

LONG TERM EFFECTS OF INVOLVEMENT IN THE
CRIMINAL JUSTICE SYSTEM: MITIGATING
COLLATERAL CONSEQUENCES & TACKLING VOTER
DISENFRANCHISEMENT

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PANELISTS

Wesley Caines
Lucy Cutolo
Kendea Johnson

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[START RECORDING SYMPOSIUM PART 1]

MR. BENJAMIN WINTERS: Hi everybody, thank you all so much for coming out to this year's Cardozo Journal of Equal Rights and Social Justice Symposium. I'm the Editor in Chief of the journal, and I welcome you here this afternoon. We're featuring two panels regarding the long terms effects of involvement in the criminal justice system: the first of which is about the role both prosecutors and defense attorneys can play in mitigating collateral consequences. Our second panel will pertain to voter disenfranchisement, for those with felony convictions.

I know you're all here for the panels, but I just wanted to say a bit about our journal before we get started. We have grown out of Cardozo's highly ranked journal of Law and Gender. We transitioned to a more multidisciplinary approach. Now in our second year with a broader focus, we are publishing pieces about cutting edge analysis on the most recent immigration and criminal justice laws, online hate speech regulation, and the President's relationship with Twitter. We also have an annotated bibliography covering issues across the whole justice spectrum. So, please look for our issues coming out in future months. And please contact me if you need more information, or would if you would like to submit to the journal.

Without further ado I would like to personally thank everyone for coming, as well as our distinguished panelists. And I'm going to turn it over to Katie Kuhl, who is our Symposium Editor, and the person who planned everything here today. Thank you.

MS. KATHARINE KUHL: Hi, thank you all for joining us today. We are currently joined by Lucy Cutolo, who is the Counsel on Collateral Consequences for the New York County District Attorney's Office, and Kendea Johnson, who is a Clinical Fellow in the Cardozo Criminal Defense Clinic. We will be joined shortly as well by Wesley Caines; he is the Re-Entry and Outreach Coordinator at The Bronx Defenders.

Collateral consequences result from an individual's involvement in the criminal justice system as a defendant. They impact the rights and resources that individual can access due to their charges, and in particular, any resulting conviction. The loss of housing, voting rights, financial aid eligibility, and immigration status are just a few of the consequences that can attach to criminal convictions and charges. So, to get started, how early in a criminal case can collateral consequences arise? And what, if anything, is a standard practice for beginning to address that?

MS. KENDEA JOHNSON: I'll start. So, first I just want to say that one thing that I would like to suggest to the audience is that we use a different term for these consequences. Collateral- the term collateral is used for these consequences to distinguish between direct consequences and collateral consequences, because direct consequences implicate the Sixth Amendment of the Constitution. Direct consequences are direct

consequences of a conviction, such as the incarceratory sentence somebody could suffer, or fines somebody has to pay as a result of a conviction. Collateral consequences suggest something that is- I think the term collateral suggests something that is sidelined as sort of subordinate. But, actually, in reality, collateral consequences are embedded in the sense that someone has to have these consequences imposed as a result of a conviction, and very often these consequences are the result of the operation of law.

So, they are not just subordinate or sidelined consequences, but they are actually- I agree, embedded in the involvement one has with the criminal justice system. So, to answer your question, collateral consequences or embedded consequences can be implicated at the beginning of a criminal case. Somebody can suffer consequences that can majorly affect their life as a result of just an arrest, not a conviction. For example, somebody who works for the Department of Education can be suspended immediately pending the outcome of their criminal case. So, collateral, if we're going to call them collateral consequences, are something that should be addressed immediately when somebody is arrested.

MS. KUHL: And is there any standard practice for beginning to address that?

MS. JOHNSON: Well, for the defense bar, I think there are a couple of different approaches. One is that there are different models of public defense. One model is the holistic approach in which offices have attorneys who are not just criminal defense attorneys. This means that they don't just represent people for their criminal charges, but they also represent them in housing court, in family court, in forfeiture proceedings, which also involve housing - somebody can lose their housing as a result of their criminal conviction. In New York City, you can lose your rights to public housing for two years as a result of a criminal conviction. It can have implications in a family court case, I know that there are some criminal offenses that can cause you to lose custody of your children. And, for people who are already involved in family court, it can- involvement in the criminal justice system- can complicate things for them.

