



Testimony of Jesse Wiese
Justice Fellowship
Before the House Judiciary Over-Criminalization Task Force
Collateral Consequences
June 26, 2014

Dear Chairman Sensenbrenner, Ranking Member Scott, and Members of the Overcriminalization Task Force, thank you for taking the time to discuss this important topic.

The overuse and general acceptance of collateral consequences is cause for genuine concern. Taxpayers and victims of crime count on a return for our investment in the criminal justice system and imposing arbitrary and perpetual civil punishments as a result of a criminal conviction greatly diminishes that return. As a conservative, I believe we should apply serious scrutiny to processes that restrict “life, liberty, and the pursuit of happiness.”¹ As a Christian, I believe that humanity ascribes its value and dignity from its Creator, and it is from that basis that the concepts of proportionality and finality in criminal punishment have their root. As a person who was formerly incarcerated, I advocate for the value of criminal punishment² and for a system that comprehensively advances the principles of restorative justice.³

PERSONAL BACKGROUND

When I was twenty-one years old, I robbed a bank at gunpoint and was sentenced to fifteen years in the Iowa penal system. My actions were a result of personal despair and hopelessness and caused great harm to my victim, myself, the community, and my family and friends. Through some providential relationships and participating in a faith-based program, I began to find purpose, value, and hope and quickly realized that actions do not take place in a vacuum and that crime harms people, breaks relationships, and has lifelong consequences. I deeply regretted my actions and looked forward to satisfying the debt that I owed.

During my incarceration, I did my best to prepare for my opportunity at a second chance. I had confronted my actions, reconciled with my victim, obtained an undergraduate degree and graduated with honors, helped other men in prison obtain their GED, participated in and volunteered with a values-based reentry program, spent time speaking with youthful offenders, and spent the last three months of my sentence studying for the law school admission test.

¹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

² See, e.g., Jeffrey C. Tuomala, *The Value of Punishment: A Response to Judge Richard L. Nygaard*, 5 REGENT L. REV. 13 (1995) (“[P]unishment is often excessive or imposed with improper motives or for improper ends, but that does not mean punishment is not a legitimate value.”).

³ See Justice Fellowship, <http://justicefellowship.org/building-restorative-justice> (advocating for a restorative justice approach to criminal justice reform and policy).

I walked out of the Iowa prison system thinking two things: I wasn't the same man walking out that I was walking in, and I wanted to make a positive difference. I deeply wanted to expiate my guilt and prove to society that I could once again be a trusted and valued citizen.

When I was released, I began to put into practice what I had been taught. I sought out mentors, attended a local church, developed a new social network, got a job, and encouraged others to do the same. Those practices and relationships led to other opportunities. I was accepted to law school, interned with a state juvenile court judge, served as president of the Honor Council, drafted statutory reforms to eradicate domestic child-sex trafficking, graduated *magna cum laude*, passed the Virginia bar exam, and joined Justice Fellowship to work with legislators across the country on criminal justice reforms, including collateral consequences.

Though my name may be attached to these minor achievements, a very small amount of the recognition, if any, should be attributed to me. The accolades belong to those along the way that sowed into the soil of my life and believed that I could "make good" on my second chance. These are much-deserved dividends earned on the thousands of dollars Iowa taxpayers paid for my very bad decision and the countless hours and resources several mentors gave to me along the way.

The truth is, however, that achieving these successes was not an easy task and there are still obstacles that will need to be overcome. I had to fight every step of the way to get where I am today. This is not to say that it should be easy, but it is an arduous and continual process convincing landlords, universities, the Virginia Character and Fitness Committee, churches, and even criminal justice officials that the system can actually work and that men and women can change. I learned early that my voice and accomplishments were not enough to erase the vestiges of a felony conviction. I pursued relationships with judges, lawyers, pastors, and other upstanding members of the community who often advocated on my behalf. Even with their voices, however, my inability to obtain a license to practice law remains a struggle for myself and my family. Despite these obstacles, I challenge men and women in our prisons to reach for the stars and take hold of the American dream. Many have never envisioned themselves beyond government subsidies or a minimum-wage job. Unfortunately, even when given the tools and vision to achieve personal success, we often remain relegated to places of continual failure or hit a glass ceiling because of arbitrary collateral consequences.⁴

