

Testimony of Bernard B. Kerik
At the “Collateral Consequences” Hearing
June 26, 2014
Of the Overcriminalization Task Force
Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives

Mr. Chairman and Members of the Committee:

I would first like to thank you for the opportunity to submit these remarks to the committee today. It is an honor.

When I began my career in law enforcement 35-years ago, I never imagined I would be sitting before you today under these circumstances. While unfortunate events prompt my testimony, what I have to tell you has ramifications for everyone in this room, everyone in our government, and, without exaggeration, everyone in this country, a country I still believe in and love so much.

As someone who has dedicated my entire life to fighting crime, I have had the privilege of running two of the largest law enforcement organizations in the world and have had many unparalleled achievements in policing as well as jail and prison reform, I once believed that I knew and understood our criminal justice system better than just about anyone. But I was wrong.

My law enforcement career began two years after I dropped out of high school at the age of 16, when I joined the U.S. Army,

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earned my GED, and served in the Military Police Corps in Korea and at Fort Bragg, North Carolina. I was a member of the Army's Tae Kwon Do Competition Team. I had the honor of teaching defensive tactics at the John F. Kennedy Unconventional Warfare Center to U.S. Special Forces and special operations personnel.

After my military service, I spent four years in various security assignments in the Kingdom of Saudi Arabia. In 1981, I joined the Passaic County Sheriff's Department in New Jersey, where I served as the Commander of Special Weapons and Operations and as Warden of the Passaic County Jail.

In 1986, I joined the New York City Police Department. Following uniformed patrol and plain-clothes assignments in Times Square, I was promoted to detective and assigned to the narcotics division's major case unit. There I earned one of the department's highest honors, the Medal for Valor, for a gun battle with a drug dealer who had shot and wounded my partner. In 1991 I was transferred to the U.S. Justice Department's New York Drug Enforcement Task Force, responsible for overseeing one of the most far-reaching drug investigations in New York history.

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For nearly six years, I served as First Deputy and later Commissioner of the New York City Department of Correction, responsible for overseeing the New York City jail system, including Rikers Island, one of the largest and most violent jail systems in the country. Under my command, the department achieved historic reductions in violence and earned international recognition for violence reduction, efficiency, accountability, and correctional excellence.

In August 2000, I was appointed the 40th Police Commissioner of the City of New York, responsible for 55,000 civilian and uniform personnel and a \$3.2 billion budget. My term was marked by dramatic reductions in crime, enhanced community relations, and my leadership of the rescue, recovery and investigation of the attacks on the World Trade Center on 9/11/2001.

In May 2003, following the fall of Saddam Hussein, I accepted a request by the White House to lead Iraq's provisional government's efforts to reconstitute the Iraqi Interior Ministry.

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In the private sector, I have served as a national security advisor to His Majesty King Abdullah II of Jordan and President Bharrat Jagdeo of the Republic of Guyana. I have conducted threat and vulnerability assessments for other heads of state, led crime reduction, national security, and management accountability assessments for the U.S. Justice Department, Trinidad and Tobago as well as Mexico City. I also oversaw the design and building of a super-maximum prison in the Arab region, designed to hold the most deadly and dangerous of the region’s radical extremist prisoners.

Then in December 2004, I was nominated by President George W. Bush for Secretary of the U.S. Department of Homeland Security, one of the highest cabinet posts in the nation. One week later, after admitting that I failed to pay payroll taxes on my children’s nanny, I withdrew my name from consideration.

After five years of state and federal investigations, on November 5, 2009, I pled guilty to tax and false statement counts, a substantial part of which had to do with my children’s nanny. I

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was sentenced to 48 months in federal prison and three years probation. I spent three years and 11 days in a federal minimum-security prison camp and five months on home confinement before being released from custody.

When Judge Stephen C. Robinson announced my sentence on February 18, 2010, he left out the most important fact: **a felony conviction carries life-long consequences.** Yes, life-long consequences... no matter how long one’s prison stay actually is. The collateral consequences of my conviction, which began within days after my guilty plea, will last until the day I die. And that’s not just true for me; that’s true for every person labeled a “convicted felon” as our federal criminal justice system stands today. That is a reality that can only change with your courageous leadership and dogged intervention.

