded in finding some sort of work. But few were working at more than bare subsistence wages or with any degree of job satisfaction or security.

#### Women Ex-Offenders

Although the discussions of jobs problems were mainly directed toward men, women ex-offenders may be even more disabled. Joseph Connor of the Women's Prison Association told the Commission that women offenders once had the dubious advantage of greater ease in concealing a criminal record because women characteristically withdraw from the labor market for periods of time. Now, the shrinkage in blue-collar jobs affects them more adversely than men. They are not eligible for the physical laboring jobs that remain, and the largest employers of women, the hospitals, government, retail trade and financial organizations, all routinely fingerprint or bond all employees. He estimated that of women inmates housed in the

Bedford Hills facility, one-third have sufficient skills for clerical, hospital or data processing jobs, all areas where they are unlikely to be hired.

Familial problems compound the problems of women ex-offenders. A statistical profile of 120 inmates in the city's Correctional Institution for Women in 1972 found that 61 of the women had children and only 29 had ever lived with their children.\*

#### How Ex-Offenders Find Jobs

According to parole and probation service witnesses an estimated 90% of ex-offenders under supervision find jobs on their own. A reasonable assurance of some form of employment is often the basis for probation or parole. Such assurance of employment, it was alleged, is sometimes either a facade, an "arrangement" by a family member or friend, or sometimes part of a process of exploitation whereby, as one ex-offender said,

Employers sign up men in prison as a source of cheap labor for the jobs that no one else wants.

Only a fraction are placed by parole or probation officers and even a smaller number by employment agencies.

Parole and probation services have no systematic channels of referral. They depend on personal contacts established by an individual officer or agency. Correctional officers scan the daily classified advertisements in the press for potential jobs, often telephoning and posing as an applicant to sound out a prospective employer. They canvass employers known to them and in some instances, as a matter of personal relationship, are able to persuade a friendly employer to consider a particular applicant. The same process is carried on by the

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\*See the New York Times. October 19, 1973 p. 43.

voluntary agencies in the field. Recommendations and referrals by professionals can be an asset when the employer is known to them. But with the unknown employer, such a referral is as often a liability because it makes known the fact that the applicant is an ex-offender. Therefore, when referrals are made to unknown employers, the ex-offender generally is sent on his own to handle the application in his own way and at times counselled to avoid disclosure of his record. The questionable ethics involved in counselling an ex-offender to be less than truthful is disturbing to many parole and probation officers but accepted as a necessary adjustment to the realities. For, as one probation officer said,

Many employers just ipso facto will not hire anyone with a conviction record or even an arrest record, when he might have been acquitted. We have tried very, very hard to re-educate them but very frequently to no avail. I think someone asked the question 'Do you advise probationers to reveal their arrest records?' That is a good question. We have found that sometimes it would be better if the probationer did not speak about his arrest or conviction record. It might be unethical, it might be a violation, it may be a distortion of the truth. But sometimes when we are really up against it, there is nothing you can do but to say to them off the record, 'Okay. Take a chance and don't mention your record. That is, don't volunteer the information that you have a record unless they ask you.'

Probation and parole officers also are aware of the impact of race on job findings, as evident in excerpts from the testimony,

There are few calls for jobs for minority youths with a tenth-grade education.

I find we don't have many requests for jobs from white probationers. Most of them seem to be able to make their own contacts and secure employment.

Our major problem in securing employment is for Blacks and Puerto Ricans. I do feel that color and ethnic background is one of the main reasons our problems have become so difficult ...not the fact that they are ex-offenders or probationers.

It is the general belief among experienced professionals in the field that

employers of the majority of ex-offenders who are working are unaware of their employees' prior record. Ex-offenders work either where no questions are asked or where the truth is unlikely to be revealed. Ex-offender employment is unstable. First, they work more often at high-turnover jobs where detailed personnel records are not maintained and questions of background history do not arise. And when an ex-offender succeeds in finding a job by denying or concealing his criminal record, he almost inevitably is dismissed when the facts are disclosed either inadvertently or through routine credit clearance or other personnel checking processes.

At the time of the hearings, the efforts of most parole or probation agencies and voluntary services were focussed on securing placement in training programs because their usual sources of jobs were shrinking. But because training programs are shaped to meet the standards of cooperating employers, they too do not welcome ex-offenders, and the "creaming" process is intensified when total funding for training programs diminishes.

Probation and parole officers who testified report that the majority of their caseloads is counted as employed. There is no data to indicate how transient this employment is, or whether it is full-time, part-time or casual. No estimates are available for the thousands of ex-offenders no longer under supervision or those released directly from prison after serving a full sentence. The most optimistic assessment that can be made is that the problem is largely one of unstable work and under-employment rather than long-term unemployment.

The high recidivism rate estimated by police and correction experts casts doubt on this interpretation. Former Commissioner Murphy in his testimony estimated that in New York City 85% of those arrested for robbery

or felonious assault have prior felony arrests, and 80% of those in our penal institutions have been there before — once, twice or three times.

The inference he draws from these figures is that,

What we seem to be dealing with is a group who are arrested, prosecuted, imprisoned, again and again, and presumably only tentatively employed, if at all, in the intervening days or months.

### Recidivism and Employment

Although recidivism data may be inaccurate because it is largely unanalyzed and includes parole and probation violators as well as those rearrested but not convicted, the data suggests a high rate of repeated offense. Little is known, however, regarding how recidivism is affected by employment. Available research data on recidivism can only be used inferentially, as evidence of the potential impact of employment on criminal activity. For example, Professor Herman Schwartz, Professor of Criminal Law at the University of Buffalo, believes that employment is among the few factors that would reduce recidivism and supports this belief by an analysis of comparative recidivism data. He said,

The recidivism rate is much higher in economic crimes like larceny, robbery and theft. By far, those are the areas where recidivism is the highest. It is of course very low, as we all know, on homicide and it is not that high for assault offenses, or sex offenses. It is really economic crimes that are most difficult in this regard, and my own experience in talking to men who are out on parole is that the problem of jobs for those getting out of prison is just so difficult, they are turned away over and over again, the jobs they can get are deadend jobs; indeed one of the most embittering experiences is the experience of an inmate who is given an open date on parole, but will sit for up to six months because they won't let him or her out until the inmate gets a job. And then, in desperation, they will let him out after six months.

I have no doubt in my own mind that one of the major ways of reducing recidivism is to improve the job picture, if only because it will reduce the temptations. But it may also reduce a little of

the cynicism and bitterness that results from being told, 'Okay, now shape up. You've done your time. Now shape up and be a good member of society and you can go out and get a job.' And in this society you cannot live without a job.

The lower rate of re-arrest of probationers compared with parolees, or for those sentenced to short-terms compared with those incarcerated for longer periods, also can be interpreted as indicating that employment is an important variable. Employment prospects are better for probationers than for parolees. Opportunities for work decline with the length of incarceration, not only because contacts are lost, but also because it is also easier to conceal a short sentence by inventing a plausible reason for a brief absence from the labor market. But the apparent causal connections between the type and length of sentence and the rate of recidivism also reflect sentencing determinations, for those considered good risks are placed on probation or given shorter sentences. Moreover, employment history is an important factor used in the assessment of rehabilitation prospects by the courts, parole boards and other authorities.

Those whose job it is to determine sentencing, operate on the reasonable assumption that employment is a positive factor in rehabilitation. Despite the lack of statistical evidence this is the informed majority opinion. But the real test, however is not employment per se, but a job that offers some prospect for a stable and secure economic status, and some hope of moving beyond the barest entry-level work and wages. Commissioner Malcolm testified,

It has been my observation based on twenty years experience in the field of parole, that one of the most devastating experiences to a parolee is to find that all jobs open are jobs such as car washing, pushing carts in the garment district or distributing circulars. These demeaning jobs for a person who is equipped for something better, hastens his return to criminal activity.

Parole and probation officers appearing at the hearings testified that current caseloads show substantially lower rates of violation for ex-offenders placed in appropriate jobs, and that those with better-paying, full-time and steady work are much less likely to be re-arrested than those with no jobs, part-time or low-paid jobs. As one parole officer said,

If an ex-offender can get work upon release and keep it for six months the probability of recidivism declines substantially and is almost negligible. The first six months are the acid test.

Only one local statistical study was presented at the hearings, the findings of a recent probation department program in Monroe County.

According to a witness,

Local employers in that county trained five hundred thirty-six men and women on probation for one year in a cooperative plan to seek and provide them with better employment. After a year and half of this group only four were re-arrested which means that five hundred thirty-two succeeded.

This example suggests the kind of solid evidence needed : the employment record of ex-offenders hired with complete disclosure of past records, in sizeable numbers, and evaluated for performance and stability. The hypothesis that the quality of a job is a key factor in turning away from crime is so eminently reasonable, that correctional experts need no further documentation. But the other side of the coin, or how well ex-offenders perform as employees, needs more substantial evidence and more of it must come from employers' experience.

#### Employer Experience

The testimony of employers who hire ex-offenders in full knowledge of their prior records, although fragmentary, is nonetheless significant. Limited though it was, it strongly suggested when ex-offenders are given

an opportunity to work at a job appropriate in immediate demands and with future potential, they will prove at least as satisfactory in output and job stability as similarly qualified applicants without a criminal record and that under satisfactory employment situations recidivism is likely to be minimal.

Most of the employer testimony presented at the hearings developed out of programs to employ ex-offenders by specialized correctional services.

#### Division for Youth Experience

The program with the longest experience is that established in 1961 by the New York State Division for Youth. This program was based on two premises. Milton Luger, Director of the New York State Division for Youth, said,

One of my basic premises is that it's not a matter of letting offenders or ex-offenders work. It is a matter of paying them. They have been working for this system already. Let's stop exploiting them and do something about giving them remuneration.

The second basic, I believe, is that the system desperately needs what they have to offer. Rehabilitation up to this point, despite good intentions and a lot of decent people working in the system, has become apparently ineffectual because the clients, — the inmates, — have not been brought into making meaningful decisions, getting on board, assuming responsibility. They have not been receiving the kind of compensation that is absolutely due them to make them part of the rehabilitation effort, so that we can develop mutual respect and cooperation between staff and inmates instead of functioning with armed camps. The system, I believe, cannot succeed without the intentional input of its clients.

From a small beginning in 1961 when two ex-offenders were hired through funding provided by a private foundation, the program for employing ex-offenders has grown in size and acquired provisional civil service status. Three categories of ex-offenders are hired; young men and women still institutionalized in Division for Youth Centers who are given staff status and function in leadership roles inside the facility, recent releasees who

who after a brief period of self-reliance are recruited to work for the Division, and adult ex-offenders referred by the Department of Parole. To date, a total of 295 have been employed with 43 on staff. The jobs initially were not intended as permanent careers, but rather as transitional work opportunities, especially for the institutionalized youth who were hired. Because the contributions made by youthful inmates proved valuable, the professional staff determined to enlarge the program and develop more permanent adult jobs. The program now is seeking to establish a permanent career ladder within civil service.

Ex-offenders have worked in a variety of jobs within the Division, as respected and responsible members of after-care teams, outreach community workers, counselors, after-care case-workers, office workers, child-care workers, house parents and in research. Some have been propelled by this experience into professional careers. For example, a former bank robber, who after paraprofessional experience was trained in social work school, is now the assistant superintendent of a camp facility within the Division for Youth. Ex-offenders employed have made more in the way of contributions toward the program, in gaining the trust of youthful offenders and developing community contacts, than the program has been able to provide them in return. The staff plans to correct this imbalance by developing a career ladder. The critical elements in the design of a career plan are finding job titles and assignments that incorporate ex-offenders into staff without creating "ex-offender" jobs or units, and developing

promotional procedures not dependent on written tests or irrelevant credentials, and yet meeting civil service standards.

Experience with ex-offenders in this program is constantly evaluated. And research findings show the critical element is to develop job-focussed screening criteria. The offense background is not the focus of screening. Selection concentrates on human relations skills — the ability to communicate and to provide leadership skills — determined by oral rather than written testing. The program has come to rely heavily on ex-offender staff members to interview new recruits, for they have proven better able than trained social workers to gauge the sincerity of interest in the work of parolee applicants. And ex-offenders have been better able to disregard an offense background of an applicant and select those who will best meet the needs of a job.

Although personal attributes and aptitudes have been found to be the essential factors determining success on the job, ongoing analysis of ex-offender employees included study of the impact of differential criminal histories on job performance. Thus far, nothing in the program's experience suggests that the nature of an offense background has significant predictive value. To the contrary, those who by conventional hiring standards would be adjudged the poorest risks — repetitive and serious offenders from disrupted families — often have become the most successful workers in the program.

#### R. O. R. Program

A more recently established program in New York City reports parallel experience. Ex-offenders have been hired in a program operating

under the aegis of the Probation Department in the Release on Recognizance Division. Established in June 1971, the program aims to provide ex-offenders with meaningful employment. A felony conviction is a disqualification for the position of probation officer in New York City (although not in several upstate counties in the state). Other jobs are not proscribed. John Wallace, the former City Director of Probation who shares with Mr. Luger the belief in the value of ex-offender contributions to correctional services and the importance of, "hiring the product we turn out," sees this new program as one way to fulfill that objective.

The Release on Recognizance Division conducts pre-trial investigations, an expanding service. To augment staff, a para-professional job title — the Investigator Aide — was created, designed to open jobs to under-employed or unemployed persons. Although not designed for ex-offenders, a clean record is not a requisite. Of 30 selected for the pilot program, one-third had criminal records. The program offers a six months training period after which trainees are eligible for civil service examination and if successful become Investigator Aides. As Aides they are given released-time for continuing education at the John Jay College of Criminal Justice. The career ladder provides eligibility for promotion to the rank of Investigator and then to Senior Investigator and permanent civil service status. Promotional steps depend on length of experience and educational achievement. Senior Investigators are able to move into a variety of administrative posts, including Court Clerk. None hired were high school graduates, but during the first six months all trainees received high school equivalencies. At the time of the

hearings all but two were already enrolled in the second semester of the freshman year at John Jay College.

Investigators Aides work side-by-side with Investigators and probation officers in the courts, in the Tombs and in neighborhoods, to complete case investigations. The then Director of the program, Jack Highsmith, testified that once the initial resistance on the part of professional staff (not resistance to ex-offenders but the typical resistance of professionals to the creation of paraprofessional titles) was overcome, the program functioned successfully. Only one of the original 30 trainees failed to complete the training period. All others have shown an aptitude for the work and the academic subjects required, and as a group have augmented the agency's ability to relate to communities. They go into areas professionals are reluctant to visit. Some are bilingual, an important skill. All have demonstrated enthusiasm and capacity for the work. No differences have been found between ex-offenders and others in the group. According to Mr. Wallace,

You can't tell who has a record unless you look at his personnel file.

This program already has become a model emulated by other cities.

Two Investigator Aides appeared at the hearings and excerpts from their testimony indicate the degree of job satisfaction.

I have a record and ROR (Release on Recognizance Division) was my first chance to get what you would call a decent job. Other than that I had done waitress work, barmaid work. I had tried to get other jobs as a secretary or switchboard operator but I guess when I got down to the line 'Have you ever had an arrest record?', and my answer was 'Yes', they gave me a nice little smile and told me they would contact me. Now working in the ROR department as an Investigator Aide we do the same job as the Investigators and we get less money than they do. But soon it will be better.

All I have to say is that its working. I know that most of us appreciate it because some of us did have records. Some bad and some good. The work we do really like. Sometimes its hard. Sometimes its not. It's good.

#### Correction Department Program

The New York City Correction Department also has been employing ex-offenders in their recently developed paraprofessional program. Once opposition to the program by Correction Officers was overcome, Correction Aides were hired. As with Investigator Aides, the title is not designed as an ex-offender job. The program then relatively new, and not yet evaluated, represents a significant departure from conventional correctional hiring policies.

#### Additional Employment Programs

Testimony concerning experience with employment of ex-offenders was given by those who operate programs supported by the Vera Institute of Justice and the Criminal Justice Coordinating Committee. These included the Court Employment Project, an alternate to adjudication for first offenders, a demonstration program conducted by the Bedford Stuyvesant Development Corporation, and a variety of programs designed to stimulate employment of ex-offenders in both the public and private sectors. All program directors agree that experience proves that a background of criminal behavior is not a valid predictor of employment potential, and no definitive correlation exists between the nature or severity of the offense and job performance. Recidivism moreover is negligible. In special programs, the aggregate number of ex-offenders employed is small but the findings are significant. Kenneth Marion of the Vera Institute said,

It has been increasingly apparent to us as we have followed the people who have come through our various programs, that employment plays a significant role in whether the individual really frees himself from the criminal justice system or just moves in a bigger loop inside the system.

Perhaps the best known program to employ ex-offenders is the Pioneer Messenger Service employing 35 ex-offenders and serving 300 businesses. The service has grown, not because of its social goals, but because it provides service that can compete with conventional messenger services. Pioneer's rates are identical with competitors. Because of the program's commercial acceptance, and because 78 of those formerly employed have remained with the service and been promoted or have moved to other full-time jobs or full-time school enrollment, this program has been the stimulus for an increasing range of employment programs. Among the customers of Pioneer Messenger Service are numerous businesses who never hire ex-offenders, including financial firms where fingerprinting and bonding is routine.

#### Private Sector Employment

Testimony from private sector employers was limited to two businessmen who volunteered to testify. Milton Lynn, who has employed ex-offenders in a metal fabrication company for 25 years said,

We find there is no difference between our regular employees and ex-offenders. They are all the same. They are now part of the group. They are part of our business. They are part of society. And because of this we have been successful.

From his experience he was able to identify some missing ingredients in the relations between employers and correctional personnel and parole and probation officers. Few in his view are able to counsel either ex-offenders or employers appropriately. They do not have sufficient information about prospective jobs. Too often, he said,

Job finding for ex-offenders is just that, finding a job for someone with a record, and not finding a job that is suited to the individual's aptitudes and matching those aptitudes and skills to particular jobs. And the salary offered is crucial. It must be adequate. A man cannot start on a minimum salary because he is going to slide back. He must have enough to live on and live decently. If employers get enough information about him we may be able to pay him at a skill level he has that is not revealed to us otherwise. When he comes in, someone has to talk to him, counsel him, give him a training program. We must teach him. If this man doesn't feel he is going to get anyplace he is not going to stay. He is going to go back. He must know he has a future. He must know what his salary will be, his benefits, and his prospects.

Expressing a similar view, Arthur J. D'Lugoff, owner of a large restaurant said,

I don't think that the fact that a person did go to prison necessarily makes him more or less honest. This is my personal experience ... I haven't found them (ex-offenders) more satisfactory or less. I have found them as the general run-of-the-mill population. In other words it is not something to be afraid of.

The testimony of these two employers is impressive for its honesty and realism. Neither expects ex-offenders to outperform others. They recognize that successful employment depends on a reasonable match between employee aspirations and employer requirements. Particularly important is that these employers, in common with special programs, find past arrest and conviction history to be irrelevant in predicting success on the job. When those who determine policy in employment areas now largely closed to ex-offenders do so on the assumption of an inevitable relationship between past offenses and future job performance, this finding is crucial. This basic agreement stemming from a diversity of experiences, albeit small in number, is sufficient to call into question what has been accepted as conventional sound employer policy.

### 3. BARRIERS IN LICENSED OCCUPATIONS

Every jurisdiction in the United States, Federal, state and municipal, has enacted laws that impose upon those convicted of an offense a wide range of penalties over and beyond direct criminal sanction, known as civil disabilities. The effect of this body of law is to deny ex-offenders many of the primary rights of citizenship - the right to vote, to serve as a juror, to enter into contracts including marriage, to initiate a law suit, to hold public office, and to engage in a wide range of occupations in both public and private sectors. The statutory disabilities governing employment constitute a barrier identified by virtually all who testified at the hearings, a barrier that has a pervasive effect on the job potential for anyone who has ever been convicted.

Many of the statutes that govern occupations are apparent survivals of a feudal past with little current functional justification. They are in reality nothing more than additional penalties for transgressions of the law. Yet they persist largely unchallenged and even unevaluated. A wide range of witnesses invited serious question as to the merits of any and all civil disabilities. But within the context of the hearings, the focus of testimony was on those that directly govern entry into licensed occupations and public employment. Because the problems encountered in public employment extend beyond the statutory controls imposed by state law to the

elaborate and varied hiring policies and practices of individual public agencies, the question of public employment merits separate consideration. This section is concerned solely with licensed occupations, and the impediments to securing a license essential to employment in a wide range of jobs in both the public and private sector.

Until late in the 19th century, licensing generally was confined to the learned professions, particularly law and medicine. Currently, a wide range of semi-professional, technical and even semi-skilled and unskilled occupations are subject to statutory control. Occupational licensing is proliferating at an ever-accelerating rate, and today an estimated 7,000,000 persons in the United States work in licensed occupations. In New York City alone an estimated 500,000 workers are subject to licensing laws. At the time of the hearings, no precise count or analysis of licensing statutes had been made. Since the hearings the American Bar Association has compiled the basic pertinent data and reports that a search of state legislative codes discloses a total of 1,948 different provisions that affect the licensing of an ex-offender.\* All either totally or partially foreclose the controlled occupation to ex-offenders.

Notwithstanding the growing importance of this phenomenon, none of the few studies of licensing laws that have been made have evaluated systematically the effect these laws have on the quality of licensees, or the opportunities for ex-offenders. This low

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\*Laws Licenses and the Offender's Right to Work. American Bar Association. National Clearinghouse of Offender Employment Restrictions, Washington, D.C. 1973.

visibility may be attributable to a general ignorance of the existence of such laws and their provisions, an ignorance shared by many professional in the correctional services as well, or may be symptomatic of the accepted view that licenses are a privilege rather than a right, a privilege to which ex-offenders are not entitled. Indeed this last has been the traditional stance of the courts.

A major national study of civil disabilities published in 1970 by the Vanderbilt Law School reveals the complex network of statutes that deprive ex-offenders of countless vocational opportunities as well as other fundamental rights. This report provided a comprehensive view of licensing restrictions.

Provisions restricting the convicted criminal's right to work are usually encountered as a part of the broad scheme of regulations necessary to protect the public health, safety, and morals. As a general rule, if an occupation is licensed or classified as public employment, past criminality may denote unfitness. It is clear that the public interest requires regulation of a wide variety of occupations and activities. No one disputes the right of government to subject their own employees to reasonable regulations. Similarly, many professional callings are proper subjects for licensing, including imposition of reasonable entrance requirements and standards of performance for practitioners. When regulatory provisions extend to semi-skilled and unskilled pursuits, however, the necessity for regulation becomes questionable...Occupational licenses, however, are now so extensive as to invite serious questions regarding their necessity and purpose.

The public often places heavy reliance on the ability and fidelity of individuals in unlicensed occupations. Salesmen, service station attendants, and lifeguards, for example, are not required to be licensed. General law, however, protects the public against

incompetence and immorality in these areas. It would be equally effective in the case of many licensed occupations. Nevertheless, the procession of license status continues at a steady pace and it is likely that most of the legislation will be upheld as a legitimate exercise of police power.

Aside from objections of being monopolistic and in restraint of trade, the over-extension of licensing is particularly ominous for a person with a criminal record.\*

This study concludes that because licensing statutes are characterized by overbreadth of coverage, vagueness of language, and inconsistency between and within jurisdictions in their application, there is an apparent lack of any rational connection between prior conviction and the occupation governed. Therefore, such laws may indeed violate the Eighth or Fourteenth amendments as cruel or unusual punishment or deprivation of equal protection under the law and due process.

#### Licensing In New York

Testimony at the hearings focused on licensing under New York State laws. It was reported that roughly 80 laws found in various parts of the Consolidated Statutes of New York State partially or totally close off to ex-offenders some 50 occupations.\*\*

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\*Vanderbilt Law Review. The Collateral Consequences of a Criminal Conviction, October, 1970. Vol, 23, No.5. Page 1162 to 1164.

\*\*A list of pertinent state laws and their essential restrictions are appended to this report. Appendix 2.

The laws in New York State, as in other states, fall into two general categories; those that explicitly prohibit holding or acquiring a license by anyone convicted of specific classes of crimes, or those that empower a licensing agency to review applications and determine the fitness of individual applicants. Within the first group, there is wide variation of the bases for exclusion. Among laws that mandate exclusion some declare as ineligible those convicted of any offense whether felony, misdemeanor or violation, some for felonies alone, some for felonies and specified misdemeanors often including vagrancy or other acts not strictly "criminal", and some for convictions implying "moral turpitude", a category open to varied interpretation. Only a few specify as grounds for exclusion crimes that appear to have some relation to the function performed by future licensees.

The second type generally gives unrestricted discretion to a single administrative authority, the Board of Regents, the Department of State, the State Liquor Authority or a special body appointed to regulate a particular professional or occupation. Such authorities by law are empowered to license those adjudged by them to be of "good moral character" or exclude those they deem "guilty of notorious or infamous conduct", standards so open to varied interpretations as to be no standards at all, and constitute a commingling of criminal and non-criminal standards. In essence such statutory language legitimizes exclusion of anyone on any grounds. The seeming difference between laws that

prohibit licensing those with criminal records and laws that establish a requirement of good moral character disappears in actual practice. Both courts and licensing agents tend to consider a criminal record as sufficient evidence of a lack of character. And conversely, they rarely disqualify for lack of character on any other bases. The American Bar Association report cites a California legislative study finding that, "as a result of the lack of definite guidelines, 'licensing agencies have been extremely reluctant to deny licenses based on the lack of good moral character unless the applicant has had an arrest or criminal record...'\* And where the language suggests that only those guilty of unusually outrageous criminal acts are to be deemed unfit-language such as "notorious or infamous conduct" or "guilty of crime involving moral turpitude" - these terms have been stretched to encompass almost any unlawful act.

As a further complication, some exclusions exist in perpetuity. An individual who engages in certain proscribed conduct may be forever disqualified not only from learned professions but, for example, from receiving a license to act as an auctioneer in this state. Other licensing laws allow for the removal of disabilities under certain narrow circumstances, most often receipt of an executive pardon. And still others permit the licensing authorities to consider evidence of rehabilitation, at their discretion.

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\*Laws, Licenses and the Offender's Right to Work. op. cit., Page 6

The list of occupations foreclosed either partially or totally by licensing controls is so varied as to appear totally absurd and irrational. New York State is not unique but is perhaps among the more restrictive jurisdictions. A survey in 1972\* that attempted to identify jobs presenting some degree of difficulty of entry for parolees and ex-convicts in the fifty states resulted in a lengthy alphabetical list, from Artificial Inseminator to Water-well and Pump Installer, but general guidelines could not be developed because the restricted occupations differed in every state. The list was compiled from responses to questionnaires by the Attorney General of each state. New York State is not as yet included because the Attorney General was reported to have replied that the magnitude of the research involved would require more time. This compilation although not complete, is a fantastic document, combining the common-place with such curious occupations as dealer in used auto parts, drugless therapist, dry cleaner, hearing aid dealer, miller, nudist society operator, pawnbroker, funeral director, pest control agent, tree expert, and watchmaker.

The list in New York is an equally strange assortment of recognized professions, and occupations such as junk dealer, auctioneer, bingo game employee, and embalmer. The classic example of Catch -22 irony, is barbering, the trade traditionally taught to prison inmates. In addition to state licensing many New York City agencies also regulate entry into a host of occupations.

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\*Attorney General's Survey, Buffalo Valley Jaycees, Lewisburg, Pa. 1972

More than one hundred types of licenses are issued by the City Department of Licenses. This agency, together with the Police Department and the Taxi and Limousine Commission are the major municipal licensing agents. Here too, the only standard provided is "good moral character", and discretion is both substantive and procedural. Nothing in the way of formulated rules that can be published and circulated to affected persons exists. Decisions are made by the Commissioners or to those to whom authority is delegated.\*

Even a cursory examination of the occupations licensed, suggests how far the practice of licensing has strayed from its original intent of protecting the stature of professions and the public interest. How many ex-offenders are unemployed or under-employed because they have been disqualified or are deterred from applying for permission to work in many occupations, although equipped by training or aptitude, is not known. But the inconsistency of legal standards, the variations in administrative rulings together with complex and threatening application procedures, doubtless comprise a formidable barrier. Professionals in probation and parole service and voluntary service organization personnel who testified unanimously oppose all across-the-board restrictions on ex-offender employment. The controls over motor vehicle licenses and the occupations governed by the State Liquor Authority they consider pre-eminently significant because of the large number of

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\*For a comprehensive analysis See Milton M. Carrow. The Licensing Power in New York City. Fred B. Rothman & Co., South Hackensack, N.J. 1968

potential jobs encompassed. In both cases the licensing agency is empowered to deny licenses to those convicted of a wide range of offenses of no apparent relation to either the use of, or work in contact with vehicles or alcoholic beverages.

#### Critical Comments

Direct quotation from testimony of but a few of the many witnesses who addressed part or the whole of their testimony to licensing laws conveys the outrage expressed at the content and spirit of these laws.

These laws either deny licenses required for many types of positions or completely bar ex-offenders from working in a particular field. Some of these laws were occasioned by particular crimes in which an offender took advantage of his position. But it is highly doubtful whether absolute unqualifications are a rational response to such incidents.  
Hon., Patrick V. Murphy., Former Commissioner,  
New York City Police Department.

The State of New York unfortunately mandates that its punishments endure forever. The New York Civil Liberties Union submits that punishment should end at the moment the offender completes the sentence imposed. A man's conviction should not pursue him for the remainder of his life. The elimination or the restriction of the statutory mandated disabilities would substantially help in the effort to eliminate the perpetuity of punishment.

Ira Glasser, Executive Director, New York Civil Liberties Union.

The lay public may comment that the person who is convicted and sent to an institution pays a debt to society. But that is far from the truth. An individual identified by the courts as an offender literally pays a debt the rest of his life. The impact of that conviction lasts far beyond the

length of any sentence, and it lasts because society has not yet provided any mechanism for fully restoring the offender to society. What we have done is just the opposite.

John Wallace, former Director of Probation, New York City

For a great many years we have known that if individual offenders are to be brought to the point of change, they must be dealt with as individuals. We need laws and regulations that are flexible to take into account the individual circumstances which prevail at the time when an offender is returned to the community on parole or is placed on probation.

I fully realize that the various laws and prohibitions that have been placed on the books were put there as a means of protecting the citizens from the depredations of individuals who have, by their own acts, labeled themselves as irresponsible, untrustworthy, and open to suspicion. But many of these laws and regulations make no allowance for the individual, his attitude, his repentance, and his family needs, or the circumstances of the employment, and the license which he might hope to obtain is forbidden. Even though the proposed employment may have merit, some licensing agency may deny permission for the person under supervision to take the job because of his conviction.

Arch E. Saylor, Chief Probation Officer, Probation and Parole Office, U.S. District Court, Southern District.

Let me make it clear at the outset that I come before you as an advocate. There may be reasonable men with reasonable arguments in favor of our present system of imposing civil disabilities, but after many years of experience in criminal law, I have found it is insufficient to justify the present practices...In my view civil disabilities simply do not satisfy any of the goals

of the criminal law. They are counter-rehabilitative, as I am sure many witnesses have testified, and to the extent they have anything to do with deterrence or incapacitation or retribution, the other goals that are usually identified when we talk about criminal law, their effect is very, very modest and hardly outweighs the fact that criminologist after criminologist has concluded that employment potential is one of the major factors that goes into recidivism. A man with bad job prospects is more, not less, likely to return to prison.

Professor Michael Meltsner, Columbia University School of Law.

The statutes which prohibit employment of persons with criminal records in certain lines of work are generally as unsound as they are unfair. The notion that a person with a felony conviction may not work as a dishwasher in a restaurant that serves alcoholic beverages is beyond comprehension. Such statutes are enacted by legislators on the basis of good intentions and colossal ignorance.

Hon. Whitney North Seymour, Former U. S. Attorney, Southern District.

#### Examples of License Denial

A few examples taken from the testimony of attorneys who described some actual recent or pending cases give an indication of the range of hardships these laws impose.

A teacher with a successful record in the New York City School system was found guilty of contempt of court. Shortly after this conviction her license was revoked and she was forced out of the school system. She secured employment in a day-care center where she was consistently appointed to positions of greater responsibility. But her present position requires certification which she doubtless will be denied once this prior conviction is revealed.

A man with 2300 hours of prison barbering experience was disqualified although his

experience far exceeded the requirements for journeyman-barber, and two years after release with no subsequent arrests.

Another, convicted of gambling offenses, but given a suspended sentence, after one year's satisfactory employment as an unarmed guard in a private investigation office, was dismissed.

Another convicted 20 years earlier for a gambling offense, and with no later arrests, was denied by the State Harness Racing Commission the license needed to make deliveries of blacksmith supplies to the tracks.

A young man, one year out of prison, eager to "get his life together" was informed by the appropriate bureau in the State Department of Health that even if he fulfilled the requirements - completion of a two-year course, with no further arrests, he would still be deemed ineligible.

The frustrations these controls cause to service agencies' job developers and individuals seeking work is particularly cruel in the case of ex-offenders who, in prison, were trained and commended for performance in professions or occupations (teachers, health technicians, and nurses) that they are unable to pursue upon release. The rationale for such a policy clearly demands re-examination when training and work experience in an occupation given in prison is intended as the main thrust of the rehabilitation process.

#### Relevance of Criminal Records to Licenses

Critics of licensing policies were unable to find any justification, legal, moral, or social, for prior conviction records as an absolute or automatic barrier to licensing. Mandated exclusion

fails to recognize the differential quality of criminal records and unlimited discretion invites unwarranted investigation and inconsistent determination. Licensing laws as now constructed, and the policies and procedures these laws engender, were held to be arbitrary, of questionable constitutional validity, not demanded for public safety, and counter-productive to the public interest, if rehabilitation of ex-offenders is given the merited priority. And furthermore, because the incidence of arrest and conviction today falls most heavily on members of minority groups, the effect of statutory constraints is to compound historical patterns of discrimination that have inhibited minority members' ability to achieve professional or technical occupational status, or to be eligible for relatively secure, although lesser-skilled jobs, that also are licensed.

It was agreed by virtually all witnesses that consideration should not include records of arrests, nor records of convictions not clearly related to the potential for satisfactory performance in the particular occupation sought; and the onus for a showing of relevance of prior criminal behavior to eligibility for a license should be shifted to the licenser.

In the entire four days of testimony only one example of an occupation was offered for which a review of all past offenses might be pertinent in determining an applicant's fitness. Commissioner Murphy suggested that possible justification for a general review might exist in the case of gun-carrying occupations. But it is important to note that even in this extreme instance, he was motivated by the inadequacy of gun controls rather than by a belief that all ex-offenders are unsuited to law enforcement

functions. He said,

Section 400 of the Penal Law in effect prohibits the employment of ex-offenders in positions that require the carrying of pistols. The Police Department is charged with the issuance of licenses for pistols, and under the Penal Law we cannot license convicted felons and those guilty of many categories of misdemeanors. I strongly believe that gun controls are not strict enough and denial of licenses in this unique area, because of previous criminal record, is well-founded.

However, I question whether all of the other restricted categories of employment require such severe limitations. These provisions must be re-examined in an attempt to open new areas and provide new employment possibilities and alter the currently discouraging and demoralizing employment situation into one which is responsive to the practical needs and the skills of the ex-offender.

#### The Defense of Current Licensing Policies

Given the scope of the Commission's hearings it was impossible to invite as witnesses representatives of all state and local agencies that administer licensing laws. Representatives of two major agencies were invited, the two with jurisdiction over the largest potential number of jobs, the State Department of State and the State Liquor Authority. Secretary of State John P. Lomenzo accepted the invitation. Acting Commissioner Robert E. Doyle of the State Liquor Authority did not accept, but sent a letter describing Authority Policy that was read into the record. Both statements are significant.

Statement of Secretary of State John P. Lomenzo prepared for  
City Commission on Human Rights.\*

I, as some of you know, prior to my present position, was a member of the judiciary and I have retained a keen interest in efforts to rehabilitate those adaptable to rehabilitation upon their discharge from a penal institution. I am proud, too, to be part of an administration which has been a catalyst in this particular area.

The New York Department of State is responsible for the licensure of more than 400,000 residents of our state.

These licensing functions are diverse in that they comprise those in the professional trade skills of barbering and cosmetology and those in the fields of real estate broker and real estate salesman.

At this juncture, let me stress that the purpose of licensing is quite obviously to protect the interest of the public and to ensure that those who are licensed for a particular occupation are competent, capable, and able to carry out their job responsibilities efficiently.

If, it so fortunately develops, there is a tangent to this in the form of rehabilitation, or therapy, so much the better.

Indeed, in the Department of State, we do consider the rehabilitative aspect.

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\*Delivered by Patrick J. Cea, Counsel, New York State Department of State.

It is policy of the Department of State to extend every possible cooperative effort to rehabilitate the ex-offender, the narcotic user and people who have generally deviated from society's laws.

Within this framework of cooperation, the Department of State has entered into agreements with the New York State Department of Correctional Services, which now includes the Division of Parole; the New York City Department of Correction, the State Narcotic Addiction Control Commission, the Federal Bureau of Prisons and the Division of Vocational Rehabilitation of the State Education Department.

.....In the case of those in institutions, under agreement made by me, one year's credit is given if the inmate had at least one year or more under supervision of a licensed barber in the institution in which he was held.

.....A similar agreement exists between the Department of State and the Federal Bureau of Prisons within the Department of Justice, the agreement and licensure system all being channelled through the liaison officer of the Federal Southern District of New York.

.....I would like to mention one other area of the Department's licensure responsibility and its relationship to the ex-offender.

On a few occasions, people with a misdemeanor-type background have applied for a license in the real estate field and I can assure you they are given every appropriate consideration.

Pursuant to the applicable law a person with a felony conviction cannot be licensed as a real estate broker or salesman until he has received either an executive pardon by the Governor or a certificate of good conduct from the Parole Board.

A certificate for relief from disability, signed by a State Supreme Court Justice, is not acceptable in lieu of the pardon by the Governor or certificate of good conduct from the Parole Board. However, in other areas it does bear great impact in the course of an administrative decision.

