

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION

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January 30, 2009

Start: 1:20pm

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HELD AT:                   Hearing Room  
                              250 Broadway, 14<sup>th</sup> Floor

B E F O R E:                   KENDALL STEWARD  
                                  Chairperson

COUNCIL MEMBERS:  
                              Melissa Mark-Viverito  
                              Darlene Mealy  
                              Mathieu Eugene  
                              Charles Barron

A P P E A R A N C E S

Michelle Fei  
Co-Director  
Immigrant Defense Project

Joanne Macri  
New York State's Defender's Group

Tony Lu  
Staff Attorney, Immigration Protection Unit  
New York Legal Assistance Group

Eugene Glicksman  
Immigration Attorney  
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CHAIRPERSON STEWART: Good morning.  
Good afternoon. My name is Kendall Stewart. And,  
I am the Chair of the City Council's Committee on  
Immigration. Also, here with me is Melissa Mark-  
Viverito, another Council Member and some of the  
other members should be joining us shortly.

I would like to thank everyone for  
coming here today for this hearing on the effects  
of entering a guilty plea on immigration status  
under the New York's Criminal Law. Once an  
immigrant has obtained legal permanent resident  
status, he is generally allowed to remain in the  
United States indefinitely and receive many of the  
same rights and opportunities as his citizen peers  
until the naturalization process is complete.

Under Federal law, if an immigrant  
is convicted of a felony, however, he may be  
subject to removal or deportation proceedings.  
And, as a result of the broad definition of  
aggravate felony under the Federal law, legal  
immigrants often receive mandatory deportation  
orders for past crimes that are oftentimes minor  
infractions.

Currently, New York State's

1  
2 criminal procedure laws requires Criminal Courts  
3 Judges to advise defendants that by making a plea  
4 of guilty for a felony charge, a defendant puts  
5 himself at risk for deportation, exclusions or  
6 denial of naturalization. There is no penalty for  
7 a Judge should he fail to advise. And, there is  
8 no remedy for an immigrant defendant if he was  
9 never given the notice. Although the same risks  
10 exists if a guilty plea is made for a misdemeanor  
11 or violation. Notice to the defendant is not  
12 required. There is no requirement that an  
13 immigrant defendant receive notice when making a  
14 plea of guilty to a misdemeanor or violation, even  
15 though such a plea could also lead to deportation,  
16 exclusion or denial of naturalization. As a  
17 result, immigrants are often deported as a result  
18 of pleading guilty to petty crimes, such as  
19 shoplifting.

20 It is predicted that between the  
21 year 2000 and 2009, approximately 14 million  
22 people will have immigrated to the United States.  
23 This is not the first time the Committee on  
24 Immigration has held a hearing on this issue. In  
25 November 2004, we held a hearing on a resolution

1  
2 calling on the State Legislature to pass  
3 legislation that would require Courts to advise  
4 defendants, facing felony, misdemeanor or violent  
5 charges, that a plea of guilty may result in  
6 deportation, exclusions from admission or denial  
7 of naturalization. The resolution also called on  
8 legislation that will provide real remedies for  
9 immigrants defendants if such advisement did not  
10 occur. Fortunately, the resolution was voted out  
11 of the Committee and out of the Council. We  
12 believe that the Council had made a statement  
13 about how the State's criminal laws had negatively  
14 impacted City residents and that charges were  
15 necessary. The State Legislature listened, but to  
16 only part of our message.

17 We are here today to find out more  
18 information on this issue and to determine what,  
19 if any, message the Council needs to send to  
20 Albany. I would like to thank everyone for  
21 attending this afternoon's hearing. Unless my  
22 colleagues have a statement, we would like to call  
23 on our first panel. But, first, let me introduce  
24 another member of the Committee is Darlene Mealy  
25 from Brooklyn, Council Member Darlene Mealy and we

1  
2 have Council Member Mark-Viverito. Do you have  
3 any statement or anything you'd like to say? All  
4 right.

5 So, we call on our first witness.  
6 We have Joanne Macri, the New York State  
7 Defender's Association. And, we have Michelle  
8 Fei, who's from the Main Street-- Immigration  
9 Defense Project also. And, we have Tony Lu  
10 [phonetic] from New York Legal Assistance Group.  
11 Well, the first thing you do, I know most of you  
12 have testified before the committees already. So,  
13 what we do is identify ourselves and then, we get  
14 well into it.

15 MICHELLE FEI: Good afternoon.  
16 Thank you for the opportunity to let us testify  
17 today. My name is Michelle Fei. I'm the Co-  
18 Director of the Immigrant Defense Project.

19 JOANNE MACRI: Good afternoon. My  
20 name is Joanna Macri. I have been with the Co-  
21 Director of the Immigrant Defense Project. I'm  
22 with the New York State Defender's Association.  
23 Thank you for the opportunity.

24 TONY LU: Good afternoon. My name  
25 is Tony Lu. I'm a staff attorney at the Immigrant

Protection Unit of the New York Legal Defense,  
sorry, New York Legal Assistance Group.

MICHELLE FEI: I'd like to start  
off by talking about who we mean when we are  
talking about immigrants who face consequences  
when they plead guilty in Criminal Court. As  
Council Member Stewart had mentioned, these  
include lawful permanent residents. They include  
undocumented immigrants. They include people who  
have, are in the process of getting their papers.  
And, the problems that result from pleading guilty,  
whether it's in Criminal Court or, as we've seen  
more often now, in problem-solving Courts, for  
example, in drug treatment Courts and domestic  
violence Courts, is that those guilty pleas or  
admissions of guilt can negatively affect  
immigrants' immigration status and can actually  
wreck havoc on their communities and their  
families.