And so, some defense offices have attorneys that can advise criminal attorneys of these consequences immediately. And so that people are aware, criminal defense attorneys are aware of these immediate and sort of drastic consequences. Additionally, you know, I think for some offices that are not what we call holistic, meaning that they don't have attorneys who practice other types of law other than criminal defense, they may have social workers available to talk to clients about other issues that are presented as a result of being involved in the criminal justice system. But, I think for people who practice in these offices which are sort of

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traditional offices, it's really important even still for these defense attorneys to be well-equipped to address collateral consequences immediately.

And that's a challenge because, in New York City for example, 53% of criminal cases in arraignments are resolved by way of pleading guilty. Which means that there's a large amount of people pleading guilty in arraignment. And what that means is that we need to know about our clients. Their lives, what their aspirations are, what they do for work, where they live. So, that means having comprehensive interviews, but also being aware of what the consequences are when somebody resolves a case by way of pleading guilty.

MS. KUHL: Thank you. To follow up to my prior question, though I think you've already touched on some of this, what are the difficulties of addressing potential consequences at different stages in a criminal case?

MS. JOHNSON: Well I think some of the difficulties may be if an attorney hasn't comprehensively addressed their client's needs, and some of their life issues. I mean, by way of example, somebody could lose their license to work as a home health aid, as a result of a conviction, but they could also have their license suspended while the case is open and unresolved. There was a case that I had in which my client was a home health aid, and her license was suspended, and she was suspended from her job. But, they were offering her an ACD. For those of you who are not familiar with criminal court practice, an ACD, or, an Adjournment in Contemplation of Dismissal, is a resolution to a case that means you're agreeing with the court, and that after six-months, or longer, the case will be dismissed and sealed. But, what that means in effect is that while you don't have to come back to court, the case is open for the agreed upon period of time, and it remains open to anybody who's doing a search to see if somebody has a criminal record, or, who has open cases.

An ACD is generally viewed as a favorable disposition, because in the end somebody's case is dismissed, and sealed, and there won't be a record of it.

However, while my client's case was open, this person wasn't able to work. Had she taken the ACD she wouldn't have been able to work for another six months. And, so, what that required was us getting proof that as a result of the open case she was going to lose her employment, and that what we really needed was an immediate dismissal. Why wait six-months when a dismissal immediately would mean that she could keep her employment, and also the same outcome that would have happened in six-months just would happen earlier?

MS. KUHL: In a memo released by Philadelphia District Attorney Larry Krasner, shortly after taking office earlier this year, prosecutors in Philadelphia were instructed to begin explaining the potential effects of

sentences that they sought on defendants' community ties, employment options, and ability to access public assistance in the future. And though I haven't found anything yet on how this has worked in practice, it certainly suggests that there's room for prosecutors to also contemplate collateral consequences on the cases that they work on. Lucy, I was wondering if you could speak a bit about how this happens, how this works on the prosecutorial side, and then also about the office that you're working in as well.

MS. LUCY CUTOLO: Yes, so obviously Larry Krasner and the Philadelphia Office work a little bit differently than the New York County District Attorney's Office. And he's also pretty new, so it's unclear how a lot of his - he's very progressive, but it's unclear - I was actually just down in Philadelphia meeting with some of his people and so it's unclear how some of this will play out in the long run. But I think it's important. So, I started in the DA's office 13-years-ago, and I when was a young Assistant District Attorney, collateral consequences, or consequences other than the sentence, or the disposition that we were looking for, were not something that we contemplated, unless, a defense attorney brought up a specific concern. One that I remember was I had a DWI, a driving under the influence case, where somebody was afraid they were going to lose their medical license. That's really the only time that I can remember ever contemplating collateral consequences then. So, it wasn't something that my DA's office was really exploring at any length when I started. And it really wasn't something that defense counsel was bringing to our attention. And that has changed a lot.

The collateral consequences that start from arrest are difficult for us to grapple with because we have to investigate the case. But, one of the main ways that we try to address some of them, is some of the bail reform that's going on. So, a lot of collateral consequences stem from pre-trial detainment. Right? People can't afford bail so they lose their jobs, they lose their places in shelters, they can't take care of their children, they can't go to work. And I think DA's offices across the country, and certainly New York County, are starting to look at some of those consequences, and are responding by not requesting bail in a majority of non-violent cases, or cases where we don't anticipate asking for incarceration. Which is something that we used to do routinely.