.....Since 1960, when the State-New York City program was inaugurated, more than 600 inmates and parolees have been licensed either as master barbers, apprentice barbers, temporary cosmetology operators or regular cosmetology operators.

.....From 1969 to April 1st of this year, the Department of State has received a total of 329 preliminary applications for apprenticeship certificates in barbering and 25 for cosmetology.

.....When 1972 began, there were 23,666 barbers licensed and 102,182 cosmetologists. Let me add hastily there has been an average of 500 barber licenses for each period in the last six years while the number of cosmetologists has shown a gain of 21,810 in the same period.

.....However, as the ratio applies to ex-offender applicants and ex-offenders who have become licensees, the rate of disapproval is less than one and one-half per cent after recommendations.

It must be importantly reiterated that licensure is to protect the public health and welfare. And, it must be repeated that where licensure is a rehabilitative adjunct, it can only be and must remain tangential.

The responsibility to protect the public interest remains the primary reason for licensure. In the face of exuberance to implement the rehabilitative process, it is still incumbent upon a licensing agency to maintain that proper balance.

In some cases, we have no alternative but to reject the application filed by the ex-offender.

.....In the light of the success achieved by the Department of State programs, I would strongly urge that other governmental agencies--at all levels--at least review, consider and where possible, modify the requirements for the employment of the ex-offender which now are severely restrictive.

There is, of course, no absolute guarantee that this rehabilitative procedure will be an armor without a rent in it.

It cannot be hoped, or expected, to be totally successful in its concept. However, it is a beginning, a thrust, which I firmly believe, based on the results of this initial program, which makes the effort well worth the interest, the time, and the energy expended on it.

Reply to invitation to appear at City Commission on Human Rights  
Hearings by Robert E. Doyle, Acting Chairman, Executive Department,  
Division of Alcoholic Beverage Control, State Liquor Authority.

Insofar as the State Liquor Authority is concerned, pursuant to Section 102 of the Alcoholic Beverage Control Law, no licensee may knowingly employ in his business in any capacity any person who has been convicted of a felony or certain other specified offenses, unless such person has received an executive pardon or the written approval of the State Liquor Authority.

By way of factual background, you may be interested in knowing that when the Alcoholic Beverage Control Law was enacted in 1934, persons convicted of a felony or certain misdemeanors were unconditionally barred from employment in licensed premises.

The law was amended in 1939 to permit employment when the ineligible person had received an executive pardon; again

in 1941, to permit employment when the ineligible person received the approval of the State Liquor Authority; again, in 1960 and 1961, so that where the Authority approved the employment by a licensee in a specified capacity the ineligible person could thereafter be employed in the same capacity by any other licensee without the further approval of the Authority. Also, in 1966, Article 23 of the Correction Law was enacted and authorizes any court of this State and the State Board of Parole to issue a certificate of relief from disability, which permits the holder thereof to be employed by a licensee without the permission of the Liquor Authority.

It is important to observe that a conviction for a crime does not necessarily disqualify a person from employment in licensed premises. Only a conviction for a felony or the crimes specified in our law constitutes a disqualification.

A review of our recent records reflects that in 1968, of the 140 applications submitted, 105 were approved; in 1969, of the 166 applications submitted, 116 were approved; and in 1970, of the 179 applications submitted, 132 were approved. Overall, approximately three out of every four persons making such applications are approved.

I invite your attention to the fact that there are several bills currently pending before the Legislature which bear directly on employment of disqualified persons in licensed premises. One such bill proposes the repeal of this provision of law. As you are undoubtedly aware, the Authority is an administrative agency of government charged with the duty of administering the various provisions of the Alcoholic Beverage Control Law as passed

by the legislature and approved by the Governor. Should any change in the law be enacted, the Liquor Authority will govern itself accordingly.

It is also significant to note that the Authority is presently engaged in litigation in which a disapproved applicant for employment has challenged the constitutionality of this section of law. The case is presently pending in the Supreme Court, Appellate Division, First Department; and the Liquor Authority is being represented by the Attorney General of the State of New York.

In view of the circumstances outlined, I do not feel warranted in participating in your hearings.

In closing, it is my considered judgment that the repeated amendments of the Alcoholic Beverage Control Law and Article 23 of the Correction Law, coupled with the Authority's record of permitting three of every four applicants to work in licensed premises, have had a salutary effect in alleviating the problem of ineligible persons obtaining employment in licensed premises."

#### Principal Defense Presented By Licensed Authorities.

The central thrust of both statements is that prevailing administrative policy is neither rigid nor stringent in reviewing applications by ex-offenders. Indeed both agencies indicate an increasing liberality toward those with prior records. But neither were able to offer any objective standards against which applicants are evaluated. They could say only each case is examined on merit, a policy assumed to contravene the possibility of arbitrariness. And in both statements, an increase in the number of applicants approved was furnished as evidence of the trend toward a less restrictive policy.

The responsiveness of both agencies to the problems of ex-offenders is commendable, but reliance on prevailing attitudes of agency leaders is not necessarily a sound basis for determining what, in effect, constitutes the right to work. In the absence of defined standards, the prospects for applicants are uncertain, the rulings will be inconsistent, and too much scope is given to opinions and judgements of the actual persons who review at any given time. If less restrictive approaches have been adopted and have been adjudged successful, they should be incorporated into objective criteria. Judge Lomenzo expressed justifiable pride in the pioneering achievements during his tenure in opening up avenues to barbering and cosmetology, and attributed his progressive outlook to a background of judicial experience. But his successors may not be so disposed. Moreover relaxation of yesterday's practice may appear to those in charge as sufficient progress, yet such relaxations may be insufficient responses to changing conditions. All agencies and all agency personnel are not equally responsive to societal needs and conditions, or to the prevailing opinions of experts in correction, or even public sentiment.

Some may not respond even as readily as the often sluggish State Legislature. Consider the problems of securing driver's licenses for ex-offenders. Legislative action was demanded to relax modestly the policies of the Motor Vehicle Bureau toward ex-offenders, permitting the Commissioner to issue a license to parolees upon endorsement by their parole officer. The bureau itself was not the prime-mover. Given the importance of a driver's license for general mobility, transportation to and from work, or

as a skill requirement for many jobs which ex-offenders could apply, few professionals in correction find this relaxation sufficient or even appropriately ameliorative. Parole officers who testified were critical of the requirement for parole approval and prefer allowing a parolee to apply directly. Moreover the law does not require the Bureau to act on a parole officers recommendation; and it does nothing for the countless ex-offenders who are not on parole. Because license rulings historically have been left largely to administrative determination, and have not been governed by consistent regulation, recent changes in motor vehicle license availability are known to only a few ex-offenders and not even to all parole officers.

Many of the witnesses who work on a day-to-day basis with ex-offenders acknowledged that some licensing agencies have become less rigid in reviewing ex-offender applications. For example, one parole officer testified that the Police Department is "beginning to relax their policies towards licenses for taxi drivers, but changing far too slowly." The changes are slow in coming and inadequate in effect.

#### Defects In The Case-By-Case Approach

The major problem, as seen by a wide range of witnesses, irrespective of the posture of current agency administrations, is that the probabilities of receiving favorable disposition to any application by an ex-offender are unpredictable. The case-by-case approach appears on its face to be all that one could reasonably require. But the surface logic and equity of this approach increasingly is attacked because it begs the essential questions - the factors

considered, the values accorded them, and the controls over individual screening agents. Even when organizational policy is non-discriminatory, or better still, positively open, in the absence of clear guidelines and careful staff instruction, actual practice can deviate widely from top management philosophy. Too often, the case-by-case approach devolves upon the understanding and ability to apply general policy objectives on the part of the particular individual who reviews a given application.

For the ex-offender the case-by-case approach is particularly threatening. Such applicants are not likely to believe that they will fare well when judged on their merits, unless they are assured that they will be evaluated only for ability to perform a particular job. Understandably, people who have been convicted cannot hold a very optimistic view of the moral judgements others will render toward them.

A case-by-case determination of "good character", unless what constitutes good character is spelled out in precise terms, provides insufficient basis for consistent or equitable determination. And standards are all the more essential in the absence of reviewing mechanisms other than the courts, a recourse available to few. To insure equitable treatment, the case-by-case review must be restricted to consideration of only those factors that are truly relevant to the performance of a particular function, and must separate criminal from non-criminal considerations.

#### What Licensing Statistics Show

Both Judge Lomenzo and Mr. Doyle offer as evidence of a flexible and progressive policy the growing numbers licensed in recent years.

But job developers for ex-offenders testified that few apply for licenses of any kind because the process of application is itself complex, lengthy, and threatening. Only the well-educated or middle-class professionals, or unusually resilient would-be waiters, real estate salesmen, or bartenders have the financial or emotional resources to withstand a process that may, after protracted delay, result in a denial. Indeed most ex-offenders generally believe that licensed occupations are totally closed to them.

The statistics presented by Mr. Doyle of the State Liquor Authority are interpreted by him as evidence of the relative ease of access to occupations under the Division of Alcoholic Beverage Control (ABC) licensing policies. But many witnesses contested this interpretation. For example, Arthur J. D'Lugoff owner of the Village Gate said,

Many ex-offenders just don't have the know-how to do these things. If they do get a lawyer, very often it just seems to be a lot of money. I have had a situation with a musician who had to hire a lawyer for \$200 just to be licensed to work as a drummer in a cabaret. Let's say the drummer would be earning \$150 a week. What is the equity in it for a person who hires a lawyer for \$200 to give him the right to work for less than that per week.

Jack Townsend, President of Local 15 of the Bartenders Union and the Chairman of the New York City ABC Board, considers the State Liquor Authority lenient in its application of the law, but said that many ex-offenders may not know they can apply. According to Richard Van Wagenen, formerly of the Criminal Justice Coordinating Council,

the problem is that few employers who have a good number of applicants for a single job will seek SLA permission for an ex-offender. Numerous witnesses agreed, noting that employers can be called to testify at time-consuming hearings on all applications, hardly worth the effort if all that is at stake is hiring a dishwasher. There were some witnesses who believe that the law is not rigorously enforced and that unapproved persons may be working for some liquor-licensees in marginal smaller establishments. Few employers of any size, reputation or stability would jeopardize their licenses for the sake of an unskilled worker. Moreover, it was alleged that where the regulation is flouted, the workers probably are exploited as a cheap source of labor.

The number of applications reviewed by the State Liquor Authority, totalling 179 in 1970, is not an impressive number when compared with an estimated 100,000 jobs under its control. Such a comparison tends to confirm the view expressed that the process of application itself, and the restraining image of an unrestricted authority serve as deterrents, irrespective of changing administrative policy. The small percentage of denials does not satisfy the claim of many witnesses, that some denials are unreasonable. Even if the percentage of denials is small, as the State Liquor Authority reports, that percentage can still work considerable hardship on individuals who have few employment options.

#### Denials By The SLA

Some examples given in testimony raise serious questions as to the reasonableness of such action that numbers alone fail to refute. The following three examples are but a few of the many cited, mainly by probation and parole officers.

1. A young probationer opened a grocery store and was doing well but found that he was unable to meet the local competition because of his inability to secure a license to sell beer. He was forced to close his store.
2. An older man, formerly a confidence man, but now, according to his parole officer, "tired of running and ready to take any secure job and be content" found a job as a maintenance man in a bowling alley. The State Liquor Authority required his employer to dismiss him because of the existence of a bar on the premises, although the man's job in no way brought him into contact with the sale of liquor.
3. A parole officer of long experience found a job for a parolee to stamp cans in a supermarket and helped him with the necessary application to the SLA. Nonetheless it was disapproved. The notice of disapproval stated "The prior arrest record of the petitioner is such that to approve this permit would create a high degree of risk in the administration and the enforcement of the Alcoholic Beverage Law and would not serve public convenience and advantage.\*

The rulings of the State Liquor Authority were a particular focus at the hearings, not because the agency is itself more restrictive than others, but because more unskilled jobs characterized by high turnover in small establishments fall within its regulation. The examples offered could be construed as evidence of an intransigent administration, but this would be a case of confusing the symptoms of problems with their causes.

#### Licensing Laws Are The Problem

The fundamental problem resides in the laws that enunciate public policy. Both Judge Lomenzo and Mr. Doyle correctly maintain

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\*This last is an example of legislative action preceded by administrative action. A recent amendment to the Alcoholic Beverage Law exempts some jobs where liquor is sold for off-premise consumption.

that they are bound by the laws they are empowered to apply and enforce. Both are in their own way attempting to mitigate the effect of laws that segregate all who have at one time found guilty of some transgression as a separate class, to be treated with continual suspicion. Even the most benign and compassionate administration could not offset the potential damage that flows from laws that either arbitrarily exclude from occupations all ex-felons or permit the total history of an applicant to be appraised against another's view of "good character."

Both witnesses, in different ways, are evidently aware that the statutes are the core of the problem. The Department of State press release distributed May 24, 1972 to publicize testimony at the Commission's hearings, begins

New York Secretary of State John P. Lomenzo today urged modification of unnecessarily restrictive restraints on employment of former prison inmates to assure maximum employability after return to the community.

Civil disabilities which severely limit employment opportunities for ex-offenders should be completely reviewed and where possible modified to assure maximum opportunity for employment after return to society's mainstream.

Mr. Doyle in noting the past and pending amendments to the Alcoholic Beverage Control Act, suggests by implication that such amendments are reflective of the statute's need for review.

The ABC Act\* drew most of the fire of critics of licensing

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\*The pertinent passages are appended as Appendix 3.

because of its archaic attitude toward alcohol, and because it regulates not only the licensee but all employees in whatsoever capacity. Enacted as a post-prohibition method to eradicate the control of organized crime, it now bars entry into a range of jobs in several industries, hotels, restaurants, clubs and numerous others, even to former misdemeanants.

Examples of the critical views expressed by correctional personnel are:

An ex-con can go into a bar and get drunk but can't work in one. To be consistent he shouldn't be allowed to buy a drink.

The present thrust of our laws dealing with employment in the sale and purchase of alcohol would appear to be almost sacramental in nature. I wonder sometimes why we don't simply limit the dispensing of booze to the clergy and senior citizens of pious reputation.

Laws such as the ABC fortify the attitudes of the large companies towards ex-offenders by prohibiting ex-offender employment.

The silliness is self-evident. A hotel can't hire an ex-offender as a porter but if it contracts to an outside firm their employees may all be ex-felons.

Arthur D'Lugoff who actively worked for the repeal of city cabaret licensing finds ABC controls equally injurious to employers and employees, especially for the many talented and creative musicians and entertainers who often are members of minority groups. Moreover, they are unnecessary to public safety, for repeal of city

cabaret licensing has had no discernible effect on the character of the cabaret industry. He believes,

"No agency, including the State Liquor Authority should hold the right of employment in its hands."

Similar criticisms can be leveled at all licensing laws for the punitive philosophy they embody. The intent of all licensing laws that impose civil disabilities on ex-offenders is to screen out anyone who could be considered in any way suspect rather than to offer a second chance to even apparently good risks. Administrative agencies cannot be faulted if, in what Judge Lomenzo characterizes as a search for the proper balance between the objectives of public safety and potential rehabilitation, they operate on the assumption that they risk censure less in denying an application than in granting one. Their policies are in accord with the traditional mistrust of anyone charged or convicted of illegal activity and with the conventional judicial view of licenses as a privilege rather than a right. If an ex-offender can be disenfranchised it follows that he is not entitled to other privileges of citizenship. It is not surprising, in the absence of statutory provisions that encourage a positive approach toward ex-offenders, that more sophisticated and objective selection criteria have not been developed. The absence of positive legislation towards ex-offenders permits Secretary Lomenzo to see the rehabilitation potential of employment of ex-offenders as "tangential" considerations, in his agency's regulation of occupational entry.

Unfettered discretion and the lack of legislated direction has allowed for bizarre rulings. Examples offered by witnesses include: Waterfront Commission denials of work permits on the basis of off-duty

behavior, such as the suspension of a longshoreman charged as disorderly while on vacation, even though charges were dismissed; the Boxing Commission's refusal to license Mohammad Ali, although such licenses routinely are given ex-offenders, because of his stance on military service; denial of a taxi license to an ex-offender after six years of a clean record, who was told to return in 14 years when he would be 50 years old; denial of a part-time waiter's job by the State Liquor Authority because the job "would not serve the public convenience and necessity." These and many more that were introduced into testimony indicate the curious standards applied by the grantors of licenses and the problems inherent in bureaucratic determinations of good character.

#### The Legislative Remedy

The obvious remedy is legislative. There are legitimate reasons for licensing many occupations, but indiscriminate regulation of occupations and escalation of credentials required as a kind of security blanket for vested interests, is opposed by groups concerned with equal access to employment. The focus here, however, is limited to those provisions in the laws that affect ex-offenders.

What appears to be required is a thorough overhaul of existing laws. The objectives should be to supplant arbitrary exclusion of all ex-felons or misdemeanants, and the open-ended determination of moral character or fitness, with legislative enunciation of positive policy that at minimum states that prior conviction is not an automatic barrier to any occupation. The basic standard for exclusion should be that a clear connection between a specific violation and the license sought can be shown by the grantor. Statutes

should either provide standards or require that they be established in precise terms. And where a past conviction may reasonably appear to relate to the license sought, sufficient evidence of rehabilitation, measured either by time elapsed since conviction, the judgement of parole and probation officers, or a satisfactory work history, should permit the applicant to be considered eligible. Representatives of the Legal Aid Society added that protection of those adjudicated as juvenile or youthful offenders requires that legislation should also stipulate that only adult convictions be reviewed.

#### Model Bills

The foregoing is, in sum, the substance of legislative reform proposed at the hearing by numerous witnesses. Discussion of the form of new legislation was also heard. The Civil Rights Committee of the Bar Association of the City of New York proposed an omnibus bill to supplant all pre-existing licensing laws. William S. Greenawalt, testifying for the Civil Rights Committee, stated

Piecemeal amendment of the seventy or eighty statutes is difficult, inordinately time-consuming, and likely to end in failure. There are so many discrepancies and inconsistencies between statutes, that even an agreed standard formulation would mean endless weeks of drafting and debating to implement. Also few lawyers or parole officers, and fewer ex-offenders, can be expected to know these statutes cold, so advice and action would almost always be ill-informed. It appears desirable, therefore, that the present statutory disabilities be removed in one law over-riding the provisions of the numerous and scattered laws on the books. Such a law would make clear to all concerned the public policy

of the State of New York and would avoid the possibility that there would remain on the books by inadvertance some limitation inconsistent with this policy.

This model bill removes disqualifications of ex-offenders for both trade and professional licensing, and for employment by state agencies as well, solely for reason of a prior conviction of a misdemeanor or felony, and repeals any act or parts of acts in conflict with the policy it sets forth.\* It establishes criteria for exclusion and administrative procedures for dealing with violations.

The precise language is as follows:

- (a) the relationship or lack of relationship between the misdemeanor or felony for which the applicant was convicted and the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit or certificate is sought;
- (b) rehabilitation of the applicant since said conviction, regardless of the misdemeanor or felony for which the applicant was convicted;
- (c) a pardon granted by the President or the Governor of the state wherein the conviction was had, a Certificate of Good Conduct or a Certificate of Relief from Disabilities;
- (d) other relevant factors.

Another model statute, also an omnibus bill, has been drafted by The Insititute of Criminal Law and Procedure of the Georgetown University Law Center.\*\* This is not aimed at any particular jurisdiction but intended to aid legislative draftsmen throughout the United States. In addition to the criteria of job-relatedness of prior convictions and evidence of rehabilitation, it also sets forth as principals of licensing the prohibition of the use of

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\*The full text is appended as Appendix 4

\*\* The full test is appended as Appendix 5

records of arrests and misdemeanors for which no jail sentence is imposed and distinguishes between criminal and non-criminal, or moral, standards by requiring that "good character" be determined without reference to conviction records. In addition, it suggests as an objective standard of rehabilitation, that a period of three years after final discharge or release with no subsequent conviction be taken as prima facie evidence of rehabilitation. Finally it requires a written explanation to the applicant when an application is disapproved.

The principal substantive problem is how far a new law can go toward establishing standards of job relatedness and sufficient rehabilitation. Among the numerous occupations licensed there is so wide a range in the degree of public trust and responsibility involved that no single statute could do more than establish general principles. The problems for licensing authorities vary also from regulating professions conducive to self-employment, to technical trades or relatively unskilled jobs, where another review is made by the actual employer. There is an obvious difference between licensing a physician who can become an independent practitioner, and an x-ray technician likely to work only in a closely supervised setting. In the former, a total review of criminal and non-criminal behavior might be justified, while the latter appears to necessitate no more than accreditation of job training and skill.

The impact of a law such as that proposed by the Bar Association will depend on how and by whom the fundamental tests of relevance and rehabilitation are applied. Both are nebulous

standards and little applicable or reliable research data exist. A principal benefit likely to accrue from legislative reform is the development of valid research evidence on both factors so critical to the selection process.

Discussion concerning job-relatedness of offenses at the hearings was largely limited to the general principle, and the specific examples offered tended toward the exotic. Witnesses were able to suggest off-the-cuff some apparently job-related offenses - narcotics violations and pharmacology, rape or sexual deviance and elementary school teaching, forgery and check cashing, blackmailing and private investigation. But even the apparent surface logic of these examples may be questionable.

Determining the relevance of a particular offense to a particular job is far more complex in the abstract than when narrowed to a single occupation. This is true not only because a focus shrinks the area of consideration, but also because ex-offenders seldom seek entry to occupations that clearly are negated by their offense background. It is not convicted rapists applying for licenses as elementary school teachers who are the problem but rather those convicted of minor offenses who are hoping only for a non-sensitve job.

The commission of any type of offence is not always predictive of future behavior. But the real problem in determining the job-relatedness of an offense arises because the majority of ex-offenders have been convicted of the lesser crimes against property that maybe more often symptomatic of prevailing behavior patterns of youth in certain milieus. Criminologists and other experts suggest that there may be no absolute correlation between behavior and future

conduct, especially if an individual is given the opportunity to adopt a different life-style. Such limited experience as has been validated in program research confirms this view. One potential research resource exists in the variations between jurisdiction, as it permits comparison of experience in regulated occupations.

#### National Clearinghouse on Offender Employment

The American Bar Association has established a National Clearinghouse on Offender Employment Restrictions to identify, catalogue and assist in the removal of unreasonable restrictions. Its fifty state survey affords ample opportunity to design studies that compare practice and evaluate the basis of exclusion.

James W. Hunt, the Clearinghouse Director, considers that the best source of knowledge will arise out of carefully considered current and future action. If a new licensing statute goes beyond stating the basic criteria to demanding that for each occupation to be licensed the specific standards be established and published, then the necessary careful job-analysis will take place and the basic flaw in the case-by-case approach will be overcome.

Even where the nature of an occupation suggests stringent standards, or where an offense appears relevant to a particular occupation, there must be a second test, the criterion of rehabilitation.

#### Recommendations:

In the Commission's view, prudence and minimization of risk may warrant substantial periods of time as a showing of rehabilitation, but the well-known fact that the longer an ex-offender

remains unemployed the greater his chances of re-committing an offense points to a shorter period. If priority is given to opening employment not only for reasons of humanity and equity but also to prevent recidivism, then it follows that denial of licenses must be confined to the clearest evidence of relationship and the most sensitive occupations, and that the stipulated time after which relevant offenses should still be considered be as brief as appears reasonable. The Georgetown model statute proposes a three year post-discharge for all. Within that time, strong evidence in the form of probation or parole evaluation, work history, or participation in education and training should be carefully considered.

The tendency of every occupational group to consider its sphere of activity especially sensitive suggests a need for impartial review of licensing authority findings. Requiring that criteria be publicized is one form of review. Another is to demand written explanations for denials. Additionally, some witnesses favor the establishment of an impartial review board.

The Commission recommends the enactment of an omnibus statute governing licensing by all state and city licensing authorities that:

- (1) Prohibits denial solely on the basis of a past criminal record.
- (2) Restricts denial to those instances where there is either a clear connection between a particular offense and the license or job sought or where there is insufficient evidence of rehabilitation.
- (3) Requires each licensing authority to develop and publish objective criteria of job-relatedness and evidence of rehabilitation,

including a time frame beyond which criminal records will not be reviewed.

(4) Establishes a method of impartial review of the criteria adopted and their application.

#### Trends In Judicial Decisions

Until recently, according to lawyers who testified, the courts seldom reversed rulings of licensing agencies. Agency decisions have sometimes been set aside and new consideration ordered because the lack of a hearing or representation by counsel constituted a denial of due process. But the courts seldom challenged the substantive rulings, holding that granting of licenses can be regulated without limit because they are a privilege and not a right. The courts have been expanding the scope of their review,\* examining the relevance of past offenses to the license sought and the extent of rehabilitation that appears to have occurred. These standards are symptomatic of a new approach, consistent with other decisions flowing from Title VII of the Civil Rights Act of 1964 that require a relationship between hiring requirements and the demands of the job.

The announcement in August, 1973, of the establishment of the Legal Action Center,\*\* a public interest non-profit law firm that plans to concentrate on the employment barriers in licensed occupations, as well as public and private employment, with a focus on litigation, is symptomatic of the increasing role played by pro bono lawyers and law firms that gives promise of expanding the scope of judicial decisions.

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\*For a discussion of pertinent cases see The Association of the Bar of the City of New York, Legislative Bulletin 17 May 1972.

\*\*271 Madison Avenue, New York 10016

### Legislative Trends

Judicial decisions point the way for legislative reform. Progress to date in New York State toward licensing restrictions has been slow. Modest reforms have been proposed repeatedly in recent years, only to die in Committee, fail to pass, or be vetoed by the Governor. The only recent reform accomplished of the many proposed was a 1972 amendment of the Alcoholic Beverage Control Act lifting some restrictions on the employment in retail establishments that sell liquor for off-premise consumption.

Portents of progress exist, however, in increased interest and stepped-up research and activity in other states. The American Bar Association and the Georgetown Law Center are both actively engaged in a national effort to eliminate arbitrary restrictions against ex-offenders and provide technical assistance to any jurisdiction interested in legislative reform.

Several states, have already enacted new legislation that partially removes occupational disabilities.

In Florida a 1972 statute\* governing all licensed occupations and public employment as well (applicable to felons whose civil rights have been restored) enunciates a commitment to rehabilitation and to facilitating employment for ex-offenders. It disallows the use of a prior conviction of a felony as the sole basis for denial of a license or public employment, exempting only law enforcement agencies.

The Illinois approach has been to amend 35 specific laws defining "moral character" as follows:

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\* The Florida statute is appended as 6 .

In determining moral character under this Section the Department may take into consideration any felony conviction of the applicant, but such a conviction shall not operate as a bar to registration.

Both are positive steps although they do not fulfill the entire need for legislative reform as it emerged from the Commission's hearings.

In California a limited reform enacted in 1970 prohibits the denial of a license to anyone for a trade learned in prison, even if a similar prior conviction would ordinarily be a disqualifier. Limited though this action is it does away with the most dysfunctional aspect of licensing laws and obviates the need for programs such as those recently instituted for barbers by the New York State Department of State. And in 1972 Governor Reagan signed into law a bill that establishes standards of job-relatedness for licensing boards to follow in determining moral character,

In 1973, Connecticut enacted a new law that represents a still more developed posture. This law which concerns discrimination against persons with criminal records, in common with the Florida law, governs both licensing and all public employment with the exception of law enforcement agencies. But it goes beyond a statement of a non-discriminatory policy by establishing three criteria for consideration: the job-relatedness of the offense, information pertaining to rehabilitation, and the time elapsed since conviction. In addition, it requires a written notice of rejection, stating the evidence presented and reasons for the

rejection, and provides for direct appeal from such rulings to a particular court.

Trade licensing reforms were enacted in 1973 in Arkansas, Colorado, Indiana, Oregon and Washington. Bills were introduced in 8 additional states with some still pending. The American Bar Association National Clearinghouse on Offender Employment reports that legislators in 12 other states and governors in a total of 25 have initiated the study of offender employment restrictions. Recent legislation should offer both the impetus and potential models for New York State action.

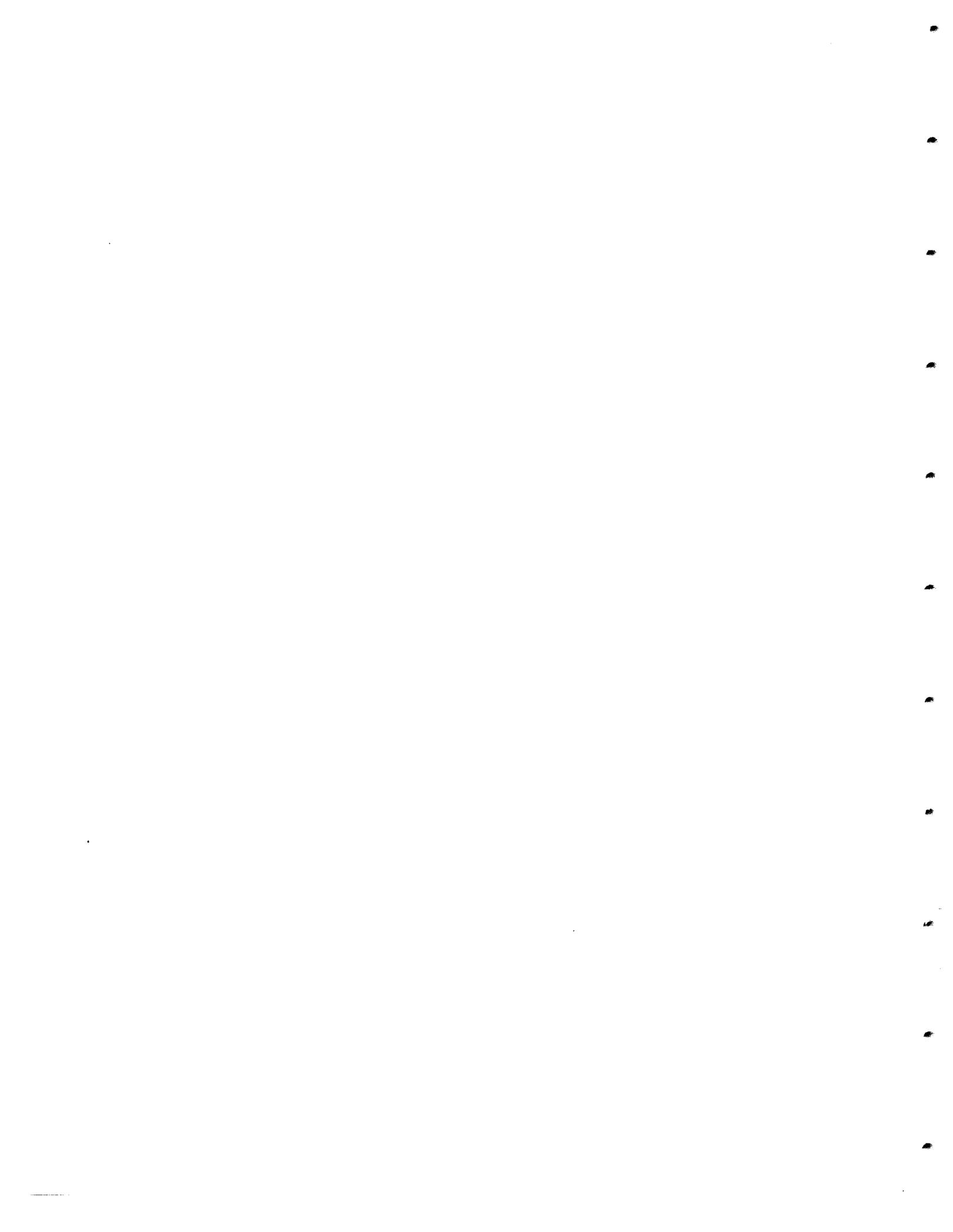
#### New York Legislative Activity

In New York State Senators John Dunne and Robert Garcia and Assemblyman Pisani are among those who have introduced and reintroduced a variety of legislative reforms addressed to ex-offenders including revision of licensing laws. In the fall of 1972 Assemblyman Joseph M. Reilly, Chairman of the Joint Legislative Committee on Industrial and Labor Problems, held hearings on ex-offender employment restrictions at which the Commission testified. The Commission's testimony was directed toward the need for removal of civil disabilities and it is gratifying that Assemblyman Reilly introduced a package of bills, related to the Commission's recommendations.

Notwithstanding renewed and increased interest on the part of these individual state legislators, 1973 proved to be another unproductive year in this state. Only one pertinent bill was passed by both houses. This bill would have broadened employment opportunities for former offenders by prohibiting denials by the State Liquor Authority where the offense background is unrelated to

the job sought, requiring approval when the supervising parole officer requests such approval, and demanding a published guideline stating the offenses considered to be related to occupations under control. The measure was vetoed by former Governor Rockefeller.

The outlook for 1974 is uncertain, but one favorable development is the passage by the Assembly on March 6, 1974 of a bill that prohibits licensing agencies from inquiring or acting upon information concerning the arrest of an applicant when that arrest was not followed by a conviction.



#### 4. BARRIERS IN PUBLIC EMPLOYMENT

Job-finding efforts on the part of correctional services and voluntary agencies serving ex-offenders, and ex-offenders themselves, according to comprehensive testimony taken at the hearings, is confined to narrow segments of the private sector. Public employment in the city generally is ignored by them. Avoidance of the public sector is based on the widely held view by professionals in the field and ex-offenders that few will be hired for civil service jobs of any kind, and that for even that potential few, the procedures are cumbersome, threatening, and overly time-consuming.

Ex-offenders frequently are virtually destitute and cannot wait months for a job. Because of their negative self-image they have limited ability to pursue a long range process of application and testing with little if any assurance of ultimate success.

Ex-offenders who testified told of numerous rejections for public sector jobs as bus drivers, orderlies, subway porters, and maintenance men. Some were rejected after passing all tests and others dismissed after provisional employment and satisfactory ratings. The latter resulted not from a failure to disclose the facts of their record at the time of application, but because that record was not received until months had elapsed. Many actions on behalf of ex-offenders have been instituted by lawyers against public hiring agencies but usually on behalf of those who seek skilled or professional titles.

It was the consensus of witnesses that the few ex-offenders who apply for jobs in the public sector are generally only the better-educated and more mature, or those with substantial pre-

conviction work histories or well-developed job skills. Those who counsel ex-offenders seldom recommend civil service jobs and therefore have little contact with public agencies. Therefore, probation and parole officers and special program personnel were unable to analyze in depth the precise barriers to ex-offenders in public employment. As a result testimony on the part of official and voluntary agencies on this topic was neither as full nor as focused as in the case of licensed occupations. Specific barriers identified were limited to the complexities of application procedures, and to then prevailing "rule of three" no longer in effect.\* In combination, it was believed, these two elements prevent the few ex-offenders who survive the application process from being hired. The first priority, according to most witnesses, is opening government employment, more urgent than licensing or the private sector, because the public sector offers a large and growing number of jobs and because the public sector should set the standards for all employers. The President's Task Force on Prisoner Rehabilitation in 1970 singles out the states and the Federal government as setting a most unedifying example in discriminating against employing persons for whose rehabilitation they are responsible. State and city agencies must set examples for others to follow, demonstrate the employability of those with negative histories, and assuage the private sector's

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\*Section 61 of the New York State Civil Service Law had provided that "Appointment or promotion from an eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list...." On January 2, 1974, the Office of the Mayor, by Executive Order, required all positions in city agencies to be filled in accordance with rank on eligible lists except where approved by the Mayor.

fear of financial loss, public censure or competitive disadvantage. Today the converse is the case. Public agencies exhort the private sector to give an ex-offender a second chance, but themselves offer even fewer jobs.

New York Congressman Charles Rangel in his testimony emphasized public sector leadership, saying

...If we say a person has paid a debt to society, we know that we are lying. We know that he carries a burden as long as he is in public life or out trying to get a job. It seems to me that if the Constitution is going to have credibility among Black and white, poor and rich, that the state, city and Federal government have a primary responsibility to test it. God knows we have enough civil service jobs. They don't require too much intelligence, much less whether or not a person has had a prior criminal record.

It seems to me that if we are going to have ads on television telling the private sector what to do, that we should have some track record of our own to show that we are making an effort to bring these people back to society.

John Wallace, former New York City Director of Probation, singled out correctional agencies as those agencies within the public sector with a special responsibility to set directions. He was critical of correctional agencies that enlist the aid of the private sector but who themselves have been unwilling to hire the products of the correctional system and reluctant to confront other public agencies. In his view, when professionals in correction and rehabilitation consider employment more rigidly exclusionary than the private sector, and yet fail to exert their influence, the credibility of rehabilitation objectives is undercut.

The City Commission on Human Rights, conscious of its role as a public agency, has long advocated elimination of discrimination of any nature in the public sector as a first step toward full and equal access to all employment. A clear imperative arising out of the hearings is to seek a reversal of the current job

scene for the ex-offender, so that public agencies will be a first and not a last or almost-never-used resort. Toward this goal the Commission determined to achieve a full understanding of public employment issues and invited as witnesses the top administrators of both the state and city civil service systems as well as representatives of the two national organizations intensively engaged in the study of public employment, the Institute of Criminal Law and Procedure of the Georgetown University Law Center and the American Bar Association.

#### The Georgetown University Law Center Study

The most comprehensive perception of public employment with respect to ex-offenders was provided in the testimony of Professor Herbert S. Miller, Deputy Director of the Institute of Criminal Law and Procedure of Georgetown University Law Center under whose leadership a major national study of the problem was completed in 1972. Entitled The Closed Door, the study concluded that all jurisdictions of the public sector offer little opportunity for anyone with a criminal record. The study codifies and analyzes in detail all civil service laws and regulations across the country and penetrates beneath the surface of statutory and administrative statements of policy to examine the functioning of public employment systems.

A principal finding reported by Professor Miller is that, official policy notwithstanding, conviction records are more often an absolute bar to all jobs and that arrest records and juvenile adjudications frequently are an equal obstacle. Although public employment of ex-offenders is largely unsystematized and undocumented, on the basis of careful analysis of procedures Professor Miller concluded that in 60% of jurisdictions some

form of prior conviction is an absolute bar, and that in 20% the same is true for arrests alone, even where it is claimed that arrests not followed by a conviction are not considered.

