

AMERICAN BAR ASSOCIATION JUSTICE KENNEDY COMMISSION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges states, territories and the federal
2 government to ensure that prisoners are effectively supervised in safe, secure environments; that
3 correctional staff are properly trained and supervised; and that allegations of mistreatment are
4 promptly investigated and are dealt with swiftly and appropriately.
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7 FURTHER RESOLVED, That the American Bar Association urges states, territories and the
8 federal government to prepare prisoners for release back into the community by implementing
9 policies and programs that:

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11 (1) from the beginning of incarceration, provide appropriate programming, including
12 substance abuse treatment, educational and job training opportunities, and mental
13 health counseling and services; and
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15 (2) encourage prisoner participation by giving credit toward satisfaction of sentence for
16 successful completion of such programs.
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19 FURTHER RESOLVED, That the American Bar Association urges states, territories and the
20 federal government to assist prisoners who have been released into the community by
21 implementing policies and programs that:

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23 (1) establish community partnerships that include corrections, police, prosecutors, and
24 community representatives committed to promoting successful reentry into the
25 community and that measure their performance by the overall success of reentry; and
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27 (2) assist prisoners returning to the community with transitional housing, job placement
28 assistance, and substance abuse avoidance.
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31 FURTHER RESOLVED, That the American Bar Association urges states, territories and the
32 federal government, in order to remove unwarranted legal barriers to reentry, to:

- 33 (1) identify collateral sanctions imposed upon conviction and discretionary
34 disqualification of convicted persons from otherwise generally available opportunities
35 and benefits;
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- 37 (2) limit collateral sanctions to those that are specifically warranted by the conduct
38 underlying the conviction, and prohibit those that unreasonably infringe on
39 fundamental rights or frustrate successful reentry; and
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- 41 (3) limit situations in which a convicted person may be disqualified from otherwise
42 available benefits and opportunities, including employment, to the greatest extent
43 consistent with public safety.
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46 FURTHER RESOLVED, That the American Bar Association urges law schools to establish
47 reentry clinics in which students assist individuals who have been imprisoned and are seeking to
48 reestablish themselves in the community, regain legal rights, or remove collateral disabilities.

REPORT

As we explain in our Report and Recommendations on Punishment, Incarceration and Sentencing, Justice Kennedy did not simply ask the American Bar Association to look carefully at the rate of incarceration in American jurisdictions and the racial and ethnic composition of our prison populations; he also asked the ABA to inquire into the “inadequacies – and the injustices – in our prison and correctional systems.” He observed that the legal profession has an “obsessive focus” on the process for determining guilt or innocence, to the exclusion of what happens after the prisoner is taken away: “When the door is locked against the prisoner, we do not think about what is behind it.” Noting Professor James Whitman’s charge that “the goal of the American corrections system is to degrade and demean the prisoner,” Justice Kennedy specifically asked the ABA to “help start a public discussion about the prison system.”

President Archer echoed Justice Kennedy’s words when he appointed this Commission. Neither Justice Kennedy nor President Archer suggested that the discussion could be completed in a year, and the Commission members knew from the outset that it was no easy matter just to begin the discussion and the discussion, once begun, might extend for many years. How could it be otherwise? After more than two hundred years of imposing punishment, it is unclear what lessons America has learned about corrections and incarceration. It is difficult even to develop a full understanding of what actually occurs in prisons throughout the country. There are ideas afloat but little consensus as to what makes prisons more or less civilized, what opportunities prisons ought to provide to those incarcerated, and how prisons can best prepare inmates to lead law-abiding lives when they return to society.

Justice Kennedy expressed a concern that prison conditions are degrading and likely to lead inmates to continue criminal activity when released. Identifying this concern as important, President Archer, in his charge to the Commission, asked us examine a number of issues raised by incarceration as a crime control strategy, including whether prison conditions are unacceptably dehumanizing and degrading, and more likely to encourage than reduce future crime. He asked us to consider whether prisoners returning home are welcomed and supported in their efforts to reestablish themselves, or shunned and allowed to drift back into their old ways; the extent to which the legal system is complicit in discouraging offenders’ efforts to go straight; and to report on current research into the causes of recidivism.