There's also a lot of contemplation surrounding immigration. I'm sure you've all been reading in the news the current climate with immigration. But, it's also something the courts that have begun to recognize in some recent cases, that immigration is as a collateral consequence that requires more protection. The defendants need to be told that deportation is a risk that they're taking by pleading guilty. And if they aren't actually told that, it is a constitutional defect. We deal with a lot of cases of people who have already pled years before are now

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coming back and saying “I’m in deportation proceedings, I wasn’t aware of this.” And the courts have found that yes, as part of your constitutional right to have an effective assistance of counsel, you need to be told correct information. And you need to be told about the risk of deportation. So, the DA’s Office, and the courts are starting to recognize that these are really important issues that we have to grapple with. And they affect defendants for a lifetime. And so, we can’t just look at what sentence we’re imposing, but we also need to consider what some of the consequences from that sentence will going be in the long run.

MS. KUHL: Could you say a bit about what the work is that your specific position does in this regard?

MS. CUTOLO: So, my specific position is attempting to grapple with some of the policy issues surrounding collateral consequences, and trying to come up with a policy that would be consistent. The New York County DA’s office is a really large office. We’re divided into investigations, and the trial division. And within the trial division there are six trial bureaus, all under different bureau chiefs. And so, what we’re finding is that each bureau was considering these types of issues separately, and there was a risk of disparate outcomes. So, a defendant- a similarly situated defendant in one trial bureau, wasn’t necessarily getting the same benefit, or same consideration for collateral consequences, that another one was just because this was all so new.

Part of what my position is, is looking kind of holistically at the whole DA’s Office, and what our policy should be moving forward, when a defense counselor brings to our attention that there’s a particularly onerous risk of collateral consequences. And that’s a difficulty too, because who’s to say what an onerous, risky collateral consequence is to a particular defendant. We don’t have clients like the defense bar, we have to think about how we represent the people. So, you know, obviously being deported from a country that you’ve lived in for 20-years is a risk. But, for one person, losing financial aid may be just as bad as losing a medical license. And it’s difficult to contemplate or to not bring your own bias to what you think is a severe collateral consequence. And so, when grappling with policy decisions these are some things that the office has to contemplate, and my role is to try to help bring the issues to the forefront and let the people in charge, the District Attorney, decide how he wants to deal with those issues.

MS. JOHNSON: As I was just listening to you talk a couple of things came to mind. And one was that you know, when I think- or, I think that when the defense bar thinks about collateral consequences, and talking and negotiating dispositions for our clients, so that they don’t suffer collateral consequences, part of what we hope that prosecutors keep in mind is that- is that actually because prosecutors are charged with the responsibility of insuring public safety, that reducing barriers to favorable

life outcomes actually increases public safety.

I think that there have been studies that have shown that people who face barriers to integration in society, no matter how long they've been incapacitated by incarceration, whether it's a couple of days or a year, there's an increased risk of recidivism. Which, arguably, if we define public safety by how much crime there is, recidivism definitely reduces public safety. But also, if the goal is to help everybody become sort of integrated in society in leading happy, healthy lives, reducing barriers that sort of decrease the opportunity for people to have such a life, I think prosecutors should incorporate that into their thinking in terms of- you know, in their policy. I don't know if you have anything to respond to that though.

MS. CUTOLO: No, I think that that's definitely true, and I think that that's- I don't know if you guys are aware- but there are new sealing motions, new sealing legislation that's just come into effect. I think it came into effect in October. And, under it there are parameters, but basically somebody who has one felony conviction, or a felony conviction and a misdemeanor conviction, can get it sealed after 10-years. So that future employers cannot see those convictions. And it's the first time that it's ever been done in New York State. Some states have similar sealing legislations already in place, but this is the first time in New York. And you know- I handle all of those applications, and you see from the people that write-in, you know they have convictions, including felony conviction from the 90's, in some cases in the 80's, and they are still facing barriers. And it's still been difficult for them to move on. So, these are definitely you know- I think legislation that is recognizing that this is not what we want for people when they're, you know, when they have kind of served their time. We don't want these barriers in place, because they do lead to more disenfranchised people. And disenfranchised people anecdotally are more likely to commit crimes. So, certainly that's something that I think is being considered by my office, and other offices around the country.

MS. KUHL: My next question sort of touches on that, and I'd also like to come back to this when Wesley joins us because he works specifically with people going through re-entry. But, I was wondering if you might say a bit about any particular types of difficulties that you've known either prior clients, or just people in general, to encounter as they experience the limitations that arise after completing a sentence. And whether there are any ways to help support people with these hurdles.