After my release, I had the opportunity to work with men who were transitioning back into society from a period of incarceration as a Reentry Specialist for Prison Fellowship Ministries. Time and time again I witnessed the majority of these men give up on their dreams of success because of the barriers to societal reintegration. The goals that we encourage men and women to set and work towards during their incarceration quickly become shattered when faced with the uphill battles of housing, employment, and social stigma. In most cases, giving up on these

⁴ See, e.g., Alfred Blumstein and Kiminori Nakamura, 'Redemption' in an Era of Widespread Background Checks, NAT'L INST. JUST. J. No. 263 (June 2009) (stating that after a certain time period, the likelihood that a person with a prior conviction will commit another crime will diminish to that of society, thus limiting the risk of recidivism and the need for some collateral consequences), available at <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

dreams did not result in recidivism, but it did result in them accepting their place in society as citizens who are unworthy of achieving certain levels of success or even representation.

Earning back the public's trust after committing a crime should not be an easy task, but it must be a realistic and attainable one if we want to increase public safety. President Bush recognized this in his 2004 State of the Union address when he stated, "America is the land of second chance[s], and when the gates of the prison open, the path ahead should lead to a better life."⁵ The billions of taxpayer dollars poured into rehabilitation programs every year amount to nothing more than a colossal waste, if we as a society don't allow the men and women walking out of prison doors to practice the rehabilitation we are preaching. In effect, we spend billions of dollars teaching incarcerated men and women how to build a new car (i.e., a new life), provide the appropriate parts, and give them the keys, but when the prison doors open, there are no roads.

COLLATERAL CONSEQUENCES ARE ON THE RISE

The term "collateral consequences" is a fairly new term referring to the "wide-range of status-related penalties, sanctions, and restrictions that are permitted or required by law because of a criminal conviction even if not included in the court's sentence."⁶ As this task force is aware, collateral consequences include, among other limitations, the loss or restriction of employment or professional license, eviction from public housing, ineligibility for welfare benefits, loss of right to hold public office, serve in the military, volunteer, or sit on a jury. Collateral consequences may also include the loss of parental rights, exclusion from government contracts, and the inability to live in certain areas. Practically, the stigma associated with a criminal conviction almost always results in the permanent loss of standing within the community.

Collateral consequences have been a familiar feature in the American justice system since Colonial times and garnered some reform interest among legal scholars in the 1970s.⁷ Recently, however, there has been an increasing awareness on the issue of collateral consequences.⁸ The reasons for this increased concern are likely related to the rising prison population, the ballooning of the criminal justice system, and technological advances in providing background searches. Today, approximately sixty-five million (1 in 4) adults in the United States have a criminal conviction.⁹ Additionally, the expanse of the administrative governmental agency has

⁵ George W. Bush, President, Address Before a Joint Session of the Cong. on the State of the Union (Jan. 20, 2004).

⁶ MARGARET COLGATE LOVE, JENNY ROBERTS, & CECELIA KLINGELE, COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE 25.

⁷ See, e.g., Margaret Colgate Love, *Starting Over With a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705 (2002) (discussing the history and reform trends of collateral consequences), available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj>.

⁸ E.g., NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, COLLATERAL DAMAGE: AMERICA'S FAILURE TO FORGIVE OR FORGET IN THE WAR ON CRIME (2013); Memorandum from Att'y Gen. Eric Holder on Consideration of Collateral Consequences in Rulemaking (Aug. 12, 2013); National Inventory of the Collateral Consequences of Conviction, <http://www.abacollateralconsequences.org/>.