From the perspective of this exhaustive study, Professor Miller was able to identify the critical elements in public employment as they apply to ex-offenders. They are the pertinent sections of state laws, the formulation and dissemination of guidelines, the application forms in use, the screening procedures, and the existence or absence of accurate data on the number of ex-offender applicants and the number qualified and hired. These elements provide an appropriate framework against which to assess the system obtaining in New York State and City.

#### Civil Service Statutes

Although statutory provisions obviously are fundamental, the Georgetown study reports that in almost in no state do the statutes provide an affirmative statement of public policy towards ex-offenders. Instead, in almost all, the former offender is either barred outright or deemed potentially unsuitable to all jobs. The essential difference hinges on whether state laws stipulate that anyone with a criminal record "shall" or "may" be refused examination or rejected. In either case, characteristically, state laws are written in language so imprecise as to permit exclusion of almost anyone on any basis.

Accordingly, a major recommendation of this study is a thorough overhaul of existing statutes, to supplant old forms with new laws written in new language that at minimum enunciates clearly a positive official policy. If it is the accepted public goal to foster rehabilitation of offenders, and if it is officially recognized that

employment is integral to rehabilitation, then public employment statutes should affirm these commitments. The laws must state that prior conviction is not a bar to public employment and limit exclusion only to those instances where a prior record has a reasonable relationship to a particular job, or where there is insufficient evidence of rehabilitation. In other words, not only should a positive policy be enunciated but the areas of administrative discretion should be narrowed. A model bill drafted by the Georgetown Institute proposes the following statement of public policy.

Section 1. The (name of legislature) finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens. The (name of legislature) also finds that the ability of returned offenders to find meaningful employment is directly related to their normal function in the community. It is therefore the policy of (name of state) to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have criminal conviction records.

Section 2. No person with a criminal conviction record shall be disqualified from taking open competitive examinations to test the relative fitness of applicants for the respective positions. Persons with criminal conviction records shall be entitled to the benefit of all rules and regulations pertaining to the grading and processing of job applications which are accorded to other applicants.

#### New York Civil Service Law

The New York State Civil Service Law, according to Professor Miller, is no exception to the general need for reform. He said,

It is so vague and so open to misuse, that it needs a thorough overhaul. I would say it is not the worst, but just one that is replete with language that can be used to screen out anyone, words like unfitness and good moral character, that can be used to cover a multitude of sins.

Ersa Poston, President of the New York State Civil Service Commission, cited in her testimony the pertinent passages of the New York State Civil Service Law:

Section 6, Article 5 of the New York State Constitution states, 'Appointments and promotions in the Civil Service of the State and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.'

Section 50, Subdivision of 4 of the Civil Service Law reads in part: 'Disqualification of Applicants or Eligibles--the State Civil Service and municipal commission may refuse to examine an applicant or after examination to certify an eligible who is found to lack any of the established requirements for admission to the examination or for appointment to the position for which he applies.' Specifically, under Paragraph (D), reads 'who has been guilty of a crime or of infamous or notorious disgraceful conduct.'

In addition, Section 3.2 of the Rules for the Classified Service (which have the force and effect of law) deals primarily with disqualification described under Subdivision (A) that 'good moral character and habits and a satisfactory reputation shall be requirements for appointment to a position subject to these rules. Any applicant who is found to lack these requirements shall be disqualified from examination or after examination from certification and appointment.'

Mrs. Poston emphasized that the key word in Section 50 is that the Department "may" refuse to examine or certify rather than "must" or "will." In addition, she noted that in only two circumstances are disqualifications mandated: first, that ex-felons are disqualified for positions as police officers by town law and village law prohibition, and second that, Title VII of the Federal Omnibus Crime Control and Safe Streets Act of 1968 disqualifies anyone with a previous felony conviction from carrying a firearm. This last, prohibits the hiring of convicted felons for those positions in the state service with peace officer status, such as parole, correction, conservation officers, and park patrolmen, all of whom have duties and responsibilities that may include the carrying of firearms. For all other positions,

employment qualification is entirely left to administrative decision.

With respect to ex-offenders, the New York statute conforms with the majority of state laws in allowing virtually unlimited discretion to civil service administrators. It is not only imprecise, but fails to acknowledge even the most rudimentary conception of rehabilitation.

The impact of the law on municipal policy is manifest in the statement of Harry Bronstein, Chairman of the New York City Civil Service Commission and Director of the Department of Personnel, who said

We in the City Civil Service Commission are creatures of the state bound by the State's Civil Service Law. Of course we enact some of our own rules...but they must be consistent with the state law. So any pioneering in this field would also require some concomitant changes in the State Civil Service Law.

This is a significant point, indicating not only the obvious fact of state control but the pervasive influence of the state law when all policies and procedural reforms must be scrutinized to assure consistency with the statutory intent.

Both Mrs. Poston and Mr. Bronstein report, however, that the surface impression gained from a reading of the pertinent passages of the law and its curious language is not consistent with their interpretation of appropriate current policy. Mrs. Poston said:

I would like to point out, however, that while under these provisions, the Department has the authority to disqualify a convicted offender from holding state employment, disqualification on this ground is not our usual practice. It has long been a policy of the Department that conviction of a crime should not automatically bar any applicant from state employment.... We have long felt that our function

is to qualify whenever possible and not disqualify. Over the years, we have been very aware of the close relationship between the offender and his social environment. Thus in the two years, we have been constantly concerned with the administration of our program as it relates to parolees, inmates in state institutions, probationers, drug users, conscientious objectors, and others with whom our investigation section staff becomes directly involved in reviewing and evaluating the background of past candidates.

Mr. Bronstein's statement of city policy parallels the state posture. He said:

Municipal government is the largest employer in this city. Consequently, those of us in responsible positions in that government are keenly aware of our responsibilities to establish and implement progressive personnel policies.

Basically the city's policy concerning employment of individuals with records of conviction has been one of evaluating each application on a case-by-case basis. The Department of Personnel does not automatically exclude ex-offenders from city employment. We have tried to set the example for private industry in the employment of people with criminal convictions, understanding that we cannot expect private industry to follow policies and practices that the city itself does not follow.

The thrust of state and city personnel policy, at least at the level of top administration, differs materially from the negative and judgmental quality of the language of the law. And it differs as well from the perception of public employment policy on the part of ex-offenders and their counselors, as reported at the hearings. All that can be said in favor of the current statute is that its provisions are sufficiently vague and loose to permit varied interpretation.

Some degree of statutory flexibility is desirable and well-written laws should allow for change to accommodate new knowledge and permit response to arising needs. But only within the ambit of basic objectives. The law as it now stands manifests no commitment to rehabilitation, nor any intent to screen in

qualified ex-offenders. It speaks only to potential exclusion. Professor Miller recommends that, at the least, the basic philosophical outlines of statutes be consistent with accepted administrative policy, not only for clarity and consistency, but because the law as written should preclude the possibility of any radical realignment of policy by individual administrators. As it now reads, the New York State Law is not only unrepresentative of current state and city personnel policy but open to widely divergent usage, and could be used as sanction for any bias or prejudice.

The Georgetown Institute study recommends that state laws go beyond a general statement of policy to promulgate guidelines for administrative implementation. The Georgetown Institute's model civil service bill suggests the following formulation. In considering persons with criminal conviction records who have applied for employment the (hiring official) shall consider the following:

- A. The nature of the crime and its relationship to the job for which the person has applied;
- B. Information pertaining to the degree of rehabilitation of the convicted person; and
- C. The time elapsed since the conviction.

Another model exists in the policy statement of the United States Civil Service Commission for employment of rehabilitated offenders adopted in 1969.\* Eight factors for consideration are enumerated, including the age of the person when the offense was committed, the circumstances under which it occurred, and the social conditions that might have contributed to the offense. And further appropriate models are the broad guidelines adopted in

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\*Appendix 7

statements of administrative policy by both state and city systems. The policy manual for the New York State Department of State dealing with the investigation section and the question of prior criminal records states:

Each case involving a conviction resulting from criminal activity shall be considered on its merits. An applicant is not disqualified or barred from appointment solely on the basis of a conviction.

Further on the policy manual continues:

In a review of criminal convictions full consideration shall be given to the

- A) Relationship of the offenders to the position sought.
- B) Age of the offender at the time of the last crime.
- C) Number of crimes committed.
- D) Lapse of time since last conviction.
- E) Probation and Parole reports and records of employment.
- F) Honesty of candidate in admitting his record.

Similarly, the New York City Civil Service Commission policy for the hiring of ex-offenders, according to Mr. Bronstein, was that:

The Commission mandated that qualification for employment of individuals with criminal convictions be determined on an individual, case-by-case analysis of the criminal and social seriousness of the act, the age of the person at the time of the offense, the length of time since the act took place, known behavior since the last criminal act, the nature of the jobs to be filled and other pertinent factors. This policy applies to every position in the City Civil Service except where statutory limitations are established, such as for patrolmen.

The criteria suggested by administrators are sufficiently generalized to be included in the statute. Professor Miller considers inclusion of basic criteria in the law valuable not only as legislative recognition of official policy, but also to broaden the scope of their application. Civil service administrative policy now governs only the qualifying of applicants as eligible, and has no mandated effect on individual public agency hiring

practice. If incorporated in the state law they would apply to all governmental subdivision's hiring.

#### Internal Problems

The division of authority over employment within the public sector is a complicating factor and one that permits the several parts of the system to adopt inconsistent or even antithetical postures. Both civil service witnesses made special mention of this aspect of public employment as a particular problem.

Mrs. Poston said,

I would like to note here that the Department of Civil Service does not actually hire the employees for the various New York State departments and agencies. The actual appointment is accomplished by each individual appointing authority. In the case on non-competitive, exempt and labor class positions, the individual agency recruits and hires directly. In the case of competitive class positions, which make up the bulk of positions, the agencies hire from lists of qualified eligibles supplied by Civil Service.

In further discussion Mrs. Poston indicated the effect this division of hiring authority can have.

Candidates for Civil Service examinations are required to report on their application convictions for offenses against the law. The Investigations Section of the Department of Civil Service obtains a character profile of the subject through reports of the candidate's training and experience, details and circumstances surrounding the offense for which he was subsequently convicted, parole and probation reports. On the basis of a reasoned objective judgement and through a process of review, the candidate is either qualified, selectively disqualified, or disqualified for the position sought.

Assuming, as in most reviews, the candidate is qualified by the Department of Civil Service, his name is placed on an eligible list without any notation as to the previous investigation. The Department of Civil Service considers him to be fully qualified candidate to be considered equally with those other eligibles on the list certified to the appointing authority. In reality however, the candidate at the time of interview for the possibility of being hired for a position, finds himself confronted with the appointing authority's request for detailed information concerning his personal history. This request for personal history quite often

is in greater depth and may include questions concerning arrests (regardless of the lack of conviction). The personnel officer might then make a highly subjective judgment based upon this one factor (criminal arrest and/or conviction) and pass over this candidate as a prospective employee. We feel that this judgment of selection is made as a result of a negative value rather than a positive.

The dichotomy between certifying and hiring permits one agency in practice to nullify the policy of the other, frustrating the intent of the highest public employment authority. The resultant variations in actual practices are particularly disturbing to parole and probation officers and job counsellors. Inconsistent action leaves job counsellors without any ability to counsel effectively.

The State Civil Service Commission is thoroughly aware of this problem. Mrs. Poston reports considering whether to recommend that all biographical data secured by the separate operating agencies be standardized, or that questions asked concerning convictions for offenses at the operating agency level be limited or eliminated entirely so that derogatory information of this nature could not be considered in the selection process among already qualified applicants. The State Commission, however, is uncertain whether it has the authority to mandate such changes.

The City Personnel Department's ability to influence public agency hiring apparently is similarly restricted. Mr. Bronstein said:

Although we are proud of the steps we have taken to date to assist ex-offenders in their efforts to secure meaningful employment, we recognize that more must be done to assure that our actions are translated into actual job offers. In the weeks ahead we plan to vigorously urge all city personnel officers to follow our example and offer employment to those ex-offenders whom we have qualified for employment. We are confident that the recently promulgated expressed appeal of the City Civil Service Commission and our own follow-up efforts will result in jobs for the ex-offenders and will assist the ex-offender

in his effort to become a fully rehabilitated member of our society.

Such confidence may or may not be warranted. Experience to date finds individual agencies varying widely in their hiring policies, variations not necessarily consistent with apparent functional differences. Often the agencies with large numbers of blue-collar unskilled jobs are more restrictive than totally white-collar or professionalized services. The structural aspects of public employment that allow a watering-down of policy underscore the need to incorporate in the statute itself the basic elements determining exclusion. For then, not only will all branches of the public sector be instructed to adopt identical standards, but equally important, public employees at all levels, ex-offenders, their counsellors inside and out of the correctional system, and the public at large will have a common understanding of the employment policy toward ex-offenders.

In this area, as with licensed occupations, Professor Miller and other critics of civil service systems recommend the adoption as selection criteria the job-relatedness of an individual's offense background and a time frame beyond which past criminal records are excluded from consideration.

Although any time frame chosen is somewhat arbitrary and opinions differ on the appropriate length, Professor Miller nonetheless urges incorporating a maximum period open to review into the body of the law. He proposes that a two-year period following the last conviction be taken as evidence of sufficient rehabilitation, and counters the argument that two years may be too short by saying:

Two years is a long time. If a person has a record for two years it may prevent him from getting a job at all....Two years is a terribly long time for him to hold out and hope for something decent to happen to him. So, if anything, two years might be too long a time.

The seeming arbitrariness of a time frame could be modified in either direction. Those whose record appears unrelated to the particular job sought would be eligible immediately, and where the offense background appears relevant earlier eligibility could be allowed where indices of employability in parole recommendations or work history or other factors exist. On the other hand, exemption from the time frame, or a longer period could be stipulated for sensitive jobs or particularly relevant offenses.

A time limit, irrespective of the precise period adopted, would be a benefit to ex-offenders, clarifying their position, and a boon also to administrators in public employment. Although troubled by the problem of determining the appropriate period, Mr. Bronstein said:

It would make life a lot easier for a personnel department such as ours if the law was explicit as to the time limit. But in the absence of that, we feel we are examining each case on its own merits.

The primary consideration in screening those whose offenses fall within the time frame then would be to determine whether the offense itself is relevant to the job sought. In the abstract, determining the relevance of each type of offense to every job title in public employment appears overwhelming. When employers may only deny jobs on the basis of relevant prior records, they will cease to ask "Have you been convicted of any violation, misdemeanor or felony?" and narrow the question to ask only for descriptions of convictions for particular types of offenses. Confining the inquiry to job-related offenses should reduce

significantly the volume of cases requiring detailed investigation.

Once review is reduced to manageable dimensions, administrators will benefit from better use of their screening personnel, and applicants will learn sooner of the disposition of their applications. There are many jobs that clearly will have no connection with any of the more common offenses and thus the area of review will focus on those offenses that present genuine selection problems.

Although job-relatedness requires study and may need a specially constituted body charged with this responsibility, the problem as it applies to public employment is less demanding than for licensed occupations.\* There is a narrower range of professional and technical jobs, and fewer for those to which ex-offenders are likely to apply. And unlike many license holders, the public employee seldom works either totally unsupervised or in complete autonomy. Consequently, the need for consumer or client protection is diminished, particularly in the case of jobs as laborers, maintenance personnel or entry-level clerical workers, for which more ex-offenders apply. Mr. Bronstein suggested the Personnel Council, an advisory body composed of deputy and assistant administrators of city agencies, as the logical group to analyze job titles and determine which crimes appear clearly relevant to each.

The ultimate objective is to refine guidelines into a set of clear directives for dissemination to all employees, so that administrative policy established at the top will permeate throughout large bureaucracies. The flow of policy often defies the law of gravity. In his detailed investigation of six jurisdictions

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\*Note that the Georgetown model licensing statute suggests a three-year time period, compared with two years for unlicensed occupations in public employment.

Professor Miller found wide deviation between top policy and actual practice. He stated, for example,

...In one jurisdiction, a very enlightened jurisdiction, the Director of Civil Service had very enlightened views of hiring people with records. We then went to his subordinates, the people who actually did the screening. What we discovered was they never had any guidelines, they never had any discussion. As a practical matter, whether or not an application was screened in or out depended on who handled it on what particular day, and what biases that particular personnel represented. If he didn't like sex crimes they would be screened out. If another didn't like middle aged voyeurs he would screen them out. So one of our recommendations is that this must be brought out in the open and there must be standards set up by the appropriate agencies, and these standards must be enforced.

#### Questions on Application Forms

In addition to the changes in application forms likely to result from legislated policy and guidelines, there are specific questions to be eliminated. The Georgetown study found that most jurisdictions ask for information on arrest records, including those where charges were dropped, or dismissed or the defendant was acquitted. Professor Miller, as well as the majority of witnesses, believes that arrests not culminating in conviction must be excluded from any employment determination. The reasons are two-fold, both based on constitutional considerations: the incidence of arrest falls particularly on minority groups and, therefore, such information has a discriminatory effect; and second, an arrest alone does not constitute evidence of a violation but only of police action.

On this count, civil service commissions in New York, both state and city, compare favorably. Neither ask applicants for arrest information. State applications were revised in 1969 to eliminate questions concerning arrests, and city forms recently also deleted such questions. But the issue does not yield to so

simple a solution. Mrs. Poston, in testimony already quoted, indicated that nothing prevents hiring agencies in their interview of an applicant from asking about prior arrests and using that information in the selection process. In city hiring, routine fingerprinting checks, administered to all except a few exempt titles, produce police reports that indiscriminately list arrest and conviction. Thus even when the applicant is not asked directly for this information, it becomes a part of his background history and may affect hiring judgments. Police reports frequently fail to record the disposition of an arrest but record only the fact that an arrest was made and, therefore, determining the ultimate outcome necessitates questioning applicants on all arrests or securing information from the courts.

#### Juvenile Records

A similar problem exists in the matter of juvenile adjudications. Professor Miller reports that few applications specify that only information concerning adult convictions is required. By implication the information sought includes juvenile and youthful offender decisions. Moreover, despite state laws protecting the confidentiality of juvenile and youthful records, this data routinely is made available to civil services. Professor Miller testified that in New York, despite laws to protect the juvenile offender, information is available at the discretion of the courts, and courts often delegate their power to the local court services and probation departments who routinely provide the data to public agencies. As in the case of arrests, it is current state policy not to ask for juvenile adjudication records. But, similarly, greater protection is needed. The prohibition against the use of arrest or juvenile records by public employers needs to be incorporated

into state law so that hiring agencies will not ask for information over and beyond what civil service already has reviewed. In all probability, assuring the privacy of arrest information and juvenile records may require a Federal law to prohibit dissemination by law enforcement agencies to employers. For, in view of the data accumulated by the Federal Bureau of Investigation, state or local controls or both probably would be insufficient.\* Nonetheless, a state can prohibit use of arrest or juvenile record information by any of its subdivisions, and can also legislate tighter control over the dissemination of information by its courts, information services, and police departments.

#### Recruiting Practices

In addition to hiring policies, the procedures of application and examination may need modification if public employment is to be open to qualified ex-offenders. Because ex-offenders now generally believe they will not be accepted and because of their urgent need for immediate work, they may need outreach recruiting and streamlined processing. Professor Miller and many others suggested that civil service departments go directly to prisons and begin the application process for those inmates who are deemed likely candidates. Forms can be filled out and reviewed, and examinations can be given and graded before prisoners are released. Determination of eligibility before release could assure a prisoner of immediate work, an assurance that is often an essential condition of parole. At minimum, inmates and prison guidance personnel should be furnished with accurate information concerning job open-

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\*The problem of arrest records will be dealt with in a subsequent section.

ings and qualifications.

Both state and city departments have been taking steps in this direction. Mrs. Poston furnished examples of cooperative programs developed in conjunction with the Division of Parole and the Correction Department to provide opportunities for inmates in certain prisons to engage in training for specific occupations and be tested while still imprisoned. If successful, they are then placed on eligible lists and considered for employment as soon as paroled or released. In her opinion the programs, although small, have been successful and indicate directions to be adopted on a state-wide basis. She said:

We are suggesting that a closer relationship should be established for the offender about to be released through Civil Service, Correctional Services and Parole Agencies. Perhaps through the use of allocating special titles, etc., or creating trainee or apprenticeship positions, greater assistance could be given to the ex-offender in securing employment within the state structure.

Mr. Bronstein indicated that the city system is moving in a similar direction. The City Personnel Department, in its latest annual report, enumerated among current goals closer cooperation with the Correction Department to institute training and initiate the application process for public employment for those still serving sentences. In addition, the city Personnel Department has advised social and community organizations that because a conviction is not a prima facie exclusion they should instruct their clients or members to apply and truthfully complete applications.

#### The Need for Data

Undoubtedly these are positive measures. Without accurate data on the number of ex-offenders who apply and the number hired, however, it is impossible to evaluate the impact of new application

guidelines and procedures. Professor Miller emphasized the importance of reliable data on ex-offender applications and hiring.

The Georgetown study found that

No jurisdiction had any data as to how many people with criminal records ever applied for jobs or how many people were actually employed who had criminal records. The standard answer was, 'Yes, we do it on an ad hoc basis. We are open. We will consider people with criminal conviction records, but we don't know how many have applied.' There is no way to determine whether any minority group, and people with criminal records are one of the largest national minority groups in the United States,... are receiving fair treatment unless records are kept.

Commissioners Poston and Bronstein both testified that they believe revised application forms and relaxed policies toward ex-offenders enunciated in guidelines have produced positive results in the numbers applying and hired. At the state level no data was maintained prior to June 1972, but since that time the Investigation Section of the Civil Service Department has kept records of the number of cases of ex-offenders reviewed and their disposition, whether qualified, disqualified or discontinued. Of 240 cases since June 1972, 191 were qualified and only 16 disqualified. For those disqualified a breakdown by class of job and type of offense exists, but no data is available to show the post-qualification experience of those approved. In the city there is only the Commissioner's opinion that more ex-offenders apply and are qualified. He said that no records are kept because of fear of building in permanent stigmatization.

The need for data to assess the general impact of policies and procedures, to spot particular points of resistance within the system and to assure that directives emanating from the top flow unimpeded throughout, presents a problem of a potential conflict with the goal of non-discriminatory hiring and with

the natural desire of ex-offenders to have criminal records forgotten and obliterated. But statistical data can be collected and maintained without vitiating open hiring and personal privacy. Data is valuable not only as a measure of the efficacy of innovations in practice, but also as the basis for research that evaluates performance and tests the validity of pre-conceived notions of a correlation between offense backgrounds and on-the-job behavior. To date, evaluations have been made only in the case of special programs for ex-offenders within the public sector. Program evaluation has only limited applicability to the mainstream of public service jobs. First, those ex-offenders hired are employed as a separate entity and can be evaluated only within the context of that program. Second, those hired by public agency programs are usually placed only in temporary or provisional jobs and are seldom able to translate successful work experience to permanent civil service status. Program evaluation has its implications, but a more valuable evaluation would compare ex-offenders hired through normal routines with other employees. Statutes that require reporting of the numbers of ex-offenders who apply and are hired would give the essential basic facts.

#### Review Procedures

A further need is to establish procedures for review of administrative decisions. In common with licensed occupations the only review available is provided by the courts, likely to be utilized only by those with sufficient perception of possible legal issues and the perseverance to follow through. The Legal Aid Society's representatives reported some limited success in litigation on behalf of individuals with either arrest or

conviction records who were rejected by public agencies. Two examples typify those introduced into testimony:

1. An individual who was employed by the New York City Police Department, not as a Police Officer, but as a civilian employee in the non-sensitive position of telephone operator under the terms of the Emergency Employment Act of 1971, was suspended by the Police Department and given a choice of resigning or being discharged, totally because of an arrest. This arrest was followed immediately by dismissal of the charges against him upon the request of the "victim", who from the very time of arrest had sought to withdraw the complaint. We successfully brought an action on his behalf.

2. An individual who over twenty-five years ago was convicted of larceny and who in the past twenty-five years has led an exemplary life....prevented from opening a local grocery store because of a mandatory statutory bar that prevented him from obtaining an off-premises beer license...is working now as a provisional employee in a New York City agency. Should he become a permanent employee he will be fired when a check is made of his past record. He does not wish us to bring a law suit until he is acutally fired. But perhaps by then the work of this hearing will prevent it from happening.

#### Legislative Reform

Again, as with licensed occupations, the first priority is for legislative reform. No action has been taken in New York in recent years, although bills to modify the civil service statute in relation to ex-offenders have been introduced. They generally die in committee. One bill that succeeded in both houses of the legislature in 1971, prohibiting the state or any municipality from rejecting applicants for examination or failing to certify those who pass on the basis of misdemeanors or violations that occurred more than three years prior to the time of application, was vetoed by the Governor on the basis that civil service authorities have not abused their discretionary power and increasingly are less inclined to disqualify

candidates on the basis of past misconduct. Assemblyman Joseph R. Pisani introduced similar bills to eliminate from review felony convictions after a substantial time lapse, but these have not been passed.

Again New York has not kept pace with other jurisdictions. Several have already adopted revised public employment statutes. The American Bar Association in its role as a clearing house reports among recent developments the Florida statute of 1970, already discussed, and amended civil service laws in 1973 in Connecticut, Oregon, Washington and Colorado. In 1971 the State of Wisconsin amended its Civil Service Law to require the Director to provide by rule the conditions under which an applicant may be refused an examination, or, if eligible, refused certification and to show that

these conditions shall be based on sufficient reason, and shall reflect sound technical personnel management practices and standards of conduct, deportment, and character, necessary and demanded.

In the state of Maine Governor Kenneth M. Curtis issued an executive order in 1972 declaring it the duty of state government to provide equal opportunity for ex-offenders. The implementation of this policy prohibits any discrimination against ex-offenders (and former mental patients). His order reads in part,

Such applicant for employment shall be regarded the same as any other candidate with respect to suitability for employment;

They shall have the same opportunity to compete for positions within state agencies as any other citizen qualified for said positions; in no case shall any unit of any department deny employment to an applicant simply because he or she has been a former patient or inmate.

In addition, the District of Columbia has adopted guidelines

defining factors to be considered, similar to those promulgated by the United States Civil Service Commission,\* specifically excluding juvenile and youthful offenses and arrests not leading to conviction, as areas of inquiry. It also designated special personnel to assure full and fair consideration to all rehabilitated ex-offenders.

In this year's legislative session the Georgetown model statute has been introduced into the Nebraska legislature. In 1973, the New Jersey office of the Public Defender, spurred by its involvement in prison unrest in that state, and in cooperation with the Committee on Institutions, Health, and Welfare of the State Assembly, developed a comprehensive legislative package. Among the bills introduced were two aimed at reform of public employment to limit discretion of administrative authorities to job-related convictions.\*\*

Interest in expanding civil service opportunities for ex-offenders is growing across the country. Senators Javits and Percy are among those critically appraising Federal civil service opportunities. Here in New York in 1973 a modest amendment to the State Civil Service Law was passed and signed into law. This amendment, introduced by Assemblyman Reilly and State Senator Giufredda, strikes out the provision in Section 50 of that Law that permits state or municipal commissions to refuse application or certification to one "who has been guilty of a crime or of infamous or notoriously disgraceful conduct." This is a step in the right direction.

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\*U.S. Civil Service Commission Policy appended as 7.

\*\*Appended as 8a and b.

But "good moral character" and a "satisfactory reputation" still remain as eligibility criteria and no positive language prohibiting disqualification solely on the ground of a prior conviction has been inserted. In view of the legislature's past record, this amendment must be hailed as an achievement, but it seems unlikely that deletion of the one phrase will have any discernible effect on public employment policies.

Recommendations:

In the Commission's view, numerous amendments that separately attempt to correct one specific defect in the law are inadequate. The pertinent passages require a complete rewriting. Working in concert with experts on civil service, both local and national, and skilled bill drafters, the Commission has prepared an amended version that it believes fulfills the major imperatives emerging from testimony at the hearings. This revised bill\* enunciates a positive policy towards the employment of ex-offenders in public agencies and prohibits exclusion on the sole basis of a prior record, unless it can be shown that a particular offense background has a reasonable relationship to the job sought and insufficient evidence of rehabilitation exists. Information on arrests not followed by conviction are totally disallowed except for pending charges during a stipulated time period. The new version also provides review procedures and requires annual statistical summaries of ex-offender application and processing.

The Commission considers this bill only a minimum first step in changing public employment from a closed to an open door hiring policy. To increase the likelihood of passage, the Commission

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\*Appended as 9

has sought critical review of its drafted bill by experts in civil service and in legislation and is also working to develop broad-based support.

Legislative action is not the sum total of all the activity required. The Commission is fully aware that enacting positive policy and declaring specific practices to be discriminatory does not automatically revamp either the image or the actuality of a formerly negative situation. Other affirmative steps are required. Large-scale programs are needed to employ ex-offenders in the public sector, in larger numbers than those now employed in special projects, and with an assurance of permanent status for those who qualify.

Such action is not essentially new, but rather the logical extension of affirmative action efforts directed toward the disadvantaged and minorities, for ex-offenders are part of both groups. To be effective, more of the initiative must come from public hiring agencies themselves rather than civil service commissions and departments. The need for agency leadership was emphasized by Milton Luger, among others. In his experience in employing ex-offenders, the State Civil Service Department was found to be entirely cooperative. He said,

I think the State Civil Service sees itself as a servant of the agencies and feels an obligation to point out their knowledge of someone's criminal record. I found no bar to any of the people I wanted to employ. Nobody told me I couldn't do it. I think too many agencies have been lamenting the law and rationalizing about the law, and then setting up an agency policy based on their own fears and hesitations, rather than recognizing that they don't do any more than they want to. I would fault the agencies more than the Civil Service on this.

Mr. Luger suggested that the Department of Career Opportunities

of the State Civil Service Commission may be the logical coordinating body to plan a multi-agency affirmative attack on the problem of ex-offender employment and to determine also how basic data can be collected and those hired be tracked without doing injury to individuals.

The American Bar Association, after a thorough review of the problem of ex-offender employment in the public sector across the nation, offers a checklist against which jurisdictions can evaluate their laws and practices. The items are:

1. Do statutes, regulations, or ordinances governing public employment explicitly provide that ex-offenders are not automatically disqualified from such employment?
2. Are former offenders permitted to take a civil service examination? Can they take such an examination prior to their release from prison?
3. Are employing agencies specifically instructed to consider ex-offenders for government employment?
4. Are employing agencies provided with clear and reasonable guidelines for the processing and consideration of applications of individuals with criminal records? Are such guidelines made available to job applicants?
5. Do job application forms provide that applicants need not disclose criminal records that have been expunged or annulled? Or records that have existed for a certain period of time? or juvenile records?
6. Are juvenile records sealed with access limited only for such law enforcement purposes as sentencing?
7. Can the period from the time an application for a job to the time of a decision on hiring is made be shortened?
8. Have educational requirements and standards for jobs been re-examined as to their reasonableness and their relation to the requirements for the position?

This is an appropriate set of standards and those concerned with ex-offenders' access to public sector jobs will have no cause to relax their efforts until, in New York State and City,

all questions can be answered in the affirmative.



## 5. BARRIERS IN THE PRIVATE SECTOR

From the testimony at the hearings, confirmed by such research evidence as exist, private sector employment of ex-offenders, is, on the whole confined to relatively small establishments that hire unskilled blue-collar workers.

The Commission's primary concern is with the larger, prestigious employers who, in this city, offer the greatest number of stable, well-paid jobs; whose policies set the tone for the labor market as a whole; and whom, it was alleged, with rare exception, tend to exclude ex-offenders. There are differences, however, between avowed policy and actual practice. Policy statements of major companies are nowhere as negative toward ex-offenders as their hiring practices are alleged to be.

### Attitudes of Employers.

Determining the actuality of practice in the private sector is virtually impossible. Companies seldom maintain records of applicants they reject, and correctional agencies and ex-offenders services have no systematic data on referrals. Actual policy is almost as difficult to ascertain for it is not necessarily formulated by top management but developed in less visible activity of personnel departments. Because individual companies were reluctant to testify, the Commission invited spokesmen from major business associations, who all agreed to participate.

Of particular interest is the testimony of the New York Chamber of Commerce presented by David F. Linowes, Chairman of The Committee on City Affairs. In recognition of the importance of the

ex-offender employment problem and its effect on criminal behavior, the Chamber of Commerce, shortly before the hearings, undertook to survey their larger corporate members as to policies and attitudes toward job applicants with prior conviction records. The findings were:

1. The companies that do have restrictions on employment of ex-offenders frequently are concerned about the category of crime and relate the specific crime to the employment possibilities.
2. Companies tend to exclude from employment possibilities those jobs connected with money and securities transactions and access, and those jobs which call for dealing with the public in an isolated situation, say in the home or on business premises.
3. While company management is quite articulate and internally consistent concerning its own position on employing ex-offenders, there is much less consistency when they are asked to suggest specific ways in which business can work with the correctional system to help offenders find employment and even whether business can or should do so.

Mr. Linowes, commenting on these findings said:

As one company response stated, 'I think business lacks correct information as to what, in general, takes place behind prison walls, except for what is gleaned from newspaper accounts of riots and old Barton Mac Lane movies. I feel that business is unaware of efforts and progress to raise educational levels and develop skills in accordance with the individual aptitudes and the needs of today's society'.

Given this statement of "non-knowledge" of what exists within the correctional system - and such information is, after all, not pertinent to most day-to-day business operations - it is safe to say, I think, that most businesses as individual firms, do not think in terms of taking initiative in employing ex-offenders. On this point, I would like to add that some businesses feel themselves almost besieged to give special employment

consideration to members of such categories as: the high school dropout, the ex-addict, the addict on methadone, the veteran, the minority group member, the handicapped and the ex-offender. One response to such beseeching has been: 'When can I get back to hiring the persons who wants to work, isn't a trouble-maker and is qualified to do the job?'

The juxtaposition of the findings of this survey against another Chamber of Commerce study the preceding year showing crime to be the major element entering into a company's decision to leave the city, point to an urgent need for constructive action. Examples of actual responses to the survey questions by individual companies, however, suggest some of the resistance points, especially the security-consciousness of major employers. Ex-offenders are considered a risk to property, persons and confidential information. The full report, appended to this document,\* provides valuable insights into business attitudes. A few of the responses to the first question, regarding whether the company has any restrictions on ex-offenders employment, are particularly illuminating:

The Company will not hire applicants who have been convicted of crimes of violence (rape, armed robbery, homicide, etc.) or who have demonstrated repeatedly an inability to rehabilitate. Additionally, we would restrict qualified candidates to jobs that were closely supervised, that did not involve money transactions or access to valuable Company property.

The ex-offender is an "unknown quantity". Despite the most sophisticated screening and evaluation techniques, we cannot predict his conduct and/or behavior in a work setting that requires discipline, adaptability, responsibility, subordination and conformity to a middle-class value system. Although

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\* As Appended as 10.

these restrictions admittedly impose on the ex-offender the burden or responsibility of proving himself in a multi-discipline system, they also enable us to provide him with the means of re-entry.

As sympathetic as we may be to the plight of these unfortunate individuals, our primary concern must be the safety and well-being of our employees and the protection of corporate property. Our entry into a program of rehabilitation on other than a minimal scale could generate apprehension among our home office population (largely comprised of female employees) and create problems with the bonding company which provides blanket coverage for all areas of the company.

And in response to the second question, that asked if employment of ex-offenders would be damaging to company operations, one company replied,

Human nature being what it is the employment of ex-offenders on a large scale would stimulate negative reactions among employees and the public. Crime is a national issue. Widely publicized in the media, it had created a panic situation in many communities. People, concerned about the rampant growth of criminal activity, would be reluctant to accept employment in organizations that employ ex-offenders.

When asked to evaluate experience with employing ex-offenders, the replies thin out. Few discuss actual experience, and those that do characterize it as limited, with mixed results. More discuss only the selected types of positions for which an ex-offender might be considered. The total impression is not of an absolute bar, but a highly selective judgmental process for some few jobs.

#### Problems of Job Developers

Those who act in a job-finding capacity for ex-offenders

tend to view the barriers as more absolute. The replies to the questionnaire indicate that most companies will consider ex-offenders for some jobs. Many professionals who serve as job developers for ex-offenders reported that letters requesting information on job openings sent on behalf of ex-offenders generally went unanswered, while letters making no mention of a criminal record sent to the same employers resulted in courteous replies. Indeed a survey undertaken by one agency to ascertain company policy toward ex-offenders, with no request for actual jobs, was abandoned because of lack of response. One voluntary agency spokesman reported that letters sent to ten of the largest companies in New York, seeking employment for a college graduate with sales experience and an I.Q. score of 152 who had been arrested and charged with possession of marijuana, received only two replies, both stating that the company was not hiring at present, a contention that was untrue, according to the witness.

Employment agencies, aware of company attitudes toward ex-offenders, make few referrals for those who have criminal record. Richard Clarke, publisher of Contact Magazine and president of a minority executive recruiting agency said:

I am sorry to say that employment agencies are extensions of the companies they work for. It is historical that employment agencies in New York City did not send out Blacks or females. They do what the company asks them to do. If a company does not make a strong effort, the agency won't take it upon itself to offer this.

They may in fact lose the confidence of the businesses they are attempting to deal with...Usually the employment agency describes the applicant in detail.

In attempting to answer questions about the applicant's work efforts, the employer has inquired as to what he or she was doing during that period of time. Our response has been paying his or her debt to society. This has had not much positive effect either.

The response has been, 'Well, there are other people unemployed who we might more easily sell to the functional supervisor.' The level of responsibility goes from personnel to the functional supervisor.

A number of companies have made a statement of interest concerning hiring ex-offenders. It is a glowing statement from the president of the corporation that doesn't normally go down to the personnel department. The law of gravity prohibits them from getting effective memorandum from the president. The middle-man decides to ignore it.