I'd like to give one example of  
that that I think helps illustrate some of the  
problems that immigrants can face. I'll call her  
Gabriele. She is a former client of the Immigrant  
Defense Project. Gabriele came to this country

1  
2 when she was very young. She had her green card.  
3 Her family never thought that she really needed to  
4 change her status in order to become a citizen  
5 because as far as they knew having a green card  
6 afforded, you know, just the benefits that they  
7 needed. And, it wasn't at the forefront of their  
8 minds to seek citizenship.

9                   When Gabriele was a teenager, she  
10 got busted for smoking a joint with some of her  
11 friends. And, she pled guilty to criminal  
12 possession of marijuana. Years later, Gabriele  
13 went back to St. Lucia to visit her grandmother.  
14 And, when she came back to the airport at JFK, she  
15 was shackled and then, actually spent the next  
16 three years getting shuffled around to seven  
17 different detention centers all across the country  
18 because her conviction, her guilty plea had caused  
19 her to be inadmissible. She was charged as what's  
20 called an arriving alien and basically lost all  
21 rights that she thought that she had automatically  
22 as a green card holder.

23                   Now, Gabriele has let us know that  
24 if she had known of the effect of a guilty plea on  
25 her in her case, she would not have taken the



1  
2 criminal possession of marijuana. In fact, what  
3 she also had available was what's called a  
4 youthful offender adjudication. And, that would  
5 have saved her from, you know, being separated  
6 from her family and her community, from getting  
7 sent to remote locations all across the country,  
8 from being disconnected and basically losing years  
9 of her life. So, that's one example I think of  
10 what can happen when immigrants are not aware of  
11 the effects of their guilty pleas.

12 And, I also want to emphasize a  
13 point that Council Member Stewart made, which is  
14 that when we talk about immigration, immigration  
15 negative-- negative immigration consequences,  
16 we're not just talking about, you know, serious  
17 felonies like murder or rape that get immigrants  
18 in trouble. We're talking about very minor  
19 things, too. For example, turnstile jumping,  
20 shoplifting, like Gabriele, having gotten busted  
21 with smoking marijuana, those can all be  
22 convictions that can land immigrants in mandatory  
23 detention and deportation.

24 And, even if those are regarded as  
25 the most serious consequences, there are a whole

1  
2 host of other consequences that we regard as quite  
3 serious, as well. You know, you can be prevented  
4 from being able to renew your green card. That  
5 means that you don't have valid ID to find work,  
6 to find housing. You might, in some cases, be  
7 forced to return to a country that has persecuted  
8 you because you don't qualify for asylum and other  
9 persecution-based relief. As we said, you know,  
10 you can face permanent exile from the United  
11 States and you can also face harsher consequences  
12 if you later try to reenter the country.

13 Joanne, do you want to speak a  
14 little bit more on this issue?

15 JOANNE MACRI: First off, I'd like  
16 to applaud this Committee for revisiting this  
17 particular issue. As you all know, our  
18 organizations feel that this is one of the more  
19 imperative issues. And, let me explain for a  
20 moment why. Some of you already have heard me  
21 talk of this in the past.

22 There's been increased  
23 collaboration right now that's been going on with  
24 the Immigration and Customs Enforcement that this  
25 Committee may already be aware of. And, the fact

1  
2 is is that the front line now with respect to  
3 detecting any type of immigration problems is with  
4 the criminal justice system.

5 And, the reason I think for that is  
6 because statistics become much easier in terms of  
7 gathering individuals for the purposes of  
8 immigration enforcement. And, as a result of  
9 that, as Michelle pointed out, many of these  
10 individuals that caught up in this particular trap  
11 are individuals who've had lengthy histories of  
12 lawful permanent resident status. In some  
13 instances, we have people who have been brought  
14 into this country when they were very young,  
15 perhaps as very young children, believing all this  
16 time that they are American citizens only to find  
17 out that they're only lawful permanent residents  
18 and possibly subject to permanent removal from the  
19 United States if they get into any type of  
20 criminal problems.

21 As a result of that, we've seen the  
22 collaboration extend. And, I want to spend just a  
23 few moments discussing that collaboration. As the  
24 Committee is aware, under New York Criminal  
25 Procedure law, 220.50(7), right now there is this

1 requirement to give an advisal in felony  
2 convictions. But, let me be here to say this.  
3 Because there is no consequence to the failure of  
4 advising, what I mean by that is, if the Court  
5 forgets to advise the client, under the Statute,  
6 the way it's written right now, there is no  
7 consequence. The plea that the person provides is  
8 still voluntary. So, even if the Court forgets or  
9 doesn't do it or doesn't do it in a proper way,  
10 the plea that was submitted based on this failure  
11 to advise is still accepted. And, that client is  
12 still stuck with the consequence of immigration  
13 that they weren't aware of when they actually  
14 submitted the plea in the first place.

16 So, we are advocating not only for  
17 this expansion of advisal to be across the board,  
18 not just with felony convictions across the state,  
19 but to also include misdemeanor offenses, because,  
20 as Michelle pointed out, it's these misdemeanor  
21 offenses that are the big net that are catching a  
22 lot of these unlawful situations or individuals  
23 who are here with green cards who might suffer  
24 consequences. But, it is especially the fact that  
25 we have no consequence if people aren't advised of

1  
2 the immigration potential problems that lie out  
3 there once their plea is submitted. And, that's  
4 the biggest concern.

5 As some of the Council Members  
6 know, organizations go out and we try to train  
7 Public Defenders. We've been talking to Judges.  
8 And, I think people are starting to understand the  
9 actual severity. I think this is the time to get  
10 the State Legislature to pay attention to this  
11 issue.