⁹ See U.S. DEP'T OF JUSTICE, OFFICE OF THE ATTORNEY GEN., THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 51 (2006), available at http://www.justice.gov/olp/ag_bgchecks_report.pdf; U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2010 3 (2011), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>; MICHELLE RODRIGUEZ AND MAURICE EMSELLEM, THE NATIONAL EMPLOYMENT LAW PROJECT, 65 MILLION "NEED NOT APPLY": THE CASE FOR REFORMING

created a beurocratic web making the reprieve from collateral consequences much more difficult to successfully navigate. In fact, one of the most misunderstood aspects of collateral consequences is that the majority of them are not legally or statutorily imposed. Those that are enforced legally are typically the most commonly known and include prohibitions on firearms, voting, serving on a jury, and holding public office. The majority of collateral consequences are imposed through administrative agencies that classify a criminal conviction as the means for disqualification from some type of governmental assistance or benefit or demonstrating a lack of “moral character.” In addition, there is a powerful cultural element to the stigma of a criminal conviction, which is mostly seen in the form of background checks conducted for employment, housing, and volunteer opportunities.

Additionally, the internet has increased access to criminal record information and the ease at which background checks can be conducted. This has extended collateral consequences to simple arrests, even in instances where the case is dismissed or there is a not-guilty verdict. States have begun to reconcile this unjust outcome by attempting to keep arrest records confidential from public purview,¹⁰ but that effort has proven difficult.

FEDERAL INCENTIVES AND COLLATERAL CONSEQUENCES

In certain instances, the federal government has incentivized states to adopt collateral consequences by withholding federal dollars if those collateral consequences are not properly implemented. For example, states face a reduction of federal transportation funding if they do not revoke or suspend “for at least 6 months, [] the driver’s license of any individual who is convicted . . . of any violation of the Controlled Substances Act, or any drug offense.”¹¹ This restriction is not directly related to any driving offense and is a great example of a collateral consequence that does not have a nexus to the criminal conduct.

Additionally, as a result of the “War on Drugs,” the federal government began to implement “user accountability” provisions that precluded men and women with a drug conviction from certain federal benefits. Under the Anti-Drug Abuse Act,¹² these provisions denied certain federal benefits such as access to grants, federal student loans, and professional licenses to people convicted of drug offenses. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act¹³ (the Welfare Reform Act) instituted a lifelong ban on Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) for people convicted of drug crimes. Realizing that these post-conviction sanctions did not address the drug issue, Congress eventually lessened the rigid restrictions under the Drug Abuse Act, but the lifelong restrictions related to SNAP benefits remain in force.¹⁴ Punishing men and women by refusing to allow them

CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT 27, note 2 (2011), *available at* http://nelp.3cdn.net/c1696a4161be2c85dd_t0m62vj76.pdf.

¹⁰ E.g., S.B. 108, 28th Leg., 2d Sess. (Alaska 2014).

¹¹ 23 U.S.C. § 159(3)(A)(i) (2012). The Governor of the state can opt-out of the requirement by sending a letter to the Secretary of Transportation certifying “that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to [the] law . . .” 23 U.S.C. § 159(3)(B)(ii) (2012).

¹² 21 U.S.C. § 1501 (1988).

¹³ 42 U.S.C.A. § 1305 (1996).

¹⁴ See MARK MAUER & VIRGINIA MCCALMONT, *THE SENTENCING PROJECT, A LIFETIME OF PUNISHMENT: THE IMPACT OF THE FELONY DRUG BAN ON WELFARE BENEFITS* (2013) (discussing SNAP and TANF benefit restrictions

life-sustaining benefits is an immoral and regressive approach to criminal punishment. Again, instituting consequences that are not rationally related to the crime impedes public safety and is a disproportionate response to criminal behavior.

These federal examples highlight the fact that several, if not most, of collateral consequences are not rationally related to the criminal conduct. One of the strongest examples of that disconnect involves victim compensation funds. State victim compensation funds are funded by criminal fines and taxpayer dollars and offer monetary assistance to victims and survivors of violent crime. Unfortunately, thirteen states disqualify a victim's ability to receive compensation if that person has a felony conviction.¹⁵

The encouraging news is that both Republicans and Democrats are beginning to see the hypocrisy in spending millions of taxpayer dollars on reentry services in one bill, but creating overwhelming obstacles with another. An example of this realization was seen during the recent defusing of an amendment to the omnibus Farm Bill which would have expanded the lifelong ban on food stamps to include people with certain violent convictions.¹⁶ This victory came about because people on both sides of the aisle acknowledged the importance of not just reentry, but restoration. As former Virginia Attorney General Ken Cuccinelli stated, "If we really believe no one is beyond redemption we need to stop throwing away that key."¹⁷ Refraining from the arbitrary expansion of collateral consequences is a good step in that direction.