To assure reliable answers to their survey, the Chamber of Commerce promised total confidentiality to its cooperating members. This fact alone tells much about the character of ex-offender employment. On the one hand, most ex-offenders who are employed have not disclosed their criminal records to their employers. On the other hand, employers who are willing to consider employing ex-offenders do not want this policy generally known. Companies that cooperate with parole and probation departments and special programs ask that their names be undisclosed. They see such anonymity essential as protection against public censure, competitive disadvantage, and to forestall a deluge of requests for jobs for ex-offenders. The most frequent reason given for remaining unidentified is the desire to protect their employees from stigma.

In some instances when a known ex-offender is hired it is company policy to conceal that fact from co-workers and supervisors in order to protect the new employee from becoming the scape-goat for every theft or irregularity.

In large companies, personnel managers are often caught between top management and functional supervisory attitudes. Irrespective of what company presidents may espouse when acting as members of boards of social agencies or in relations with community groups and special programs, it remains the personnel manager's job to minimize risks in hiring and to send to first-line supervisors only those who will be acceptable. Job developers testified that where company top managements express an active interest in employing ex-offenders, and even in instances where a rapport has been developed with a particular personnel department, an ex-offender may be hired, but fired after a few days by the first-line supervisor if the supervisor holds a negative view of ex-offenders.

Reluctant to say that they will not hire ex-offenders as a matter of policy, large companies may resort to a variety of subterfuges. According to testimony, they may indicate that they are not hiring, or that union control over hiring or bonding company requirements govern their actions. Where legal constraints do apply (as, for example, the prohibition against hiring ex-felons in banks insured by the Federal Deposit Insurance Corporation, or the required fingerprinting in the securities industry), company spokesmen are frank. Such frankness is also encountered among executives of department stores and other

increasingly security-conscious businesses and public utilities whose service employees go directly into customers' homes.

Candor is relatively rare, however, and where it occurs it would seem that management assumes that the exclusion of ex-offenders appears entirely justifiable. A curious inconsistency developed in the testimony is the fact that several Wall Street firms use the Pioneer Messenger Service, a Vera Institute of Justice employment program for ex-offenders and ex-addicts, to deliver stock certificates, and report entirely favorable experience' - strange indeed, when routine policy would dictate against employing anyone with a prior record. Among the witnesses were some of the victims of a recent amendment to the state Securities Law requiring fingerprinting for all employees in the financial field. These were two men, both long-time employees of Wall Street firms, well regarded and frequently promoted and both holding jobs not involving physical contact with stock certificates, who were fired when ancient offense records were disclosed.

In a world of half-truths and contradictions between stated policy and practice, it is understandable that the ex-offender himself is less than candid. It is part of conventional wisdom learned from other ex-offenders and from those who counsel them to try to conceal any offense background and to account for unexplainable periods of time by pure invention. The following excerpts are samples of a recurrent theme in the testimony of ex-offenders and probation and parole officers as well.

After a while you become so distressed and desperate for work you decide to lie. I think it is really an impossible thing for an ex-offender to find a job if he explains he has a record.

Once you answer have you ever been arrested - you never get past the question to perform. You never get a chance to show your talents. And I would like to be judged on my merits, not on the fact that ten or twelve years ago I did time.

The only time I found a favorable response from an employer (when he revealed his record) was when it was very profitable for him - when he could pay me under the table and steal me blind.

And from a probationer officer'

We have sometimes found it better if the probationer did not speak about his record. It might be unethical, it might be a violation, it might be distortion of the truth, but sometimes when we are really up against it there is nothing that you can do but say to them 'Off the record, O.K. take a chance and don't mention your record, - that is don't volunteer any information'.

Ex-offenders who successfully conceal their past and are hired live in constant fear of inadvertent disclosures or of systematic clearance checks. They know that once the past is revealed they probably will be discharged irrespective of performance. They will be discharged for falsifying the facts. To them the final blow is to be told that dismissal is not attributed to the fact of a prior record, but failure to disclose that fact, for honesty is the first requirement for all employees.

#### Application Forms

A substantial portion of testimony concerned the appro-

priateness of questions asked on application forms.

It was virtually unanimous among the witnesses at the hearings that questions concerning arrests not followed by convictions have no place on an application form. As already noted, public employment systems, Federal, state, and local, have eliminated this question. Apparently, the more sophisticated employers are following suit. For example, the American Bar Association reported that the American Telephone and Telegraph Company recommended to all personnel officers of its subsidiaries that arrest questions be eliminated. And some of the more prestigious companies' applications now, in addition, carry the statement that convictions are not a bar to employment, urging full and honest disclosure. These are encouraging trends but obviously not the full answer.

Companies that do not ask for arrest records may still receive that information on fingerprint reports or credit clearance checks. And many companies still do ask for arrest information as well as all convictions. A central difficulty is that companies are free to evaluate individual records in any way they see fit, resulting in completely idiosyncratic practices with no visible guidelines, even in such generality as exists in public employment.

What questions concerning past offenses are legitimate subjects of inquiry by employers? Some employers contend that all aspects of a prospective employee's history are pertinent to determine appropriate work assignments and supervision and the need for supportive services or practical assistance. William J. vanden Huevel, former Chairman of the New York City Board of

Corrections, in support of this view, said:

We are all so careful to protect ex-offenders from identification. The fact that a person has been in trouble, been in prison, that proves a sort of vulnerability. To pretend the problem doesn't exist doesn't help. You are dealing with people with social problems so deeply rooted. Many come out of ghetto communities, ignored and alienated. We put them through an institutional life and expect some solution, whereas the reverse happens.

Someone who has been in trouble with the law needs someone who can help him. If someone is willing to take on an ex-offender as an employee I think we should be realistic about the problem the private sector faces.

In other words, there is anxiety on both sides. However, Mr. vanden Heuvel acknowledges that complete disclosure would only work to the ex-offender's benefit with some employers. Parole and probation officers favor honest discussion with prospective employers for practical as well as ethical reasons. When it is known that an employer will consider an ex-offender it is possible to discuss individual aptitudes and limitations that can maximize the chance of successful placement. When frank discussion is possible, probation and parole services find they are able to refer clients for better jobs, because employers who maintain contact with the counsellors of ex-offenders recognize that probationers and parolees are closely supervised and helped, and therefore generally are good risks. Such employees recognize, moreover, that responsible probation and parole personnel would

not refer an ex-offender with a clearly relevant offense background.

Because most questioning directed at arrest and conviction backgrounds is used to screen out undesirables, probation and parole officers who testified at the hearing oppose such general inquiries. At minimum they would like to see the area of inquiry narrowed to recent years and to relevant offenses, and certainly to eliminate arrests. To most, any further questioning is unnecessary and an invasion of privacy.

All probation and parole officers and all other agencies and programs that serve ex-offenders are eager to see applications designed to encourage honest responses, not only because counselling dishonesty conflicts with the aims of rehabilitation, but also because the stress and anxiety generated by a fear of being "found out", can impair an ex-offender's performance on the job. Therefore they urge that application forms state that an offense is not an absolute disqualification and that favorable recommendations from counsellors will be given weight.

Any measure that encourages candid discussion of the impact of prior record on job eligibility would have merit. Ex-offenders are equally injured by being told there are no job openings, or some other "polite" version, because such statements are transparent. Indeed, the customary avoidance of straight talk often leads them to interpret all denials to be a consequence of their prior criminal history, even when they are in fact unqualified for the job they seek. And evasiveness does not allow for fruitful exchange between employers and job developers. If the area of

inquiry was narrowed, and if employers would then feel free to say they do not consider an individual with a particular offense background qualified for certain jobs, the door is open to discussing whether other jobs might be suitable or whether after a given time-period or successful completion of training or a supported work program, the candidate might be reconsidered.

Recommendation:

Until a time when prevailing employer sentiment shares the professional's view that the records themselves are not individually predictive, and that the risk of hiring a few who may prove to be unworthy is insufficient to justify exclusion of a whole group, the only way to protect ex-offenders from blanket discrimination is to restrict by law the questions that may be asked. Although negative background information may be obtained through other sources, if ex-offenders know they will not be asked for their entire history, more may be willing to apply and will survive the initial screening. When interviewers meet ex-offenders face to face, without the preconceptions that damaging histories on application forms create, even if the dates of offenses are long past or their nature irrelevant, they may be able to assess an applicant for his current employability. Curtailing the information obtained from ex-offenders may inhibit the accumulation of data needed to evaluate ex-offender employment, but methods

other than personnel department application forms can be devised to accommodate research needs.

In accordance with the position adopted in the Commission's guidelines, questions on arrests should be prohibited except in the case of pending charges or other special circumstances and questions on convictions restricted to offenses relevant to the job sought or the nature of the business or industry.

### Bonding

Bonding, a practice affecting increasing numbers of jobs, was cited by many who testified as a particularly obstinate barrier to ex-offender employment. Witnesses, however, were uncertain of the actual nature of this problem. Is it the policy of insurance companies to refuse bonding to ex-offenders, or to disallow separate bonding for individual employees in the event that an employer is covered by a blanket bond? Or is the issue of bonding a facade behind which employers hide their own prejudices?

Most of the professional job developers accept the latter view. They believe that insurance companies may impose some restrictions, but more often the need for bonding enables employers to shift the ultimate responsibility. The bonding issue was characterized as "a big screen," "a cop out", and a way to avoid saying,

"I can't hire you because you are young, poor, or black."

To substantiate this view, witnesses offered examples of instances when employers were able to secure bonding for ex-offenders they wished to hire. A major insurance company employed and bonded an ex-offender for a large sum, despite full knowledge of his extremely negative history. Some companies have been able to bond some individuals separately in companies covered by blanket policy. And often identical jobs are off-limits to ex-offenders in one company because of the need for bonding and not in another within the same industry. The strongest indicator that employer policy is more often the barrier than insurance requirements is in the limited utilization in New York City of bonding available for ex-offenders under a Federally-funded program operated by the Department of Labor.

The Federal program provides bonding at no cost to employers from \$500 up to \$10,000 for employees unable to be bonded commercially. Instituted in 1965 as a demonstration program aimed at stimulating commercial bonding companies to widen their view of insurable risks, it has been successful to the extent that it has provided bonds for many ex-offenders. National experience with the program has recorded a comparatively low default rate. David Leibowitz, Correctional Program Officer of the United States Department of Justice, reported that as of 1970 the Federal program incurred a loss of only 18% compared with commercial industry losses that run as high as 50 to 60%. Nevertheless the program has not succeeded in expanding commercial insurance company coverage for ex-offenders. The failure of the Federal program to serve as a

stimulus to the commercial bonding industry, despite its low default rate and despite wider use in localities other than New York City suggests, as many witnesses believe, that the problem does not reside entirely within insurance company determinations. The Federal program's impact may have been blunted because it deliberately adopted a low profile. Federal bonding was funded only modestly and has not had the capacity to insure every ex-offender nor even to distribute widely its descriptive literature. And because it was channeled through the State Employment Services as an additional burden for SES personnel and without special staff of its own, the program may have received less than full utilization.

What accounts for the apparently unyielding nature of the bonding problem cannot be determined precisely from the testimony at the hearings. Too few employers were represented and there was no insurance company participation. The insurance industry is either extremely reticent or disinterested, for no efforts to secure some form of participation on its part were fruitful.

What is clear, however, is that the necessity of bonding in many jobs is a problem that must be faced and one part of the answer lies in stimulating changes in bonding requirements. A possible approach is to assure full utilization of the Federal program by seeing that all prisoners and ex-offenders, and all probation and parole officers and special program personnel are aware of its provisions. Another is to involve the fidelity and surety industry itself in the problem.

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Recommendation:

The insurance industry needs to be acquainted with the broader social and economic consequences of the policies that exclude so large a group in such desperate need of employment from so many jobs. A consortium of insurance experts should be brought together by the Department of Correction to consider the total ramifications of the problem and devise constructive approaches. For example, it might prove to be a better use of Federal funds to give them directly to commercial insurers as reimbursement for any differential in the cost of insuring presumably higher-risk individuals. Such reimbursement would necessitate an analysis of differential risks, an analysis not now made. A demonstration project of this kind, upon evaluation, might show traditional beliefs concerning all ex-offenders to be unfounded. Failing this, it is possible to question arbitrary exclusion from bonding when practiced as a violation of Title VII of the Civil Rights Act, or as a possible violation of the New York State Insurance Law that prohibits insurance discrimination on the basis of race.

Unions

Although some witnesses indentified unions as a factor in private sector resistance to employment of ex-offenders, the problem resides with specific unions and not the whole labor movement. Unionized labor today is not a monolithic structure. Testimony indicated the varying political and social postures and the differences in influence on hiring.

Testimony by ex-offenders and job counsellors noted the differences in union policy, contrasting certain trades within

the building industry that bar ex-offenders from apprenticeship and membership, with other industries where unions are open to membership and supportive of all workers within their jurisdiction. The necessity of union membership may at times discourage some ex-offender applicants. Many are excluded from skilled trade membership because they lack appropriate training, if for no other reason.

Recommendation:

Therefore, it is important that correctional services work with unions as allies rather than adversaries to gain access to apprenticeship programs, and to provide in-prison and post-release training that will be valid for membership.

Several major local unions sent representatives to testify at the hearings, including spokesmen for the longshoremen, teamsters, storeworkers, hospital workers and bartenders. David Sippel, representing Local 810 of the International Brotherhood of Teamsters, presented a comprehensive view of ex-offender problems, calling for drastic revision of licensing laws, re-oriented training in prison, along with expanded work-release and specialized ex-offender job development services. A unique element recommended in his testimony is that the study of the judicial system, the prison system and the problems of the releasee be included in curriculum at all educational levels to develop some public understanding of the offender, an understanding considered basic to attitudinal change.

Representatives of District 65 of the National Council of Distributive Workers decried its actions on behalf of prisoners

and ex-offenders. First, it has offered assistance to a union of prisoners formed in the Greenhaven correctional facility as a liaison with the world outside. Second, it has operated a training center, using Federal funds, to train candidates in groups of 55 for jobs in shipping, receiving, and packing, and then referring them for union jobs. One-fourth of those enrolled in the program are ex-offenders. William Tate, representing District 65, said:

We feel that organized labor has a very important role to play if they will. And it's ironic that the majority of organized labor isn't involved, because as everybody knows, the only difference between us and the so-called ex-con is that we didn't get caught!

He urged other unions to take the initiative in training and placement. District 65 is limited in what it alone can do. The jobs within its jurisdiction are not sufficient to meet the flood of requests they receive for training slots. As he said,

"It's a sad commentary that if you answer six letters from Attica, you get twenty-six more."

#### Stimulating Business Interests in Hiring Ex-Offenders

Private employers have few incentives to employ ex-offenders and for the most part, they have been insulated from legal constraints in their hiring decisions. A variety of recommendations was offered at the hearings to overcome resistance to hiring ex-offenders in the private sector, ranging from persuasion to financial inducements and legislated requirements. Until now, most approaches to employers on behalf of ex-offenders have been

calls for altruistic gestures or action, consistent with a recognition of "social responsibility." Experience with other disadvantaged groups, including the physically handicapped, shows this usually results in the "give someone a break" attitude that has too often produced tokenism, of benefit to the few individuals hired, but probably of larger benefit to the employer who feels absolved from any further involvement in the particular problem or from other social problems. Programs that serve ex-offenders tend to view the employer who cooperates as "the good guy who is taking a risk," And the payoff to him is gratitude and silence. This is manifest in the fact that those who are able to induce some employers to hire an occasional ex-offender feel honor-bound not to divulge the employer's name.

Business spokesmen as well as correctional service personnel see the need to shift from a philanthropic posture to one that emphasizes the economic benefits of hiring ex-offenders. But those who endorse such a shift recognize the difficulty of doing so in the absence of any data that attests to either the rehabilitative effect of employment and the consequent decline in crime, or the quality of ex-offender job performance.

In the absence of substantial statistical evidence, all that can be utilized is the experience of those few companies who on their own initiative or under Federal Manpower Administration and Training funding have hired ex-offenders. Milton Lynn, whose experiential findings have been discussed in an earlier chapter, believes that few employers know what to expect if they agree to employ even a single ex-offender and are most likely to accept

the experience of another businessman. He suggested that business groups ask those companies with experience to offer a counseling service for other interested members within a peer-group protected setting, removed from the pressure of public exposure. Those who have participated in programs would be willing, he said, to divulge that fact and share the results. For it is not generalized suspicion alone that produces negative policies, but also the lack of knowledge of how to handle specific problems, the relationships with co-workers, superiors, unions, insurance companies and the like.

The number of employers who could be reached on an individualized basis, however, is restricted. The need for wider channels of communication is reinforced by the findings of recent surveys\* that most employers never have been approached by anyone on behalf of ex-offenders. Today, nearly all major employers are sensitive to social issues and many have specially designated officers to deal with them. They need to be sensitized to the ex-offender problem.

One logical approach is to publicize the findings of programs that have succeeded in working with employers, limited though they may be. Groups such as the Alliance for a Safer New York, Coalition Jobs, and voluntary agencies such as the Fortune Society, the Osborne Association and The Correctional Association of New York, as well as numerous individual parole and probation officers and even prison personnel have developed contacts and

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\*RCA Institutes The Invisible Prison, New York, 1972.

presumably made successful placements; they testified to their ability to re-use these contracts repeatedly. If ex-offender employment continues as a clandestine operation the knowledge gained through experience is unlikely to have any significant impact and it is highly unlikely that there ever will be enough program personnel to provide service to all ex-offenders or to tap all potential employment resources on a one-to-one basis. The typical program pattern of job development is doomed to meager results if it persists in the form described by Phillip Davis of the NAACP's Project Rebound.

The NAACP, because of its prestige in some quarters and its acceptance has opened doors to industry. So far, we have been relatively successful in placing many of our clients. At the moment, too often those who do decide to work with us, do so in secrecy. They do not want their names mentioned elsewhere. They respond to us as the NAACP, and are quite fearful of being deluged by other programs with similar requests.

Recommendations:

Bringing employer experience with ex-offenders out into the open is a basic necessity. This was among the principal purpose in holding the hearings, but one that was not fulfilled to a satisfactory degree. Business groups, such as those who were represented at the hearings, should see this as an appropriate function for them to under take. They could provide a forum for the exchange of experiences among their membership and a program for sharing ex-offender employment experience. In the proper context, the dynamics of management, rather than parameters of social policy, business organization representatives agreed that the

problem could be confronted honestly. The questions of risk to employee morale, customer relations, competitive position and public image could be assessed objectively without any need to be defensive. The real relevance of offense backgrounds could be tested against intrinsic operational factors and not solely against the social issues that are often only peripheral business concerns.

Discussion of actual employment experience can have particular value if the experience comes from large prestigious companies. Large companies are leaders and role models for the business community. Stephen L. Bogardo, Chairman of the National Businessmen's Council in New York said:

There are many businessmen who will  
do something because they know  
Xerox or IBM has done it before.

Moreover larger companies are the appropriate focus, according to witnesses, not only because they offer more stable jobs, but also because they already have well-developed training and employee counselling facilities and are accustomed to devoting some part of their resources to community problems.

A step toward developing a business-oriented approach has been initiated by the Alliance for a Safer New York. In the Spring of 1973, subsequent to these hearings, two meetings were held with Senator Javits as Chairman, to which top executives of major companies were invited to discuss, first with each other and later with state and city correctional leaders, possible courses of action. A written presentation prepared in advance outlined a blueprint for business action, suggesting prison visits, formal

commitments by companies to employ ex-offenders, designating a specific department as responsible for program planning and implementation and a structured arrangement for inter-company exchange of experiences. Of special interest is the recommendation made that companies carefully assess current policies toward ex-offenders, including questions on application forms and bonding requirements. The first program designed to provide skill training for 35 ex-offenders in accounting, computer operation and custodial engineering, designed to fill specific positions in 11 participating corporations, is beginning in April, 1974.

According to David Linowes, the experience of the Chamber of Commerce in its work on other social problems has shown that business responds best when it has full confidence in an outside system with which it can work. Therefore, closer collaboration between the business community and the local Department of Correction should be established to develop confidence and to sensitize correctional personnel to business needs and problems. This implies more than occasional group meetings for general discussion. A meaningful collaboration requires an involvement of the business community in the correctional process, constructed to allow employers an input in the full scope of vocational rehabilitation, rather than merely asking them to accept the products of the correctional system.

A strong working relationship between employers and the correctional system would insure the relevance of inmate vocational education to labor market opportunities and requirements, facilitate the expansion of work-release programs

and establish a basis for negotiating commitments with those companies involved, to hire inmates upon release. Witnesses from the business community were critical of the irrelevance to business needs, in kind and quality, of current inmate training and work experience. Mainly, however, they were unsure of the extent to which rehabilitation takes place in prison, or of what criteria exist to measure potential employability.

A cooperative relationship between the business community and the New York City Department of Correction is beginning to develop, albeit tentatively. The Chamber of Commerce has established a program in cooperation with the Correction Department to operate inmate training in city correctional institutions, preparing some offenders for pre-arranged jobs upon release. Correction Commissioner Benjamin Malcolm offered examples of other cooperative ventures including a work-release program for 125 offenders to be developed with Consolidated Edison. Other witnesses have detected an increasing responsiveness on the part of large companies that have a strong commitment to the city. Their willingness to participate in programs is often symptomatic of a growing recognition that crime must be controlled if the economic life of the city is to be preserved.

#### Manpower Programs and the Business Community

Post-release programs also need to shift their relations with employers from using representatives of major firms as advisors and philanthropic supporters to giving employers more overtly active roles. But first manpower programs need to be established on a firmer footing and within a coordinated structure.

Most programs operate within the strictures of tight budgets, allocated on a year-to-year basis, and therefore have insufficient stability to allow more than spotty and ad hoc projects. Small specialized programs, although valuable to individual clients, must negotiate cautiously with employers for fear of eroding through their persistence such initial welcome as they are accorded. They also must avoid trespassing on another program's territory. Even larger city-wide manpower programs have been unable to deal with institutionalized resistance to ex-offenders within the private sector. According to Gary Lefkowitz of the city's Manpower Career and Development Agency\*, programs for the disadvantaged have endeavored to modify traditional hiring requirements such as educational attainment and skill levels and have succeeded in having some requirements waived with two notable exceptions, records of crime and drug abuse. This experience casts into doubt the potential for small manpower programs in restructuring hiring requirements for the ex-offender unless they secure employer participation in the original planning and design of the program.

Federal funds under Manpower Administration programs in New York City in 1972 provided approximately \$20,000,000 in reimbursements paid to employers for extra training costs. Some 7,500 people have been hired per year under these contracts, of whom 90% have been minority members and about half under twenty years old. But within this program there has been no systematic or significant attack on ex-offender employment. Reimbursements are tailored to jobs and anyone meeting job requirements and Federal poverty

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\*Now the Department of Employment

criteria is eligible for hiring. The result has been that the ex-offender is relegated to the end of the employment line in programs, little different from where he stands in the open market. Those who operate publicly-funded recruiting and training programs, out of a desire to accommodate corporate users of programs and score a high number of placements, it was alleged, become unwitting accomplices in the discrimination against the ex-offender.

A new program, Private Concerns, Inc., established in New York City on February 1, 1974, gives every indication of becoming a vehicle for involving the private sector in the construction of a system for employing ex-offenders. Funded by the Law Enforcement Assistance Administration in accordance with a proposal developed jointly by the Criminal Justice Coordinating Council and the Alliance for a Safer New York, it is engaged in developing a coordinated approach to pre-release and post-release employment that will ultimately integrate the criminal justice system and special program intervention with mainstream employment. The thrust of the program is involvement with the business community and labor in every phase of recruiting, training and placement so that business itself will have an opportunity to assess traditional screening criteria against the actual job potential of inmates and ex-offenders. As an added asset the program has a sizable research component available to work with both the correctional system and employers.

#### Inducements to Employers

Employers have no persuasive incentives to hire ex-offenders beyond a generalized concern with crime. In the opinion of

several witnesses familiar with the problems of manpower program development (such as Hugh Ward, then Director of Coalition Jobs), special inducements are necessary or ex-offenders will remain difficult to place, no matter how well trained. Because the ex-offender is the least favored by employers when commingled in programs designed for the disadvantaged, he suggested outright subsidies. These included a 10% premium above the normal reimbursement rate for other disadvantaged groups or a per diem rate paid to those who hire parolees or released prisoners without Federal subsidy, or a flat grant of \$1,000 dollars per hire to any employer willing to train and employ an ex-offender in an entry job. Still others recommended a subsidy in the form of insurance granted to those companies that adopt an affirmative posture toward ex-offenders of an amount determined to compensate for potential loss, damage, litigation, drop in business volume, or any other extra cost attributable to hiring workers with prior records of conviction. This last was recommended to assuage employer fears of public censure when consumers become aware that ex-offenders are serving them.

The foregoing recommendations have merit, but also some fundamental weaknesses. Special negotiation and extra bonuses imply that all ex-offenders inevitably are the poor employment risks that employers believe them to be. Subsidies and other forms of special treatment can often serve to confirm rather than dissipate prejudice. Recent accomplishments in securing equal employment opportunities for minorities and for women is attributable mainly to affirmative action that flows from

explicit expression of public policy in legislation. While it is certainly true that employers need to develop screening mechanisms to detect those ex-offenders totally unsuited to the nature of their business or to a particular job, the lesson of experience is that employers are more likely to re-examine hiring criteria, utilize resources they already have available, or adopt new selection techniques when public policy states that arbitrary exclusion will not be tolerated. The problems that many employers envision with shareholders, customers, and the general public will not exist when employing ex-offenders is no longer the act of an individual progressive or liberal company in hiring an occasional ex-offender as a matter of social benevolence, but of compliance with a law that prohibits arbitrary exclusion of this particular class of job applicants. No one can then fear competitive disadvantage on this basis.

Chairman Norton said at the hearings,

The fact is that the Commission has convinced business in New York that it will not suffer by hiring Blacks, Puerto Ricans, and women. Increasingly it has been found that qualified people in these categories had been excluded, perhaps not intentionally, but by virtue of traditional procedures or policies. The ex-offender problem surely is analogous. We need to focus on specific ways in which business will see hiring ex-offenders as something more than a philanthropic gesture and excluding them as poor business.

#### Legislative Remedies:

Good will, unfortunately, is a weak tool for forging and reshaping public policy, especially in areas where prejudice and mistrust long have been legitimized by existing laws or the absence of legal constraints. The hiring practices of private employers historically have been free of legal constraints. Employment decisions outside the public sector were insulated from challenge until the enactment of the Civil Rights Act of 1964. This act, in common with most state

fair employment practices laws, does not speak directly to the problems of ex-offenders. Only the Illinois statute has been amended to prohibit inquiry related to arrests on application forms, and this falls short of a total answer.

Although the courts have been utilizing Title VII as a basis for striking down the use of arrest and even conviction records when not job-related, amendment of Federal, state and local laws to enumerate ex-offenders as a protected class was endorsed by many witnesses. The extension of civil rights laws to ex-offenders, with employment as the major focus, was the legislative action sought by most probation and parole officers. Frequently, clearly employable ex-offenders under their supervision are rejected for jobs solely because of an irrelevant offense record. But neither probation nor parole services are able to challenge what they believe to be unfair or unfounded decisions.

Most lawyers who testified consider legislation that establishes as discriminatory any arbitrary exclusion of ex-offenders to be the most fruitful action despite potential difficulties in enforcement. Proving that a particular hiring decision was based solely on a prior conviction record is admittedly difficult. Nevertheless, such laws would have an impact because employers are increasingly sensitive to legal requirements. Professor Michael Meltsner of the Columbia School of Law, after careful study of the problem, proposed:

That state human rights laws be amended to make it unlawful for any employer to refuse to hire, to discharge, or otherwise discriminate against an individual because of his prior conviction for a crime, unless such crime is reasonably related to the bona fide occupational qualifications and reasonably necessary to the normal

operation of the particular business. Such amendemnts might be patterned on 42 U.S.C. Section 2000 et. sec. which empowers the Equal Employment Opportunity Commission to adjudicate claims of discrimination in employment on the basis of creed, religion, and national origin and sex.

He envisions one statute regulating both public and private sectors, and although he recognizes the difficulties of administering such a law, with all the subtleties intrinsic to hiring decisions, he believes that

The kind of statute I am talking about would require the employer to justify any employment discrimination, if we can call it that, on more than simply the facts of the offense, so that he would have to do more than make the easy leap from felony convictions to bad character.

It seems to me that this is the heart of this sort of legislations and we have a similar pattern developing in the cases which have construed Title VII of the 1964 Civil Rights Act. Employers cannot so easily get away with, for example, saying things like, 'Well, customers will make adverse business decisions based on who we hire so we don't have to hire those people.' The process here is forcing the employers to come up with rational relationships between the background of the particular person and the sort of job they have in justifying those important business considerations. It is one thing, it seems to me, for a bank to refuse to hire a convicted embezzler. There is more than just a general notion that because someone has been convicted of a serious crime the business has an interest in not having people with bad character on the premises. It is another thing entirely, for let us say a hospital, to refuse to hire a convicted embezzler to work as an orderly.

An important by-product of such legislation may lie in its impact on attitudes. Realistically most employment decisions will not be reviewed. But the existence of such a law declares as illegal accepted biases as the basis for employment policy.

The only objection raised to legislation of this type is that it may be relatively ineffective so long as arrest and conviction information is readily available. Some legal experts are convinced that regulating the use of arrest and conviction data is well-nigh impossible, and prefer instead to control the supply of information at the source, limiting its maintenance and dissemination through expungement or annulling and sealing of criminal records.\*

Because the incidence of arrest and convictions falls with disparate effect on minorities, some jurisdictions have already concluded that both arrestees and ex-offenders already are protected. This is true for example in the State of Maryland. Treadwell O. Phillips, Chairman of the Maryland Human Relations Commission testified that in March 1972, in the course of hearings on a particular case under review and after careful study of pertinent court decisions the Maryland Commission determined that once it is established that protected classes, in this case members of minority groups, suffer as a result of this type of employment inquiry (the questions of arrest or conviction), the employer must justify a denial of a particular position on the basis of the job-relatedness of the information. Therefore, the Maryland Commission ordered the respondent in the particular case to desist from inquiries of this nature for the particular job, and now interprets state policy to be that

Any employer has a right to ask for  
arrest and conviction records, but,

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\*To be discussed in a subsequent chapter.

once he asks that question of an applicant for a particular job, the burden shifts to him (the employer) to show that this information is necessary and is related to the actual job that is expected to be filled.

Mr. Phillips stated that this ruling not only covers arrest and convictions, but also credit information and other personal matters considered to be improper areas of employer inquiry, unless they can be justified on the basis of job-relatedness. It is the Maryland Commission's intent to issue general guidelines to this effect for state-wide dissemination as well as make this interpretation explicit in the state law. In June 1972 the Minneapolis Commission on Human Relations announced adoption of a similar policy.

Recommendation:

The New York City Human Rights Commission, as already discussed, had been considering similar action prior to these hearings, and the testimony at the hearings together with careful study of judicial rulings led to the adoption of the guidelines on arrest and conviction records. Commission action does not obviate the need for legislation. Statutes can expand the classes of respondents now covered (licensing agencies, for example) and facilitate enforcement by issuing directives to police departments and others as to the proper channels for distribution of arrest and conviction information.

The issuance of guidelines or even enactment of amendments to state or city laws are not the sum total of the work required. Determination of the relevance of convictions to particular jobs will require careful and systematic review of current employer policies and formulation of more detailed interpretations of the

guidelines. The objective is to find that balance that protects business interests in the broadest sense and yet does not come down as arbitrary job denials. Obviously it would be enormously helpful if businesses themselves were to initiate this study and most fruitful if similar businesses or industry groups would work together in systematic appraisals of specific jobs and operational considerations. To stimulate such action the Commission has begun to collect data from a diverse group of large employers in order to clarify its understanding of prevailing policy. Simultaneously, the Commission is engaged in a continual analysis of all pertinent court cases and research findings as they occur, and will refine the stated guidelines accordingly.

6. REMOVING THE STIGMA OF A RECORD OF CONVICTIONS,  
ARRESTS, AND JUVENILE ADJUDICATIONS

Repeal of outdated restraints on ex-offender employment and amendments to civil service and civil rights laws to protect ex-offenders from arbitrary acts of discrimination, already a tall order to fulfill, does not exhaust the full range of proposals for new legislation. Lawyers, law enforcement officers, and legislators urged enactments of laws to deal with the stigma of a criminal record. Three categories of proposals offered in testimony include methods to strengthen existing provisions for restoring those rights forfeited as a consequence of a conviction, techniques to limit the life of the stigma of a criminal record, and ways to protect those not convicted, but only arrested or adjudicated as juveniles, from treatment as convicted offenders.

The intent of the first two types of proposals is to give ex-offenders a fresh start by limiting the duration of the impact of an offense and to do so by an official and authoritative assessment of rehabilitation, rather than allowing individual licensing agents or employers to make subjective judgements. The aim of the last is to preclude adverse use of information concerning contacts with the police or the courts that do not represent conclusive findings of an offense and have no legitimate place in employment determinations.

Restoration Of Rights

Although many witnesses expressed their commitment to the belief that all punishments for an offense should end with the completion of a sentence, the difficulty of giving substance to

this ideology impelled them to consider how rights now forfeited by law could be regained by law.

A first priority clearly is to amend the statutes that impose civil disabilities and re-assess the justification for any loss of rights, including the right to employment. It appears unlikely, however, even if the statutes are amended as proposed, that licensed jobs will be open to all ex-offenders immediately upon completion of a sentence, or even shortly thereafter. Convictions of a serious nature or for specific types of offenses may reasonably be construed as disqualifications in certain occupations unless there is substantial evidence of rehabilitation. Provisions that now restore the rights of convicted persons are intended to serve as prima facie evidence of rehabilitation but, as currently constructed, fall far short of this goal. Witnesses consider them limited in effect, if not virtually meaningless.

Currently an ex-offender is eligible to regain all forfeited rights upon receipt of an Executive Pardon, a Certificate of Relief from Disabilities (available to first offenders), or a Certificate of Good Conduct (for those with more than one offense). Executive Pardon is seldom used and affects only a few special cases and, therefore is not pertinent to the majority of ex-offenders. The two other provisions could provide assistance to ex-offenders who make satisfactory re-adjustments, if they were amended and strengthened. Certificates that presumably attest to an individual's progress toward stability, if made more accessible and accorded sufficient weight, could make a significant contribution toward reinforcing the full potential for rehabilitation.

At present, the impact of both certificates is blunted by eligibility requirements and by the methods through which they are obtained. Certificates of Relief can be issued by probation or parole officers to those under their jurisdiction, or by the court of sentence at the time of sentencing or any time thereafter. The Certificate of Good Conduct can be issued only after five years of satisfactory behavior following the last conviction or release from prison and sufficient evidence of re-adjustment to responsible living. In addition to court or supervisory officers' recommendations, there is a complex application process. The result is that in the four years following the provision by law for Certificates of Relief, only 1,800 have been issued. And from 1947 to 1971, only 4,000 Certificates of Good Conduct have been granted, or less than 200 per year. Assemblyman Leonard Stavisky, in his testimony, referred to an estimate by former New York State Commission of Correction Russell Oswald, that only 3% of discharged felons in New York State will eventually receive a Certificate of Good Conduct.

Acquisition of either certificate is far from automatic. Ex-offenders testified to the many difficulties encountered. First, not all offenders are aware of either the criteria for eligibility or the method of securing certificates. Probation and parole officers may fail to initiate the necessary applications, and when they act the paper-work and bureaucratic channelling results in long delays before the certificates are received. The Commission heard testimony from a women ex-offender, not incarcerated but given six months

probation for a first offense, who was unaware of her eligibility for a Certificate of Relief and not properly advised by her probation officer. Long after completing probation she qualified for a civil service position and would have been hired if she could produce the certificate. One year later, despite calls to the Probation Department and private lawyers working on her behalf, she still was awaiting its issuance, and needless to say, still jobless.

The major defect in both certificates, however, according to witnesses, is the lack of recognition they receive as evidence of rehabilitation by licensing agencies and employers, both public and private. The right of grantors of licenses and all employers to subject to scrutiny an applicant's past record is not materially altered. They may or may not give the certificates any weight at all, or only such weight as they choose. In addition, Certificates of Good Conduct are often limited to specific job areas, implying that parole boards have pinpoint expertise in judging the nature of individual rehabilitation and fitness for particular occupations.

With respect to licensing, it is significant that Judge Lomenzo said that the State Department of State does not view a Certificate of Relief as eliminating restrictions in the case of real estate brokers, or salesmen indicating that licensing agents decide on some other less formal basis to which occupation such certificates relate. In the public sector, the same is true. One attorney reported that in a current action on behalf of an applicant for a job in the Fire Department, the City Personnel Department ignored the applicant's Certificate of Relief, a policy justified on

the ground that the rights restored do not include the holding of public office, and that all public employment is tantamount to public office.

With respect to the private sector where no laws regulate ex-offender employment, whether or not these certificates are recognized is obviously optional. This is perhaps more understandable than in the case of licensed occupations and public employment. Because the latter are governed by state law it would seem logical that they be bound to accept state provided restoration of rights if the intent of the law is to be fulfilled.

A similar deficiency occurs within the Federal system where Mr. Sayler testified that Certificates of Meritorious Discharge can be given to youthful and young adult offenders who have displayed evidence of satisfactory rehabilitation. These are intended to have an effect equal to a Presidential pardon, removing all civil bars, but employers can and often do disregard them. Disregard of these certificates constitutes in effect a double veto system, for if an individual qualifies under the law he may still be rejected.

Among the numerous recommendations made was a relatively simple change, automatic issuance of the appropriate certificate either after a specified time period with no additional violations or in accordance with a judicial determination made at the time of sentencing. Automatic restoration of rights is now the law in fourteen states. Additional recommendations included widening eligibility by reducing the waiting periods. But the most significant change demanded is mandated recognition of these certificates, at least by those empowered by law to deny licenses or jobs on the basis of prior misconduct.

Only if mandatory, it was believed, would these provisions ameliorate substantially the duration of bias against ex-offenders.