MS. JOHNSON: There's a host of barriers to integrating into society, even with the new legislation. I discussed housing, previously which you know, when people come out of jail and they don't have employment, and they, obviously, they don't have savings. Public housing should be an option, because they need some place to live. And

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so, if they're not able to apply for public housing, that makes it very hard to have a safe roof over your head. In addition to that, it makes it really hard sometimes to obtain employment in New York and in other jurisdictions too. Because, you know, we live in an age where information is readily available. So, it's not just that people can look up convictions, but I think that there are private sources where people can look for arrests.

So, even somebody who's been arrested and convicted for a non-criminal offense, which would be under our penal law, a violation, has been fingerprinted. And until that record, the fingerprinting record, is sealed and destroyed there are ways for people, including employers, to search and see that somebody has been fingerprinted. Maybe not necessarily knowing what that person has been fingerprinted for, but the suggestion is that somebody has had contact with the criminal justice system.

There are human rights laws under New York City's Commission of Human Rights, for example, employers are not supposed to discriminate against potential employees for having criminal records. And they're not supposed to consider certain criminal offenses; certainly I think it's only supposed to be directly related to employment. But because this information is accessible, there's so much information that's accessible we don't know how people are using it. So, I think that that's definitely an issue, that those seeking employment and housing face these barriers.

And also, I mean, I think you know, I think also being isolated, I mean this is sort of not really a concrete collateral consequence. But, for people who have been incarcerated, being isolated from one's family and friends and having to come back and sort of become familiar with their community is also difficult. And I think that remains sort of an emotional barrier that is not often talked about that presents a challenge to successful re-integration.

MS. KUHL: Are there any recommendations that either of you can make? There are a number of students here today, and some will look to go into practicing either as a prosecutor or as a criminal defense attorney, regarding how to consider this in their work, or how to let it inform what they're doing, and their service.

MS. CUTOLO: I mean I think one of the most important things is just realizing that these consequences exist. And as far as if you're interested in prosecution, as I said I know as a young assistant I never really thought about this, And I think it's important for prosecutors to understand how the dispositions, and the charging decisions that we make have long-lasting effects. Not just on the individual defendant, but on their families, and their communities. And not necessarily that any one consequence should be dispositive, but to just keep those in mind as decisions are being made.

MS. JOHNSON: I would say for those of you that want to do re-integration work or become criminal defense attorneys, or work with immigrants who are facing- who have faced, or are facing criminal charges, I think the first thing you want to do is make yourself familiar with the doctrines surrounding this work. Which I guess would start with *Padilla v. Kentucky*. And that sort of sets the floor of what, doctrinally speaking, what we're responsible for under the Sixth Amendment. In *Padilla*, the court says you know, being deported is a significant consequence to a criminal conviction. So somebody who is not advised correctly on whether or not they can be deported as a result of the criminal conviction has received ineffective assistance of counsel, right? But, the court doesn't just say that this is limited to deportation.

McGregor Smith worked at the Bronx Defenders. He actually started their Civil practice. And he argues that this is an opportunity for defense attorneys to sort of expand this idea of using collateral consequences to get better pleas. So, informing prosecutors and judges of what collateral consequences are, using the decision in *Padilla* to suggest that these consequences are enmeshed with criminal convictions and they really have an effect on people's lives. And suggesting that, what the court was saying in *Padilla*, is that we should be taking that into consideration moving forward, and considering that when people resolve their cases by way of plea.

And I also think that we want to keep in mind that you know, under the penal law there are sentences for certain crimes. And the penal law doesn't contemplate these collateral consequences. Right? So, when people are being evicted, or losing their jobs, or losing their property, or losing their kids, or being separated from their families as a result of a criminal conviction, or even an arrest, that was not what was intended by the legislature. That's an increased punishment, right? If we want to think about this on the most basic level. So, I think we want to use this to sort of get everybody to see that we need to take what's happening as a result of criminal convictions, and arrests, and think about this. Think about how it's impacting individuals. But that means that we have to educate ourselves about what the consequences are, and, also, if we're in the practice, what our responsibilities are to our clients about informing them of the collateral consequences.

MS. KUHL: I'm going to open this up to everyone now. I'm still hoping that Wesley makes it to join us so he can share about his work. But, in the meantime please feel free to ask any questions you have.