12 The other thing I want to mention  
13 is clearly one of the other problems we've seen  
14 with this increased collaboration is that fact  
15 that in problem-solving Courts, like drug Courts,  
16 domestic violence Courts, mental health Courts,  
17 where all the parties agree that there should be  
18 an alternative to criminal sentencing and  
19 programming made available. I hope that's not  
20 because of my comments. Because of that  
21 particular scenario, what's been happening is  
22 green card holders, as well as non-citizens,  
23 people who are here unlawfully, are being turned  
24 down to these mental health programs, domestic  
25 violence programs, drug programs, just because

1  
2 they are not American citizens. And, they're  
3 facing more severe consequences.

4 So, what we're trying to emphasize  
5 here is with all of this collaboration, the front  
6 line for dealing with immigration is through the  
7 criminal justice system. That's where the largest  
8 amount of people are being apprehended by  
9 Immigration. Thank you.

10 MICHELLE FEI: Just to tag on with  
11 what Joanne was talking about, with Rikers, NYSA  
12 and IDP and our other partner organization,  
13 Families for Freedom, we've actually made good  
14 headway into trying to present workshops at Rikers  
15 Island to try to get to immigrants before they get  
16 shipped across the country, to let them know what  
17 their options are; even help them understand what  
18 their immigration status is and try to help  
19 prepare them for having to fight their immigration  
20 cases on their own because the truth is most  
21 immigrants do not have lawyers to help represent  
22 them in their immigration cases. And, even  
23 sadder, there is no right to counsel now in  
24 immigration Court. So, you know, we felt that the  
25 work that we're trying to do with Rikers is

exceedingly important.

At the same time, we do feel that as much as we can do with Rikers, the more that can be done earlier on, the better. So, should criminal defense attorneys be advising their clients about possible immigration consequences? Of course. You know, and we've been working hard to try to make sure that criminal defense attorneys have a systemized immigration service plan in order to help them do that. But, the truth is that, you know, it's a huge problem. And, we need everyone to pitch in. It can't just be on the shoulders of criminal defense attorneys. And, in fact, Judges are, you know, I think a great resource that should be tapped into in order to provide these advisals.

And, for all the reasons that Joanne has listed and I'll add on one more, which is that, you know, we find that the current advisal system is woefully inadequate. We think that the suggestions that Joanne has made including expanding it to misdemeanors and violations, having it be standard, having set language and offering forms of redress are

critical. And, we also feel that, you know, there should be an opportunity for immigrants to consider what the immigration consequences are; that they need more time besides at that-- it shouldn't just be at the time when they're entering their pleas that they get a chance to consider what the immigration consequences are, even if a short period of time is provided, for example, so that they can call the Immigrant Defense Project's hotline to try to get, you know, advice on whether or not their guilty plea is going to cause immigration consequences if they can't afford or they don't have on hand an immigration lawyer. I think that would make a huge difference. Thank you very much.

TONY LU: A lot of the work that we do at the New York Legal Assistance Group is to help immigrants file affirmative applications. And, it's actually through a lot of the work of the State defenders and the Immigrant Defense Project that we're able to advise them when they come to us after having already been convicted or having either pled guilty or found guilty of criminal convictions.



One of the major constituent groups that we serve are refugees and asylees. And, we've found that, in several instances, refugees and asylees, who are in a position now to adjust their status to become permanent residents are in this untenable position of not being able to move themselves out of that status and become permanent residents because of a minor conviction that occurred as a result of a plea that they were advised to take.

Also, lawful permanent residents attempting to naturalize; we've come across many situations where they file naturalization applications and not only are their naturalization applications denied, they put themselves at risk of removal because they're unaware that two shoplifting convictions from, you know, seven years ago, eight years ago, could actually result in them being put into removal proceedings.

And so, it's not, you know, we're seeing these at the back end of things when we're trying to help out immigrants apply for different statuses or petition for family members to finally join them. And, this is a family unity issue.

1  
2 And, it also creates problems for folks. One  
3 client is a lawful permanent resident, who is  
4 going to college. And, she wanted to become a  
5 citizen so she'd be eligible for scholarships.  
6 And, unfortunately, she was arrested with a group  
7 of her friends for shoplifting and was advised to  
8 go ahead and just take a plea. And, you know, and  
9 it became an issue when she tried to become a  
10 citizen so that she would be eligible for  
11 scholarships.

12 One point that, you know, and I  
13 think that a lot of these issues are already  
14 covered. But, one thing I think that the  
15 Committee may not be aware of is that plea  
16 bargaining is-- the extensive use of plea  
17 bargaining is a uniquely American practice. There  
18 are very few countries that use plea bargaining as  
19 extensively as the United States. So, most of  
20 these immigrants are completely unfamiliar with  
21 this notion of pleading to a lesser offense.

22 And, many of the clients that we  
23 have seen, the only thing that they know is that  
24 their attorney told them to just go ahead and say  
25 yes and they would never have to serve any time

1  
2 and that the issue would be resolved. They didn't  
3 understand necessarily that they were pleading to  
4 a lesser offense and admitting guilt just so that  
5 they could get out of, you know, the uncertainties  
6 of a trial. And, if there was a judicial advisal  
7 system in place that they would probably have  
8 thought twice about going ahead and taking that  
9 plea and creating a situation where they were  
10 risking severe immigration consequences down the  
11 line. Thank you.

12 CHAIRPERSON STEWART: We have been  
13 joined by Council Member Mathieu Eugene. I have a  
14 few questions that I want to ask. And, I hope  
15 that you might be able to... Yeah, I have a few  
16 questions that I would like to ask before we were  
17 rudely interrupted. Now, there's a number of  
18 things that you, you know, you spoke about. You  
19 said one, there's no right to legal defense in  
20 criminal cases.