The Commission set a goal of understanding the issues; describing them for the American Bar Association; and mobilizing this body to continue the discussion that we have begun, to take a real interest in the many thousands of men and women we imprison every year, and to assume responsibility for the correctional institutions our legal system has created and maintained. When we complete our work, the discussion will have only begun. This Association must commit itself to continuing that discussion.

When the Commission began to prepare for its first hearing in November of 2003, none of its members – including its criminal practitioners – was totally familiar with the facts and figures we considered relating to corrections law and practice, recent research into the causes and effects of increased reliance on incarceration, or the legal rights of prisoners. Some of our members had greater knowledge than the average citizen, or the average lawyer, but even they

lacked detailed information concerning the controversies over the impact of incarceration on crime rates, the collateral effects of imprisonment on families and communities, the net-widening effect of intensive supervision strategies, and the efficacy and cost-effectiveness of treatment alternatives to confinement. We knew that the prison infrastructure had grown exponentially since the early 1980s, and as we did our work we saw that state budget deficits have begun to encourage legislators to get “smart on crime” by reducing their prison populations (or, in a few states, cutting prison programming).

The issue of correctional reform is not a new one, and this is not the first time that the bar has been called upon to address it. In the course of its work, the Commission was instructed by the work of an earlier ABA Commission, also called into being by a Supreme Court Justice’s speech about the need for reform of the corrections system. In 1969, Chief Justice Warren Burger urged the ABA, in a speech at its 1969 Annual Meeting, “to assume leadership in a comprehensive examination of the penal system.” He too made this a responsibility of all lawyers and judges, not just those already involved in a criminal practice. In response, the ABA Board of Governors and the House of Delegates created the Commission on Correctional Facilities and Services, an interdisciplinary body conceived as an action-oriented analogue to the then-newly created Criminal Justice Standards Committee. The Commission was chaired for its first five years by Richard Hughes, former governor and later Chief Justice of the State of New Jersey, and later by ABA legend Robert McKay. The Commission carried out its work through a number of separate action programs and information clearinghouse projects, for which it secured more than \$15 million in grants from governmental and private sources over the eight years of its existence. At one point, it had thirty paid staff members. Among its major programs were the National Volunteer Parole Aide Program, the BASICS (Bar Association Support to Improve Correctional Services) program, and the Resource Center on Correctional Law and Legal Services.¹

Yet, for all of the resources and energy and talent devoted to its work, it appears that the ABA Commission on Correctional Facilities and Services left little lasting impression on the legal landscape, and its work was all but forgotten in the crime war of the 1980’s. Given the almost obsessive focus for the last twenty years on increasing the number of people in prison and expanding the prison infrastructure, we probably should not have been as surprised as we were by the magnitude of the present problem, and the extent to which it has been institutionalized. To put the point concisely, the problem is that correctional systems too often fail to do any correcting. They warehouse inmates, and in the process may actually increase the chances that prisoners, once released, will be neither equipped nor inclined to conform their conduct to the law. Current correctional policies enlarge the cadre of people permanently at the fringes of society, and create a prison infrastructure that depends upon a continuing stream of new prisoners.

Although it came as no surprise to us that most people have a generally unsympathetic response to convicted felons, the Commission became acutely aware of an irony that is readily

¹ During the course of its existence, the Commission produced a number of studies and reports. Its final report is available from the Criminal Justice Section Office. See “When Society Pronounces Judgment – The Work of the Commission on Correctional Facilities and Services. Five Year Report, 1970-1975.”

apparent in our treatment of men and women sentenced to prison: i.e., the public expects convicted felons to learn their lesson and become law-abiding citizens, while the legal system burdens them with continuing collateral disabilities that make it very difficult, if not practically impossible, for them to successfully reintegrate into the free community. To the extent that the legal system has itself been complicit in creating this class of “internal exiles,” it is incumbent on the legal profession to try to remedy it.

Justice Kennedy’s expressed concern about the degradation of the prison experience seems intuitively correct, since no matter how well-managed and funded a prison system may be, loss of freedom and all it entails, as well as the social stigma of conviction, must weigh heavily on most prisoners. That said, evidence of dangerous living conditions or correctional staff mistreatment of prisoners has not been systematically collected at a national level, and abuse appears more severe in some state systems than in others.² Prison administrators say there have been sweeping improvements in recent decades, with widespread acceptance that abusive behavior is unacceptable and that proper procedures can minimize it. Advocates for reform and former inmates, however, say a culture of violence persists and is made worse because of tacit acceptance by administrators, politicians and the public. Concerns have been expressed about such issues as medical and mental health services, prison rape, substance abuse treatment and counseling, job training opportunities, prison visiting policies, and the use of “super-max” facilities. Yet the restrictions on prisoner lawsuits in the 1995 Prison Litigation Reform Act have limited the courts’ oversight of prison conditions, and it is not clear what effect this law might have had in bringing back some of the abusive conditions that led to federal injunctions and continuing oversight of prison management by federal courts in some states.