FEMALE VOICE 1: Hi thank you both for speaking; it's been interesting to hear two different perspectives. My question is for Lucy. You mentioned the different trial divisions and that the way that they address collateral consequences might result in disparate impacts. Could you maybe tell us a little bit more about the differences between the trial

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divisions and how they address certain collateral consequences?

MS. CUTOLO: So, the trial divisions- the different trial bureaus- there's no distinction between them, they're under the same division, they're under the same chief; the trial chief. But, there are just too many people to be supervised under one chief. And so they have been divided. And so, any disparate outcomes are completely unintentional. So, it would be that a defense attorney- a concrete example would be, you know, they're under the drug laws. Under new- under a new case law in the second circuit, there are some felony drug convictions that are aggravated felonies, meaning mandatory deportation. And there are some that are not, and they can be the same level felony. And so, in one trial bureau, a defense attorney might know this, and might come to the assistant and say "can we please plea to an immigration-safe drug felony?," and that would be allowed. In another bureau, perhaps because there's no overarching policy, it wouldn't. And it wouldn't be because of any, as I said overarching policy, it would just be what they were informed of, or at the time who was making the decision. Obviously, we don't want inconsistent outcomes like that. The defendants are similarly situated; they should both get the same benefits. And so part of my job is to educate assistants on what the consequences are, even if the defense counsel doesn't bring them to their attention. And to try to make it so that bureau chiefs know what the policy is, and can make determinations that way so that it isn't arbitrary what trial bureau you wind up in, you'll all be treated the same way.

FEMALE VOICE 1: So, you were saying like one district attorney would say that the plea offered should not prompt deportation, and another wouldn't be informed of these consequences or that this could be offered. How could this inconsistency be resolved?

MS. CUTOLO: Well, it's still being determined what the policy will be. And right now it's still very much on a case by case basis. But, we're hoping to come up with some strategies across the board because that's really the only thing that can ward against inconsistencies. But, that's the goal, so, at this point it would depend how it would be resolved. We are working towards immigration safer pleas. But, my position was only created in November, so this is very much a work in progress.

MS. KUHL: Yes?

FEMALE VOICE 2: You guys talked a little bit about pre-trial procedure. And, I'm writing my journal note about the effects of bail on pre-trial detention and the resolution of cases, but also the risks to defendants when pre-trial detention is determined by algorithms. I'm wondering what you guys think about that.

MS. JOHNSON: I think from a defense perspective, we are in favor of eliminating cash bail. I think there's definitely a debate about risk-algorithms, and risk-assessment tools. Because, some of them carry a

certain amount of bias when there's not actually a person using information that's presented to them in the moment to make a decision about whether or not they're going to be setting bail. I think the hope for people who are advocating bail reform in New York is that we have a non-cash bail system. And, you know, who knows what- I mean, there's going to be some bail, but I think that the hope is maybe that we have a system where there's a risk assessment tool that is determined to be the least biased of all of them out there. I think that there's been a recognition that bail- the setting of bail- has had an impact on case outcomes, and life outcomes. Because research has shown that people who are held in on bail for the pendency of their case, often their case is resolved by way of plea in the end. That's what research has shown. And also, that people who are held on bail are disproportionately poor people of color held in on bail, I guess because people with money can make bail, right?

MS. KUHLE: I'm going to take the rest of your questions, but we are joined by Wesley Caines now, and I'd like to revisit some of our earlier questions. Thank you, I'm glad you could join us. One of the questions that was asked earlier, and I think from your work you'll be able to add a lot to this, is what are some of the difficulties that individuals face when they have completed a sentence? And, what types of supports are available to help them address these hurdles as they're going through re-entry?

MR. WESLEY CAINES: That's a packed question. It's- I think Ms. Johnson hit it on the head in the last part of her answer to that question around poverty, right? And, when you're poor you tend to not have support systems and a network that you can rely on. So, if someone has means and they're convicted and they go into the system, when they're coming out, they tend to have a social network or family network, some support network in their community that can help them overcome their justice involvement. Whereas for someone who's poor, someone who maybe had not been integrated in our society in a way that we would have thought would have been helpful, it's a challenge for them.