21 MICHELLE FEI: In immigration  
22 cases.

23 CHAIRPERSON STEWART: In  
24 immigration cases. But, in generally, the folks  
25 are entitled to a legal defense in other criminal

1 cases, right? But, in immigration cases, you're  
2 not. So, they are on their own. All right. Do  
3 you think that there can be a ten point list of  
4 things that should be-- the Bar Association or the  
5 Judges should know when dealing with immigrants in  
6 terms of, you know, the factors to remind them;  
7 one, that they should be advised, the defendant  
8 should be advised that if they take a plea, and as  
9 we were working on before, and other points that  
10 they should be advised about in terms of  
11 immigration matters.  
12

13 JOANNE MACRI: We can actually  
14 provide something even better, Council Member  
15 Stewart. What's happened recently is the Columbia  
16 Law School has actually developed an online  
17 resource, a free resource. It's called an  
18 Immigration-- well, it's a, excuse me, it's a  
19 Criminal Collateral Consequences of Criminal  
20 Convictions Calculator. And, what this calculator  
21 does is, it's available to anyone online access.  
22 You type in, for example, one of the areas that's  
23 involved in this calculator right now is  
24 immigration consequences. You take the New York  
25 Penal Law section, you put it into the calculator

1  
2 and then, there is a listing of the potential  
3 immigration consequences. And, in fact, the Law  
4 School just launched it publicly yesterday in  
5 front of the New York State Bar Association annual  
6 meeting that's being held here in--

7 CHAIRPERSON STEWART: Oh, great.

8 JOANNE MACRI: -- New York City.

9 So, we're timely on this. But, on top of that,  
10 the fact is is that they have been going around to  
11 the judiciary, they're going to begin I believe to  
12 do so more aggressively, to let Judges know that  
13 this online calculator is really available and  
14 designed for them. And, this is in response to  
15 Chief Judge Kay's recent recommendation that  
16 collateral consequences need to be part of the  
17 criminal justice system. This calculator also  
18 includes information about public housing and how  
19 criminal convictions could relate to consequences  
20 in public housing. It's going to be available  
21 online. It's an easy, accessible resource.

22 And, for those, when the  
23 calculator, if it's not updated, we actually have,  
24 for example, the Immigrant Defense Project has a  
25 full chart of over 90 pages of New York law and

1  
2 the potential immigration consequences listing  
3 that's freely available on the website,  
4 [www.immigrantdefenseproject.org](http://www.immigrantdefenseproject.org). So, these  
5 resources are easily available to the judiciary.  
6 It's just basically convincing them that this  
7 should be mandated to look at them once in a  
8 while.

9 CHAIRPERSON STEWART: All right.  
10 What is the most frequent complaint that your  
11 office has received regarding criminal trial Court  
12 proceedings?

13 MICHELLE FEI: You want to start  
14 and--

15 CHAIRPERSON STEWART: The most  
16 frequent complaint.

17 TONY LU: For us, at the New York  
18 Legal Assistance Group, for the most part, it's  
19 that they did not understand what the proceedings--  
20 - what was happening in the proceedings, you know,  
21 whether or not it's the responsibility of the  
22 defense attorney or Court-appointed interpreter,  
23 whatever. They feel that they were basically told  
24 to just nod and say yes when the Judge asked them  
25 the question and that they would be basically, you

1  
2 know, told to do some community service and that  
3 they would be fine. So, they were never, ever  
4 fully aware of the consequences of entering a  
5 guilty plea. And, in addition to that, I think a  
6 lot of them were not even aware that they were  
7 making a guilty plea. They thought they were  
8 just, you know, apologizing to the Judge or  
9 something.

10 CHAIRPERSON STEWART: So, in other  
11 words, there need to be some sort of clear  
12 understanding set within the Court system that  
13 when the Judges are asking them questions, they  
14 should at least repeat or make sure that the  
15 defendant knows that he's admitting. I thought  
16 that was one of the standard things that Judge  
17 will do when someone is before a Judge. And, they  
18 ask them if they agree that this is what they--  
19 that they are admitting to and all of that. I  
20 thought that was one of the main things.

21 TONY LU: I believe that is the  
22 case. And, I think that the addition of some kind  
23 of judicial advisement on the fact that there  
24 might be immigration consequences would serve as a  
25 backstop to the fact that maybe they didn't fully

1 understand the language that the Judge was using.  
2 And, I think this goes hand in hand with what I  
3 was saying earlier about many immigrants and  
4 refugees not understanding what a plea bargain is  
5 because that's not a common practice in most  
6 countries.  
7

8 CHAIRPERSON STEWART: But, what  
9 happens when one is not, let's say, when one is  
10 English-challenged, they may be able to speak a  
11 few words in English, but they may not be that  
12 quite versed in English. What happens in those  
13 cases? Do they always get a translator? Or, what  
14 happens?

15 JOANNE MACRI: I am really happy  
16 you asked that question, Council Member Stewart.  
17 Generally speaking, and I want to say this, this  
18 is not across the board, right, because New York  
19 State, for example, is a fairly geographically  
20 large state. And, as a result of that, many  
21 instances, for example, in upstate New York  
22 locations, for instance, there are small village  
23 justice Courts. And, in some instances, we've  
24 seen Courts being held in the back of an auto  
25 garage and that kind of thing. What ends up



1  
2 happening in many instances is the Courts try to  
3 make an attempt to have a translator available.  
4 However, time and time again, we hear about  
5 circumstances where some one will try to call  
6 somebody on the telephone to provide some quick  
7 translation; sometimes it might be a family  
8 member, who's in the Courtroom, who would be  
9 willing to provide translation because a  
10 translator cannot be immediately provided to this  
11 individual.