RECOMMENDATIONS

Though there are many non-legislative layers to alleviating collateral consequences, there are several actions Congress can take that will help alleviate the practice of arbitrary collateral consequences. First, Congress can create some guidelines for agencies regarding the administration and relief requirements for collateral consequences. Providing clear definitions for phrases such as "crime of moral turpitude" as well as requiring that all collateral consequences be "substantially related to the criminal conduct" are small first steps that can have a big impact.

Second, Congress can implement a "collateral consequences impact statement" that would provide necessary scrutiny to any new collateral consequence. This would provide a check against the growth of collateral consequences as well as reinforce their proper role within the law.

Third, Congress should pass bipartisan legislation such as the Second Chance Reauthorization Act (H.R.3465) that Chairman Sensenbrenner has introduced to counter the proposition that men and women with a criminal conviction cannot become good citizens and to engage churches and communities in assisting with their full integration into society.

for people convicted of a drug offense), *available at* http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf.

¹⁵ DOUGLAS EVANS, COMPENSATING VICTIMS OF CRIME 25 (2014), *available at* http://justicefellowship.org/sites/default/files/Compensating%20Victims%20of%20Crime_John%20Jay_June%202014.pdf.

¹⁶ S. 954, 113th Cong. amend. 1056 (2013).

¹⁷ Beth Reinhard, At CPAC, Ken Cuccinelli Moves to the Center, *National Journal* (Mar. 14, 2013), <http://www.nationaljournal.com/politics/at-cpac-ken-cuccinelli-moves-to-the-center-20130314>.

Lastly, in order for there to be a shift in how our society views men and women with a criminal conviction, there must be a cultural transformation that extends beyond the halls of Congress and into our places of worship and communities. Examining the issue from a moral lens is necessary to achieve the desired change. Excluding someone from a clear and just path to restoration takes away that person's incentive to transform their life, take responsibility for their own affairs, and provide for their own family. Countries including Singapore¹⁸ and Fiji¹⁹ have taken on the cultural aspects of collateral consequences and have had striking results. Justice Fellowship is currently inviting federal and state legislators to identify themselves as values-based leaders on justice issues by joining our Legislator Network. The Network is a fellowship of federal and state leaders committed to transforming the way we think and talk about crime and punishment through a biblically-based restorative justice approach that recognizes and advances the dignity of human life. It prioritizes victim participation, promotes offender responsibility, and cultivates community engagement.²⁰

CONCLUSION

“There is a latent, pervasive attitude in our society which stresses the generic unworthiness of the criminal—his permanent unfitness to line in ‘decent society.’ He is seen as an unredeemable, permanently flawed, ever-threatening deviant. Proper citizens are felt to be menaced or degraded by consorting with him whether or not he has ‘paid his debt.’”²¹ And though the notion of second chances is a concept deeply rooted within the fabric of American society, extending this hope to the sixty-five million adults with a criminal conviction in this country remains a work in progress. Arbitrary collateral consequences place irrational limitations on the ability of men and women to give back to society at their highest potential and relegate millions of Americans to second class citizenship. I am committed to the presupposition that all men have intrinsic value and are salvageable and I am committed to paving the road of reconciliation from our prisons into our communities. I hope to see you on that road.

Respectfully submitted,

Jesse Wiese, J.D.
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¹⁸ Yellow Ribbon Project, <http://www.yellowribbon.org.sg/>.

¹⁹ Fiji Corrections Service, <http://www.corrections.org.fj/pages.cfm/yellow-ribbon/communities/giving-offenders-second-chance.html>.

²⁰ Building Restorative Justice, <http://justicefellowship.org/building-restorative-justice>. For more information about Justice Fellowship's Legislator Network, contact Chris Shank at Chris_Shank@justicefellowship.org.

²¹ BERNARD COGAN & DONALD L. JR. LOUGHERY, SEALING AND EXPUNGEMENT OF CRIMINAL RECORDS—THE BIG LIE, 61 J. CRIM. L. & CRIMINOLOGY 389 (1971).