What we do at the Bronx Defenders is that we have advocates including myself who work to help people from the moment of arrest to overcome barriers. We look to identify any self-identified client deficits that we can help fulfill. We also help to help assess strengths and weaknesses, support systems that are in place or not, and we look to help them kind of build up their strengths and address their weaknesses. It's extremely challenging in the age of technology, and the internet to really overcome justice involvement. And when I say justice involvement, I'm not simply speaking about case outcomes, I'm not only speaking about conviction, I'm talking about from the moment of arrest. You have consequences that you must deal with. And, the more marginalized you are, the more challenging those obstacles are to overcome. So, there are

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systems in place, part of the challenge for me and the work that I do and the critique that I have of the system, is that the carceral space isn't one that's really designed for transformation, and rehabilitation. Right? So, people who come out you know, seemingly well, they come out rehabilitated in spite of the system. Not because of it, right? So, we're asking folks, and we're building out this re-entry infrastructure by shifting resources from incarceration to community. But the fact of the matter is many of the people who are coming out, because they spend that dormant sequestered time in prisons and jails, without really getting core issues addressed, they're coming out as a baby trying to eat an apple as opposed to having applesauce for them.

So, it just- it's a set up to fail and my concern is that in 10, 15-years, and when we see the pendulum swing back because that's what has happened with our justice system, there's going back and forth without really looking at the core issues in our justice system, and the institutions that we lead our justice through, without doing that we're setting people up to fail, and then there might be someone who will come along in five, or ten years with studies that say, hey, there is all of this research into this thing called re-entry, and it's really not having the impact that we'd hoped that it would have, or the return isn't sufficiently great for us to continue doing this, so, we should go back to just locking people up and throwing away the key.

MS. KUHL: Could you say a bit about the Bronx Defenders' work with people when cases begin, but also the work that you do with members of the community just as they're going through re-entry. Could you say a bit about what that work looks like, how the outreach happens?

MR. CAINES: Sure. So, from the moment- how many people are not familiar with the Bronx Defenders? We're well-branded as a holistic defense organization. We're a public defender organization that has anywhere from 30 to 35,000 crimes come through our doors each year. And that's through arraignments, that's through family court, housing court, and that's through an open-intake system that's community facing. Right? So, I'll give you an example of a client who comes to our office through arraignment. That person immediately has- our office is organized into interdisciplinary teams. So, you literally don't have only a lawyer, you have a lawyer, a social worker, you have lawyers from different disciplines; from housing, from civil action practice, our family defense, and immigration practice. We have criminal social workers; we have advocates who have a strange name, CLA, civil legal advocates who pretty much do everything. Right? So, when someone comes in as a client into the Bronx Defenders' doors, whomever their first point of contact is, literally is the tip of a sphere that includes all of these disciplines, and all of the other folks who could come in and address other collateral issues that may present.

So, that person- let's move forward a bit. Let's say that that person ends up taking a plea, I said plea and not trial for a very specific reason, 97, 98% of cases end in pleas. I think that in and of itself is a critique of our justice system. But, someone takes a plea and they're having to go in for a prison sentence for the first time, one of the things that we have is we have a pre-entry orientation which is designed to de-traumatize them to the extent possible and to address the aspects of going from the city corrections system to the state corrections system, which are very different institutional systems. Right?

And then we're planting a seed in this individual about what's possible while they're incarcerated, like having discussions with them in this orientation around what their long-term goals are, and how we can support those goals. And, we give them an option of what's available within the prison system; both through the programs DOCCS [the New York State Department of Corrections and Community Supervision] is offering, and also through peer-offerings. A lot of programs that were found to be highly transformative, are programs that were started and operated by other prisoners. And, over the decades DOCCS has actually co-opted some of those programs and legitimized them so to speak, and made them DOCCS programming. So, having someone understand that this is not just a punitive space if they don't want it to be, is something that's very helpful. And we stay connected to that person. So we'll write them, we'll send them books, we'll send them resources, we'll help them and their family navigate the systems.

Part of this orientation often involves a conversation with family and loved ones, their support system. Right? How to be supportive of someone who is about to enter the prison system. Letting them know you love them and you're there for them, while at the same time holding them accountable for something that they may have done that has some dire tragic consequence. Right? That's a very nuanced conversation that we have with family members. How to be supportive without being enabling. So, by the time that individual has gone to prison, and are making the transition back to community, we would have built a rapport with them to the extent that they're comfortable enough in reaching out to us and saying, "hey, these are the challenges that I have." Maybe connecting back to family and community, but it may be very practical things like, "hey, I had a sexual offense and now I'm not allowed to live within 1,000 feet of a school. And my family can't afford to move. What do I do? I don't want to be in the shelter system." Right? And the shelter system may end up being the best option available for them. But, there are other options as well that we could explore, and try to find them housing that's SORA-compliant.