Legislative activity in this area, traced by Assemblyman Leonard Stavisky, shows evidence of regression. In 1968 he introduced a bill to provide that if an applicant for public employment was qualified except by virtue of a conviction record, possession of a Certificate of Good Conduct would relieve him of that single disability. In 1968, this bill passed both houses but was vetoed by the Governor on the ground that ex-felons should never be employed in law-enforcement functions, or positions of fiduciary responsibility, or occupations bringing them in direct contact with the public. In 1969, an amended bill excluding the three areas that were of concern to the Governor again was introduced, but this version never reached the Governor's desk, passing only in the Assembly and failing in the Senate. In 1971 a new bill failed in the Assembly and in 1972 it died in the Codes Committee.

In 1972, several bills were introduced to strengthen restoration provisions. Among them was one to require that the Certificate of Relief be a factor in civil service determinations and one to reduce the waiting period for a Certificate of Good Conduct from five to two years, but neither survived committee processing. The only change accomplished in New York in 1972 was the enactment of the bill introduced by Assembly Joseph Pisani that widens eligibility for Certificates of Relief to those convicted of a first felony who may previously have been convicted of a misdemeanor or violation. No new measures were enacted in 1973.

As in the case of licensing laws, other states have accomplished more than New York. The Illinois Legislature recently enacted a

### Controlling the Source of Criminal Record Information

In the opinion of many witnesses, fundamental legislation affirming a positive employment policy toward ex-offenders, would be only one part of the solution for it will be difficult to enforce so long as information concerning history is available. The existence of sophisticated data-gathering services, such as those that supply credit information, intensifies the need for control over the information itself in the form of expungement, or annulling and sealing criminal records, or providing a form of amnesty.

Expungement or sealing of records has been an approach to the problem of the stigma of conviction recommended for at least a decade by the National Council on Crime and Delinquency and the American Bar Association and a variety of expungement statutes have been enacted in several states. Such statutes take various forms. Some apply only to youthful offenders, some only to misdemeanants, and some only to those who have not been incarcerated. Few were adjudged by witnesses to be of sufficient effectiveness, and all are used only sparingly.

The salient questions in determining an expungement or annulment policy are whether the procedure should be automatic or discretionary, mandatory or permissive, how ex-offenders are to be instructed in its use, and whether employers are to be prevented from directing questions to expunged convictions.

The Georgetown University Law Center, after reviewing all current provisions, offered in its report a Model Annullment

and Sealing Statute\*, allowing all who have been convicted to petition for annulment and sealing of the record of conviction at the completion of the sentence. The petition may be granted or denied by judicial determination, but the court must state reasons for denial. After two years of a clean record there is a provision for automatic annulment. When annulled records are sealed, the Federal Bureau of Investigation and other local and state law enforcement and data collection agencies are notified that the records are not to be divulged except in response to inquiries from courts, law enforcement agencies, or when the individual is applying for positions affecting national security. The Model Statute also limits questions on application forms for employment to convictions that have not been annulled or sealed. Annulment, or legal invalidation of records, was chosen instead of expungement, or physical destruction of records, because the former meets with less opposition and presents fewer difficulties in implementation.

Expungement of criminal records has been endorsed by concerned legislators for several years, but no bill of this type has ever received favorable treatment in New York State. Whitney North Seymour testified that when he served in the New York State Legislature he co-sponsored a bill to allow expungement except in cases where the records may be a proper basis for inquiry into a subject's subsequent activity, such as suspected linkage with organized crime. Senator Jeremiah Bloom recently introduced two bills, one to provide amnesty to first offenders at the discretion of the court after a probationary period, and another to create a

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\*Appended as 11.

temporary commission to conduct an experimental study of amnesty provisions. The latter was designed to offer a moderate proposal that might gain acceptance, but this as well as the more positive legislative step failed to emerge from the Codes Committee.

At the Federal level, similar action has been initiated and is receiving increasing attention. President Nixon's inclusion in his 1974 State of the Union address of a pledge to begin a major initiative to erect safeguards that protect the right of privacy has witnessed heightened interest. The Justice Department is drafting a comprehensive bill to regulate the use of criminal justice system information and the Senate Judiciary Sub-committee on Constitutional Rights has been holding hearings on the control of criminal record information. U.S. Senator Quentin N. Burdick of North Dakota has been an active sponsor of legislation to "quiet" criminal records for several years, and in 1974 Senators Sam J. Ervin Jr. of North Carolina and Roman L. Hruska of Nebraska introduced bills providing for the sealing of criminal records after stipulated time periods.

Experts in law enforcement administration who testified disagree over the relative merits and feasibility of various approaches to eradicating the stigma of criminal records. Some consider such an approach essentially impractical because of the likelihood of continued opposition, not only from the police but also from sectors of the press and from banks, insurance companies and others who feel it imperative that they be able to scrutinize an applicant's total past history, including arrest. Already the F.B.I. Director Clarence M. Kelley has expressed opposition to the sealing of records.

Sealing of records is opposed less than expungement, but experience in the case of juvenile offenders indicates that sealing is less than adequate protection, because of the difficulty of controlling access to any information that continues to exist as a matter of record. However, the effect of sealing records can be fortified by requiring that they be removed to a specified central depository. The application of a limited form of amnesty, granting to some offenders the right to truthfully answer "no" to questions concerning past convictions unless asked by employers who have been determined to have the need for full criminal record information, was suggested as a compromise that might gain legislative acceptance.

A philosophical problem exists, however, in any proposal that aims to destroy or conceal criminal records. To some witnesses this approach constitutes sidestepping the basic issue, the problem of how to change attitudes towards ex-offenders. Moreover, because any form of expungement or sealing policy must operate within a time-frame, they question its effect. The problems for ex-offenders are the most acute during the first days and months following conviction when such protection would not apply. On the other hand, supporters of expungement or sealing, although acknowledging these limitations, are unwilling to await public attitudinal change.

Recommendation:

The Commission heard testimony at the hearings from many ex-offenders whose lives have been blighted by a conviction as much as twenty years past. Therefore, any measure that limits the life of so disabling a stigma must be encouraged and supported.

The Commission is in accord with The New York Civil Liberties Union, The Community Service Society, and other concerned groups who endorse the provision of a time limit beyond which no one can be identified as an ex-offender. Given the difficulties of re-entering the society, anyone who has been able to survive for two years or more without again resorting to unlawful acts should be given the opportunity to be considered for what he is, and not for what he once was. Development of some form of control over criminal records is a desirable safeguard, especially in view of the probable difficulty of enforcing laws that prohibit adverse use of criminal record information.

#### Arrests And Juvenile Records

Two specific types of information, arrests not followed by a conviction and juvenile adjudications, require special controls. Neither arrests nor court decisions affecting juveniles are appropriate criteria for evaluating employability. This was the clear consensus of witnesses at the hearings. The two issues are related not only because neither arrestees nor juveniles can be treated as having been convicted, but also because questions concerning arrests are often used as a disguise to uncover juvenile encounters with the law. Those adjudicated either as juveniles or youthful offenders can truthfully, under the law, answer "No" to a question about conviction, but not to one about arrest. The problem in both cases is one of designing the appropriate controls, ones that preserve data essential to law enforcement agencies and at the same time limit the availability to authorized users. The problems of arrests and juvenile records were discussed by many witnesses, but, for each topic a witness of particular expertise was invited to

testify exclusively on that problem. Because of the comprehensiveness of the testimony of these two witnesses, Aryeh Neier, Executive Director of the American Civil Liberties Union, on arrest records, and James D. Silbert, of the Legal Aid Society, on juvenile records, both are appended to this report in full.\*

The problem with arrests according to Aryeh Neier, is that the public often views an arrest as evidence of criminality, failing to distinguish between arrests and convictions. This attitude has been justified on the ground that many who are arrested and may be guilty as charged are not tried or not convicted because of insufficient evidence or technical legal reasons. Although most citizens readily affirm the significance of a presumption of innocence as a constitutional right, the principle is flagrantly violated in employment decisions.

More than 8 million arrests are made each year in the United States and regardless of disposition, the arrest alone is at minimum a source of embarrassment and can also be a serious barrier to employment, particularly to members of minority groups. As an indication of the tendency to regard arrests as an evidence of criminality, an informal survey conducted this year by the New York Urban Coalition of application forms of 169 large employers in the city found 49 asking for all arrests, and curiously many who asked for arrest information did not ask about convictions. This blurring of the distinction between a charge and a finding of guilt acquires a degree of official sanction when, as already noted,

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\*See Appendix 12 and 13.

police records list all charges without consistent recording of the ultimate disposition. Thus, although civil service commissions no longer ask for arrest information, it becomes a part of their personnel history file. Many licensing authorities, however, continue to ask for arrest records, often in lieu of any question concerning convictions.

The implication that an arrest constitutes a negative record probably discourages many applicants who have never been found to be guilty of any offense. The courts have been ruling against the use of arrest information in employment. Generally, decisions that disallow the use of arrest information as employment criteria have been based on the disparate effect of arrest upon minority groups. A recent decision in the Supreme Court of Colorado indicates a growing concern with the maintenance of arrest information by the police as a violation of the right of privacy,\* questioning the validity of retention by police of arrest information unless demonstrably related to necessary law enforcement activity.

Recommendation:

The Guidelines issued by the Commission, as already discussed, declare that in most cases the use of arrest information in employment decisions will be considered a violation of the Human Rights Law because of the disparate effect on members of minority groups. But because that information remains accessible, control over the data itself is a necessary adjunct.

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\*Davidson vs. Dill, 503 P.2d 157 (Col. 1972)

- Aryeh Neier, in his statement, indicated why arrest records cannot be satisfactorily controlled at the local or state level, but demand Federal action. Congressman Rangel testified to the routine dissemination of arrest information by the Federal Bureau of Investigation (derived from not always accurate local police data) to the U.S. Civil Service Commission as well as to others upon request. The fact that arrest information becomes a permanent part of the records of centralized data-gathering agencies, such as the New York State Information Intelligence Service, and has been available at times to other than authorized users, indicates the gravity of the problem.

For several years many concerned groups have urged that fingerprints and photographs be returned automatically to those arrested but not convicted, now only returnable upon formal application. This was recommended by The National Advisory Commission on Criminal Justice Standards and Goals. That Commission also urged the establishment of tighter controls over police data to ensure the privacy of individuals and the security of the information.\* Another group, The Project on Law Enforcement Policy and Rulemaking funded by The Police Foundation, has formulated Model Rules for the release of arrest data, limiting availability to only those employers expressly permitted by law to have such access, or where necessitated by reasons of national security.\*\*

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\*In a Report released by the United States Justice Department; The New York Times, October 15, 1973, p. 27.

\*\*Model Rules for Law Enforcement; Release of Arrest and Conviction Records. Project on Law Enforcement Policy and Rulemaking, College of Law, Arizona State University, May 1973.

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Juvenile Records

The problem of juvenile adjudications, according to James Silbert of the Legal Aid Society, is that the statutory intent to provide confidentiality of juvenile records is not fulfilled because the information is obtained by private and public employers either through direct questioning of job applicants or requiring individuals to provide certificates of court records. The fact of a juvenile adjudication gives an often unwarranted impression of criminal behavior. An estimated 75% of the girls and 40% of the boys who are remanded come under court supervision for actions that by no standard are criminal, but for behavior considered objectionable in a child or because of parental inability to provide adequate care or supervision. Juveniles may be arrested on the allegations of a parent or other persons for acts such as truancy or staying out late, behavior that comes to judicial attention only when part of the disruptive family life of the poor. Children and youths have been adjudicated as persons in need of supervision (PINS) and not convicted.

The subsequent effect is of "having a record". For these youths and as well as those who actually have committed a criminal offense, age at the time of adjudication is the primary factor. It is the clear intent of the law that they should not suffer in adult years because of behavior committed out of immaturity.

Recommendations:

Mr. Silbert suggests the only effective control is either total expungement of records or markedly strengthened control over their dissemination. He further recommends, and the Commission agrees, that employment questions be restricted by law to adult offenses.

### Prospects For Legislative Reform

In the past bills aimed at providing better controls over arrests and juvenile records have been introduced in the New York State Legislature with little success. Several bills to control the use of criminal record information have been introduced since the time of the hearings, but all have failed to pass. In 1974, the measure already discussed in connection with licensed occupations, to prohibit inquiries concerning arrests, and a companion bill introduced to amend the Executive Law to prohibit inquiries about arrests and juvenile adjudications for employment or apprentice training programs, are under consideration.

At the hearings New York State legislators who testified characterized the climate in Albany as unfavorable. Congressman Rangel viewed the Federal scene as generally more receptive because representatives from areas not as exercised over crime as the major cities often are able to adopt a more progressive posture. The lack of any organized constituency at either state or Federal levels has been a deterrent. Legislators can count only on the groups that traditionally have provided support for prison reform. In New York, the Community Service Society, the Citizens Union, the Urban Coalition, the Civil Liberties Union and others have sponsored and endorsed appropriate legislation annually, and have published careful analyses of pending legislation, only to be disappointed with the results.

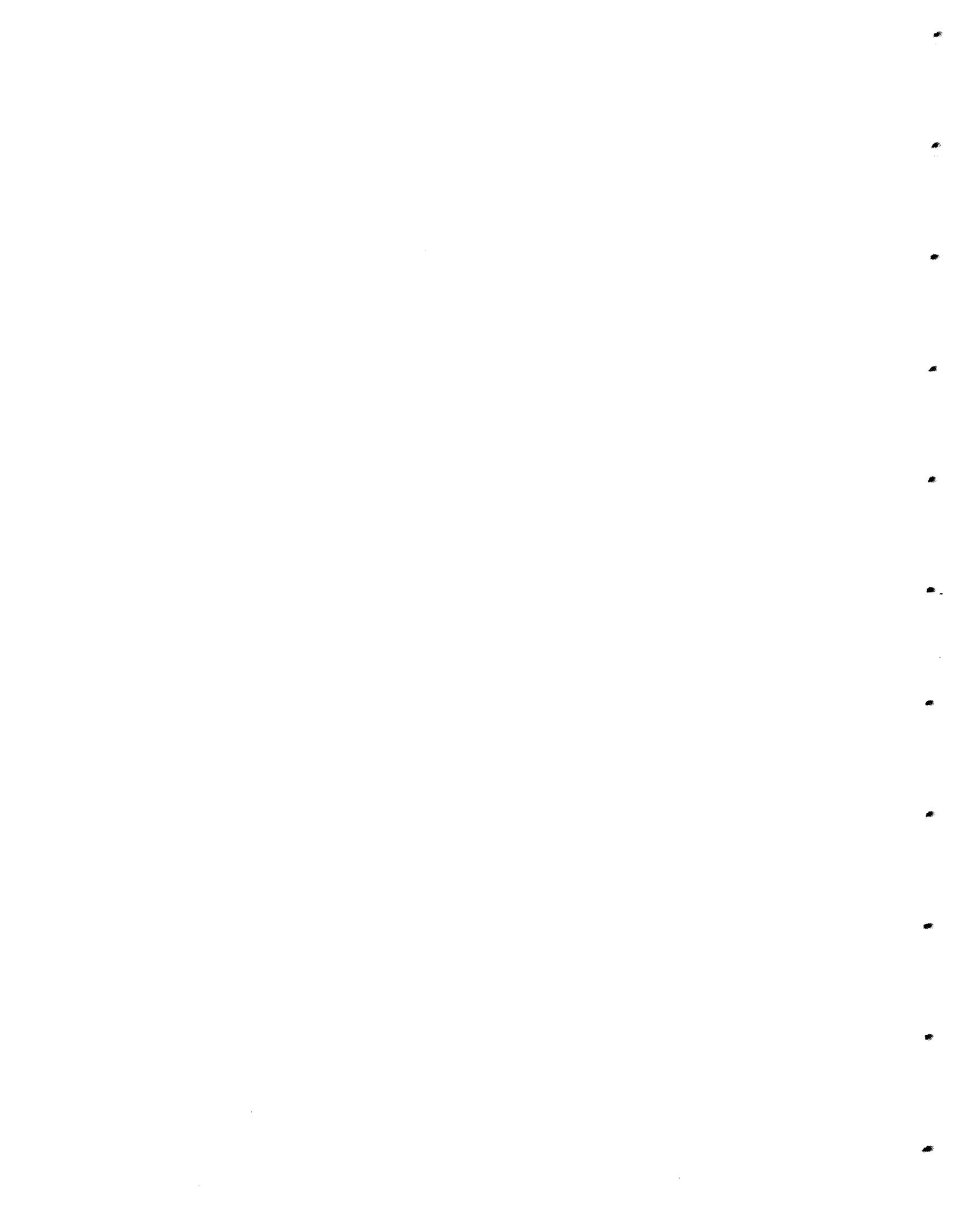
Where is it that support can be found and developed? Assemblyman Anthony Olivieri considers the legal community an essential resource to be mobilized. He suggests calling a meeting of trial lawyers to enlist their support on issues of prison reform and relief

and protection for ex-offenders. State and city bar associations are beginning to play a more important role, but not sufficient as yet. Another resource is the departments of correction. Arthur Huffman, State Criminologist of the Illinois Department of Correction, attributed legislative successes in Illinois, at least in part, to the leadership of the Correction Department. He said,

We recognized that the basis for change is an informed and concerned public. I would make this objective evaluation, that our experience indicates that at least in Illinois the citizens were generally more concerned while albeit not necessarily as much informed. But they were a great deal more concerned and showed themselves more willing to change than the bureaucrats, the correctional administrators and the legislators. So in an attempt to get the people whose help we need we worked through citizens groups...We also cultivated the leaders on both sides of the aisle in the legislature. We did that in a number of ways. From the very beginning of the development of plans for the new agency we shared it with them. We wrote them frequent letters. We sent them reports. We told them what we were trying to do. We established tours of our prisons...We gave them free access to anything they wanted to see. We encouraged their communication with residents of the institutions. Then we presented our objectives and aims at every possible convention and meeting that we could...We compiled reports and statistics showing what we needed to do to move toward community based operations. We showed them institutions ninety and one hundred years old...We took problems to them and said "How would you do this? How would you handle it"? In summary, we think that the 1971-72 legislative program in corrections, initiated by the Department of Correction itself, represents long overdue recognition of the futility of preaching rehabilitation while simultaneously denying the offender

differential treatment and training programs necessary to bring about new careers, and while denying the ex-offender the means to obtain productive employment.

It is the Commission's intent to work further to stimulate the kinds of initiative taken in Illinois and the potential leadership that could be exerted by the city and state Bar Associations.



## 7. CORRECTIONAL REFORM

Prisons do not rehabilitate; they punish. This is not only the expert view, but the opinion of the general public. It is a time-worn cliché that prisons tend to turn out only more determined and sophisticated criminals. To some witnesses the inability of prisons to rehabilitate inheres in institutionalization itself. Prison reform is a topic that surfaces every ten or twenty years. Prisons are charged with inhumanity and counter-productivity but little measurable change occurs. Law Professor Herman Schwartz said,

In the name of honesty, humaneness and economy we should acknowledge that rehabilitation is largely illusory and pernicious. Whether it's called a prison or a correctional facility or a reformatory or a training school, prisons punish and very little more.

Other criminologists and sociologists concur, and in academic circles the prevalent view is that it is impossible to effect significant changes in personality or behavior in a prison setting. Studies of new programs in California, for example, have concluded that no prison program has evidenced any capability for substantially reducing recidivism.\* Where individual institutions within a state-wide system report lower recidivism rates, either no evaluative studies exist or those that have been made fail to determine what has contributed to the lower rate. The problem, according to criminologists, is that recidivism, often presented as evidence of the

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\*Daniel A. Ward "Evaluative Research for Corrections." Prisoners in America. Preutice Hall, New Jersey, 1973.

failure of correctional systems, cannot be so construed. Such a view is no more accurate than to interpret recidivism as the manifestation of inherent criminality in certain individuals or groups. Prisons cannot take society's failures and convert them into successes. Success or failure depends mainly on what happens outside prison walls. And so prisons cannot justifiably claim credit for those who "go straight", because rehabilitation in prison even if theoretically possible, in practice becomes impossible, given the lack of trained manpower to work with inmates.

For this reason many experts who testified are convinced that the appropriate direction to pursue is an intensive search for alternatives to incarceration. Increasingly this is the goal of law enforcement and correctional experts. Whitney North Seymour said,

More and more those of us who are involved in prosecution of crime have thought of turning to other alternatives for dealing with offenders in place of indictment, trial, and conviction. One of the primary purposes is to avoid a criminal record that will haunt a defendant for the rest of his days and block his chances of rehabilitation. The Department of Justice's Brooklyn Plan, The Vera Institute's Court Employment Project, and other forms of deferred prosecution are all pointed in this direction. Undoubtedly much more attention must be given to these techniques for providing a "second chance" that is really meaningful."

And Professor Pownall agreed saying,

I have come to feel that it simply does not matter what kind of correctional institution we have. All the money we spend has been

misplaced. One way to avoid the stigma of a record is to keep people out of the system altogether - the criminal justice system. That means that there is a need for a chance to affect the system with pre-trial intervention programs. Its always better to keep a man out of the system than to let him into it.

Work as an alternative, especially community work, was suggested by William vanden Huevel. He recommended that the courts sentence offenders to community employment or public service work in fields where needed services could be provided without displacing normal sources of employees. One such experiment was reported in the testimony, a program in Minnesota for those convicted of offenses against property. Those selected are confined to a Restitution House operated by a private contractor where supervised living and work are provided, and a part of inmates earnings are withheld to furnish funds to victims of crime.

The notion of devising alternatives to imprisonment may appear radical at a time when harsher sentencing policies and maximum security prisons seem to be increasingly popular. But wardens of major prisons frequently are quoted as saying that only fractions of those sentenced need to be placed behind bars to assure public safety. Estimates quoted frequently suggest that as little as 10 to 15% of those now in prison constitute a threat to society. The majority could be dealt with effectively within the community under varying degrees of control. So esteemed a group as that at the annual Chief Justice Earl Warren Conference that took place

in June of 1972, promulgated as one of its recommendations that "Imprisonment should be the last resort. The presumption should be against its use. Before any offender is incarcerated, the prosecution should bear the burden of providing in an evidentiary hearing that no acceptable alternative exists."\*

And the National Advisory Commission Justice Standards and Goals, mentioned earlier, concurs, recommending in addition that only murderers or professional and persistently dangerous offenders be sentenced to more than five years imprisonment.\*\*

Modern correctional officers, it is clear from the testimony at the hearings, are beginning to discard the rhetoric of rehabilitation of recent decades with its emphasis on psychotherapy and group counselling, in favor of practical programs that integrate offenders into a social and vocational setting. They are seeing alienation, hostility and other anti-social traits as part of the syndrome of criminal behavior, symptoms rather than causes. Instead of the amorphous goal of rehabilitation, thoughtful professionals in the field now look to more manageable objectives - reducing the prison populations, closing archaic facilities, saving the taxpayer's money, and devoting time under sentence to activity likely to have a practical pay-off for offenders and the community. The thrust of much of this thinking is community-based correctional facilities. No one knows whether this will prove rehabilitative to

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\*A Program For Prison Reform: The Final Report. Annual Chief Justice Earl Warren Conference on Advocacy in the U.S., June 1972. The Roscoe Pound American Trial Lawyers Foundation, Cambridge, Mass, p. 10.

\*\*New York Times, October 15, 1973, op.cit.

most offenders or reduce crime, but all other methods have been failures, and community-based facilities are less costly.

A more moderate view focuses on prison reform. What is generally understood as prison reform - improved living conditions, less senseless brutality and regimentation, and more contact with family, friends and the world outside-undoubtedly would reduce the psychic damage done by imprisonment. But the focus of the hearings was on the deficiencies in rehabilitation that arise out of erroneous budgetary priorities, with more than 90% of total correctional budgets, it was reported, earmarked for custodial care and only token amounts for anything that could be construed as rehabilitative in intent. Potential gains were projected by some witnesses through shifting priorities toward vocational counselling, training and education. They, as well as those who look toward more fundamental change in the treatment of ex-offenders, contend that prisons, at the very least, could do more to overcome some of the gross employment disabilities characteristic of the majority of those convicted. The dehumanization and alienation of inmates in prison, with its damaging effects upon self-image and its intensification of anti-social attitudes, assuredly impairs the ex-offender's ability to find and keep a job. But even more pertinent is the lack of any work experience or vocational development that increases his or her actual job skills.

No single institution, however, can be expected to overcome all the damage of growing up in poverty, but, it was the consensus, prisons could begin to reverse educational and vocational deprivation.

Prison Work Experience

Almost all prisoners work while serving time. And yet Professor George Pownall found that prison work experience had no substantial relationship to post-release employment. The kind of work prisoners do is dictated largely by the needs of the institution rather than by the prisoner's needs for training and experience, and those among the witnesses who have made systematic visits to prisons report that many programs listed as vocational training are actually institutional maintenance. For example, kitchen and beauty parlor work are listed as training programs for the Women's Correctional Facility at Rikers Island, although observers report neither as adequate preparation for post-release employment, either in efficiency or quality of work. And both kinds of work run up against the potential barriers of licensing requirements. The Greenhaven facility lists seven training programs with an enrollment capacity of less than 5% of its inmate population, and yet includes barbering and shop, both as much designed for institutional maintenance as for their vocational impact.

Prisoners traditionally have been trained and employed in prison as barbers and cooks, medical technicians and teachers, irrespective of their inability to utilize this experience in the outside world. And prison industries are designed to provide low-cost products needed by the state or ones that do not compete with the outside labor market or profit making enterprises.

The New York State Correctional Law authorizes employment of prison labor to produce products for the use of the prisons or for

sale to the state or its subdivisions and institutions but generally prohibits its use in fields dominated by private industry. The precise limits are unclear. There are certain explicit prohibitions. For example, photo-engraving is one. The exact legal confines of prison work are not easily determined, embedded as they are in the intricacies of correctional law.

It was alleged by some witnesses that the nature of prison work is shaped more by tacit agreements with unions and business groups than by statutory provisions. Whether by law or by informal understandings, the irrelevance of much of prison work to the current demands of and opportunities in the local labor market is symptomatic of the fact that correctional systems are related to the employment process in only the most marginal way.

Prison work was described by ex-offenders as a curious mixture of unrelated occupations. In all but two states, license plates are manufactured by prisoners. One state employs the majority of its inmates in the manufacture of twine, with the nearest competitor 1,800 miles away and in another prison. According to ex-offenders who testified, these are not extreme examples but typical of prison industry.

New York State is a prison license-plate manufacturer. The Bedford Hills correctional facility, now housing some of the over-flow from Rikers Island, was reported to offer as prison work the making of snow-fencing for state roads, wooden coat hangers of special shape sold only to state institutions, kitchen work, leaf raking, painting of peeling walls, and snow-shoveling. Such work is ill designed to develop salable skills, or skills at all, or ones, that are readily transferable to gainful employment.

No data exists on the releasee's use of prison training. One prison in New York State was reported to be proud of its brick-laying training program, although surely aware that ex-offenders would be unlikely to gain the essential access to union membership. Another has an elaborate horticultural program likely only to serve as a possible hobby for inmates who for the most part return to urban ghettos. And ex-offenders who eagerly sought participation in limited training offerings in computer-programming, optical trades and other skilled occupations testified that notwithstanding satisfactory course completion, jobs in these fields were closed to them upon release. Whether such jobs were closed by bonding, union or licensing regulations, or required active negotiation for slots on the part of the vocational program and the trainers is unknown. But the damage to individual ex-offenders is clear, as witness the statement of one ex-offender who testified,

When you widen an individual's horizons you expand his aspirations and limit his prospects of fulfilling them you leave him only one alternative. He doesn't want a job as a packer. It's doubly hard for one who has worked hard in prison to upgrade his skills to no avail.

The distribution of limited vocational education offerings is apparently unsystematized. Some are offered only in one prison, some in several, and the type of vocational education bears little if any relationship to the way in which prisoners are allocated to any of the various institutions. Occasionally an individual prisoner can secure a transfer to an institution in order to avail himself of a particular type of training, but this depends apparently on

prisoner awareness of the program's existence and his initiative.

In addition to the irrelevance of most prison work and vocational education to job opportunities or to the jobs open to ex-offenders, it was stated by a range of witnesses that prison work standards are low in terms of both man-hour output and quality, and that prison equipment for work and training is outmoded. It was contended that prison work does not even develop good basic work habits because often ten men are assigned to a task two could complete. Furthermore, prisoners are exploited, paid only token amounts, such 35 cents an hour, while the proceeds of their labor are either retained by the institution or the products sold on the outside for the benefit of the institution, or, as often alleged, become the property of correction officers.

One witness reported that nine correctional facilities in New York State with 40 manufacturing units produce 721 products with a total sale value annually of \$6,900,000. Yet prisoners emerge after months or years of work virtually penniless, with no funds to carry them through even a week of acclimatization and job-seeking. Their meager earnings are consumed in the purchase of essentials, soap, stamps, cigarettes, during imprisonment and it is hard to envision much enthusiasm or motivation for menial work when the wage rate is as inconsequential as 35¢ a day.

Recommendations:

These glaring deficiencies suggest obvious remedies. One of the most frequent recommendations with which the Commission concurs was that prisoners be paid the minimum wage for all inmate work. Doing so would not only provide them with a financial cushion for

the immediate post-release period, but also perhaps cause prison authorities to review standards of work and supervision and the ways in which prison labor is deployed. Prisoners then would be more likely to work only at trades that would provide them with potentially salable skills and prison maintenance could be paid for by charging inmates for their room and board. William vanden Heuvel suggested a formula under which one third of prisoners' earnings be donated to a fund for restitution to victims of crimes, one-third retained by the prisoner or sent to his or her family to prevent welfare dependency, and one-third paid for prison costs. Requiring work to provide restitution to victims is not only a logical punishment but also provides some modest aid to victims of crime, who are more often the poor. Welfare dependency for the families of inmates is not only costly to taxpayers but contributes to the disruption of families, for if the family cannot any longer depend on its former head when in prison, he or she is seldom welcome upon return. How prisoner earnings are utilized is open to varying policy determinations. But it is clear that payment of a living wage would result in attaching more significance to prisoner work both in the eyes of inmates and those who supervise them.

An ideal system proposed is one that identifies prisoner vocational needs, interests and aptitudes at the beginning of sentence and then determines the appropriate place of imprisonment accordingly. Correctional facilities would differ in the type of educational and vocational programs offered, with trade-training for each occupation concentrated in one facility instead of

similar programs scattered throughout the system. Such concentration should permit better equipment, training staff and post-release job development than now occurs. As for training offerings within prisons, obviously they should be substantially increased and carefully re-directed.

Prisoner interest in vocational training is manifest when all training programs, it was reported, are over-subscribed and have long waiting-lists, and inmate capacity has been demonstrated in the past when during wartime prisoners produced precision equipment for the military services. Interests and aptitudes of inmates should be considered and emphasis given to the kind of training that can make a positive contribution to post-release employability.

Instead of license-plate manufacture, for example, Richard Clarke, the publisher of Contact magazine, from the vantage point of employment agency experience, suggests training in small appliance repair, a field under-supplied by manpower all over the country, one that pays a living wage, and one where ex-offenders who are qualified probably could be placed. Moreover, training requirements are neither overly complex nor expensive to provide.

Professor Pownall's study of federal prisons found drafting a skill more often used by ex-offenders and one he recommends be increased in training offerings. Others were able to suggest environmental recycling projects, medical billing and record-keeping, as vocational directions that fulfill two objectives, directing training towards jobs that would be available and supplying trained manpower for urban needs that now are unfulfilled.

One specific suggestion made by a witness was that Rikers

Island inmates be employed in data-processing and electronics work for the Health and Hospitals Corporation to provide billing and record-keeping services for Medicare and Medicaid.

A further recommendation is to develop closer relations between the business community, unions and correctional facilities. Commission Malcolm believes that prison training is useless unless "outside employment forces, the unions and employers, are involved in the training of the inmate while he is incarcerated and in placing him immediately upon his release." Only this involvement guarantees the appropriateness of the training and enhances the likelihood of post-release placement. Most prisons are near enough to major industrial centers to allow inmates to be trained in cooperative programs by potential employers in skills that would become the basis for post-release employment. The essence of cooperative training is a commitment to hire successful trainees. Without the actuality of prospective jobs, training tends to be little more than a time-filling exercise.

In sum, the whole concept of prison work needs reorientation. Prisoner employment apparently is now a facet of punishment little removed in spirit from chain-gang labor. Seldom is it viewed as a major rehabilitative force intended to change the pattern of work from the casual and marginal activity that prison inmates engaged in prior to sentencing. There is a marked difference between imposing training for a trade or skill on inmates, and allowing inmates to embark on the development of a new skill for which they have a genuine interest. It is important that inmates be guided, in their quest for work, into those skill areas that are

recognized and salable in the world of work, and that ex-offenders can hope to utilize. Training for an occupation that is fore-closed to ex-offenders may be even more damaging than no training at all.

The state institutions, where inmates' sentences extend for a year or more, averaging three years, have an obvious opportunity to do systematic and long-range work skill development. It is important that they focus that on the New York City labor market irrespective of the insitution's location, for an estimated 90% of those in state facilities come from and plan to return to this city.

#### Present Trends

It is encouraging to learn that the State Department of Corrections has begun to develop a comprehensive Model Reception Classification - Rehabilitation System. The stated objectives are to develop a detailed plan for a statewide system of diagnosis, assignment and program review to identify the unique needs of each inmate admitted, to allow the maximum utilization of institutional resources. The project's personnel have been in contact with the Human Rights Commission and the findings of the hearings will be made available to them and whatever aid desired will be given.

In city institutions, the potential for meaningful training is limited. Of the 11,000 housed in the fourteen city institutions, on any given day some 7,000 usually are awaiting trial. The average stay in city detention is thirty-five days. This restricts the utility of most manpower training, when programs average five months per cycle. At the time of the hearings, of 3,000 sentenced male inmates at Rikers Island facilities, only 80 were enrolled in a skill-training program funded by the Manpower Administration, and hundreds were on a waiting list. Only 30 of approximately 1,000 women prisoners were enrolled in a federally-funded sewing project. The city Correction Department, however, according to Commissioner Malcohm, has been intensifying its efforts to secure training facilities and make special efforts for the sentenced population.

Spurred by the success of a federally-funded manpower program, begun in 1965, when the majority of the first 200 graduates were placed on jobs averaging up to \$150 a week, other programs have been initiated. For example, at the Bronx Community College a plastics program is in development, utilizing heavy equipment that cannot be moved. The program will begin at Rikers Island,

and later the men enrolled will be transported to the college to complete the course. No security problem is envisioned. Experience with inmates housed in community residential centers has shown little risk and few violations. The Department of Correction has been working also with the clothing and bakery industries to develop inmate prison training programs with a promise to hire those trained upon release.

The Police Department, in cooperation with the Vera Institute, plans to establish a tire repair service for police vehicles as work for prisoners that will continue after they are released. But much more activity is urgently required. Commissioner Malcolm makes the following recommendations.

1. In the City of New York, we need a vast expansion of manpower training programs with a job placement program immediately upon release.
2. That there be a serious involvement of unions and private employers to offer jobs to ex-offenders.
3. That there be government involvement on a larger scale. By that I mean that the Civil Service system in the city and state and the Federal Government address itself to this problem.
4. Employment opportunities to establish work-release programs be made while the persons are still incarcerated hopefully for a significant number to be released on jobs each day and come back to the institution at night.
5. Vocational or other programs for inmates in such institutions as Rikers Island with the community providing guarantees for placement upon release.

Congressman Herman Badillo emphasized the importance of labor union participation in training and endorsed the concept of a union for prisoners to deal with both inmate working conditions and wages as well as post-release employment. In this context, the proposal presented by District 65 of the National Council of Distributive Workers of America to the New York State Correctional Department to enroll prisoners at the Greenhaven facility as union members while still in prison, has considerable merit. Union membership could provide inmates with a much needed link to the realities of the job market as well as an organizational base for post-release job finding. The proposal, unfortunately, has met with resistance on the part of the state correction officials and may now require testing in the courts.

#### Work-Release

To many witnesses the ideal arrangement for upgrading inmate occupational skills is work-release. Work-release programs not only expose inmates to real jobs under actual conditions but also familiarize employers and other workers with those who have been convicted of offenses within the security of a controlled situation.

The benefits of such programs compared with work in prison kitchens or laundries are obvious. But work-release programs are not easily developed. In addition to finding suitable job-training slots, transportation must be arranged, and when work-release is structured as part of pre-release transfer to community-based centers, housing presents an additional problem. Halfway houses or minimum-security housing facilities, strongly

endorsed by correctional experts as a transitional modality between prison and full release, generally encounter local community reluctance or resistance in whatever neighborhood is selected for location. But outside housing or work-release programs for those who remain institutionalized can be developed if correctional departments mobilize all potential resources.

Although authorized by law in New York State in 1968, no work-release programs, it was reported, were established until 1970. Only two state prisons, Attica and Auburn, were reported to have on-going programs, The Community Service Society reported that only forty-seven inmates in state institutions were enrolled, an insignificant number out of the total of 15,000 incarcerated in state facilities.

In New York City, some model facilities were in existence at the time of the hearing, housing approximately 150 sentenced offenders for the final three or four months prior to their release. More are planned. Commissioner Malcolm testified that he plans to transform the entire Queens House of Detention into a work-release facility.

By contrast, New Jersey, where work-release was initiated in 1969, has made more substantial use of this program as part of a vastly intensified vocational rehabilitation effort. According to the testimony of Horace J. De Podwin, Dean of Rutgers' School of Business, New Jersey's inmate population, similar to New York's, is predominantly male, young and Black, with only a few having more than an eighth grade education. Until 1965 that state spent a mere

\$20,000 on vocational training for some 3,000 adult inmates. By utilizing available Federal funds there has been a substantial increase in the amount allocated to training, with a particular focus on work-release. Dean De Podwin, in comparing New York with New Jersey said:

The reason I am given for the virtually zero performance on work-release in New York State is no funding. But this cannot be the real reason since New Jersey never funded its Work-Release Program but managed to have about 1,300 on work-release in three years. The real reason seems to be a lack of administrative interest in New York State.