In its hearing in Sacramento in April of 2004, the Commission heard testimony from officials and prison advocates alike about the documented cases of abuse in California prisons that led Governor Schwarzenegger to appoint a blue ribbon commission chaired by former Governor Deukmejian to investigate and make recommendations about reforms in correctional administration. Witnesses testified to the absence of programming that would prepare prisoners for release, and the predictably high rates of return to prison by parolees. Over 70 per cent of those entering prison in California each year come by way of administrative revocation of probation or parole, most often for minor technical violations as opposed to new criminal activity, rather than a new court commitment. On the other hand, serious new criminal activity by a parolee or probationer is often treated as a violation of release conditions, so that confirmed criminals may return to the community after only a few months. Prisoners in California prisons, particularly women, have a difficult time obtaining competent and humane medical care. Roderick Hickman, the newly appointed Secretary of Youth Authority and Corrections

² The abuse of Iraqi detainees by American military police came to light just as the Commission was finalizing its report, and provoked calls for a closer look at domestic prison conditions. The New York Times editorial page noted recent reports of domestic prisoner abuse, and called for the development of “national prison standards” and “an independent body that enforces them.” See Editorial, *The Dark Side of America*, N.Y. Times, May 17, 2004. See also Fox Butterfield, *Mistreatment of Prisoners Is Called Routine in U.S.*, N.Y. Times, May 8, 2004 (discussing documented reports of prisoner abuse in state prison systems); Jenifer Warren, *State Penal System is Hammered in Report*, LA Times, January 16, 2004 (discussing report filed by federal Special Master John Hagar). A book-length study of American prison conditions by Alan Elsner was published too late for consideration by the Commission. Alan Elsner, *GATES OF INJUSTICE: THE CRISIS IN AMERICA’S PRISONS* (2004).

Administration, acknowledged a “cultural disconnect” between those responsible for operating prisons on a day-to-day basis, and prisoners and the communities from which they come and to which they will return.

The research that has been done confirms that being sent to prison has a negative effect on offenders’ later income, employment prospects, and family involvement, all of which is predictive of future criminality. The effect on prisoners’ spouses and children is less certain, but is also likely to be negative. Finally, as to the larger community, prison expansion has had quite different effects on the communities that benefit economically from it, and those that it fragments and impoverishes.³

Spurred initially by budgetary concerns, a number of states have been developing alternatives to incarceration, particularly for the high percentage of prisoners whose offenses are linked to substance abuse.⁴ There is also evidence that many state jurisdictions have recently been willing to consider and approve that early release of inmates as a way to reduce budget deficits and control spending.⁵ These early release programs, while often driven by the common concern about resources, operate quite unevenly from state to state. From what we have been able to determine, there is a consistent effort made by states considering early release to reduce inmate populations without necessarily cutting back on prison programming. Some prison systems are beginning to focus on the importance of developing programs to prepare prisoners for reentry, and to support them in the first critical weeks after their return to the community.⁶ Research has identified the moment of “hand-off,” when a prisoner is released back into the community, as a critical time when the offender needs support in order to avoid slipping back into old patterns, and committing new crimes. Yet in many states the traditional send-off of “\$50 and a bus ticket” seems still to be the norm.

Prisoners who are “handed off” expect that they have moved from incarceration to freedom, but their freedom brings with it a host of restrictions and constraints not imposed upon the general population. The legal system imposes collateral penalties on convicted felons that

³ See Marc Mauer & Meda Chesney-Lind, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Parts IV and V (2002); John Hagan and Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, in Michael Tonry & Joan Petersilia, *Prisons Vol 26*, at 121 (1999).