Let me paint a picture for you of why this needs your attention, dedication and immediate assistance.

Imagine for a moment an Assistant United States Attorney chooses to investigate and prosecute you, or a member of your

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staff, for perhaps using your government cell phone, car, or laptop for personal use...or enhancing your income on a mortgage application...or failing to pay payroll tax on your children’s nanny...or missing an income tax filing...or any ethical issue that they could turn into criminal conduct simply because they choose to. Imagine you are driven by addiction or a desperate desire to be united with your family. Imagine you find yourself convicted of a crime, a felony. It would be a first-time offense, a non-violent offense. Not a sexual offense. No guns are involved; no one is kidnapped or even injured. Nevertheless, you are a convicted felon. Would it bother you to be told by your children’s school that you could not chaperone them on a class trip or school event because of you are a convicted felon? I know good and decent men, and great fathers that it has happened to. They’ve also been denied the right to coach their child’s sports team... soccer, baseball and football.

Imagine opening your mail to find a notification from your insurance carrier that your homeowner’s policy was being cancelled due to your conviction. And also receiving written notice from the U.S. Government’s Contracting Office that you are no longer eligible for government work, can never again get a

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security clearance, and can’t even consult with the government through a DOD contractor, for example.

Then imagine learning that, should your life insurance policy lapse – a policy you, like me, may have had for more than ten years – you will be prevented from obtaining another, as a result of your conviction. How does it benefit society to force your spouse and children to fend for themselves once you are dead and gone?

Maybe you, like me, have served on the board of a non-profit organization. In the aftermath of 9/11, I was one of the founding members of the Board of Trustees of the Twin Towers Fund, a non-profit which raised and distributed more than \$216 million to over 600 families related the emergency service workers killed on 9/11. However today, as a convicted felon, I cannot be the head of my own non-profit for helping restore people's rights with convictions because of my own conviction. You could not either.

Do you know that it is nearly impossible for a convicted felon to rent an apartment? This is because most landlords and leasing companies run criminal background checks on applicants

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and use information about prior arrests or convictions as a basis for denying housing, even if it is out dated or erroneous. I know of a man with a 30 year old, non-violent and non-sexual crime conviction, who attempted to rent an apartment and was denied five times, losing a total of \$1,100 in "application fees" before he could no longer afford to apply for leases.

Congress, the courts, and our prison systems urge former offenders transitioning back into their communities to obtain successful employment, but our laws operate as obstacles that prevent felons from getting jobs. Are you aware that should you apply for a U.S. Small Business Administration (SBA) loan in an attempt to work and take care of your family, your loan will be denied? I know someone that had already been approved for a \$500,000 unsecured SBA-backed loan, that was subsequently denied once they become aware of his prior conviction. You, too, could not get a loan.

Given that more than half of those incarcerated in the U.S. prison system are uneducated and many are illiterate, they need all the help they can get upon release from prison, but obtaining

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student loans for a convicted felon is close to impossible. No matter who you are, as a convicted felon, you seldom qualify for student loans.

And imagine this: If you and your spouse want to adopt a child, forget it. Convicted felons are excluded from being adoptive parents. I personally know a couple who cannot have children, and I can't think of anyone better to be a parent, but they cannot adopt due to a felony DWI conviction 12 years ago.

In many states, you can forget about obtaining a real estate license, barber's license, EMT certification, law license, or CPA certification. I would not be allowed to do so, and if you were a convicted felon, you would be denied also. In fact, in just about any job regulated by the government, a convicted felon should not apply. Surprisingly, do you know that if you are convicted of a felony, you cannot be a garbage collector in many cities around the country?

Like you, I have served my country. I have nearly died more times that I can count, protecting the American people and

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defending our Constitution, yet today, I do not have the right to vote, and will not for at least another two years, even after already serving three years and eleven days in prison. In some states, a convicted offender is prevented from voting forever. This was started after the Civil War to disenfranchise blacks, and I can assure you today that this works really well. Black and Hispanic felons are discriminated against even more than White felons. Ask them. They will tell you their story.