Dean De Podwin's description of New Jersey Work-Release Programs indicates some of the problems as well as potential solutions. He said,

Work release need not be limited to unskilled jobs. Inmates have been released to work at these jobs: short order cook, assembly-line worker, meat cutter, nurse's aide, accountant, porcelain decorator, training technician, roofer, welder, cement finisher, machinist, photographer, salesmen, fork-lift operator, lathe operator, baker, secretary, beautician, sewing-machine operator, telephone operator and presser. One major problem has been finding jobs for the inmates eligible for the program. Because of the economic slump a number of businesses no longer hire work releasees. Our institutions at Annandale and Clinton are situated in Hunterdon County where employment opportunities are in short supply.

A second problem is transportation. Most of our institutions are not accessible to public transportation. Thus institutional transportation is used. However, we are frequently pressed to the limits with this. Inmates are permitted to use their own automobiles, but many inmates do not have the resources for this.

Our final problem is the lack of minimum security housing for men and women participating in the program. Several work-releasees reside at the Bureau of Parole's residential facility in Jersey City; others live at other minimum security units located in West Trenton, Stokes State Forest, Wharton State Forest, and the town of Clinton. New Jersey will soon open two community service centers in urban areas of the state. These will house, among others, inmates participating in the work release program.

It seems clear that community-based correction facilities are critical. The massive institutions located in rural areas are of little value in rehabilitation. That does not mean that urban location itself is the answer. The last area of major need concerns getting jobs for ex-offenders. May I add this point from my perspective as Dean of a graduate business school. Jobs for ex-offenders can be secured only if there are people with a job of securing jobs. We must have people with this as their only responsibility. The work can be integrated with the State Parole System and there are other refinements. But the major need is to stop talking and to start doing. Now we are doing almost nothing to secure inmates jobs upon release.

The New Jersey experience demonstrates the impact administrative attention can have even in a tight job market and with limited funding.

Recommendation:

Work-release programs must be expanded with particular attention given to work experience with city employers or in work skills that are salable in the New York City labor market. Work-release, itself, is no panacea. The selection of occupations, and employers,

and the quality of training and supervision are critical elements.

#### Job Development by Correction Departments

Representatives from the correctional systems of North Carolina and South Carolina testified to the successful record of placement of ex-offenders that has resulted from aggressive job development initiated by both states' correctional services. Each state assesses an inmate's vocational needs at least one month prior to release or entry into a work-release program, and offers an individualized package of services including counselling, skill-testing, driver-training and other supportive services. Job-development teams go out into the community to contact thousands of employers, community organizations and employment services. Of special significance is the employment of ex-offenders as job developers. Ex-offenders have been found particularly effective by both state correction departments in opening job opportunities for their counterparts.

This achievement by two southern states with largely under-educated black prison populations points directions for other regions.

#### Recommendation:

The major lesson is that job development for ex-offenders requires a special staff with this function as its principal responsibility. The success of ex-offenders as job developers in these programs is not unique. Pre-trial intervention programs, youth programs and many programs serving ex-offenders both in the city and in the state have found ex-offenders to be successful job-finders. This experience invites attention to expanding the employment of the ex-offender within the correctional process itself.

Many of the ex-offenders who testified at the hearings are

themselves job counsellors and developers employed by programs under voluntary agency auspices. Some express a degree of ambivalence toward a job for which their past criminal record is a qualification. Some frankly said they work with ex-offenders only because they have no other options. However, among them and among others who are unable to find any work at all, there are many who feel a strong interest in work within correctional services in prison or with recent releasees. For those ex-offenders who seek jobs in the helping services, the opportunity to test the capacity and commitment derived from personal experience offers a unique combination of personal development and job satisfaction. As one ex-offender said, "Those who know what it really sounds like to hear the gates shut, can relate better to the shut-ins." Ex-offenders currently are prohibited by state law from employment as correctional officers. Job development staff, however, could be constructed as a separate service and thus escape this prohibition.

#### Educational Programs

The educational deficiencies of most inmates are the most obvious barriers to post-release employment. Prisons have conducted educational programs for some time, but most ex-offenders return with little more in the way of basic education than they had achieved when they were committed. The trend now among progressive correctional experts is to consider the objectives of education incompatible with incarceration. Where these functions are combined they believe education suffers, for education then takes on the negative authoritarian aura and time-filling quality of prison life. For this reason, several witnesses, including

Congressman Badillo, favor the establishment of separate school districts for prison systems, staffed by special teaching personnel. A practical advantage is that such districts probably would qualify for Federal educational funds. This proposal found favor with many witnesses including Commissioner Malcolm.

In New Jersey, separate school districts were created by law in 1972 and the expectation is that the increased professional resources afforded as well as the opportunity to secure additional state and Federal funding will permit education to become a primary focus of the incarceration period. Educational furloughs offer an alternative method of providing remedial and additional schooling, endorsed by most witnesses.

Recommendation:

Many of those in prison are the failures of conventional educational systems. They are the ones our schools have neither taught to read nor convinced that education held any realistic promise for them. Therefore, continuation in prison of that same system probably will succeed with only a few and then largely as an alternative to boredom or drudgery. New programs need to be designed for young adults, utilizing both academic and vocational materials with meaning for them, while convincingly indicating the values of education as a bridge to a job or to a better understanding of individual potential. Inmate teachers have been used by many prisons. Perhaps some inmates can qualify or be developed as instructors in an educational system under high quality standards, but professionals who are specially

trained for this work are a first priority.

The Outlook for Correctional Reform

Many who have long been concerned with prison reform despair of accomplishment in this field. They are discouraged by the inability to generate sufficient public interest. Because inmates and ex-offenders are themselves a relatively impotent constituency, indeed often disenfranchised, legislators are slow to respond even in the event of a crisis. David Rothenberg, Executive Director of the Fortune Society, after years of testifying before innumerable state and Federal bodies, considers that:

The two national parties in their formulating committees have heard us but there are not many votes in this. They are not interested in solving problems. What I have come to see is our need for vengeance is greater than our need to solve problems. The blueprints are all here, what kinds of institutions, separation centers, community treatment programs. Everybody wants community treatment programs, but somewhere else.

The record of the 1973 New York State Legislature is in accord with the pessimistic views. Of a host of prison reform bills introduced, only one has been enacted, raising the sum given prisoners upon release from \$50 to \$65.

Some witnesses were more optimistic. Paul D. Travers, New York City Director of the State Division of Parole, for example, testified that the State Department of Education is actively engaged in reassessing educational and vocational training. And this is evident in the State Department of Correctional Services' recently released master plan that included proposals for community

preparation centers with increased vocational training facilities. Commissioner Malcolm reported increasing cooperation between city employer organizations, unions and educational institutions, and the Department of Correction. And prisoners themselves are becoming more active on their own behalf. Some legislators are hopeful of eventually securing increased budgets for correctional agencies. But in 1973 the proposals for increases in the corrections budget were trimmed.

On the Federal level, Senator Javits has been the sponsor of legislation calling for a comprehensive national effort directed at rehabilitation and consisting of training and job development programs for ex-offenders including work-release, public-sector employment and pre-trial intervention.

Of thirteen prison reform bills introduced in the New York State Legislature by a bi-partisan group of legislators in the 1972-73 session, none were passed. Most, according to Congressman Badillo, were a re-run of the post-Attica agreements. Legislative apathy together with stringent budgetary controls suggest that efforts be intensified in those directions that require neither new laws nor additional funds.

Areas for correction department work lie in developing relations with unions, employment services, bonding companies and the other gate-keepers of the job market. Still another activity would be a careful evaluation of the correctional departments' own rules, for example, those governing parole eligibility where the assurance of a job appears an unrealistic requirement. But the primary focus perhaps should be on the modus operandi of the limited vocational services now provided.

Assemblyman Stavisky suggested a possible resource available in the 1971 amendment to the City Charter that gives the City Commissioner of Correction formal charter responsibility for development of rehabilitation and retraining programs. Commissioner Malcolm expressed the intent to secure more funding for post-release services to implement this extended responsibility.

In the longer run, there remains a major selling job to be done to develop support for vastly increased vocational and job-development efforts. Congressman Rangel suggested the cost-benefit approach as a strategic tactic. There are real tax dollar savings to be achieved by effective rehabilitation, but it may take some increased outlays to achieve savings. The New Jersey example is pertinent. Dean De Podwin estimates that each inmate costs New Jersey \$4,000 per year in operating expense and \$25,000 in capital costs of building new prisons. The average inmate is sentenced to three to four years in prison and may return for additional terms. If the spending of \$500 annually per inmate on job training and development succeeds in cutting recidivism by only a third, the resultant saving would equal \$1,000 per inmate.

Recommendation:

It is not easy to muster much optimism for even so hard-headed and pragmatic an approach. But if it is to have a chance of success, the dollarsavings to be realized are probably better presented as evidence gained from sizable and carefully documented demonstrations than as a matter of conjecture. The public knows only of prison failures in the constantly repeated data on recidivism. It behooves the correctional services to offer as counter-weight,

evidence of successful adjustment. For surely there are many  
ex-offenders who, given only minimal assistance, have become  
stable law-abiding citizens.

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### B. POST RELEASE SERVICES

What is it that recent releasees from prison need? First, according to the testimony they may need a period of adjustment, a chance to restructure social ties with family and friends, consider possible paths to follow, and time to develop or renew their capacity to make decisions and exert initiative. The time needed for reorientation varies with the individual, and depends also on the length of incarceration and quality of pre-conviction experience. But those familiar with ex-offenders' re-entry difficulties consider it unrealistic to expect many ex-offenders to make an immediate adjustment from prison to a job, even if one can be found.

#### Transitional Needs For Funds

To some witnesses this interim adjustment period is a time when counselling is the primary need of ex-offenders. But others reject this view. One parole officer described counselling as what is resorted to when no real help is available. Practical assistance, not counselling, is what an ex-offender needs. Money is a first need. Ex-offenders may be able to re-integrate into a community if they have funds for temporary self-support. Therefore, they consider it imperative that each ex-offender have sufficient funds to allow him to live while he finds a place to live and looks for a job.

Such funds could be provided under several alternatives. If, for example, inmates were paid the minimum wage rate for work in prison they might accumulate sufficient funds to finance a transitional period. Alternatively, instead of the token amount given each inmate upon release, low-cost loans could be offered to be repaid out of subsequent earnings.

At present, ex-offenders have only welfare or the assistance supplied by voluntary agencies. Many, it was reported, avoid welfare because they fear the humiliation of confessing impoverishment and explaining its cause. The indignities of the inquiry and the delays before an ex-offender receives an emergency check from the Department of Social Services are enough, it was alleged, to turn some to a more ready source of funds, illegal acts.

Recommendation:

The most practical recommendation is that the Department of Social Services provide a separate facility to deal with the approximately 500 persons who return to the city from prisons each week, and staff that facility with personnel who are sensitive to recent releasees' embarrassment, both financial and emotional.

At present, the financial problems of ex-offenders become a problem for parole officers, who endeavor to secure temporary loans for ex-offenders because they know, as one parole officer said, that without funds

He will return to his old buddies for assistance rather than expose himself to the welfare intake officer.

Voluntary agencies dole out small amounts, often out of the pockets of staff. As Judith Weintraub, Job Developer with the Correctional Association of New York, said,

We are dealing with individuals who, when they start a job, may have seven cents in their pockets, and that's all. They don't have money for carfare, or for lunch. They don't even have money to keep themselves alive.

The Correctional Association has given approximately \$150,000 in the past ten years in small amounts to meet the small but totally

paralyzing financial needs of ex-offenders.

### Probation and Parole Services

For all ex-offenders except the relatively few released from prison after serving a full sentence, probation and parole departments serve as the primary initial contact. Neither was established to act as an employment service. That their security function is paramount is evident in the fact that the success of probation and parole are measured by violation rates, rather than by the adjustment offenders make to community life. Added to the principal responsibility of insuring that the conduct of offenders under supervision meets the terms of release, probation and parole officers also are the providers of a host of practical and social services. They are employment counsellors and job-finders as well.

With the exception of the Federal service, however, neither probation nor parole services have been endowed with planned or budgeted job-development capacity, nor is training in counselling, vocational guidance, or job development a requirement for staff. Lacking in budgeted resources or trained staff, manpower services are provided largely on an ad hoc basis. To their credit, most probation and parole officers see the problem of jobs as critical and devote considerable effort to developing job referral resources.

Their efforts to find employment for ex-offenders, however, are restricted in many ways. First, probation and parole services are characteristically under-funded, with the inevitable result that each staff member is burdened with caseloads too large to allow individualized attention. Caseloads can run as high as one hundred or more with the result that an average of one hour per month

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is available for each parolee or probationer. As one probation officer said,

When you have a large caseload of probationers, many of who are mobile, who live in furnished rooms, you have all you can do just to keep up with where they live.

The average time devoted to each client is only a theoretical measure because, in actuality, officers' time is often consumed by the problems concerning the few who violate the conditions of parole and probation, most often the failure to report in regularly. They must be found, charged with a violation and followed through judicial processing. In whatever time remains, officers try to strengthen faltering marriages, find housing, place children, refer clients for medical or psychiatric care and offer job advice.

Not only unmanageable work loads, but also inadequate resources, inhibit the job-finding capacity. Most probation and parole services have little more in the way of placement resources at their disposal than any private citizen. They too rely on newspaper advertisements and such personal contacts as they have been able to develop. Usually, the weight to be given to their assessment of a candidate by a prospective employer depends entirely on individual rapport.

A critical question raised in testimony at the hearings is whether a fundamental conflict exists between the supervisory function, with its ultimate authority over the liberty of probationers and parolees, and a role of helping service or advocacy. Both officers and the ex-offenders they serve evidently are aware of this potential conflict of interest. Officers testified that a positive relationship

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is difficult to establish when the client knows you have the authority to send him back to prison. In some states, attempts have been made to separate the two functions within one office. For example, in New Jersey, parole officers do not make arrests. But in the opinion of witnesses this is a transparent facade, for the parolee is aware of the integral relationship of the two functions, so long as both are performed within one agency. To some ex-offenders who testified, it's a case of "cop" versus "convict", with the "cop" role virtually always dominant. The officer is often looked upon as another prison guard to placate by a show of adjustment.

For this reason some correction experts consider that job-finding and other helping services cannot be satisfactorily developed within a correctional setting. But others and many ex-offenders as well, believe this to be a theoretical issue and one that could be overcome if probation and parole services were up-graded by funding sufficient to reduce caseloads and provide special job-development and vocational guidance capacity. Re-organizing these services to free probation and parole officers from time-consuming red-tape and record-keeping and allow them to focus on rehabilitative services, they believe, would permit a significant improvement over the perfunctory relationship that now too often is typical. Logical as this appears, it is also clear that any substantial improvement in job-placement services will require a more structured access to employment resources.

Testimony from parole and probation officers was directed primarily to the difficulties in helping ex-offenders find jobs and only secondarily to the systemic problems of correctional services.

Therefore, precise recommendations on the basis of the testimony on what is only one aspect of parole and probation functions would be inappropriate. The Citizens' Inquiry on Parole and Criminal Justice recently released a major report calling for radical re-design of parole services\*, based on a thorough study of the entire service functions.

#### Employment Services

The Federal correction services, it was reported, have the assistance of a specially designed job development officer employed by the United States Bureau of Prisons. But his effectiveness depends on his individual initiative, for no centralized or comprehensive job-information source is available to him. Local offices of state agencies are served through a liaison with the State Employment Service. The effectiveness of this arrangement apparently is debatable. Probation and parole officers characterized the local State Employment Service as relatively ineffectual and considered that ex-offenders receive little more attention from the SES than from private employment agencies. Spokesmen for the State Employment Service indicated that the skills and educational level of most ex-offenders is insufficient for most orders received. No records are kept of the total number of ex-offenders served, but a special unit for correctional vocational rehabilitation service processes some 1,800 or 1,900 referrals annually with a normal success rate of only 50 percent.

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\*Report on New York Parole. March 1974, available at 84 Fifth Avenue, New York, 10011.

The inadequacies of the State Employment Services facilities for ex-offenders are not irremediable. Several witnesses recommended that the special unit for ex-offenders be redesigned and augmented by a staff of ex-offenders to act as job-developers, in addition to the usual professionals. Overhauling the State Employment Service so as to give ex-offenders more attention, some believe, would be more effective than hiring a few job developers for each probation and parole agency because a centralized employment service enjoys broader command of the labor market.

Recommendation:

Any systematic structure for job information and referral would be preferable to the current ad hoc and splintered approach. Individual probation and parole officers and voluntary agency counselors, as well, inevitably exhaust their personal contacts. They need broader access, broader perhaps than provided by the State Employment Service. A centralized job bank and coordinated employment service with up-to-date information on jobs and training programs is required, but it must also be able to evaluate ex-offender eligibility. It is questionable whether any referral system alone will suffice. Job development appears essential. And this probably would best be operated by a staff with a high commitment to and understanding of the ex-offender and his particular problems. Ex-offenders need advocates who can cut through the layers of prejudice and suspicion, and here is a logical role for ex-offenders themselves as well as those trained in both criminology and manpower problems.

### Training Programs

Economic conditions in the city, characterized by a continuing shrinkage of entry level jobs, give training programs added importance. At the time of the hearings, those who aid ex-offenders in their search for work experience were concentrating on slots in training programs, not only for their potential value in upgrading client employability, but because in the absence of jobs, training stipends provided an alternative means of subsistence.

The New York City Manpower Area Planning Council estimated that a total of \$200,000,000 of combined Federal, state and city funds have been available annually for manpower programs in New York City. Few manpower programs have been designed for ex-offenders, and entry by ex-offenders into programs intended for the disadvantaged population is limited. It was estimated that only 2,000, or less than 2% of the number of ex-offenders returning to the city each year have been served by the programs.

Ex-offenders apparently are only slightly better able to compete for manpower training slots than for jobs. Limited participation by ex-offenders in training programs has several causes. First, as already discussed, specifications for many job titles exclude those with prior history of arrest or conviction. Second, in their efforts to show high success rates programs tend to select those most likely to be hired. This it was reported occurs even when the policy of the program is to serve ex-offenders because those who recruit candidates often are affected by the hiring criteria of employers with whom they work.

The Manpower Area Planning Council concluded that ex-offenders

require a special focus in programming, and as a part of their fiscal year 1973 and 1974 Comprehensive Manpower Plans designated inmates and ex-offenders as manpower program priorities. A special focus was recommended despite the possibility that it may tend to perpetuate labelling ex-offenders as a group apart because job development for ex-offenders has its own imperatives different from the dropout or the welfare client. Programs should begin during incarceration or pre-sentence detention and continue after trial or release, and job development must take into consideration statutes that exclude ex-offenders and the problem of a possible relationship of prior criminal acts to certain occupations. Securing a prior commitment to employ successful trainees is especially essential when the trainees are ex-offenders.

Companies contracting with the Federal government can specify "no convictions or pending court cases" among criteria for eligibility. Exclusion of those with prior records unless demonstrably job-related is a policy that program representatives believe should not be allowed to continue in companies reimbursed for training costs. Arbitrary refusal to train, or to hire those trained, should be a disqualification for Federal reimbursement. An alternative suggested was the granting of a higher rate of reimbursement than for trainees with no criminal record to cover potential additional risks in hiring ex-offenders. Whether or not warranted in actual costs, a higher rate, it was suggested, might induce employers to consider ex-offenders.

Representatives of programs designed for ex-offenders under the auspices of voluntary agencies such as the Urban League, the NAACP, the Bedford Stuyvesant Restoration Corporation, and others

testified at the hearings. Frequently they employ ex-offenders as integral members of policy-making staff. Some programs focus on counselling, some on job development and some conduct independent training programs. Many report disappointing results unless the sponsoring organization has sufficient prestige to induce cooperation on the part of employers.

The experience of voluntary agencies is that with sufficient individualized attention and guidance given to the job seeker, and aggressive job development, it is possible to make successful placements. Moreover, the best programs begin with prison inmates, allowing time to develop a future job plan before release. Commitments by employers are easier to secure in advance of an actual hiring date, and advance training and counselling for individuals or groups then can be directed toward specific real job opportunities.

Although both men and women ex-offenders are equally disadvantaged in the search for jobs, fewer programs serve women. There are far fewer women ex-offenders, but there is also apparently an assumption that women ex-offenders, in common with all women, have less need for employment assistance. One woman ex-offender said:

They assume a woman can always find a man to take care of her, and if she doesn't, she can hustle on the streets.

One of the few programs for women has been established by the Women's Prison Association, a court diversion project, providing a supervised residence with intensive career counselling and training for twenty women.

Recommendations:

The Commission concludes that programs run by individual voluntary agencies, helpful as they may be to those they serve, have insufficient reach and power to change general hiring policies. What is needed is a coordinated system of programming that provides for a pool of knowledge and resources and develops clear links to major employers, both public and private, with the correctional system.

Service provisions to ex-offenders are completely inadequate. And there is insufficient knowledge as a basis for designing an optimum system. It is therefore encouraging that some beginnings of data-gathering are evident. The New York City Department of Correction is computerizing data on the skill and education levels of inmates and the New York City-Rand Institute is engaged in a major evaluation of the relative methods of post-release intervention. To date, services to ex-offenders seldom have been evaluated systematically. It is therefore impossible to assess the effects of group versus individual counselling, of off-site versus on-the-job training, or other program components. But even without statistical data, it is apparent that job development is an essential program ingredient, and one that must precede counselling or training. Given the ingrained resistance to hiring ex-offenders for many jobs, it is unrealistic to develop educational and vocational training directed only towards traditional or generalized manpower considerations.

When, as in the past, programs have been developed with only the hope of better jobs for ex-offenders, they tend to compound the alienation and disillusionment ex-offenders sense and diminish the

credibility of societal motives. The desirable program structure is debatable. An independent entity to undertake full responsibility for the employment of ex-offenders has the advantage of freedom from the negative authoritarian image of most official bodies. But the price of freedom is a loss of integral connections with the correctional system. How to structure a coordinated system must be given careful thought, but the structure is perhaps less important than the existence of an agency that has, as an operating priority, employment service for ex-offender. Federal funding of the quantity and form proposed by Senator Javits to create a comprehensive manpower structure would be of value. It is to be hoped, however, that new manpower intervention on the part of the ex-offender will not replicate the errors of past manpower programs in overestimating the importance of training. Programs must strike a balance between upgrading the skills of the population served and critical reassessment of artificial hiring restrictions. Any special attention given to ex-offenders must be approached within the context of the total disadvantaged population. Priorities always create problems when others are neglected. Finally, program planners must be sensitive to business needs, and in working to penetrate artificial requirements, must recognize that there are legitimate business concerns; in some occupations or industries a past conviction record may impose more risk in hiring than an individual employer should be expected to assume.

Given these caveats, there is still ample room for a centralized system to serve as a liaison between the criminal justice system and employers. With sufficient research and evaluation capacity, such a

system might begin to develop data that provides experiential underpinnings for correctional theory. And we might at last learn something about the relations between employment and recidivism.



IN CONCLUSION

The criminal justice system in the United States clearly is in trouble. The problems extend far beyond log-jams in the courts and outbreaks of violence in the prisons. The real danger is that the belief in rehabilitation of offenders will be discarded as a myth. Rehabilitation has been a part of correctional and criminological language for so long that the public assumes that it has been tried and found wanting. The truth is that little that by any measure can be considered rehabilitative has been attempted. The principal message of the hearings is to give rehabilitation a chance.

Employment, acknowledged as perhaps the most fundamental rehabilitative force, has had only a tangential relation to the correctional process. Vocational rehabilitation activity is small-scaled and tentative, and directed almost entirely toward the personal deficiencies of offenders. Offenders and ex-offenders are in limited degrees counselled, guided, motivated and trained, as though their job problems will be overcome by these activities. The testimony of the hearings makes it clear that even highly motivated ex-offenders supported by the assistance of dedicated counsellors face an almost impossible struggle in the quest for a steady job. Against the entrenched institutionalized resistance to the employment of those with a criminal record, a good part of it bolstered by law, only those with either unusual skill or valuable contacts are likely to succeed.

The deficiencies of ex-offenders as potential employees cannot be discounted as an element of the problem. From a manpower

perspective, ex-offenders comprise perhaps the most difficult group, the most deprived and damaged segment of the disadvantaged population. Nevertheless, attempts to deal with their employment problem as if it arises entirely out of their educational and vocational inadequacies will continue to fail. At least an equal amount, if not more, of the services to ex-offenders must be addressed to eliminating rigid and arbitrary barriers that exclude them from all but a shrinking number of marginal jobs, aggressive job development, and systematic evaluation of actual employment experience.

Guidance, counselling and training, of course, will be needed. But these services can only be fruitful if the clients have some viable opportunities. In the case of ex-offenders, supportive services have been mainly sympathetic commiseration and hand-holding through periods of acute distress. Those who serve ex-offenders give an appearance of having been co-opted by employer attitudes, viewing the hiring of anyone with a prior record as a risky business, when they confine job development to solicitation of philanthropic gestures and advise ex-offenders to be less than truthful job applicants. Professionals in the field are well aware of the shortcomings of their role, but feel powerless to change laws and customs. Their whole-hearted response to the hearings was predicated on the hope that full discussion of the problem would provide them with allies, and developing an alliance of concerned groups was indeed a primary purpose of the hearings.

The first priority emerging from the hearings is to develop broader and more articulate support for legislative reform of

essentially three types: removing arbitrary and prejudicial barriers to employment embodied in licensing and public employment laws; providing positive legal protection against discrimination in all areas of employment; and controlling the access to arrest and conviction record information. New York unaccountably lags behind other jurisdictions and the dismal record of 1973 again stands in contrast with substantial progress made in other states. Many desirable reforms have been introduced repeatedly in Albany in recent years but the few that survive the legislative process are in jeopardy of gubernatorial veto.

The problem is one of mustering sufficient support, and support from those segments likely to have sufficient political impact. Thus far, support has come mainly from civil libertarian and social welfare groups, today infortunately suspect as representative of "bleeding heart" liberalism. At a time when few legislators and political leaders will risk appearing "soft on crime", it is important that support for legislation have a pragmatic as well as an ideological base. The impact on tax-payers of the high cost of incarceration, and the costs of dependency are not well understood by the public at large. And even less well known is the lack of any practical justification for the exclusions from licensed occupations or public employment permitted or sanctioned by law, or from private employment as a matter of custom, that disqualify those with an offense background either irrelevant or so long past as to be improper considerations for hiring. And few know how readily available police and court records are through indirect channels of clearance.

Legislative reform may be better received if actively endorsed

by lawyers' groups who can present, for example, the questionable constitutionality of many existing statutory provisions or the indiscriminate use of arrest information, and by correction departments and employer organizations who can attest to the cost-benefit factors involved. The business community is beginning to take action, utilizing its concern over the high cost of doing business when crime is on the increase in constructive approaches. It would seem likely that support from the affected industries for an amendemnt to the Alcoholic Beverage Control Act, similar to that recently vetoed by the Governor, might be a potent force in securing action that would broaden job opportunities for ex-offenders. Correction departments have in their files information never analyzed and presented to the public, to show how critical employment is in reducing recidivism. Experience in other states demonstrates how effective correction departments can be in securing legislative reform when they utilize their knowledge and exert their influence on the legislature and on the business community.

The Commission intends to continue in its efforts to build a coalition of legal, correctional, employer and citizens groups to provide active support for legislative reforms, and in addition, to utilize its resources to educate the public to the urgent need for positive legal protection for ex-offenders. The task of securing appropriate legislation, however, can only be considered a bare beginning. Fundamental to protecting ex-offenders against discrimination is the ability to determine the two criteria, the job-relatedness of an offense, and the extent of rehabilitation. With

respect to both, current knowledge is far from adequate. To assure that the Commission's Guidelines will have their intended effect, the Commission's staff has been carrying on intensive research, reviewing all pertinent judicial decisions and research reports, and analyzing current hiring policies in all major employment areas. But until actual employment experience is analyzed, usable knowledge will be limited.

Existing programs for ex-offenders seldom have been systematically evaluated and nothing in the way of hard evidence is available concerning the actual performance of ex-offenders now employed without any special intervention. Essential to upgrading the level of knowledge is the design of methods to track and monitor ex-offender employment without subjecting them to further stigma. Tracking systems probably can best be designed in conjunction with new work-release and manpower programs.

The problem of the ex-offender is too urgent to await our ability to answer all the questions. And the answers can only come out of expanded action. There is already sufficient experience gained in programs for ex-offenders, as well as in manpower development for other disadvantaged groups, to point the directions. Pre-trial intervention and work-release should be expanded. Aggressive job development must be given a high priority. Transitional employment for ex-offenders must be made available in supported work projects and within correctional services and allied fields. And off-site training must be linked firmly to actual job opportunities.

Admittedly, sizable resources will be needed to make any

significant impact on the ex-offender employment problem, and the current prospects for the commitment of substantial sums for these purposes are poor indeed. Therefore, it is imperative that correctional departments and existing manpower programs use available resources to the maximum. This will require not only a careful realignment of work and training programs but the development of a coordinated system.

The Commission intends to use its Guidelines as a vehicle to bring together all agencies now servicing offenders and ex-offenders in vocational development to develop a systematic plan for concerted and focussed programming. Through coordinated activity not only will existing services be able to work more effectively to deal with employer resistance, but the findings, if carefully evaluated, can serve as evidence of the value of manpower programs, evidence essential to securing additional funding.

APPENDIX IHEARINGS PARTICIPANTS\*I Correctional Services Representatives

Mr. Ellison Ball, Probation Officer, Kings Criminal Supervision Branch, Office of Probation

Ms. Beatrice Burg, Probation Officer, Queens Criminal Investigation-Supervision Branch, Office of Probation

Mr. Thomas J. Callanan, President, New York State Probation and Parole Officers Association

Ms. Clymene Davis, Supervising Probation Officer, Guidance Services, Supreme Court Department of Probation

Ms. Genevieve Eason, President, The Counseliers, Inc., an organization of Black professional workers in the fields of probation, parole and related services

Mr. Charles Fastov, Chief Probation Officer, Supreme Court Department of Probation

Mr. Philip Gumbs, Probation Officer in charge of employment, Supreme Court Probation Department

Mr. Frank Hall, Director, Concentrated Employment Program for Ex-Offenders, North Carolina Department of Correction

Mr. Arthur Huffman, State Criminologist, Illinois Department of Corrections

Mr. David Leibowitz, Correctional Program Officer, U.S. Department of Justice

Mr. Milton Luger, Director, New York State Division for Youth

Hon. Benjamin Malcolm, Commissioner, New York City Department of Correction

Mr. Oscar Prioleau, Director, Project Transition, South Carolina Department of Corrections

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\*Scheduled witnesses listed in accordance with their status at the time of the hearing

Mr. Arch E. Sayler, Chief Probation Officer, Probation and Parole Office, U.S. District Court, Southern District

Mr. Paul D. Travers, New York City Area Director, New York State Department of Correctional Services, Division of Parole

Mr. Simon Tropp, Acting Supervisor, Supreme Court Probation Department; Committee on Correction, National Association of Social Workers

Hon. William J. Vanden Heuvel, Chairman, New York City Board of Correction

Mr. John Wallace, Director of Probation, Office of Probation for the Courts of New York City

## II Federal, State and City Legislators

Hon. Herman Badillo, U.S. House of Representatives

Hon. Jeremiah B. Bloom, New York State Senate

Hon. Albert H. Blumenthal, New York Assembly

Hon. Carter Burden, New York City Council

Hon. Robert Garcia, New York State Senate

Hon. Anthony Olivieri, New York State Assembly

Hon. Oliver Koppel, New York State Assembly

Hon. Joseph R. Pisani, New York State Assembly

Hon. Charles Rangel, U.S. House of Representatives

Hon. Leonard Stavisky, New York State Assembly

## III Other Public Officials

Mr. Harry Bronstein, Chairman New York City Civil Service Commission and Director, New York City Department of Personnel

Mr. Richard Givens, Regional Director, Federal Trade Commission

Hon. John Lomenzo, Secretary of New York State

Ms. Ersa Poston, President, New York State Civil Service Commission

Mr. Treadwell O. Phillips, Executive Director, Maryland Commission on Human Relations

Mr. William G. Rafferty, Senior Employment Counsellor, New York State Employment Services

#### IV Law Enforcement Officers, Lawyers and Legal Scholars

Mr. Ira Glasser, Executive Director, New York Civil Liberties Union

Mr. Robert M. Kaufman, Chairman, Committee on Civil Rights, New York City Bar Association

Mr. James W. Hunt, Director, Clearing House Project, American Bar Association

Robert Kline, attorney

Professor Michael Meltsner, Columbia University School of Law

Professor Herbert S. Miller, Deputy Director, Institute of Criminal Law Procedure, Georgetown University Law Center

Hon. Patrick V. Murphy, Commissioner, New York City Police Department

Mr. Aryeh Neier, Executive Director, American Civil Liberties Union

Mr. John C. Ruhnka, staff attorney, Vera Institute of Justice

Professor Herman Schwartz, University of Buffalo Law School

Hon. Whitney North Seymour, U.S. Attorney, Southern District

Mr. Stephen Shestakovsky, Counsel, Fortune Society

Mr. Gerald Schwartz, staff attorney, Brownsville Legal Services

Mr. James D. Silbert, Legal Aid Society

Dr. Terence V. Thornberry, Center for Studies in Criminology and  
Criminal Law, University of Pennsylvania

V Academicians and Research Directors

Dr. Bernard Cohen, New York City - Rand Institute

Mr. Horace J. De Podwin, Dean, Graduate School of Business Admin-  
istration, Rutgers University

Dr. Michael Liechenstein, New York City - Rand Institute

Dr. Russell Nixon, Professor of Social Policy, Columbia University  
School of Social Work

Dr. George A. Pownall, Professor of Sociology, Kent State University

VI Representatives of Agencies and Organizations Concerned with  
Ex-Offenders

Mr. Harold Baer, Jr., Community Service Society

Mr. Joseph Callan, Assistant Executive Director, Osborne Association

Ms. Pauline Feingold, Director, Coalition Action Council, New  
York Urban Coalition

Mr. Donald Goff, General Secretary, Correctional Association of  
New York

Mr. Donald Menzi, Supervising Planning Specialist, New York City  
Manpower Area Planning Council

Ms. Susan Pass, Planning Specialist, New York City Manpower Area  
Planning Council

Mr. Melvin Rivers, President, Fortune Society

Mr. David Rothenberg, Executive Secretary, Fortune Society

Mr. Richard Van Wagenen, Criminal Justice Coordinating Council

Mr. Hugh Ward, Coalition Jobs

VII Business and Labor Representatives

Mr. Stephen L. Bogardo, Chairman, National Businessmen's Council

- Mr. Richard V. Clarke, Publisher, Contact Magazine
- Mr. Joseph F. Cunningham, National Alliance of Businessmen;  
counsultant to state departments of corrections
- Mr. William Haddad, New York Board of Trade
- Mr. David F. Linowes, New York Chamber of Commerce
- Mr. Milton Lynn, President, Elzee Metals, Inc.
- Mr. Arthur J. D'Lugoff, proprietor, Village Gate
- Mr. Sol Molovsky, Executive Vice President, United Storeworker's  
Union (statement)
- Mr. William Nuchow, Secretary-Treasurer, Local 840, International  
Brotherhood of Teamsters
- Mr. Anthony M. Scotto, International Vice-President and President,  
Local 1814, International Longshoremen's Association
- Ms. Lillian Roberts, Associate Director, D.C. 37, American Feder-  
ation of State, County, and Municipal Employees, AFL-CIO
- Messrs. Milton Silverman and David Sipell, Local 810, International  
Brotherhood of Teamsters
- Messrs. William Tate and Morris Doswell, District 65, National  
Council of Distributive Workers of America
- Mr. Jack Townsend, President, Local 15, Bartenders Union; Chairman,  
New York City Alcoholic Beverage Control Board

#### VIII Manpower Program Representatives

- Mr. John Burrell, GROW Workshops, Inc.
- Mr. Stephen Cumberbatch, NAACP - Project Rebound
- Mr. Joseph Connor, Coordinator, Court Diversion Project, Women's  
Prison Association
- Mr. Philip Davies, NAACP - Project Rebound
- Mr. Jack Highsmith, Director, Law Enforcement Minority Manpower  
Project, National Urban League
- Mr. Gary Lefkowitz, Assistant Commissioner, Manpower and Career  
Development Agency, Human Resources Administration

Messrs. Kenneth Lein and Emory Jackson, National Urban League

Mr. Kenneth Marion, Associate Director, Vera Institute of  
Justice

Ms. Alice Reed, Teacher-in-Charge, Manpower Development Training  
Program, Rikers Island Adolescent Center

Mr. Robert Robinson, Manhood Foundation

Ms. Terry Strauss, Criminal Justice Coordinating Council

Mr. Franklin Thomas, President, Bedford-Stuyvesant Restoration Corp.

Ms. Judith Weintraub, Job Developer, Correctional Association of  
New York

IX Ex-Offenders Employed in Special Programs

Mr. Charles Bergansky

Mr. John Bordeaux

Mr. Robert Brown

Mr. Richard Clark

Mr. William Colon

Mr. Al Cruz

Mr. John Delgado

Mr. Richard Lang

Ms. Fran O'Leary

Mr. Henry Robinson

Ms. Etrulia Palmer

Mr. Thomas Rolon, Jr.