⁴ See, e.g., John Wool & Don Stemen, Vera Institute of Justice, *CHANGING FORTUNES OR CHANGING ATTITUDES? SENTENCING AND CORRECTIONS REFORMS IN 2003* (March 2004). Mary Ann Saar, Maryland’s Secretary for Criminal Justice, told the Commission that over 80% of Maryland’s prisoners have a substance abuse problem, and this figure seems consistent with reports from other jurisdictions.

⁵ See Judith Greene, *SMART ON CRIME: POSITIVE TRENDS IN STATE-LEVEL SENTENCING AND CORRECTIONS POLICY*(2003) http://www.famm.org/nr_sentencing_news_trends_report_11_03.htm

⁶ Much recent research on prisoner re-entry has been conducted by the Washington-based Urban Institute. Studies on the experience in Illinois, Maryland, New Jersey, and Ohio, can be found on the institute's web site, <http://www.urban.org/content/PolicyCenters/Justice/Projects/PrisonerReentry/overview.htm>. The Commission was particularly impressed by what it learned from Maryland’s Secretary Saar about the efforts underway in that state to implement drug treatment programs in prison, and to begin reentry programming at the moment a prisoner enters the system. See David Nitkin, *Ehrlich set to sign bill to expand prisoner drug treatment*, *Baltimore Sun*, May 11, 2004.

are difficult and sometimes impossible to shake off, and social norms invite open discrimination.⁷ Because the number of people with criminal convictions has risen so rapidly in recent years, collateral penalties have become one of the most significant methods of imposing a continuing social stigma and diminished legal status in America.⁸ Federal laws encourage states to exclude people with convictions from participation in a wide variety of federal programs and benefits, including food stamps, housing, insurance, educational assistance, parenting, and drivers' licenses.

The Commission also heard persuasive testimony that strict parole and probation revocation policies, as well as unnecessarily lengthy periods of supervision in the community, may actually be widening the prison net and thus working at cross-purposes with efforts to control population growth. In California, for example, parole revocation policies have resulted in a revolving door in and out of prison for thousands of people, so that many of them are truly doing "life on the installment plan."⁹

The Commission has concluded that Justice Kennedy and President Archer were right to focus attention on the state of our correctional system. For far too long, there has been the absence of a national conversation about how to cope with the inevitable downstream effects of the "race to incarcerate" in the 1980s and 90s. That conversation has at long last begun, and it is a bipartisan discussion. As the Commission's report was being finalized, the disclosures of prisoner abuse by American soldiers in Iraq, some of whom had been prison guards in civilian life, have turned the spotlight on conditions in our own prisons.¹⁰ And, as President Bush noted in his 2004 State of the Union address, almost all prisoners eventually do return to the community, and their ability to establish themselves successfully as law-abiding citizens should, therefore, be a matter of considerable interest to communities across the Nation. Prison conditions and prisoner reentry are a matter of public safety as well as sound public policy.

⁷ The Legal Action Center has recently published a 50-state survey of selected legal barriers to reentry, including how each state has responded to federal laws authorizing but not requiring them to bar persons with criminal records from certain benefits and opportunities. See *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Convictions*, <http://www.lac.org/lac/index.php> (hereafter "Roadblocks"). A few states, like New York, have laws forbidding discrimination on the basis of a criminal conviction, but it is not clear what effect such laws have on offender opportunities since it is likely that they are difficult to enforce.

⁸ See Bureau of Justice Statistics, U.S. Dep't of Justice, *Prevalence of Imprisonment in the U.S. Population, 1974-2001* (2003) (estimating that in 2001, 5.6 million or 2.7% of adult Americans had served a term in prison, more than double the percentage in 1974). Jeremy Travis has reported that "[a]n estimated 13 million Americans are either currently serving a sentence for a felony conviction or have been convicted of a felony in the past." **Error! Main Document Only.** See Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE SOCIAL COSTS OF MASS IMPRISONMENT* 19 (Meda Chesney-Lind & Marc Mauer, eds. 2002), (citing Christopher Uggen et al., *Crime Class and Reintegration: The Scope of Social Distribution of America's Criminal Class* (paper presented at the American Society of Criminology meetings in San Francisco, Cal. (Nov. 18, 2000)).

⁹ See, e.g., "Back to the Community: Safe and Sound Parole Policies," Report of the Little Hoover Commission, November 2003, documenting the failure of California's correctional system to prepare prisoners for reentry and its easy resort to parole revocation. The Commission heard testimony from Michael Alpert, Chair of the Little Hoover Commission, who spoke of the same "disconnect" between prison administrators and parole officials, and the communities to which prisoners return.