Over the course of my 35-year career, I have rescued people from burning buildings, been stabbed, shot at, and saved my partner in a gun battle. I have survived the terror attacks on 9/11, and a bombing plot in Iraq. I have been the target of numerous death threats, seized tons of cocaine and millions in drugs proceeds from the Cali Cartel, and brought cop killers, Colombian drug lords and Iraqi terrorists to justice. I have received more than 100 awards for public and extremely heroic service, including the New York City Police Department's Medal for Valor, plus 29 other medals for excellent, meritorious and heroic service. I have also been commended for heroism by President Ronald Reagan, and received the DEA Administrator's Award from the U.S. Justice

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Department, two Distinguished Service Awards from the U.S. Department of Homeland Security, The Ellis Island Medal of Honor, and an honorary appointment as Commander of the Most Excellent Order of the British Empire by Her Majesty Queen Elizabeth II.

I have carried a firearm in the service of my country since I was 18 years old. I have actually used that weapon to save the lives of others. However, I can no longer possess or even have access to a firearm of any kind, hunting or otherwise, for the rest of my life, even though my conviction had nothing to do with violence and was non-violent!

Lastly and undeniably, the most devastating, embarrassing and heartbreaking of any other collateral consequence, is one that is so repugnant that it defies description.

We often talk about the collateral cost of a conviction, as it relates to the offender, and their inability to obtain work, or how they are negatively impacted on so many levels as a result of their conviction. However, I believe the ones who get punished the

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most are the silent, out of the spotlight ones--the children of those incarcerated and ex-offenders.

Despite those who are incarcerated being encouraged to stay close to their families, to parent their children, to be a father or mother, it is nearly impossible to do so. And even when they are released and face all these barriers, it is difficult for families to rebuild, to reconnect, to gain the ground they lost.

Does the punishment imposed on convicted felons and, more so, their children fit the crime? I would hope you would agree that it does not.

The system today insures personal, professional, and family disconnection and possibly dissolution. Is that the purpose of our justice system? I didn't think so, but the reality is that a felony conviction is just that.

There are 2.5 million people in prison today, about 70% of which are in for drug related crimes, and many are uneducated...and many illiterate. About 40% of the prison

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population prior to incarceration worked, paid taxes and took care of their families like I did. But because of collateral consequences, they cannot.

In my case, the cost to the American taxpayer for my three-year incarceration was not just \$28,000 a year as the Bureau of Prisons reports. The cost to the American taxpayer was in the millions because I was not working, paying taxes, supporting my family, putting money into the economy...and there are thousands just like me. Worse than that, that cost continues today, more than a year after I was released from prison, and in all probability will continue for years to come.

I cannot find work, and if I cannot, those who are not left with the privileges that I have been blessed with, hundreds of thousands a year – will face even greater odds of remaining unemployed, guaranteeing higher recidivism and destroyed families.

If I can't rebound with any sort of success, then those less fortunate most likely never will either.

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And for many, their only hope for survival--to live, to support their families, to simply have a life has been dramatically taken away from them.

Is that how the system is supposed to work? I think not and hope you will side with me and millions of other Americans who are being crippled by this archaic system.

For any American that believes that once you’ve paid your debt to society after a felony conviction, you are made whole, or given a second chance in life, they are dreadfully wrong.

The truth is that your debt is never paid, no matter how honorable a life you lead afterwards. No matter what steps you take to be better than your past, you cannot escape it.

The collateral consequences of a felony conviction are grave. They have and continue to erode the very fabric of our society. Every day we prove we are not a country of “second chances” or “rehabilitation” or “forgiveness” as we are fond of

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saying.

Those are empty words.

If we truly want to better society, to reduce recidivism, to strengthen families, to have a foundation of justice instead of injustice, we must act. And act with courage and conviction...no matter what. Self-interest or political gamesmanship cannot be more important than our families, our society, our country. America is a country we all love. Let's show her that, not by empty words and platitudes, but by our actions.

Distinguished men and women of this committee, you have the power to lead Congress in replacing injustice with justice. In closing, I ask you to work with me to help the millions of non violent felons, who have served their time yet continue to be unjustly punished by the system.

Let's join together to right this wrong, to bring justice to injustice and to stop the erosion of our families, our communities, and the very fabric of our society.

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Let's do this not for our legacies or ourselves. Let's do this because it is the right thing to do. Let's do this for our children. Let's do this for our future. Let's do this for the United States of America.

Thank you.