Ms. Martha Whitaker

APPENDIX II - STATUTORY CONDITIONS AFFECTING LICENSING LAWS  
IN NEW YORK STATE

State: New York

All Citations To: McKinneys Consolidated Laws

STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Public Adjuster	Felony; crime or offense SS123(9)	Honest, good character <u>Ins.</u> SS123(9) (Supp. 1972)
Radiologist	None	Good Moral Character <u>Pub. Health</u> SS3505
Shorthand Reporter/ Certified	None	Good Moral Character <u>Educ.</u> SS7504
Social Worker, Certified	None	Good Moral Character <u>Educ.</u> SS7704
Veterinarian	None	Good Moral Character <u>Educ.</u> SS6704
Weighmaster	None	Good Character <u>Agric. &amp; Mkts.</u> SS197-n
Wine, Winery Wholesaler	Felony <u>Alco. Bev. Control</u> SS110	None
X-ray Technician	None	Good Moral Character <u>Pub. Health</u> SS3505
X-ray Therapy Technician	None	Good Moral Character <u>Pub. Health</u> SS3505

State: New York

All Citations To: McKinneys Consolidated Laws

## STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Ophthalmic Dispenser	None	Good Moral Character <u>Educ.</u> SS7124 (Supp. 1971-72)
Optometrist	None	Good Moral Character <u>Educ.</u> SS7104 (Supp. 1971-72)
Pawn Broker	None	Good character <u>Gen. Bus.</u> SS41
Pharmacist	None	Good Moral Character <u>Educ.</u> SS6805
Physician/Surgeon	None	Good Moral Character <u>Educ.</u> SS6524 (Supp. 1971-72)
Physiotherapist	None	Good Moral Character <u>Educ.</u> SS6534 (Supp. 1971-72)
Pilot, Harbor	None	Good Moral Character <u>Nav.</u> S92 (Supp. 1971-72)
Podiatrist	None	Good Moral Character <u>Educ.</u> SS7004(7) (Supp. 1971-72)
Private Investigator Watchguard	Felony; illegally using, carrying or possessing a pistol or weapon; making or possessing burglars instruments; buying or receiving stolen property; unlawful entry <u>Gen. Bus.</u> SS74	Character, integrity <u>Gen. Bus.</u> SS74
Psychologist	None	Good Moral Character <u>Educ.</u> SS7603 (Supp. 1971-72)

State: New York

All Citations To: McKinneys Consolidated Laws

## STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Manager Milk Plant	None	Good Moral Character <u>Agric. &amp; Mkts.</u> SS57
Masseur	None	Good Moral Character <u>Educ.</u> SS7804 (Supp. 1971-72)
Merchant Truck Man	None	Responsibility and character <u>Agric. &amp; Mkts.</u> SS223-a
Midwifery	None	Good Moral Character <u>Pub. Health</u> SS2562
Milk Dealer	None	Character <u>Agric. &amp; Mkts.</u> SS258-c
Milk Tester/ Weigher/ Grader	None	Good Moral Character <u>Agric. &amp; Mkts.</u> SS57-a
Money Lender	None	Character and general fitness <u>Banking</u> SS343
Money Transmitter	None	Character and general fitness <u>Banking</u> SS642
Narcotic Manufacturer	Violation of any law relating to drugs <u>Pub. Health</u> SS3314	Good Moral Character <u>Pub. Health</u> SS3312
Nurse, Practical	None	Good Moral Character <u>Educ.</u> SS6905
Nurse, Registered	None	Good Moral Character <u>Educ.</u> SS6904

State: New York

All Citations To: McKinneys Consolidated Laws

## STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Fire Arms Carrier	Felony; misdemeanor; receiving stolen property Sodomy; rape <u>Penal</u> SS400 (Supp. 1972)	Good Moral Character <u>Penal</u> SS400
Frozen Dessert Manufacturer/ Wholesaler	None	Qualified by character <u>Agric. &amp; Mkts.</u> SS71-d
Funeral Director	None	Good Moral Character <u>Pub. Health</u> SS3421(2) (b) (Supp. 1971-1972)
Hairdresser/ Cosmetologist	None	Good Moral Character <u>Gen. Bus.</u> SS404(1) (b)
Horse Racing Personnel	Crime; violating or attempting to violate any law relating to horse racing <u>Unconsol</u> SS7915(2)	Character & general fitness SS7915(2) Consorting with those convicted of crime or bookmakers <u>Unconsol</u> SS7915(2)
Industrial Alcoholic Permit/Manufacturer/ Distributor/Broker	Felony <u>Alco. Bev. Control</u> SS110	None
Junk Dealer	Larceny or receiving stolen property <u>Gen. Bus.</u> SS61	None
Land Surveyor	None	Good Moral Character <u>Educ.</u> SS7206-a (Supp. 1971-72)
Licensed Cashier of Checks	Crime; Felony <u>Banking</u> SS369(6)	Character & general fitness <u>Banking</u> SS369(6)

State: New York

All Citations To: McKinneys Consolidated Laws

## STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Accountant	None	Good Moral Character <u>Educ.</u> SS7404(1)(7)
Alcoholic Beverage Wholesaler/ Manufacturer/ Retailer	Felony <u>Alco. Bev. Control</u> SS110	None
Architect	None	Good Moral Character <u>Educ.</u> SS7304(1)(7) (Supp. 1971-72)
Attorney	None	Character and fitness <u>Civ. Prac.</u> SS9404 (Supp. 1971-72)
Auctioneer	None	Good Character <u>Agric. &amp; Mkts.</u> SS274 (Supp. 1971-1972)
Bail/Bondsman	Crime & offense involving moral turpitude <u>Ins.</u> SS331(3)(b)	Good character and reputation <u>Ins.</u> SS331(3)(b)
Barber	None	Good Moral Character <u>Gen. Bus.</u> SS434(b)
Barber Shop Owner	None	Good Moral Character <u>Gen. Bus.</u> SS438(3)
Beauty Parlor Operator	None	Good Moral Character <u>Gen. Bus.</u> SS404(1)(b)
Beer Brewer/ Wholesaler/ Vendor	Felony <u>Alcoholic Bev. Control</u> SS110	None
Bingo Game Operator	Crime <u>Gen. Munic.</u> SS481	Good Moral Character <u>Gen. Munic.</u> SS481

State: New York

All Citations To: McKinneys Consolidated Laws

## STATUTORY CONDITIONS AFFECTING LICENSING OF EX-OFFENDERS

Occupation	Criminal Record Restrictions	Other Restrictions or Requirements
Boxer/Wrestler	None	Character and general fitness <u>Unconsol.</u> SS8912
Cattle Dealer	Fraud or misrepresentation in transactions relative to cattle; violation of law concerning movement, shipment, transportation of cattle <u>Agric. &amp; Mkts.</u> SS251-1(a)	Character <u>Agric. &amp; Mkts.</u> S251-1(a)
Chauffeur	Commissioner may take into consideration traffic violations <u>Veh. &amp; Traf.</u> SS501(1)(a)	Fitness <u>Veh. &amp; Traf.</u> SS501(1)(a)
Dealer/Live Stock	Fraud or misrepresentation in transactions relative to cattle; violation of law concerning movement, shipment, transportation of cattle <u>Agric. &amp; Mkts.</u> SS251-(1)	Good Moral Character <u>Agric. &amp; Mkts.</u> SS251-k
Dental Hygienist	None	Good Moral Character <u>Educ.</u> SS6609(7) (Supp. 1971-72)
Dentist	None	Good Moral Character <u>Educ.</u> SS6604(7) (Supp. 1971-72)
Embalmer	None	Good Moral Character <u>Pub. Health</u> SS342(2)(b) (Supp. 1971-1972)
Engineer (Professional)	None	Good Moral Character <u>Educ.</u> SS7206 (Supp. 1972)
Explosive Handlers	Crime (One or more years in prison) <u>Labor</u> SS459 (Supp. 1971-72)	None

APPENDIX IIIALCOHOLIC BEVERAGE CONTROL LAW, SECTION 102 (2)

No person holding any license hereunder shall knowingly employ in connection with his business in any capacity whatsoever any person who has been convicted of a felony or of any of the following offenses, who has not subsequent to such conviction received an executive pardon therefore removing any civil disabilities incurred thereby or received the written approval of the State Liquor Authority permitting such employment, to wit:

- (a) Illegally using, carrying or possessing a pistol or other dangerous weapon;
- (b) Making or possessing burglar's instruments;
- (c) Buying or receiving or criminally possessing stolen property;
- (d) Unlawful entry of a building;
- (e) Aiding escape from prison;
- (f) Unlawfully possessing or distributing habit forming narcotic drugs;
- (g) Violating subdivisions six (fraudulent accosting; jostling for purpose of picking pocket,) eight (solicitation of homosexual acts), ten (standing on sidewalks making insulting remarks) or eleven (consorting with bad characters) of section seven hundred twenty-two (disorderly conduct) of the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven, or violating section 165.25 (jostling) 165.30 (fraudulent accosting) or subdivision three of section 240.35 (loitering for the purpose of engaging in or soliciting deviate sex act) of the penal law;
- (h) Vagrancy or prostituion; or
- (i) Ownership, operation, possession, custody or control) of a still subsequent to July first, nineteen hundred fifty-four.

APPENDIX IVPROPOSED OMNIBUS LEGISLATION OF THE BAR ASSOCIATION  
OF THE CITY OF NEW YORK

Enact the following new statute:

AN ACT removing disqualification of misdemeanants and felons from employment by the state or any of its agencies, or from trade, occupational or professional license or certificate solely by reason of the prior conviction of a misdemeanor or felony, and providing administrative procedure for violation, repealing any acts or parts of acts in conflict herewith, providing an effective date.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. It is hereby determined and declared as a matter of legislative finding:

That it is the policy of the State of New York to encourage and contribute to the rehabilitation of misdemeanants and felons and to assist them in the assumption of the responsibilities of citizenship;

That the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to the assumption of the responsibilities of citizenship.

Section 2. A person shall not be disqualified from employment by the State of New York or any of its agencies or political subdivisions, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit or certificate is required to be issued by the State of New York, or by any of its agencies or political subdivisions, solely because of a prior conviction of a misdemeanor or felony. Any person convicted of a misdemeanor or felony may, at any time following his discharge upon conviction, payment of a fine upon conviction, or release from custody pursuant to a sentence served upon conviction, apply for employment by the State of New York or any of its agencies or political subdivisions, or for a license, permit or certificate to practice, pursue or engage in any occupation, trade, vocation, profession or business.

Section 3. In reviewing an application by a person convicted of a misdemeanor or felony for employment by the State of New York or any of its agencies or political subdivisions, or for a license, permit or certificate to practice, pursue or engage in any occupation, trade, vocation, profession or business, the State of New York or any of its agencies or political subdivisions may consider the following facts:

continued

- (a) the relationship or lack of relationship between the misdemeanor or felony for which the applicant was convicted and the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit or certificate is sought;
- (b) rehabilitation of the applicant since said conviction, regardless of the misdemeanor or felony for which the applicant was convicted;
- (c) a pardon granted by the President or the Governor of the state wherein the conviction was had, a Certificate of Good Conduct, or a Certificate of Relief from Disabilities;
- (d) other relevant factors.

Section 4. All acts or parts of acts inconsistent with this act are repealed.

Section 5. This act shall take effect immediately upon becoming law.

APPENDIX VPROPOSED MODEL STATUTE, GEORGETOWN UNIVERSITY LAW CENTER

Proposed Model Statute relating to disqualifications of applicants with criminal records for a permit, registration certificate or license to practice a trade, occupation or profession and establishing standards to guide Boards, Commissions or Departments authorized to grant, renew, suspend or revoke such permits, registrations, certificates or licenses.

Section 1. It is the policy of the Legislature of the State of \_\_\_\_\_ to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The Legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful (trade, occupation or profession) and that policies to ensure this end shall be provided under the laws of \_\_\_\_\_.

Section 2. (a) Subject to the provisions of subsection (b) of this Section, and Sections 3 and 4 of this Act, in determining eligibility under this (chapter, title), the (Board, Commission, Department) may take into consideration conviction of certain crimes which have not been (annulled or expunged), but such convictions shall not operate as an automatic bar to being (registered, certified, licensed or permitted) to practice any (trade, profession or occupation).

(b) The following criminal records shall not be used, distributed or disseminated in connection with an application for a (permit, registration, license or certificate):

- (1) Records of arrest not followed by a valid conviction;
- (2) Convictions which have been (annulled or expunged);
- (3) Misdemeanor convictions not involving moral turpitude; and
- (4) Misdemeanor convictions for which no jail sentence can be imposed.

Section 3. (a) (Boards, Commissions or Departments) authorized to (license, certify, register, or permit) the practice of (trades, occupations or professions) may refuse to grant or renew, or may suspend or revoke any (registration, permit, certificate or license) for any one or combination of the following causes:

- (1) Where the applicant has been convicted of a felony, or a misdemeanor involving moral turpitude or for which a jail sentence may be imposed, and such criminal conviction directly relates to the (trade, occupation or profession) for which the (license, certificate, permit, or registration) is sought; or

- (2) If the (Board, Commission, Department) determines, after investigation, that the applicant so convicted has not been sufficiently rehabilitated to warrant the public trust.

(b) The (Board, Commission or Department) shall explicitly state in writing the reasons for a decision which pro-

hibits the applicant from practicing the (trade, occupation or profession) if such decision is based in whole or part on conviction of any crime described in subsection (a) (1) of this Section. For purposes of subsection (a) (2) of this Section completion of probation or parole supervision, or a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction, shall be deemed prima facie evidence of sufficient rehabilitation.

Section 4. When considering non-criminal standards (good moral character, temperate habits, immoral habits, unethical conduct, trustworthiness, dishonorable conduct, habitual intemperance in the use of intoxicants) in the granting, renewal, suspension or revoking of (licenses, permits, certificates or registrations) to practice a (trade, occupation or profession) the (Board, Commission or Department) may not take into consideration conviction of any crime. Nothing in this Act shall be construed to otherwise affect proceedings before the (Board, Commission or Department) which do not involve conviction of a crime.

Section 5. This act shall not be applicable to any law enforcement agency, however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

Section 6. Any complaints concerning the violation of this act shall be adjudicated in accordance with the procedures set forth in \_\_\_\_\_, \_\_\_\_\_ Statutes for administrative and judicial review.

APPENDIX VIFlorida Statute Removing Offender Employment Restrictions

Chapter 71-115

Senate Bill No. 798

AN ACT removing disqualification of felons from employment by the state or any of its agencies except law enforcement agencies, removing disqualifications of felons whose civil rights have been restored for trade, occupational or professional license or certificate solely by reason of the prior conviction of a felony, permitting denial of employment or license if felony for which convicted directly relates to position or license sought, providing administrative procedure for violation, repealing section 112.01 Florida Statutes and any other act or parts of acts in conflict herewith, providing an effective date.

WHEREAS, it is the policy of the State of Florida to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and

WHEREAS, the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to the assumption of the responsibilities of citizenship, now therefore

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. A person shall not be disqualified from employment by the State of Florida or any of its agencies or political subdivisions, nor shall a person whose civil rights have been restored be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession or business for which a license, permit or certificate is required to be issued by the State of Florida solely because of prior conviction of a felony. However, a person may be denied employment by the State of Florida or any of its agencies or political subdivisions or a person who has had his civil rights restored may be denied a license, permit or certificate to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a felony if the felony for which convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, profession or business for which the license, permit or certificate is sought.

Section 2. This act shall not be applicable to any law enforcement agency, however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

Section 3. Any complaints concerning the violation of this act shall be adjudicated in accordance with the procedures set forth in Chapter 120, Florida Statutes, for administrative and judicial review.

cont.

Section 4. Section 112.01 Florida Statutes is specifically repealed. All other acts or parts of acts inconsistent with this act are repealed.

Section 5. This act shall take effect immediately upon becoming law.

Approved by the Governor June 10, 1971.

Filed in Office Secretary of State June 10, 1971.

APPENDIX VII  
U.S. CIVIL SERVICE COMMISSION, EMPLOYMENT OF THE REHABILITATED  
OFFENDER IN THE FEDERAL SERVICE

**POLICY** It is the policy of the Federal Government to hire, carefully and selectively, rehabilitated offenders for jobs where they are needed and for which they are qualified by education, training, and competitive examining procedures. This policy stems from the belief that employment opportunity for the rehabilitated offender is an effective tool in the national effort to prevent crime. It provides the Federal Government with an additional source of manpower and enables the rehabilitated offender to become a working, tax-paying citizen.

**THE REHABILITATED OFFENDER** There is no complete and inflexible definition of a rehabilitated offender because it takes mature and sophisticated judgment to decide if a person is suitable for the particular Federal position for which he applies. However, it is possible to review a person's record, conduct and rehabilitative efforts to see if he has demonstrated that he is fit for the particular position which he seeks.

Rehabilitated offender status is not a badge that can be worn by the professional thief, persons associated with large-scale organized crime, or former offenders who give no evidence of stability or participation in the rehabilitative process. Laws relating to treason, bribery of Government officials, and other matters specifically provide that persons convicted of such offenses may not hold, or may be disqualified from holding, a Federal position. Therefore, rehabilitated offender policy does not apply to persons convicted of these offenses.

**ON-GOING PROGRAM** The Civil Service Commission and the employing agencies of the Federal Government will accept applications for employment from persons who have records of criminal convictions and will consider for employment those judged to be rehabilitated offenders. Each case will be decided on its individual merits.

Suitability examination will take the following factors into account:

- a. Nature and seriousness of the offense.
- b. Circumstances under which it occurred.
- c. How long ago it occurred.
- d. Age of the person when he committed the offense.
- e. Whether the offense was an isolated or repeated violation.
- f. Social conditions which may have contributed to the offense.
- g. Any evidence of rehabilitation demonstrated by good conduct in prison and/or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, and the recommendations of persons who have or had the applicant under their supervision.
- h. The kind of position for which the person is applying.

**JUVENILE AND YOUTH OFFENDERS** Candidates for Federal employment are not required to answer affirmatively to questions pertaining to the following offenses: Law violations committed before the applicant's 21st birthday, in which the charge was adjudicated in a juvenile court or under a youth offender law. The juvenile and youth offenders described above must still meet the general requirement that all persons entering the Federal service be of good character.

**ARRESTS** Arrests not leading to convictions are not required to be shown on Civil Service application forms, but circumstances surrounding an arrest may be evaluated when determining an applicant's suitability for employment.

**ROLE OF FEDERAL COORDINATORS** Federal Coordinators for the Employment of the Handicapped also have the responsibility for assuring that rehabilitated offenders receive full consideration in all matters pertaining to employment. Each Federal agency has an official serving as a coordinator in both its headquarters and throughout the country--in each of its field establishments having appointing authority.

**PROGRAM SUPPORT** The Civil Service Commission encourages consideration of rehabilitated offenders for Federal jobs by providing a flow of information to Federal agencies.

The Commission further supports the program by providing training courses for coordinators and other agency officials, and by furnishing technical advice and assistance. Constant liaison is maintained with Federal and State agencies concerned with the rehabilitation and employment of offenders. The cooperation and assistance of these agencies in the screening, referral, and follow-up of rehabilitated offenders, who apply for Federal employment, is an important factor in the selective placement program.

**SERVICES OFFERED** As a service to rehabilitated offender applicants, the Commission answers inquiries and furnishes advisory service on qualifications for employment, appropriate examinations, and employment opportunities. This service is available by mail or interview. Contact the Selective Placement Specialist at the U.S. Civil Service Commission office nearest you. Check the addresses listed in this leaflet.

**HOW TO APPLY** Rehabilitated offender applicants are required to meet the full qualifications of education, experience, medical standards, and suitability as outlined in the civil service examination announcements for the position for which they apply. Therefore, a former public offender seeking a career in the Federal Civil Service should take full advantage of the rehabilitation services available to him.

When a former offender has demonstrated complete rehabilitation through his conduct and activities, he should consult the Civil Service Commission Pamphlet No. 4 "Working for the U.S.A." for information on how to apply for a civil service job. Former Federal employees should also read Civil Service Commission Form 532 of August 1966 on "Information Concerning Reinstatement". Any rehabilitated offender who requires assistance may call or visit the nearest Commission office for assistance.

Once the rehabilitated offender applicant has established eligibility in an examination (investigation of his suitability is part of the examination process), his name will be certified to one or more agencies for employment consideration, just as other applicants would be certified.

The rehabilitated applicant may obtain special selective placement assistance by contacting agency coordinators for employment of the handicapped and by requesting referral assistance from a Commission office. If he has a probation officer, parole officer, vocational rehabilitation counselor, or employment service counselor, he should also ask them to contact the agency to which he applies for employment.

APPENDIX VIIIa

ASSEMBLY, No. 2303

STATE OF NEW JERSEY

INTRODUCED MARCH 22, 1973

By Assemblymen DEVERIN, BASSANO, VEIT, KENNEDY,  
 Assemblywoman A. KLEIN and Assemblyman RYS

Referred to Committee on Institutions and Welfare

An Act to amend and supplement "An act relating to employment qualifications of rehabilitated convicted offenders," approved September 4, 1968 (P.L. 1968, c.282).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L. 1968, c. 282 (C. 2A:168A-1) is amended to read as follows:

1. The Legislature finds and declares that it is in the public interest to assist [rehabilitated convicted offenders to obtain gainful employment by the elimination of impediments and restrictions upon their obtaining employment] in the rehabilitation of convicted offenders by removing impediments and restrictions upon their obtaining employment or participating in a vocational or educational rehabilitation program based solely upon the existence of a criminal record.

Therefore, the Legislature finds and declares that a person shall not be disqualified from employment by the State of New Jersey or any of its agencies or political subdivisions, solely because of a prior criminal conviction.

However, a person may be denied employment by the State of New Jersey or any of its agencies or political subdivisions by reason of a prior criminal conviction, if the crime for which he was convicted directly relates to the position of employment.

2. Section 2 of P.L. 1968, c. 282 (C. 2A:168A-2) is amended to read as follows:

2. Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, any State, county or municipal department, board, officer or agency, hereinafter referred to as "licensing authority," authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate

EXPLANATION---Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

[may grant an application for a license or certificate or an application for admission to a qualifying examination notwithstanding that the applicant has been convicted of a crime, other than a high misdemeanor, or adjudged a disorderly person, where it shall appear to the licensing authority that the applicant has achieved a degree of rehabilitation which indicates his engaging in the profession or business, for which he is an applicant for license or certificate or admission to a qualifying examination, would not be incompatible with the welfare of society or the aims and objectives of the license authority] may not disqualify any person from pursuing or engaging in any occupation, trade, vocation, profession or business for which a license or certificate or admission to a qualifying examination for a license, is required, solely because of a prior criminal conviction.

When considering noncriminal standards such as good moral character, moral turpitude or other like phrases, a licensing board may not take into consideration conviction of any crime.

However, a person may be denied an application for a license or certificate or admission to a qualifying examination for a license, by reason of a prior conviction of a crime if the crime for which convicted directly relates to the specific occupation, trade, vocation, profession, or business for which the license or certificate is sought.

3. Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, any licensing authority may permit any person subject to correctional supervision in this State to engage in regulated employment pursuant to an approved program of vocational or educational rehabilitation.

4. This act shall not be applicable to any law enforcement agency, however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policies set forth herein.

5. This act shall take effect immediately.

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#### STATEMENT

Laws governing at least 18 different professions and occupations in New Jersey discriminate against persons convicted of crimes. Sections of laws controlling certification and licensing for these jobs disqualify ex-offenders by stipulating that admission to those professions and occupations shall go only to those with good moral character and reputation, and not to those persons convicted of certain crimes or of crimes involving moral turpitude.

The President's Commission on Law Enforcement and the Administration of Justice in 1967, and more recently in 1973 recommended:

"The repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government."

This bill is patterned after the law in Florida and after model legislation from Georgetown University Law Center endorsed by the American Bar Association National Committee on Employment Restrictions and Corrections. The model legislation was prepared after studies and surveys of similar proposals in more than 20 states. The bill also is a response to the findings of Governor Cahill's Commission on Vocational Education in Correctional Institutions. That commission was critical of the arbitrary employment disqualifications for ex-convicts and recommended review of these laws. The bill also is consistent with the spirit and letter of the New Jersey Criminal Law Revision Commission report of 1971 which recommended that laws should establish a rational relationship between the criminal conduct of a man and the ensuing civil and employment disabilities imposed on him. Gainful employment is vital to any ex-offender's chance for returning freely to society. Testimony before the Assembly Institutions and Welfare Committee in 1972 on proposals to reform the correctional system included several recommendations for widening employment opportunities for former prisoners. The committee was told that the lack of jobs and financial security were major factors contributing to the high rates of parole violations and subsequent criminal acts.



APPENDIX VIIIb

ASSEMBLY, No. 2305

STATE OF NEW JERSEY

INTRODUCED MARCH 22, 1973

By Assemblymen DEVERIN, BASSANO, VEIT, KENNEDY,  
 Assemblywoman A. KLEIN and Assemblyman RYS

Referred to Committee on Institutions and Welfare

An Act concerning employment rights of persons with criminal records, amending R.S. 10:1-1, 10:2-1, 11:9-2, 11:9-6, 11:17-1 and 11:23-2, amending and supplementing "An act concerning discrimination against eligibles certified for appointment in the competitive class in civil service, and supplementing chapter 10 of Title 11 of the Revised Statutes," approved August 8, 1939 (P.L.1939, c. 322).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. R.S. 11:9-2 is amended to read as follows:

11:9-2. The tests mentioned in section 11:9-1 of this Title shall be competitive, free, and except as to such limitations as to age, residence, health, [habits, character,] sex and other qualifications as may be lawfully considered [desirable] relevant by the chief examiner and secretary and specified in the Civil Service Examination Announcement Bulletin or other civil service Examination Announcement, open to citizens who may be lawfully appointed to any position in the class for which they are held, who have resided in this State for at least 12 months prior to the date of the test.

If it appears that an employment list containing sufficient names to provide a full certification to fill existing or anticipated vacancies is not likely to be established from among qualified residents in the State, the chief examiner and secretary may, with the approval of the commission, admit qualified citizens of the United States to such tests.

For positions involving unskilled and semiskilled laboring work, or involving domestic, attending, or other housekeeping and custodial services at State institutions where the character of the work, the relatively low rate of compensation, or the place of work, makes it impracticable to secure at stated times a sufficient number of applicants to supply the needs of the service, the chief examiner and secretary may, with the approval of the commission, provide by regulation for a procedure permitting the testing of applicants singly or in groups at stated places for laboring work, and at State institutions or elsewhere for domestic, attending, housekeeping or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

custodial service at any time on due notice of such tests, but without public advertising as required in this chapter.

2. R.S. 11:9-6 is amended to read as follows:

11:9-6. The chief examiner and secretary shall reject the application of a person for admission to a test for establishing an employment list, or refuse to test an applicant or certify the name of an eligible, who:

a. Lacks the established qualification requirements for the position for which he applies or has been tested; or

b. Is physically unfit to perform effectively the duties of the position in which he seeks employment; or

c. Is presently addicted to the habitual use of drugs or intoxicating liquors; or

d. [Has been guilty of a crime or infamous or notoriously disgraceful conduct; or] (Deleted by amendment.)

e. Has been dismissed from the public service for delinquency; or

f. Has made false statements or a material fact or practiced or attempted to practice any deception or fraud in his application, in his tests or in securing his eligibility or appointment.

If, however, it shall appear that any such person, who is ineligible under subparagraphs [d.] e, and f, hereof, has achieved a degree of rehabilitation that indicates that his or her employment would not be incompatible with the welfare of society and the aims and objectives to be accomplished by the agency of government where such person is to be employed, then the chief examiner and secretary may, provided that the appointing authority of the employing agency shall concur therein, admit such person to appropriate tests, and subsequently certify such person as eligible for employment. When the chief examiner and secretary refuses to examine an applicant or after examination to certify an eligible, the Civil Service Commission shall afford such person an opportunity to submit facts for consideration in a review of the refusal.

3. Section 1 of P.L. 1939, c. 322 (C. 11:10-6-1) is amended to read as follows:

1. Whenever, in making an appointment to any position in the competitive class, pursuant to chapter 10 of Title 11 of the Revised Statutes, from among those graded highest in an open competitive examination, an appointing officer shall appoint or give employment to any person graded lower in such examination than any other person or persons whom such appointing officer might lawfully have appointed to or given employment in such position, and who was willing to accept such

position or employment, such appointing officer shall within 5 days after making such appointment or giving such employment enter upon the records of his office the statement in writing of his reasons for appointing or giving employment to the person so appointed or given employment, and his reasons for failing to appoint or to give employment to the person or persons so graded higher in such examination, and shall, within the same period, transmit a copy of such statement to the commission, certifying under oath that the said statement is a true and complete statement of his reasons for the acts referred to therein, and that such acts were not done by reason of race, color, political faith, prior criminal record, as provided in R.S. 11:17-1, or creed of any person so appointed or given employment, or any person not appointed or given employment. Until such certified statement is filed as herein provided, the Civil Service Commission shall not include in the payroll the name of the person so appointed or given employment.

4. R.S. 11:17-1 is amended to read as follows:

11:17-1. No person in or seeking admission to the classified service shall be appointed, demoted or removed or be favored or discriminated against because of his political or religious opinions or affiliations. No question in a test or contained on any form used in connection with the carrying out of the provisions of this sub-title shall relate to the political or religious opinions or affiliations of a competitor, prospective competitor or eligible on an employment or reemployment list established and maintained by the commission and chief examiner and secretary.

No person in or seeking admission to the classified service, through examination or appointment may be asked orally, or by means of any application form, questionnaire or otherwise, whether the applicant or employee has ever been arrested or convicted of a crime, but questions concerning arrests resulting in criminal charges pending within a 6-month period prior to the application or convictions obtained during the course of current State employment are not covered by this subsection.

However, this subsection shall not apply to applicants for employment with or employees of the New Jersey State Police.

Cabinet officers of the respective Executive Departments of New Jersey may request individual exemptions from this subsection to ask questions concerning a specific crime or crimes as they relate to a particular employment position. The President of the Civil Service Commission is authorized to grant an exemption if the nature of the crimes to be questioned bears a direct, basic and material relationship to the position of employment.

Where an individual has committed a crime that relates to a position of employment sought, the interviewer should take the following factors into account:

- a. Nature and seriousness of the offense;
- b. Circumstances under which it occurred;

- c. How long ago it occurred;
- d. Age of the person when he committed the offense;
- e. Whether the offense was an isolated or repeated violation;
- f. Social conditions which may have contributed to the offence;
- g. Any evidence of rehabilitation demonstrated by good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, and the recommendations of persons who have or have had the applicant under their supervision;
- h. The kind of position for which the person is applying.

The President of the Civil Service Commission is directed to promulgate rules applicable to every State agency and board in furtherance of this act.

5. R.S. 11:23-2 is amended to read as follows:

11:23-2. The chief examiner and secretary may refuse to examine an applicant, or after examination to certify an eligible who:

- a. Lacks any of the established preliminary requirements for examination or position or employment for which he applies; or
- b. Is so physically disabled as to be rendered unfit for the performance of the duties of the position to which he seeks employment; or
- c. Is addicted to the habitual use of intoxicating liquors to excess; or
- d. [Has been guilty of a crime or of infamous or notoriously disgraceful conduct; or] (Deleted by amendment.)
- e. Has been dismissed from the public service for delinquency or misconduct; or
- f. Has made false statements of any material fact, or practiced or attempted to practice deception or fraud in his application, examination or in securing his eligibility or appointment.

If, however, it shall appear that any such person, who is ineligible under subparagraphs [d.] e, and f. hereof has achieved a degree of rehabilitation that indicates that his or her employment would not be incompatible with the welfare of society and the aims and objectives to be accomplished by the agency of government where such person is to be employed, then the chief examiner and secretary with the concurrence of the appointing authority may admit such person to appropriate tests, and subsequently certify such person as eligible for employment. When the chief examiner and secretary refuses to examine an applicant or after examination to certify as eligible, the Civil Service Commission shall afford such person an opportunity to submit facts for consideration in a review of the refusal.

6. This act shall take effect immediately.

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STATEMENT

In hearings during 1972 on proposals to reform New Jersey's Correctional System, the Assembly Institutions and Welfare Committee heard considerable testimony on the importance of jobs in the rehabilitation process for people released from prison. However, several sections of the Civil Service laws automatically bar ex-offenders from obtaining public employment, and our present laws exclude them from even competing in civil service examinations.

Two recent commission reports in this State recommended revision of laws discriminating against exoffenders: the New Jersey Criminal Law Revision Commission report of October 1971, and the Governor's Commission on Vocational Education in Correctional Institutions in June, 1972. Both State commissions urged that employment restrictions be considered in connection with the specific crime and the job being sought to widen the employment opportunities for exoffenders, in place of the current legal obstacles to employment regardless of the man and the nature of his crime. The concepts of this bill have been recommended by various committees of the American Bar Association.

The President's Commission on Law Enforcement and the Administration of Justice in 1967, and more recently in 1973 found that:

"Most states and local public agencies are precluded from hiring exoffenders because of restrictions in civil service legislation and other forms of governmental personnel regulations. These restrictions should be repealed and procedures established to make the prohibition apply only where it is reasonably related to the offender and the particular job involved."

Since service occupations in government account for a growing proportion of employment in our economy, restrictive provisions of Civil Service law deny former inmates the opportunity to work in areas where many new job openings occur. This bill would

remove these automatic disqualifications based on a man's previous criminal record. However, the bill does allow that employment may be denied where a man's prior criminal activity relates directly to the nature of the job being sought.

APPENDIX IXCITY COMMISSION ON HUMAN RIGHTS' PROPOSED AMENDMENT TO CIVIL SERVICE LAW

## AN ACT

To amend the civil service law in relation to  
disqualification from public employment of  
persons convicted of crimes

The people of the State of New York, represented in Senate and Assembly,  
do enact as follows:

Section 1. Subdivision 4 (d) of section fifty of the civil service law  
is hereby amended to read as follows:

(d) subject to the provisions of section fifty-a of this chapter, who  
has been guilty of a crime or of infamous or notoriously disgraceful conduct; or

SS2. The civil service law is hereby amended by adding thereto a new  
section, to be section fifty-a, to read as follows:

SS50-a. 1. It is the policy of the state of New York, as exemplified in  
numerous laws, to assist and encourage the rehabilitation of persons convicted  
of a crime or crimes and help such persons become law abiding citizens and  
function normally in the community. The rehabilitation of such persons is dir-  
ectly related to their ability to find meaningful employment. Meaningful em-  
ployment of such persons will reduce recidivism, and will serve the best inter-  
ests of such persons, the community in which they reside, and society as a  
whole. It is found that in the area of public employment the legislature has  
not heretofore set forth a clear and affirmative policy, with respect to such  
persons, for the guidance of public officials and employees carrying out the  
provisions of the civil service law. To help accomplish the foregoing ob-  
jectives and to open the doors of public employment for such persons as widely  
as possible, with due regard for the legitimate protection of the public  
interest, the following is enacted.

2. Notwithstanding the foregoing provisions of section fifty of this  
chapter, and except for disqualification from employment otherwise provided for

specific titles or positions by statute, or by local law now in effect, the state civil service department and municipal commissions may not refuse to examine an applicant, or after examination may not refuse to certify an applicant, nor may an appointing authority refuse to appoint an applicant or candidate from a list certified by the state civil service department or a municipal commission, solely by reason of a crime or crimes of which the applicant or candidate has been convicted, if the applicant or candidate is otherwise eligible, unless after investigation and an opportunity to the applicant or candidate to be heard thereon, the head of the department, commission or appointing authority, as the case may be, or his designee or designees, makes a written finding that (a) such crime or crimes has a direct relation to the position sought, or (b) the applicant or candidate has not been sufficiently rehabilitated to warrant the public trust, and it is in the public interest to disqualify the applicant or candidate for such position. Completion of probation or parole supervision, or expiration of three years after final discharge or release from a term of imprisonment without a subsequent conviction shall be conclusively deemed to establish that the applicant has been sufficiently rehabilitated in the absence of any facts or evidence to the contrary.

3. A record of arrest without subsequent conviction shall not be inquired into and shall not be used as a basis for disqualification, except that inquiry may be made as to whether charges are pending and undetermined for an arrest made within six months prior to the date of the application; if such charges are then pending the department, commission or appointing authority may defer action upon the application until such charges have been determined but not in excess of nine months from the date of the application, at which time the candidate or applicant shall be restored to the status quo as of the date of the application and the record of arrest without subsequent conviction shall not be used as a basis for disqualification.

4. A copy of the findings provided for in subdivision two of this section shall be furnished to the applicant or candidate with a notice of disqualification. If the disqualification is based on subdivision 2 (a), the finding shall state in detail the direct relationship found between the crime or crimes and the position sought; if the disqualification is based on subdivision 2 (b), the finding shall state in detail the facts upon which insufficient rehabilitation has been found and what conditions the applicant or candidate must meet to overcome such disqualification. Such findings shall be reviewable by the Supreme Court in a proceeding brought pursuant to the provisions of article seventy-eight of the civil practice law and rules.

5. On or before March 31st of each year, the state civil service department and each municipal commission shall make a written report to the governor of its actions under this section for the preceding calendar year. A copy of such report shall be furnished by the municipal commission to the Mayor or other chief executive officer of the political subdivision in which it operates. Such report shall contain (a) the number of applications reviewed on the basis of prior convictions; (b) the positions for which such applications were made; (c) the number of such applications approved and the number of such applications disqualified; (3) the positions for which such applications were approved and disqualified; (e) whether the disqualification was based on job relatedness of the conviction or insufficient rehabilitation; (f) the number of deferred actions under subdivision 3 of this section.

SS3. This act shall take effect immediately.



APPENDIX XQUESTIONNAIRE PREPARED BY THE NEW YORK CHAMBER OF COMMERCE

Detailed responses to New York Chamber's Questionnaire on employment problems of ex-offenders. Spring 1972.

Question No. 1. Does company have restrictions on employment of ex-offenders? Yes or no \_\_\_\_\_. If yes, are restrictions due to nature of company operations? \_\_\_\_\_. Does the category of crime affect employability? \_\_\_\_\_ (e.g., company may be willing to employ a convicted drunkard but not a convicted armed robber) Without going into the nature of your business, what are specific restrictions and rationale for them?

Chamber note: In almost all cases, where there are company restrictions on such employment, they are due to the nature of company operations and the category of crime does affect employability.

Responses: "Company will not hire anyone convicted of theft or with multiplicity of offenses. Problems of this nature preclude applicant from being bonded."

"Category of crime does affect employability. Some employees visit customer premises. Others have access to money. Still others have access to essential Government and other critical communication equipment. Our employees must have absolute integrity."

"Employment limited to such areas as youthful offenders, civil disorders, disorderly conduct -- all carefully reviewed."

"The duties and responsibilities of many of our positions require that employees be bonded. Therefore, it is necessary that we carefully review the conviction, past record, attitude, truthfulness, etc. of the individual."