So, these are just some of the things that we do for our clients on the front, middle, and the back-end. Hope that answers your question without

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monopolizing your time.

MS. KUHL: No, that's very helpful. So, I want to open up for questions again. You had a question that we held on.

FEMALE VOICE 3: Yeah, I just want to ask whether there is an expectation for Assistant District Attorneys to anticipate collateral consequences when they think of the pleas they are offering, and to bring this information to the defense counsel?

MS. CUTOLO: So, as both of the other panelists have mentioned a lot of the defense bar, you know, the kind of holistic treatment, there's no need right? The defense counsel will go to the assistant and say what the collateral consequences might be. But, we also have clients who, I don't know if your familiar with the 18B panel? But, if for some reason there's a conflict, or one of the kind of bigger defense groups can't take the case, they'll be assigned an 18B attorney and often times that's a solo attorney practice. They won't have any of the benefits of having practitioners in their office who have other information regarding immigration or housing. So, a lot of times they won't know what a lot of the collateral consequences will be. And so, it's important for assistants to know, so that just because a client doesn't get the benefit of being defended by you know, a Bronx Defenders attorney, or a Legal Aid Society attorney, they can still know that we're contemplating the collateral consequences.

Right now my analyst, Jackie Ascencio, and I are writing training materials. The training that we're doing this Fall is focused mostly on immigration consequences, but that will be kind of built out as time goes on to just educate assistants who are dealing with these issues who may not be getting the information that they need from defense counsel. So, that they can know everything when they're deciding what a proper disposition will be for any given case.

MS. KUHL: Other questions? Yes.

FEMALE VOICE 4: From a defense perspective, do you think that collateral consequences require legislative attention, or do you think that the practices discussed today are enough to address them?

MS. JOHNSON: Well, I mean, I'm sure we're probably going to say very similar things so you can jump in at any time but, I think- I do think part of the responsibility is on the legislature because if the goal is to make it so that everybody can sort of have access to things that people should have access to, being with their family, and education, a home, a job, then, why is it that somebody who has a criminal conviction for a drug-related offense has to lose their housing? Why is it that somebody who has a criminal conviction for marijuana can lose their access to financial aid? I mean, there are certain consequences that I mentioned before that take place by operation of law, or that are agency policies that I think don't necessarily have to be. You know, somebody who works for the Department of Education can be suspended for having marijuana- for

being arrested for having marijuana in their pocket. Right?

I don't necessarily think that everybody who has marijuana in their pocket needs to lose their position at the Department of Education. Especially depending on what their position is. So, I think that there are agencies that need to take a really close look at some of their policies. And then, I think that there are some consequences that operate under the New York City criminal procedure law. Like, for example, when somebody has a marijuana conviction, they can lose their driver's license. And so, that means for that person that who needs to drive to work, they now don't have a way of getting to work. I think that there are some things that the legislature can also take hold of, and eliminate as a consequence of criminal convictions.

MR. CAINES: I agree. I think we have built this system out very intentionally. And we can't divorce the intentional biases that are built into our criminal justice system, and the outcomes of it, we can't divorce that from how we have chosen to order our society. Fact of the matter is, is that individual agencies or individual states are looking to incrementally address collateral consequences, and I hate that terms. I think it's perpetual punishment, it's perpetual consequences. Right? Because when you speak to collateral consequences, it invokes a militaristic view of you know, a military engaging in an act which achieves its desired result, and then there are these consequential things that happen that they weren't necessarily aware would happen in this action. That's not this. This is 47,000 plus laws and local ordinances nationally that have been built into our penal codes, and our municipal laws, which disenfranchise people and shift their status of citizenship. That's a very different thing than simply saying "we went about doing justice, and oh, look, this thing happened as a consequence of that."

We need to address this. That's the challenge of trying to legislatively change the laws that create this infrastructure of perpetual punishment, is that there are certain opposing forces within government and outside of government, but mostly in government. Government actors are the ones that are responsible for this. Make no mistake about it. When you're talking criminal justice reform, when you're talking about how we order our society; the government, the policy makers have passed laws which have laid out the playing field on which we're all operating. So, when you tell me that a private company or business is discriminating against someone, because of their criminal history, that company is empowered to do that because of the laws and the policies that were enacted by our policy makers.