12 And, this is something that because  
13 there isn't this uniform treatment, the mere fact  
14 of providing an advisal across the board takes  
15 care of all the inconsistencies that exist  
16 throughout the criminal justice system in New York  
17 State. And, you know, we ask the Committee to  
18 consider joining at least 22 other jurisdictions  
19 across this country that mandate advisals not just  
20 for felonies, but for misdemeanors and violations  
21 across the board.

22 CHAIRPERSON STEWART: Right. Now,  
23 with that in mind, once a plea agreement has been  
24 made or entered into, what options, if any, are  
25 available for immigrant defendants? In other

1 words, a young man may have entered a plea guilty,  
2 which he may not have been guilty. But, he  
3 entered it because he didn't want to lose his job  
4 and he didn't want to miss school or he didn't  
5 want to miss something. And so, they say well,  
6 listen. We put you on probation, six months'  
7 probation. And, you may do 12 hours of community  
8 service; go in the park and pick up some leaves or  
9 whatever. And then, six years later, he wants to--  
10 - he said I wasn't guilty and now, they want to  
11 put me in deportation proceedings. How can I get  
12 this cleared? What are the options of this  
13 gentleman?  
14

15 MICHELLE FEI: Unfortunately, the  
16 options are actually quite limited. Part of the  
17 reason is because immigration Courts, for example,  
18 let's say, this young man goes into deportation  
19 proceedings, into removal proceedings. The  
20 immigration Court is not going to question what  
21 has already happened in the criminal case. Now,  
22 there are limited circumstances where, for  
23 example, you can file what's called, in New York,  
24 a 440 Motion under a Criminal Procedural law,  
25 Section--

1

2

CHAIRPERSON STEWART: [Interposing]

3

Say that-- what is that called?

4

MICHELLE FEI: It's a 440 Motion.

5

It's a--

6

CHAIRPERSON STEWART: 440 Motion.

7

MICHELLE FEI: Yeah. It's Criminal

8

Procedure Law, Section 440.10, exactly.

9

CHAIRPERSON STEWART: Point ten.

10

Yeah, go ahead.

11

MICHELLE FEI: And, that's to

12

vacate a plea. However, you know, for many

13

immigrations Courts, a 440 Motion, under Section,

14

under Criminal Procedure Law 440.10, is not

15

sufficient. Whatever the conviction is on record

16

is what will still stand, right. So, you know,

17

the only way that you can actually challenge that

18

conviction and have it not regarded as a

19

conviction that will be used as the basis of

20

removal is by actually having that conviction

21

completely dismissed, right. So, if you can

22

appeal that conviction--

23

CHAIRPERSON STEWART: [Interposing]

24

How--

25

MICHELLE FEI: -- for example--

CHAIRPERSON STEWART: The point here is that is there a time when you can appeal this plea? Is there a time when you can have it wiped out from the slate, you know.

JOANNE MACRI: There's a Statute of Limitations under the State provisions that if you submit a plea and you want to go ahead and file an appeal, that's fine. The problem is that basically, when you submit an appeal after you've voluntarily pled guilty, most times your appeal is dismissed because the Court looks back to find out if you voluntarily made the plea in the first place. Now, that's one issue.

If you try, in the appeal, to argue that well, the reason I want to now appeal my case is because I didn't know about the immigration consequences, in most jurisdictions in New York State, that is not enough to win on your appeal. So, as Michelle mentioned, the only other option you have is to do this post-conviction remedy of filing what's called a 440.10 Motion.

Now, the problem with these motions is they're rarely ever granted across the state. And, on top of that, even if you get a 440.10

1  
2 Motion granted by the Criminal Court, which  
3 basically reopens your criminal case and gets rid  
4 of that formal plea that you originally entered,  
5 immigration Judges are saying that even though the  
6 plea is no longer on your criminal record, we will  
7 still consider it to be an immigration-- a  
8 conviction for immigration purposes to deport you  
9 if we know that the reason the Criminal Court  
10 reopened that case was solely based on the fact  
11 that you didn't know about your immigration  
12 consequences. So, it's sort of a-- you see the  
13 catch 22.

14 CHAIRPERSON STEWART: Okay.

15 JOANNE MACRI: The other thing I  
16 want to add to your example that I'd like the  
17 Committee be aware of is last year, the New York  
18 State Department for Probation Services issued a  
19 memo recommending that the Probation Services  
20 across New York State actually consider contacting  
21 Immigration and Customs Enforcement when they have  
22 individuals in their office that they believe may  
23 have immigration potential for consequences in  
24 terms of should be placed in removal proceedings.  
25 So, your young man, for example, who needs to take

1  
2 care of this and takes the plea quickly and goes  
3 on probation may possibly, doesn't happen across  
4 the board, we're very thankful for that, may  
5 possibly even deal with immigration, not in the  
6 Courtroom, but at the Probation office when he  
7 goes to report to a probation officer.

8 So, you understand why these  
9 advisals right at the front stage are so critical,  
10 especially now. I think even more so now than in  
11 2004. Sorry, I don't mean to... Continue.

12 CHAIRPERSON STEWART: Yeah, along  
13 that line, what is Article, I think it's Article  
14 28? What is that?

15 JOANNE MACRI: Article 28  
16 proceedings, if--

17 CHAIRPERSON STEWART: Yeah.

18 JOANNE MACRI: -- that's what  
19 you're referring to. Do you want to-- does  
20 anybody want to...

21 MICHELLE FEI: You can take it.

22 JOANNE MACRI: Oh, okay. In terms-  
23 - I don't mean to-- okay. It depends on what  
24 you're referring to in terms of--

25 CHAIRPERSON STEWART: [Interposing]

1  
2 No, well, I know of a case that we were trying to  
3 help someone when he had to go back before the  
4 Judge. And, because he had done something some 15  
5 or 20 years ago, we were trying to help him. We  
6 write letters. We do all of these things. And  
7 then, his attorney says that they have to file  
8 something like a Article 28 and have it cleared.  
9 And then, so that he can stay in the country.