¹⁰ See note 2, *supra*.

The Commission concludes that, where prison conditions and reentry are concerned, three steps need to be taken: 1) prison conditions must be safe and humane, for prisoners and staff alike; 2) prison programming must be developed and implemented to help prisoners prepare for their return to the free community; and 3) the legal system must be scrutinized to ensure that it does not itself aggravate the problem of reentry by presenting criminal offenders with insuperable obstacles to reintegration into the community. If the legal system is preventing prisoners from obtaining a true second chance, the alternative for them may be a return to criminality.

Three essentials must coexist if prisoners are to have a genuine second chance. First, prisons must provide resources to assist prisoners in preparing for freedom and coping with the responsibilities it entails. Second, the community must be ready to accept them upon appropriate terms. These first two essentials go hand in hand. The community is likely to be skeptical about returning former offenders until prisons demonstrate that they are preparing former offenders to succeed in freedom. Third, the legal system must support former offenders and eliminate barriers to successful reentry. The fewer the impediments to reentry, the greater will be the opportunities for success. Barriers to employment, education, housing, treatment, and generally available public benefits must be eliminated to the greatest extent possible. The legal system may need to draw on the skills of other disciplines to provide treatment and training before a prisoner's release and support during the first months at home. It may need to develop and rely upon risk assessment techniques in making release decisions, and in assisting offenders to cope with the issues most likely to trip them up upon reentry. But there are also issues that are entirely within the domain of the law that must be addressed, including in particular parole revocation and supervision policies and collateral sanctions.

Accordingly, our recommendations are that jurisdictions should review their correctional policies and practices (as California is presently doing) to ensure that offenders are effectively supervised in safe, secure environments; that correctional staff are properly trained and supervised; and that allegations of mistreatment are promptly investigated and dealt with swiftly and appropriately. Further, jurisdictions must take steps to prepare prisoners for release back into the free community beginning from the time they first report to prison (as Maryland is presently doing), including but not limited to substance abuse treatment, educational and job training opportunities, and mental health counseling and services. Prisoner participation in such programs should be encouraged by giving credit toward satisfaction of sentence for successful completion of such programs. Finally, it is essential that correctional officials work with those responsible for community supervision to assist offenders returning to the community with transitional housing and job placement assistance. Correctional officials need to have a stake in the success of prisoners returning to the community, not a vested interest in their returning to prison.

The Commission was impressed by the evidence it saw of a change in law enforcement attitudes toward reentry and the relationship of law enforcement to offenders. For many years in many communities, when offenders were released on probation, parole or after serving sentences, police, prosecutors and probation and parole officers tended to view themselves as adversaries of the offender. Law enforcement officials tended to look for a reason to send

offenders back to prison rather than considering ways of assisting them to reintegrate into the community. In many places, the old approach is changing as law enforcement officials recognize that successful reentry means not only that an offender will avoid reincarceration; it means that the offender contributes positively to the community rather than commits additional crimes, and that by eliminating criminal acts there will be fewer victims of crime. We heard testimony in California that prosecutors and police work with offenders and the community to help offenders reclaim their place in the community. Their approach is proactive and supportive, and it is working.

Reentry is not easy for many offenders. Substance abuse, poor job training, and other personal characteristics may complicate the task of moving from prison to freedom. But, the chances that reentry can be successful increase if correctional officials understand that their job is to begin to prepare an offender for release, and law enforcement officials join with the offender and the community upon release to continue to assist with reentry. A true partnership is needed for there to be a promise of success. To succeed, that partnership must value reentry and be prepared to measure the performance of all members by how well they succeed in promoting effective reentry. Probation and parole officers, for example, must understand that they are most effective and most successful when, working in partnership with others, they enable more offenders to avoid recidivism and reincarceration. Performance measures for probation officers should be based upon the number of probationers or parolees who successfully complete their community supervision rather than by the number of revocations or disciplinary measures. By measuring performance in terms of successful reentry as opposed to the number of revocations, a community increases the probability that of successful reintegration of offenders into the community, and thus the level of public safety.

If each of the official stakeholders in the partnership measures performance by the overall success of prisoner reentry, the partnership will work together to do what is required to promote successful reentry. They will identify the problems that released prisoners face, and they will make efforts to assist released prisoners with transitional housing, job placement assistance, and substance abuse avoidance.