So at the end of the day I think that we really have to call it for what it is. It's a system that doesn't resemble what I consider justice. Right? There's gonna be harm in a society, and we want to minimize harm as much as possible. We want to, you know, amplify public safety, and when

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people violate the trust of the larger community there has to be way to hold them accountable. But what does that mean? How we view accountability for one's actions is a conversation we really need to have explicitly, and intentionally. Because if we're going to say that for this act, the punishment is this, it should be bookended. And if it's not gonna be bookended, let's stop playing games, and let's stop saying that people have second chances, because they really don't. If you have means, then you have a second chance because you have the financial and social capital with which to overcome the harm that you have caused. The vast majority of the people in this system do not.

MS. KUHL: We have time to take one more question, if anyone has anything else they'd like to- Ben?

MR. WINTERS: Yes, I guess with all that is being said about the ordinances and statutes that can perpetuate this and enable it, is there any capacity within your jobs as counselors, or coordinators, to sort of having a legislative advocacy role? Or is it just the fact that there's so many problems, we have such a strong caseload that you have to deal with each day, that doesn't seem to almost like- I don't want to say worth it- it'd be worth it to like spend your time in there because of the nature of those legislatures, and stuff like that. But, is that part of something you do, or are there other people in your organizations that deal with this?

MR. CAINES: For me I couldn't do this work if I was just doing the work. So, a large part of the work I do is to leverage the experience of my direct clients, and my community work, with policies. And, the Bronx Defenders have allowed me to do that in a way that makes sense for me. Our office is an activist office. We're on the ground and we see the impacts of laws and actions by government agencies. And, we leverage that experience, we study it, and then we look for ways to litigate, we look for ways to advocate with policy makers around changing laws, both in New York City and in Albany. But, without that aspect of my job, that's maybe 40% of the work that I do. If that was not the case I could not do this work. This would have really burned me out quickly if I thought that I'll be doing this now and in 20-years someone with a different name is gonna be doing the same thing.

MS. JOHNSON: I mean, I would think that prosecutors would have a certain amount of- I wonder if there's anybody in the prosecutor's office that is working on policies for collateral consequences, or- I mean, and not within your office, but in terms of influencing the legislature if you're seeing the impact that this has on the communities that you're in fact trying to protect with prosecutions. I wonder if there's been any discussion within the office about having sort of a discussion about policy change, and collateral consequences?

MS. CUTOLO: So that's not a direct part of my job, but there certainly is. There's a policy and management unit and an advocate who

actually deals with trips to Albany, advocating for certain law changes, so it's not usually an Assistant District Attorney that would do that. There are people in policy and management. But, then that role is also played by our chief of criminal court, he does a lot of advocacy work. So, there definitely is, it just isn't my job as my job is much more parochial within the office in terms of educating the assistants.

MS. KUHL: We can take one more question if you anyone has one. Okay?

FEMALE VOICE 5: Sure, I was actually just wondering how Right to Counsel is interacting with criminal court contact. And also, is that affecting the awareness of collateral consequences?

MR. CAINES: So, we were- we were doing representation in the housing court way before the Right to Counsel, which is a good thing. It hasn't fully rolled out throughout the Bronx, there are certain zip codes which came online first. It's been a challenge in the system for our attorneys in housing court to work with. But when it comes to the work and the impact of representing more people against landlords who overwhelmingly have attorneys, the outcomes have been better. Landlords are more likely to engage in negotiations, if the tenants have representation by us, or by anyone else. So, that's a good thing. I think that- I don't know I just think that our system needs a little bit more balance.

We also represent clients against NYCHA [the New York City Housing Authority], so it's not just private landlords, right? It's battling permanent exclusion, where a family is forced to exclude one of its members, sometimes minors, because of arrests on NYCHA property. Regardless, of the level of the offense. And sometimes seeing that policy-first of all, we don't like the policy but the policy is not enforced universally for everyone. So, there are a lot of factors that come into whether or not a development's management will move to have one particular family member, from one particular family excluded, versus another based on the relationships that exist within the development. So, we also represent clients in NYCHA hearings. Not just in housing court. But the outcome is a lot better with an attorney than without an attorney.

[END 10-15-18 CJERSJ SYMPOSIUM PART 1]