10 JOANNE MACRI: There are a couple  
11 different things. I'm not sure if it's Article 28  
12 or Article 78 proceeding that they might be  
13 referring to.

14 CHAIRPERSON STEWART: I'm not too  
15 sure, 28, 78--

16 JOANNE MACRI: No, it's okay,  
17 'cause--

18 CHAIRPERSON STEWART: It's some  
19 eight.

20 JOANNE MACRI: -- I get confused--  
21 yeah.

22 CHAIRPERSON STEWART: Some kind of  
23 eight.

24 JOANNE MACRI: I think the Article,  
25 if it's the Article 78 proceeding, that, too, is

1  
2 another form of trying to take an appeal up when  
3 your appeal time has already expired. Or, in the  
4 instance I just described, where you submit a plea  
5 of guilty and now, you want to back off from that  
6 guilty plea and say I want to appeal my case  
7 because I just found out I may be deported, right.  
8 Well, a lot of times, your appeal's going to get  
9 dismissed because the Appellate Court says you had  
10 an attorney. You were represented by counsel.  
11 You voluntarily submitted a plea of guilty. So,  
12 you went on the record, admitted to doing X. And,  
13 we read you your rights. We told you that this is  
14 a plea of guilty and you acknowledged you were  
15 accepting it. And now, you want to appeal. What  
16 is your ground to do so? And, immigration  
17 consequences under State Appellate law is pretty  
18 much not recognized as being a valid reason,  
19 unless this Committee pushes to put an advisal in.

20 If you put a mandated advisal in,  
21 when you go up on appeal, at least now the  
22 individual has a chance to go back to the  
23 Appellate division and say I wasn't advised of my  
24 immigration consequences. My lawyer failed to  
25 tell me. The Judge failed to tell me. I didn't



1  
2 know, at the time, that I could be facing  
3 deportation. Now, I want you to send me back.  
4 I'll have to deal with my criminal case all over  
5 again. But, send me back and give me that chance.

6 CHAIRPERSON STEWART: All right.  
7 We have been joined by the famous Charles Barron,  
8 Council Member of Brooklyn. I think he has a few  
9 questions.

10 COUNCIL MEMBER BARRON: I'm just a  
11 humble servant. That's all. I'm just concerned  
12 about what happens often in Court in the Black and  
13 Latino and Caribbean communities is they get these  
14 ACDs. And, the ACDs are not really, and I don't  
15 know if you're pleading guilty. It's an  
16 adjournment contemplating dismissal. And, that  
17 happens frequently. It happens often. Does that  
18 impact the immigration status?

19 MICHELLE FEI: An ACD is actually  
20 one of the few dispositions in New York that we  
21 regard as safe, right.

22 COUNCIL MEMBER BARRON: Okay.

23 MICHELLE FEI: And, that's because  
24 when you have an ACD, an adjournment in  
25 contemplation of dismissal, what the Court is

1  
2 basically saying is okay, you know, we're not  
3 going to make a decision on your case now. We'll  
4 see if you stay clean. If you stay out of trouble  
5 for the next, usually six months--

6 COUNCIL MEMBER BARRON: Six months.

7 MICHELLE FEI: -- usually,  
8 sometimes a year, and if you do stay clean, what  
9 we'll do is we'll dismiss the case. It's gone,  
10 right. And, that's a huge opportunity for  
11 immigrants. And, it's a great option for them in  
12 lots of ways because what they don't have is a  
13 conviction on their record that can be used  
14 against them, right. And, the problem is the way  
15 that immigration defines convictions is very  
16 different from what you or I or most people would  
17 kind of, in our everyday lives, think of it as a  
18 conviction. And, for immigration, you can, and  
19 this problem arises, as we had mentioned earlier  
20 in problem-solving Courts, is that oftentimes, you  
21 can admit guilt, right, in a problem-solving  
22 Court; enter a program and then, usually the  
23 agreement is the charges will get dismissed or  
24 they'll get reduced, right. But, for immigration  
25 purposes, those stay as a conviction for the

1  
2 original charge because you have to admit guilt.  
3 You have to admit at least the facts. Or, you  
4 have to either plead guilty or admit guilt in  
5 order to get into these programs, right.

6 So, that's why the problem-solving  
7 Courts, even though they are such a great option  
8 and, of course, if you have a drug problem, if you  
9 have domestic violence problems, they can be, you  
10 know, so useful to immigrants and their families.  
11 They can also be used against you because you  
12 think that you're getting treatment. You think  
13 that, you know, you're avoiding the criminal  
14 justice system. And, in fact, sometimes what  
15 happens is you end up in a worse position than you  
16 would have been if you had taken a straight up  
17 plea to something else.

18 JOANNE MACRI: And, I want to add  
19 to the ACD issue, Council Member Barron, is the  
20 problem we've had, or we've seen in our office or  
21 our hotline, is that generally speaking, with  
22 ACDs, again, it's adjournment in contemplation of  
23 dismissal. As a result of that, what ends up  
24 happening is in many instances you hope to  
25 goodness that that individual that accepted the

ACD has no contact with any immigration authorities until the case is finally dismissed--

COUNCIL MEMBER BARRON: Um, hm.

JOANNE MACRI: -- because if the case is not dismissed, let's say for instance, they have a naturalization interview coming up. Perhaps they have a green card or adjustment of status interview that's going to happen, or perhaps they decide to go out of the country to do vacation and try to come back in. Immigration Service will look at that ACD and say, as far as we're concerned, the criminal case is still pending against you.