The Commission also strongly recommends that jurisdictions take steps to reduce or eliminate legal barriers to reentry so that only those necessary for public safety remain. As a first step, jurisdictions should identify the legal barriers to reentry, including both collateral sanctions imposed upon conviction and discretionary disqualification of convicted persons from otherwise generally available opportunities and benefits. They should limit collateral sanctions to those that are specifically warranted by the conduct underlying the conviction, and eliminate entirely those that unreasonably infringe on fundamental rights or serve only to frustrate successful reentry.

Perhaps the most important step that a jurisdiction can take is to limit the situations in which a convicted person may be disqualified from otherwise available benefits and opportunities, including employment, to the greatest extent consistent with public safety. This requires an educational program directed not only at public officials and employers, but also at the private sector. Jurisdictions should consider expanding their pardon process, or establishing a process by which returning offenders may obtain a certificate of good conduct, whose effect

would be to remove all collateral disabilities that limit employability and other opportunities.¹¹ It seems intuitively plausible that most across-the-board employment bans based on conviction records are unnecessary to assure public safety, and that a system of case-by-case determinations would not be too difficult to administer.¹²

Jurisdictions must also recognize that there also are practical rather than legal hurdles facing former offenders who try to succeed in reentry. For example, employers who could hire former offenders may be reluctant to do so because of liability concerns. These practical hurdles must not be ignored, although developing a plan to deal with them may be extremely difficult. If there is a commitment to supporting reentry, innovations may be possible. If, for example, the pardon power were reinvigorated, as we recommend, a jurisdiction might consider providing an affirmative defense – reliance on a pardon grant -- to any employer alleged to be negligent or otherwise culpable for hiring a former offender.

Finally, the Commission recommends that law schools establish clinics in which students may gain both understanding and experience in representing those who have committed crimes and are imprisoned as a result, or who are seeking to reestablish themselves in the community through restoration of rights. In the course of their clinic work, students could also have an opportunity to work with the victims of crime, and seek to encourage a community dialogue about rehabilitation and reintegration. Such clemency and reentry clinics may educate the lawyers of tomorrow to the problems of the least among us.

The goal of these recommendations is to ensure humane conditions of confinement for prisoners, to avoid recidivism, and to maximize the chances that former prisoners will work, pay taxes, rear families and become contributing members of their communities. To this end, they seek to enlist members of the legal profession in the important work of removing unreasonable legal barriers to reentry. Reducing recidivism means fewer victims, less crime and less imprisonment. It is win-win for the successfully integrated former prisoner and the community to which that person returns. Successful reentry means that an individual, whose crime and incarceration disrupted the social fabric and imposed upon the community the costs of the crime and the punishment, will add value to the community and serve as a constant reminder that we are indeed a nation of second chances for those who violate the law. It also recognizes what

¹¹ According to the Legal Action Center's "Roadblocks" report, see note 4, supra, six states (Arizona, California, Illinois, Nevada, New Jersey and New York) offer certificates of rehabilitation that remove occupational and licensing bars resulting from a conviction and create a presumption of rehabilitation. The Commission found that a number of other states, including Alabama, Georgia, Connecticut, Nebraska, and South Carolina, have an administrative pardon system that offers essentially the same sort of relief. Many states and the federal government have a pardon process in place that could provide this relief, but at present does not, largely because of a reluctance on the part of the chief executive to appear "soft on crime."

¹² According to the Legal Action Center's "Roadblocks" report, note 4, supra, Kansas and Hawaii require all employers to make individual determinations where employment of convicted persons is at issue. Kansas requires that a conviction be reasonably related to the applicant's trustworthiness or the safety or well-being of employees or customers in order to serve as a basis for excluding an applicant for employment. See KAN. STAT. ANN. § 22-4710(f). Similarly, Hawaii allows employers to consider only recent criminal convictions that are rationally related to the employment, and only after a conditional offer of employment has been made. See HAW. REV. STAT. § 378-2.5.

Justice Kennedy described as “the Gospels’ promise of mitigation at judgment” for those who concern themselves with how prisoners are treated, and who are willing to play some part in welcoming them back to the community upon their release.

Respectfully submitted,

Stephen Saltzburg, Chairperson
Justice Kennedy Commission

August 2004