"We are an investment banking house with bonding problems; also, the industry has been open to stealing of securities."

"Financial-fiduciary operations."

"The Company will not hire applicants who have been convicted of crimes of violence (rape, armed robbery, homicide, etc.) or who have demonstrated repeatedly an inability to rehabilitate. Additionally, we would restrict qualified candidates to jobs that were closely supervised, that did not involve money transactions or access to valuable Company property."

"The ex-offender is an "unknown quantity." Despite the most sophisticated screening and evaluation techniques, we cannot predict his conduct and/or behavior in a work setting that requires discipline, adaptability, responsibility, subordination and conformity to a middle-class value system. Although these restrictions admittedly impose on the ex-offender the burden or responsibility of proving himself in a multi-discipline system, they also enable us to provide him with the means of re-entry."

"As sympathetic as we may be to the plight of these unfortunate individuals, our primary concern must be the safety and well-being of our employees and the protection of corporate property. Our entry into a program of rehabilitation on other than a minimal scale could generate apprehension among our home office population (largely comprised of female employees) and create problems with the bonding company which provides blanket coverage for all areas of the company."

"We deal with highly-confidential matters for clients, and our people must be absolutely trustworthy and have no known tendencies that might result in the disclosure of confidential matters to others outside the office."

"Under Federal insurance requirements, our employees must be bonded."

"Any serious record of conviction -- due to requirements of insurance company providing our blanket bond."

"Customer contact jobs; accounting records; handling money or materials."

"Fidelity bond coverage and security clearances."

"In general, we don't employ 'records.'"

Question No. 2. Does company believe that employment of ex-offenders would be damaging to company operations -- security, morale, ability to recruit and employ regular employees, etc."\_\_\_\_\_. If yes, please explain\_\_\_\_\_.

Responses to "yes": "Due to the nature of our business, they would be considered a security risk/bonding problem."

"The potential does exist."

"Yes, security, nature of business operation."

"Could affect security (pilferage, embezzlement, etc.) depending upon where and how employed."

"Security."

"Would not be permitted for security reasons."

"Security -- past experience has shown our industry (finance - securities) vulnerable to ex-offenders."

"Security"

"Nature of our business (insurance) is particularly vulnerable on account of handling money and nature of security."

"Human nature being what it is, the employment of ex-offenders on a large scale would stimulate negative reactions among employees and the public. Crime is a national issue. Widely publicized in the media, it has created a panic situation in many communities. People, concerned about the rampant growth of criminal activity, would be reluctant to accept employment in organizations that employ ex-offenders.

"Based on recent experience, companies that participate in re-entry programs are often viewed by the public as havens for criminals and drug addicts."

Question No. 3. Has company employed ex-offenders? \_\_\_\_\_ For all positions? \_\_\_\_\_ Selected positions? \_\_\_\_\_ If for selected, for which positions and which are excluded? \_\_\_\_\_ Summary, positive of such employment experience \_\_\_\_\_.

Responses to those answering they employ for selected positions: "Yes. As for which positions, this is a judgemental factor based on the seriousness and nature of the crime, when the crime was committed and subsequent rehabilitation of the individual, e.g., repetition of the crime. Those known cases involving observed follow-up have worked out well, but no studies have been made on this to make any affirmative judgment."

"For selected positions. No definitive rule, sensitivity of job and offense would be taken into account. No known adverse experience."

"Some employment, but experience is very limited."

"Some such employment. Average results."

"For selected positions. In accordance with restrictions."

"I don't know if company has employed ex-offenders. May possibly have been employed as laborers on construction jobs."

"For selected positions, positions that do not require employee to be bonded. Limited experience has been positive."

"Excluded from areas involving actual securities and cash, which leaves little else for a beginner. Mixed experience, successful in a few instances--badly burned by stealing in others."

"Positions where security was a consideration. Limited experience but seems to be positive."

"We would employ such persons only for positions not involving access to money for confidential information. We have had only one such employee and our experience with him has been excellent."

"Employment varies with locations. Treasury area would normally be excluded; others are appropriate."

Excluded are "positions where employee will come into contract with cash or securities. Experience is 75 per cent negative."

"Generally, ex-offenders are placed in jobs that are commensurate with their abilities and temperament, and which provide for close supervision and guidance. They are excluded from positions that involve the handling of funds and valuable company property or that provide a means of profiting through illegal transactions.

"Over the past several years, we have participated in numerous re-entry programs (VISTA, JOIN, VERA Institute of Justice, Brooklyn Work-Release, etc.). Over-all, our experience has been unsatisfactory."

For "non-sensitive areas under direct supervision."

"Ordinarily, individuals convicted of a dishonest act (i.e., larceny, theft, burglary, etc.) would not be employed in positions where company funds are handled. Experience -- nothing of noteworthy nature has come to our attention."

Question No. 4. Do you believe that businesses should work with prison system to help offenders find employment? Yes \_\_\_\_\_. No \_\_\_\_\_. No comment \_\_\_\_\_. If yes, please give specific suggestion \_\_\_\_\_.

Responses were mainly yes (some with no comment): "Possibly. If industries can set up training programs through intermediate organizations in training ex-offenders for work in firms that are not restricted due to bonding requirements as are banks, insurance companies, security houses, etc."

"Yes. Institutional training should encompass world of work training, remediation training, motivational training and specific training usable by industries."

"Yes. Business should aid in identifying placement opportunities."

"Do you know. For our limited requirements we could not envisage our relationship with the prison system being productive."

"Yes. It's difficult to generalize. Would depend on the nature of the business."

"Yes. Business must obviously help the ex-offender to find his place as a useful and productive member of society."

"Yes. Industry should advise the prison system of types of jobs and skills needed (or would employ ex-offenders for), participate and/or provide support in training, and even interview prisoners soon to be released."

"Try to develop positive action programs and commitments by employers. Determine interests of ex-offenders."

"Identifying appropriate jobs; pre-release training, orientation of prison administrators to company concerns."

"Depending on the nature of the business and category of crime affecting the ex-offender."

"Offender should spend some time in labor-oriented position proving his reliability."

"Careful screening and bonding by prison system after man is paroled."

"Possible utilization of Federal bonding program which provides bond coverage for new employees who are recent exoffenders. Pilot programs."

"Business can contribute in many positive ways to this worthwhile objective. Acting in an advisory role, they can help the prison system:

- "1. Establish internal skills-training programs for inmates in such clerical areas as typing, stenography, key-punch, filing systems, etc.
- "2. Set up vocational guidance programs, including aptitude testing and screening.
- "3. Organize effective rehabilitation programs that would be acceptable to business organizations and evaluate existing re-entry programs.
- "4. Refine and simplify administrative procedures, minimize paper work, use standard forms where feasible and reduce the time it takes to process an applicant for employment consideration.
- "5. Encourage participation of the business community in re-entry programs.
- "6. Enlighten the public and employees on the extent of this social problem and explain the advantages to the community of resolving it."

Question No. 5. Comment on business relationship to the problem of employing ex-offenders\_\_\_\_\_.

Responses: "Business has a stake in reducing the factors which could lead ex-convicts back into crime and prison."

"I think that business lacks correct information as to what, in general, takes place behind prison walls (except for what is gleaned from newspaper accounts of riots and old Barton MacLane movies). I feel that business is unaware of efforts, if any, and progress, if any, to raise educational levels, and develop skills in accordance with individual aptitudes and the needs of today's society (since the job market for experts in making mattresses and license plates appears to be somewhat limited)."

"Business and government are the only major sources of job opportunities which are necessary if ex-offenders have any hope of supporting him or herself within the law."

"Bonding is a problem."

"Prejudice among fellow employees. Possible morale problem."

"Ex-offenders might have difficulty adjusting to a closely supervised clerical organization. Applicants would have to be screened carefully to determine their qualifications for specific jobs. Significant appraisal factors would include education, experience, aptitude and temperament."

"It is complicated. Nature of the business -- financial vs. production -- presents varying problems."

"Rehabilitation is everyone's business."

"Would be a problem in the organization where our employees work on the customers' premises."

"Nature of some businesses can utilize and absorb (ex-offenders). However, competitive job market can provide 'clean applicants.'"

Question No. 6. Does the New York Chamber have a role to play in dealing with this problem? Yes \_\_\_\_\_ No \_\_\_\_\_ No comment.

Responses: "The New York Chamber can lead the way in educating public and industry to: (1) encourage and support pilot projects and studies to define types of industries that may readily assimilate ex-offenders; (2) training programs related to industries where they can be accepted; (3) working with existing groups already assisting ex-offenders; (4) encouraging City, State and Federal Governments to set example in employment practices."

"Chamber can present coordinating and information-gathering role, and as spokesman; but contacts and placement should be by individual companies."

"The Chamber of Commerce could act as "broker" between business and the penal system by correlating information from business to pinpoint specific industries and occupations which suffer from shortages of skilled manpower. Such information could, in turn, be fed into the penal system and training programs developed accordingly. If those authorities lack the personnel or funds to develop such programs, the Chamber should undertake to encourage companies and industries to underwrite specific training programs, or portions of them, and perhaps also lend personnel for their implementation in much the same manner that business has done in other areas (school drop-out programs, etc.). If necessary, the Chamber might consider using its resource to have legislation enacted which could offer tax and other incentives to businesses which furnish financial and other support."

"Chamber could enlist support of and coordinate efforts of business community."

"It might be an effective means for putting ex-offenders in touch with business concerns who would consider employing them and be a clearing house for data on the experiences of business firms who employ ex-offenders."

"An informational role relating to top business management the nature of the problem and how they can help."

"Set criteria of eligibility for ex-offenders to seek jobs and encourage businesses to make employment available to disadvantaged people."

"Should support this position of rehabilitation and aid in finding companies who would partake in rehabilitation programs."

"I question the Chamber does have a role."

"The Chamber could:

- "1. Bring together member companies and experts (correction leaders, legislators, union representatives, criminologists, program specialists, etc.) to discuss the employment problem of ex-offenders.
- "2. Provide a forum for member companies to discuss common problems related to employing ex-offenders and exchanging ideas on the development of re-entry programs.
- "3. Support industry's views before Legislative committees and other government bodies.
- "4. Apprise member companies of new and pending legislation on the re-entry problem."

#### General Statements

"Our experience in this area is very limited. The Company has no policy which would prohibit the hiring of an ex-convict and, in fact, we participate with agencies employed in some rehabilitation programs. Any decision on this matter would be made on an individual basis and we would consider the nature of the offense leading to the arrest, record while in confinement, and probation arrangements. Of more importance would be the background and work experience of the applicant related to the job opening and the supervisory skills available in the area of potential assignment. To insure a successful placement, the Company would require a very positive evaluation of each of the factors mentioned above because of the special skills required in our industry."

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"We do not have a firm corporate policy dealing with the hiring of those once convicted of a crime. Rather, we deal with each case as it comes along. If those charged with hiring are convinced that the unlawfulness is part of the past, and not likely to recur, and that there are positive qualifications for job opening, then we are free to hire. That has happened."

May 23, 1972

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APPENDIX XIMODEL ANNULMENT AND SEALING STATUTE, GEORGETOWN UNIVERSITYLAW CENTER

Section 1. In all cases wherein a criminal conviction has been entered against any person, the person so convicted may petition the court wherein such conviction was entered for an order annulling and sealing the record of such conviction after termination of probation or parole supervision, or after final discharge or release from any term of imprisonment. He may present such petition in person, by an attorney, or by a probation or parole officer and the expenses coincident with this petition shall be borne by the state. The court shall grant such an order unless in the opinion of the court the order would not be consistent with the public interest. The court shall explicitly state in writing any reasons for not granting an order of annulment and sealing. A denial of such an order shall be appealable by the petitioner and the burden of proof for sustaining the denial shall lay upon the state.

Section 2. Departments of probation, parole or corrections

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- \* The expungement statute does not grant relief to persons arrested but not convicted. Several states have statutes providing some form of relief for such persons. The Institute anticipates this model statute being coupled with the recommendation that no arrest record shall be released for purposes relating to employment, license, bonding, or any civil right or privilege (Chapter 8). Should an arrest record statute not be adopted, then expungement provisions should include providing relief for persons arrested but not convicted.

exercising supervision of custody over any convicted person shall inform such person in writing of the completion of probation, parole or imprisonment, and the termination of supervision or custody.

Where this person has not reached the age of legal majority a copy shall also be given to his parents, guardians, or others similarly situated. Information concerning annulment and sealing rights shall, in non-technical and clearly understandable language, be included in this written communication. If within two years, following termination of probation or parole and after final discharge from imprisonment or mandatory release, an order annulling and sealing the record of conviction has not been granted, and no subsequent criminal conviction has occurred, the court shall enter such an order on its own motion. The court shall attempt to notify the person whose record has been annulled and sealed of this motion and its effect on his legal status.

Section 3. Upon the entry of such an order, petitioner shall be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. Provided that in any subsequent prosecution of such defendant, such prior conviction shall have the same effect as if it had not been annulled. Nothing in this act shall affect any right of the offender to appeal from his conviction or to rely on it in bar of any subsequent proceedings for the same offense.

Section 4. Upon granting of the motion to annul the petitioner's conviction the court shall order the court records physically sealed and removed to a separate location and maintained in a confidential

status. The court shall notify local and state law enforcement agencies (of its local jurisdiction) and the Federal Bureau of Investigation of the order annulling and sealing the conviction. This notification shall direct these agencies not to divulge and release information about the conviction except as otherwise provided in this Act. Upon receipt of this notification, these agencies shall take whatever action is necessary to ensure compliance with this order and shall then notify the court that action has been taken. The court shall supervise this action and response and may hold in contempt of court anyone failing to abide by its order. Except under the following circumstances the court's motion and receipt of such a notice shall thereafter prohibit the court and law enforcement agencies from divulging the record of conviction or fact of annulling and sealing.

- (a) inquiries received from another court of law;
- (b) inquiries from an agency preparing a presentence report for another court;
- (c) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency; and
- (d) inquiries from an agency considering the person for a position immediately and directly affecting the national security.

Information about the annulled conviction may not otherwise be released when the request for information is related to an application for employment, license, bonding or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have no criminal records.

Section 5. In any application, interview, or other form of evaluation process for employment, license, bonding or any civil right or privilege, with only the exceptions enumerated in Section 4, a person may be questioned about previous conviction of crime only in language such as the following: "Have you ever been convicted of a crime which has not been annulled or sealed by a court?"

Testimony of Aryeh Neier  
Executive Director  
American Civil Liberties Union  
156 Fifth Avenue  
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before the

New York City Commission on Human Rights

Hearings on

"The Employment Problems of the Ex-Offender"

May 25, 1972

My testimony is not concerned with ex-offenders. Rather, my testimony is concerned with persons previously accused of being offenders against whom the charges were not proved. They are innocent people. At any rate, that is the presumption to which they are entitled, even if it is not the presumption they enjoy in practice.

The purpose of maintaining and disseminating arrest records is presumably to enable the nation's law enforcement agencies to control and reduce crime, it is increasingly doubtful that this purpose is served by the practice. In light of all the information now known about the effects of arrest records on those who bear them, the question arises: Is crime controlled or reduced if large numbers of people are prevented from getting jobs, licenses, homes, credit, or admission to schools because of their "records"?

The criminal dossier of an arrested person continues to haunt him even though he has not been proven guilty of any crime. According to the F.B.I., law enforcement agencies make some 7.5 million arrests per year for all criminal acts, excluding traffic offenses. Of those arrested, more than 1.3 million are never prosecuted, and another 2.2 million are acquitted or have their charges dismissed. But they cannot escape their arrest records. See Crime in the United States, F.B.I. Uniform Crime Reports (1969).

The F.B.I. crime Reports tell a grim story of rising crime rates and staggering rates of recidivism, and of the rearrest of persons previously arrested. Could it be that the rising crime rates and the recidivism and the rearrests have something to do with the rising efficiency with which arrest records are maintained and distributed? Are people forced into crime by their inability to escape the record prison of acts which they have never been proved to have committed? These are disturbing questions for which definitive answers are hard to find, but they must underlie any consideration of the variety of proposals which have recently been made to restrict the maintenance and dissemination of arrest records.

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The probability of a black urban male being arrested at least once during his lifetime has been estimated to be as high as 90%. For white urban males, the figure is 60% and for all males, it is 47%. See President's Commission on Law Enforcement and the Administration of Justice, Task Force on Science and Technology, Appendix J at p. 216 (1967), fewer than 25% of those arrested per year are found guilty of the offense for which they were arrested and only a little more than another 25% are found guilty of any crime at all. (Crime in the United States, F.B.I. Uniform Crime Reports, at Table 17, p. 103 (1969)). Despite their innocence before the law, persons with an arrest record are subjected to the severe, continuing and pervasive punishment that attaches to the commission of a crime, namely the lifelong disabilities of a "criminal record". Furthermore, that disability has the same damaging effect on a persons' opportunity for employment and acceptance by society as a conviction record. See, e.g., President's Commission of Law Enforcement and the Administration of Justice, at pp. 75, 77 (1967); Hess & LePoole, Abuse of the Record of Arrest Not Leading to a Conviction, 13 Crime and Delinquency 494 (1967); Report of the Committee to Investigate the Effect of Police Arrest Records on Employment Opportunities in the District of Columbia (hereafter "Duncan Report") (1967). Unlike the conviction record, however, the arrest record is an illegitimate offspring of the criminal justice system, and poses a grave threat to the entire scheme of constitutional protection which our system of justice offers to citizens innocent of legal wrongdoing.

Indeed, the Supreme Court has held that "t/he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed. . . whatever probative force the arrest may have had is normally dissipated." Schware v. Board of Bar Examiners, 353 U.S. 232, 241 (1957). Furthermore, "arrest without more does not, in law any more than in reason impeach the integrity or impair the credibility of a /person/. It happens to the innocent as well as the guilty." Michelson v. United States, 335 U.S. 469, 482 (1948), See also Pennex v. United States, 313 F. 2d 524 (4th Cir. 1963).

Examples of employment discrimination against persons with arrest records are legion. A study of the New York area employment agencies, for example, indicated that 75% would not accept for referral an applicant with an arrest record and no conviction. See Sparer, Employability and the Juvenile Arrest Record, at 5 (Center for the Study of Unemployed Youth, New York University), cited in Menard v. Mitchell, 430 F. 2d 486, 490 n. 17 (D.C. Cir. 1970; see also Herr, Punishment by Record: A report to the Connecticut Legislature on First Offenders, at I, 7 (1970); Note, Retention and Dissemination of Arrest Records: Judicial Response, 38 U. Chi. L. Rev. 850, 864 (1970); Hess and LePoole, The Abuse of the Record of Arrest Not Leading to Conviction, 13 Crime and Delinquency 494, 495 (1967).

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Despite administrative attempts to prevent the dissemination of arrest records, it has been found, for example, that employers in the District of Columbia have often obtained records from police sources, and that as a direct result job applicants are not hired. See Duncan Report, at 6 (1970). The Chief of the Employment and Employee Relations Section of the District of Columbia Personnel Office told the Duncan Committee that many interviewers, receptionists and employers automatically rule out arrestees whenever a risk is involved in the job. Id., at 10. A representative of the Work Training Opportunities Center of the D.C. Department of Public Welfare declared that employers' attitudes engendered a defeatism among unemployed persons with arrest records. Id., at 12. The Director of the local U.S. Employment Service in Washington stated that many employers required a "clean" arrest record as a condition of employment, and that the Service was able to place only about 15% of applicants with records of convictions or arrests.

Since few employers are capable or willing to invest the time to investigate the circumstances surrounding an arrest, a policy of automatic rejection is a good excuse for an employer to avoid doing so. See Note, Retention and Dissemination of Arrest Records, 38 U. Chi. L. Rev. 850, 865 (1970); Note, Discrimination on the Basis of Arrest Records, 56 Cornell L. Rev. 470, 472 (1971). Other employers have stated that an arrest record indicates bad character, and that applicants without arrest records are therefore better qualified for that reason alone. Note Maintenance and Dissemination of Arrest Records Versus the Right to Privacy, 17 Wayne State L. Rev. 995, 1005 (1971); Cornell Note, supra, at 471-72.

Persons with arrest records are discriminated against by public as well as private employers. A California legislative committee, for example, found that applicants for post office jobs who had arrest records were automatically disqualified because it was considered cheaper and simpler to hire applicants without records. (Hess and LePoole, supra, at 497). A Chicago prison employee was suspended because of an arrest due to mistaken identity seventeen years earlier when his record came to the attention of his supervisor. Id., at 496.

Perhaps more disturbing than informal discrimination is the type of discrimination against arrested persons which is promoted by state law. In 1969 New York enacted a law requiring the fingerprinting of securities industry employees. Of the first 20,000 persons fingerprinted, 361 were found to have arrest records, and 54 lost their jobs. Approximately one-half of those with arrest records had never been convicted of any offense. Wayne State L. Rev. Note, supra, at n. 18. An estimated 56% of all states, 55% of all counties, and 77% of all cities ask whether an applicant has ever been arrested on their civil service

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application forms. See Miller and Marietta, Guilty But Not Convicted: Effect of an Arrest Record on Employment, at n. 15 (unpublished study prepared at the Georgetown University Law Center, 1972). Many more jurisdictions have vague character standards for civil service jobs which give hiring officials great discretion in rejecting applicants with arrest records. (Id., text accompanying Notes 144-159d). Finally, arrest records have adverse consequences under state law on applications for professional and occupational licenses (Duncan Report, at 14-15; Cornell Note, supra, at 474-75; Chicago Note, supra, at 864; Hess and LePoole, supra, at 497). and on applications to surety companies for the bonding necessary for licensed employment. Hess and LePoole, supra at 495; Cornell Note, supra, at n. 26.

Many public agencies, such as the Board of Examiners of the New York City Board of Education, require the fingerprinting of applicants for employment to facilitate checking with law enforcement agencies. This Commission has previously been concerned with the racially discriminatory consequences of the Board of Examiners employment policies. I would suggest that the consideration of arrest records in determining whether a person will be licensed by the Board of Examiners may be a very important reason for the racial composition of the staff of the New York City school system. I hope the Commission will further explore this question.

The racially discriminatory impact of inquiry into arrest records was the basis for a recent decision by Federal District Judge Irving J. Hill of California in which he ordered Litton Systems, Inc. to stop using arrests which did not result in convictions as a condition of employment. Among the findings by Judge Hill which led to the decision were:

"Negroes are arrested substantially more frequently than whites in proportion to their numbers. The evidence on this question was overwhelming and utterly convincing. For example, negroes nationally comprise some 11% of the population and account for 27% of reported arrests and 45% of arrests reported as 'suspicion arrests.' Thus, any holding that disqualifies prospective employees because of having been arrested once, or more than once, discriminates in fact against negro applicants. This discrimination exists even though such a policy is objectively and fairly applied as between applicants of various races..."

Gregory v. Litton System, Inc., 316 F. Supp. 401 (1970).

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Given the racially discriminatory impact of the use of arrest records as a condition of employment, I believe this Commission should consider whether, without additional legislation, it has the authority to take action against public and private employers which inquire into arrest records. We further hope that the Commission will join the ACLU in supporting legislation which would:

- 1) require the expungement of records of all arrests not resulting in convictions,
- 2) require that employers not be allowed to inquire into arrest records as a condition of employment.

We believe that criminal penalties are required to enforce such legislation.



APPENDIX IIITESTIMONY OF JAMES D. SILBERT,LEGAL AID SOCIETY

.....As most of you probably know, the Family Court is the judicial body which deals with juvenile offenders in New York City and New York State. The Family Court jurisdiction deals primarily with juvenile delinquents under the age of sixteen and embraces all persons in need of supervision, which has jurisdiction for boys up to the age of sixteen and girls up to the age of eighteen.

The intent and spirit of the Family Court Act is that the proceedings which take place herein are private and confidential.

The Family Court Act itself has numerous statutes which provide for this privacy and confidentiality. Generally speaking, they say not only

are the proceedings themselves to be held in private, but all records thereof are to be absolutely confidential.

There are other certain provisions in the Family Court Act which prohibit police records from being relayed to the general public and to private and public employers.

The purpose of the Family Court is that the proceedings there should be protective and not punitive. The Act is punctuated throughout by semantics and euphemistics of the general Criminal Court proceedings, the phraseology.

For example, a child is not arrested but, rather, he is taken into custody by the Police Department. He is neither convicted nor found guilty of a crime but adjudicated either a juvenile delinquent or person in need of counseling.

These terms "juvenile delinquent" and "person needing supervision" are not only based on the actual act which brought the child to court, but on a second hearing which determines that not only did the child do the alleged act, but also that he either requires supervision or treatment.

Consequently, the entire nature and spirit

of the Family Court is to protect the child and not to have the proceedings used against him later on in his life or even at this particular time.

However, theory and practice make strange bedfellows. In reality, statistics and information is disclosed to the Armed Forces, public and private employers and certain Civil Service organizations and public agencies. Information is routinely divulged either by the Police Department and other agencies.

Despite the fact that the Act prohibits this disclosure, the Act may be voided in many ways. Generally, the way it operates is that he goes for an interview and must answer a question, "Have you ever been arrested or convicted of an act which declared you a juvenile delinquent?"

The child is told when he is in court and when he leaves the court that everything that happens there is confidential and he doesn't have to answer that question. However, the child gets placed in an untenable position. If that is his response, the normal inference is that probably yes, something did happen and must have been terrible, whatever it was.

Generally, what will happen, is that the employer will tell a child if he says, "Yes, I was in court, but really it was nothing basically," the employer will tell the child, "well, go to the Family Court and get what is called a certificate of record which will describe essentially what happened in the Family Court."

The way the Act is avoided is that the child consents to have this confidentiality breached, and this occurs daily in the Family Court.

In the Armed Services, there is almost direct access to Family Court records. When an eighteen- or nineteen-year-old young man goes to the Armed Services recruiting station and has to fill out the initial forms, these questions are asked. The questions vary in the different departments within the Armed Forces: the Army, the Navy and the Air Forces; but generally what happens is when the young man begins to have an interview signs a consent, and this consent allows the Armed Forces to investigate generally his background which, in many cases, goes into the question of what happened to him in the Family Court.

In fact, I believe it is the Navy's recruit-

ment form which the young man has to sign in which there is a statement which states, "Regardless of what any person in authority has told you about your background in the Family Court, you must answer these questions truthfully," and there is also a caveat which is on all the forms; it says, "Any information which is inaccurate --" and this goes to the question of police records as well as Family Court records -- "can either be grounds for dismissal from the Armed Services" and, in certain instances, different forms of punishment.

Consequently, the theory of the Family Court is not carried out in spirit or in fact. The fact that a young person at the age of twenty-five, who may be going to an interview, will have to answer this question have to account for his behavior at the age of twelve or thirteen, is a very, very serious and unfortunate circumstance.

The general purpose of the Family Court is to attempt to relieve a child of any youthful indiscretions which may have occurred to him at the ages of thirteen or fourteen so that it should not hang over his head for the rest of his life.

Unfortunately, as I said, this is not what

happens. The situation not only will affect the child directly or the person later on in life but, in certain circumstances, it may affect his entire family, because just the Family Court records themselves may be declared private and, if the disclosure of these materials are tightened up this doesn't mean that details of these proceedings will not be disclosed.

The case in point deals with probation records which describe what happened in the Family Court. Also included are police records which generally only have arrests and also records from the parole organization from the New York State Training School Community Service Bureau.

The situation of today is slightly different for the Community Service Bureau which is the parole organization, as it is for the Probation Department. In the last year or so, there has been a great deal of criticism raised in the whole avenue of confidentiality as the result of a rather lengthy study which was done by the Legal Aid Society, which I will like to submit to your Commission.

It is a report done by another attorney in

our office, which was subsequently published in the Law Journal and in one or two other magazines.

Basically dealing with the history of the factual structure of confidentiality, a new rule to the Family Court was suggested and, whilt it has not been approved yet, it has been recommended by the Appellate Division and is awaiting approval. The rule is to seal Family Court records, and the seal may only be broken upon the Court Order of another court or by a Court Order from the Family Court Judge and, hopefully, this particular provision, which has not been adopted yet, will be able to avoid a great deal of this unfortunate disclosure.

As I said, this deals only with what happens in the court itself. The Community Service Bureau, which is the prime organization of the training schools, regularly will get requests from the Public Housing Authority, from Job Corps, and some other agencies and employers that a young child may go to.

I was told on Monday of a situation in which the Public Housing Authority contacted the Community Service Bureau and asked them what

information did they have on the particular child. The child's mother had applied for public housing and the Public Housing Authority wanted to find out why the child went to Family Court, whether he went to the training school, and what was the circumstances.

I think this clearly violates both the spirit and the letter of the Family Court Act, and we are attempting now to have the Community Service Bureau maintain the same standards of confidentiality that the Probation Department will maintain hopefully if this new rule is promulgated in the Family Court itself.

I think that the experience in the Family Court is especially detrimental to a person later on in life because a great many of the things that children do come to Family Court for, are for noncriminal reasons. And you probably all are aware, the Family Court has jurisdiction over persons in need of supervision, which is non-criminal behavior, which is only deemed objectionable in a child, and I am talking about truancy, running away from home, staying out late at night and noncriminal behavior like this.

Probably seventy-five to eighty per cent of all girls who are brought to the Family Court will end up having a Family Court record for this non-criminal behavior, and probably thirty-five to forty per cent of all the boys will have a record in the Family Court for the same type of non-criminal behavior.

A child can be arrested on the allegations of a complaining witness for being a person in need of supervision; a mother or a truant officer can come to the court, without the child being there, give sworn testimony to a judge, and a warrant will be issued. The child will be arrested pursuant to this warrant just as if he had or she had committed a crime.

This child can be placed in temporary detention and eventually can be sent to the same institution that a juvenile delinquent can. This child will have the same police that a child that committed a delinquent act will have and will have a court record.

Consequently, when a child is faced with a Family Court record, produced later on in life, the fact that he does have a Family Court Record will

not show that it was not for criminal misbehavior. Consequently, I believe, in terms of employment problems for children with nondelinquent behavior records, in many cases can be just as detrimental in later life as a criminal misbehavior record.

The report that the Legal Aid Society has put out, suggests or recommends strongly that rather than having the file sealed, that they be expunged. It was our feeling that the mere fact that they exist can in no way help the child. The Family Court has resisted this strenuously and the result has been the suggestion that the files be sealed.

The child, as you can well imagine, has great difficulty getting employment. Most of the people that have been speaking here and talking about employment opportunities for ex-offenders, are talking about over the age of eighteen. You probably are well aware of the crime statistics which show that the largest age group committing crimes today is younger than eighteen, and every day we have young kids that have been away in the training schools, who come back to their homes and are unable either to get a job because the statute prohibits them from getting a job because

of their age or because of their background; so, in not only years, in terms of age discrimination, a child is not protected by the same age as discrimination requirements that the Federal Civil Rights statute does have.

So, basically, I would just like to say that although it appears that certain elements of the confidentiality of a child's Family Court record may in fact be closed, still appears that a child will be able to have his record divulged because he is forced, really, to consent to these records being disclosed in order to obtain employment; and I think, along with the Legal Aid report, I would like to also submit a copy of the proposed rules of the Family Court Act which deals with the sealing of records.

COMMISSIONER CHIN: Thank you, Mr. Silbert. I would like to ask you, regarding the practicalities of keeping this confidentiality, is there any way in the foreseeable future that the "crimes" for delinquency, truancy, can be expunged or sealed, based on the nature of the act itself as opposed to the general category of being arrested by the Family Court?

MR. SILBERT: No. I don't see any way, unless they are just out and out expunged. An arrest record, as I said before, are maintained on juveniles although they are supposed to be kept separate.

When a child is arrested, as when an adult is arrested, his name is sent to the Police Department which is now compiling names of similar individuals. Consequently, I don't see any way other than out and out expungement.

COMMISSIONER CHIN: What I am suggesting is not merely administrative but statutory rulings as to discrimination for age itself. In other words, if we are trying to protect the infant perhaps for indiscretions in their youth, we should perhaps do this on a legislative plane, which is the only way because, if your forms that are set forth by the military are federal forms, I don't think the City or State has the power to revoke that, and I wondered if we did do it on a nationwide level, that a person is not required to fill in a form of that nature, what that would do.

MR. SILBERT: Yes. Definitely think it would be helpful. There are provisions in the Family Court

Act which deal with privacy of records and that particular section could very well be amended to say after "X" amount of time the child's record should be expunged; or if the case is dismissed, his record should be expunged immediately.

The problem is not only as far as what happens in the Court; it is the details of the proceedings. If the Family Court record is expunged but the record still stays in the police station that the child was arrested -- and he may have been arrested before he was a truant, or if the mother is denied public housing because the child was arrested, that is only half the problem.

I think, if the statute were amended to say the record should be expunged, it should and probably would encompass the other areas, but it is a question of where the thrust has to come from, initially.

COMMISSIONER CHIN: I would agree. I think if you are going to solve the problem, you have to solve it all the way, not leaving it just to the Legislature.

In regard to the procedures in trying to protect those young offenders, do you find that the

court itself has been protective and whether it were assigned to the court for determination of this issue as to whether they should be released or not, this is your suggestion, that we leave it to the Family Court to decide whether another Family Court's request should be granted; and would you feel that that is a safety valve; or had the court been sympathetic to this?

MR. SILBERT: Yes, I think the Family Court has been very sympathetic to the question of confidentiality. The impetus in this particular area actually began with the Family Court Judge's opinion which came down two years ago involving a man in his twenties who applied for a job, and the problem was that he had a Family Court record when he was twelve or thirteen years.

He was brought to court, but the case was dismissed even before it began, I think, and he had to account for why he was in the court. That particular judge ordered that his record be expunged, that the police record be expunged, and it was a very, very broad order. It was filed in the Family Court but not in the Police Department and, consequently, I would think that any legisla-

tion in this area would have the support of the Family Court judges.

I think the feeling that destroying the record may in some way backlash for the child was the reason they felt it should be sealed rather than expunged, because these records, as you know, go on to the Criminal Court. If an eighteen-year-old young man is brought into a Criminal Court, while there is not indicated the Family Court conviction, which it used to indicate, on his probation report it will indicate that he has a Family Court record.

COMMISSIONER CHIN: So, therefore, it will be a potential detriment to the person because maybe this will be picked up and it may reflect back on him.

MR. SILBERT: I don't think so. This is the position that the Probation Department and the Family Court Judges have taken. It is my thought that expungement is much better because in theory while it may help the child, my opinion is that my information is the contrary, that in no situation will it actually help the child.

If the record was merely from the Family

Court, they could say, "We have no record of this child," and that would be it. There would be no negative inference which could be drawn from this.

COMMISSIONER CHIN: Suppose they had a form given to them by the military and they will say that the records are expunged or sealed, how would you ask an individual to handle this?

Would he just say, "No," or would he say, "There is a Family Court conviction"?

MR. SILBERT: He would have to say, "Under State law, I don't have to answer that question."

If the Civil Rights Law, which prohibit discrimination based on race, creed, color, age and things like that, if that were to include prior to criminal records and could be interpreted broadly enough to include the Family Court, I think it could be incorporated in that record.

COMMISSIONER CHIN: Because the Fifth Amendment is a right where, when it is used, it is often interpreted as being guilt, so therefore, if you do answer as you have stated, there may be an inference that the person did a harsher crime than he actually did.

MR. SILBERT: Yes, that is definitely the

greatest shortcoming in this provision.

COMMISSIONER CHIN: Do the other Commissioners wish to ask any questions?

(No questions.)

COMMISSIONER CHIN: Thank you, Mr. Silbert. It has been very enlightening.

MR. SILBERT: I would ask to have incorporated in the record the two statements, "Confidentiality of the Family Court Juvenile Records" and "Rules for the Family Court of the State of New York within the City of New York."

"RULE 9. Sealing of Records.

9.1. All records of any court proceedings shall be sealed.

9.2. Records sealed pursuant to Rule 9.1 shall be made available to the following persons:

(a) a judge of the Family Court or probation officer assigned to the Court;

(b) a judge of another court upon subpoena.

Explanation: Section 166 of the Family Court Act, the only general provision relating to

privacy of records, states that:

'The records of any proceeding in the Family Court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.'

The statute, couched in general language, has failed to prevent wide dissemination of Family Court records. Information is routinely divulged to police departments, representatives of the armed forces, civil service commissions and private employers. At the request of the Appellate Divisions, the Family Court branch of the Legal Aid Society has prepared an excellent study concerning the dissemination of juvenile records; the study strongly recommends measures to strengthen confidentiality. In addition, legislation

has been introduced to prohibit disclosure of juvenile delinquency proceedings.

It is apparent that the purpose of the Family Court Act and spirit of Section 166 has not been implemented. Insuring privacy of hearing is ludicrous when the details of the proceedings are later made available to large numbers of persons -- protection of children, a central feature of the Family Court, becomes meaningless when their careers and reputations are damaged by disclosure of records 5, 10 or 20 years after the fact. Although the Legal Aid report and legislation is limited to juvenile cases the same criteria should be followed in adult matters, particularly family offenses, custody and conciliation. The proposed general rule thus does not differentiate between types of cases. It should also be noted that the Legal Aid Society recommended expungement of records, a step which may be too drastic and perhaps of little consequence provided records are sealed.

Rule 9.1 mandates the sealing of all

records while Rules 9.2 and 9.3 indicate when sealed records may be disclosed.

Rule 9.2 concerns two areas: (a) insuring the availability of all records to Family Court judges and probation officers, and (b) permit the disclosure upon subpoena of Family Court records to other Courts which may have an interest in the case.

It should be emphasized that the rule establishes a very stringent policy against dissemination of confidential information, a measure which the Office of Probation and Legal Aide Society in particular felt to be necessary. If the rule is adopted as drafted, the Family Court and Appellate Divisions should carefully monitor its results and evaluate its effectiveness during an interim period.

RULE 10. Effective Date. These rules shall take effect on April 1, 1972."

COMMISSIONER CHIN: Mr. Arthur J. DeLugoff (phonetic), proprietor of the Village Gate, will now make a statement.

MR. DELUGOFF: My name is Arthur Delugoff.