COUNCIL MEMBER BARRON: Right.

JOANNE MACRI: And, as a result of that, we don't care if it's going to subsequently get dismissed. We might have a problem. Now, let's take it a step further. So, let's say the individual says look, I've got three months left 'til my dismissal. Let me just take care of it. I won't get in any problems. My case, I guarantee you it's going to get dismissed. If this individual has anything else on their record, they could get picked up by Immigration, a detainer

1 lodged against them and they'll never get the  
2 chance to have that dismissal because now, they've  
3 got a problem with enforcement, which is part of  
4 the ACD conditioning.  
5

6 COUNCIL MEMBER BARRON: Right. So,  
7 what do you do, and that's the real challenge not  
8 just for immigrants, but for, you know, people in  
9 our community period. Do you take them to trial?  
10 What is the better route? And, oftentimes, people  
11 are innocent.

12 TONY LU: Right.

13 JOANNE MACRI: That's right.

14 COUNCIL MEMBER BARRON: They're  
15 innocent. But, the Court-appointed lawyers, who  
16 don't want to go to trial, they want to have  
17 everything adjudicated by way of plea bargaining,  
18 is going to encourage just about every person that  
19 comes their way to do an ACD. So--

20 JOANNE MACRI: We should give the  
21 example. We had an example just a few weeks ago.  
22 Here's what we recommended. The person had a  
23 naturalization interview coming up in a few weeks.  
24 The case had not been dismissed yet. We said  
25 write a letter, ask to continue the interview 'til

1  
2 after the date that you know you're going to have  
3 this dismissal and go into your interview and hope  
4 for the best. At least in that instance when they  
5 walk in, they come in with a certified disposition  
6 from the Court that says the charge has been  
7 dismissed. And, we know Immigration is not  
8 allowed to look beyond that decision.

9 COUNCIL MEMBER BARRON: Okay. All  
10 right. Thank you very much.

11 MICHELLE FEI: I'm sorry. I'd just  
12 like to add to that. You know, part of the reason  
13 why we are so in favor of having an advisal system  
14 is that it might be-- so, you know, if you have a  
15 client who is contemplating an ACD, but, for  
16 example, that's client, for example, has a drug  
17 problem, perhaps they're not sure if they can keep  
18 clean for the next six months, and if the decision  
19 is between pleaing guilty to something or trying  
20 to take an ACD, if that's a possibility for them.  
21 You know, the problem is often that right now,  
22 immigrants don't have the information that they  
23 need in order to make an informed decision, right.  
24 So, with the advisal, we don't expect it to solve  
25 every problem that immigrants and their families

1  
2 and their communities would face. But, at least,  
3 they would have an opportunity to figure out, to  
4 try to see what their options are, to weigh their  
5 own options, right, because ultimately it's the  
6 client's decision what they think is best for  
7 them. And, to, you know, have an opportunity to  
8 perhaps consult with others.

9                   We have a hotline that we run where  
10 we answer questions. We have more than 1,500  
11 calls a year; sometimes more than 20 calls a day  
12 from immigrants and their families and their  
13 advocates to kind of help them figure out what the  
14 risks and the benefits are of each way of, you  
15 know, of all their possibilities. And, that way,  
16 you know, they can make an informed decision.  
17 They might choose to plead guilty knowing that  
18 that would cause negative immigration  
19 consequences. In some cases, there's no way to  
20 escape immigration consequences. But, at a  
21 minimum, they are ensured that they've been  
22 through the process, that they understand and that  
23 they can consider fair and just.

24                   COUNCIL MEMBER BARRON: Thank you  
25 very much.

CHAIRPERSON STEWART: Before I call on Council Member Eugene, I just want to follow up on the question that Mr. Barron has asked. The question about ACD, or even cases that were dismissed, it appears to me that people are still asked to get the--

MICHELLE FEI: Disposition?

CHAIRPERSON STEWART: -- the--

MICHELLE FEI: Certificate of Disposition?

CHAIRPERSON STEWART: -- right, disposition of the case even after the Courts have dismissed it, whatever. And, it's years ago. So, tell me why is it, if that is the case, why is it that is it called upon for them to bring that in even if it was dismissed?

JOANNE MACRI: Generally speaking, any time that anybody has any type of contact with the Immigration Services, especially in situations where they're seeking benefits, but even in situations where they might travel outside the country and they're coming back in, any time that there's a background search, that's required by Immigration Services of the individual, it's a



1 national background search. It's an FBI-based  
2 background search, as well as they actually search  
3 the State Department and the Consul's office to  
4 make sure there are no problems overseas in other  
5 countries. They want individuals to bring the  
6 dispositions in because they give the opportunity  
7 the individuals to clarify what cases, because in  
8 any immigration situation, not only are you asked  
9 to identify convictions that you have, but you're  
10 always asked to identify any arrests--

11  
12 CHAIRPERSON STEWART: Right.

13 JOANNE MACRI: -- you have ever  
14 had. And, as a result of that, they want to  
15 confirm that their background search matches the  
16 documentation that you're walking in with, in many  
17 situations. Now, obviously, in a lot of cases,  
18 when they're sealed records, it's very difficult  
19 to get the certified disposition. And so, as a  
20 result of that, what ends up happening is, you  
21 know, the individual is left to the background  
22 check that is done by Immigration. So, we always  
23 favor the idea that giving the person the  
24 opportunity to put this information forward  
25 because it might be less harmful than it would be

1  
2 if Immigration had to go do a little bit more  
3 research in these matters.

4 CHAIRPERSON STEWART: At this time,  
5 I'd like to call on Council Member Mathieu Eugene.  
6 And, he has a few questions.

7 COUNCIL MEMBER EUGENE: Thank you.  
8 Thank you very much, Mr. Chair. Thank you and  
9 thank you to the member of the panel. Thank you  
10 very much for your presentation. We all know that  
11 immigration is a very, very big piece. And, there  
12 are so many things we got to fix in term of  
13 immigration in this great country, United State,  
14 the land of immigrant.

15 I came late, but, let me ask you  
16 one thing. I don't know if you discussed that  
17 before I get here. It seemed that there's a  
18 possibility that somebody may decide to plead  
19 guilty even if he doesn't know what he's going to  
20 get into, without knowing the consequences. Is  
21 there any type of training, of education, to  
22 inform the people or the immigrant, the non-  
23 citizen, you know, the consequences of their  
24 decision, what they are facing in term of  
25 deportation and, therefore, of the wit, the legal

wit, of the consequences of what they get into?

MICHELLE FEI: There are such trainings. There are such trainings. And, in fact, the Immigrant Defense Project and, especially in collaboration with NYSA, we've been trying to really make these trainings. We've been trying to broaden these trainings to reach as many people as possible. So, for example, as I had mentioned earlier, we have a hotline where immigrants and their families, criminal defense lawyers, other immigration advocates call us to try to learn more about what the negative immigration consequences are.

We have a protocol that we have recently come up with. And, that protocol is basically trying to get every single Public Defender office across New York City, including New York City, of course, because that's where the greatest number of immigrants are, to adopt what we call an Immigration Service Plan. And, what this Immigration Service Plan would include would be language accessibility, right, because a lot of immigrants in New York City have limited English proficiency. It would include a component where

1  
2 criminal defense attorneys are required to ask  
3 their clients what their immigration status is  
4 because, unfortunately, the sad state of affairs  
5 now is that there are still a lot of criminal  
6 defense attorneys who say well, my client looked  
7 like he was white. He spoke perfect English.  
8 There was no reason for me to doubt that he was a  
9 citizen of the United States.

10 This Immigration Service Plan also  
11 includes advisals so that immigration-- I'm sorry,  
12 immigrants will be advised as to what the negative  
13 immigration consequences could be, whether that's  
14 through an in-house expert at the Public Defender  
15 office or through, you know, some other means.  
16 And, it also includes referral systems so that,  
17 you know, if you don't have an immigration expert  
18 in-house, you can refer out to somebody who is  
19 more versed in the subject and who can possibly  
20 represent the immigrant in immigration  
21 proceedings.

22 We also do do trainings, judicial  
23 trainings, so that we can educate Judges about the  
24 issue, too. So, we do feel like there is growing  
25 awareness. For example, on a national level,

1  
2 we're part of a collaboration of criminal  
3 immigration experts. And, in the past few years,  
4 we're so thrilled to see that, you know, criminal  
5 defense attorneys really are paying much more  
6 attention to this issue. And, when you look  
7 around the country and you see what different  
8 criminal defender offices are doing, it's amazing,  
9 you know. It's a watershed change from what we  
10 had just from even just a few years ago.

11 But, of course, that doesn't mean  
12 that we've done enough, right, otherwise, we  
13 wouldn't see the problems that we still see today,  
14 which is why we think advisals are, you know, they  
15 might not be everything, but they're a significant  
16 step in the right direction.

17 JOANNE MACRI: And, I will throw  
18 this in as I'm sure my colleague will agree. Our  
19 organizations are always open and willing to come  
20 out to communities--

21 MICHELLE FEI: Yes.

22 JOANNE MACRI: -- as some of the  
23 Council Members are aware, to just spend-- give us  
24 20 minutes, give us an audience and we'll make  
25 sure the word gets out. I mean, that's really I

1 think what comes down to it.

2                   The advisals, as far as we're  
3 concerned, are really the safeguard. But, if we  
4 can even go out there and make sure community  
5 members know that before you have any contact with  
6 the police, these are the things that you need to  
7 know. If you happen to be 17 and your parent is a  
8 U.S. citizen, it's time for you to consider what  
9 you have to do to become a citizen. Now, those  
10 kinds of things, obviously, are always the best  
11 preventative measures. But, in the meantime, the  
12 advisals are necessary now because of this  
13 increased collaboration with Immigration. And,  
14 they are the safeguard that I think are going to  
15 try to lessen that large net that we're concerned  
16 about.

17                   MICHELLE FEI: I'd just like to  
18 reiterate what Joanne said. We are thrilled,  
19 thrilled, thrilled to come out at any time to give  
20 trainings. It's actually, well, some of mine and  
21 Joanne's favorite work. We do a lot of trainings  
22 with community advocates, with community members  
23 and, you know, we feel that the more people have  
24 knowledge about this issue, the better that the  
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situation will be for everybody.

COUNCIL MEMBER EUGENE: Yeah, thank you very much. I don't know if you are a sidekick.

JOANNE MACRI: We do a good tag.

COUNCIL MEMBER EUGENE: Right, a sidekick, because you see in advance what I was going to tell you, ask you, because I'm having a information forum, February 5<sup>th</sup>. I don't know if you are on the list for it.

MICHELLE FEI: We will be there.

COUNCIL MEMBER EUGENE: Are they on the list? Okay. On February 5<sup>th</sup>--

JOANNE MACRI: If we're not--

COUNCIL MEMBER EUGENE: -- I would love you--

JOANNE MACRI: -- put us on the list.

COUNCIL MEMBER EUGENE: -- please, I would like to ask you to come. I got Juna [phonetic] right here. Juna is going to contact you because we are going to--

JOANNE MACRI: We [crosstalk]

COUNCIL MEMBER EUGENE: -- have an

information forum to inform the people in the community, you know, what--

JOANNE MACRI: That would [crosstalk]--

COUNCIL MEMBER EUGENE: -- you know, the different situation in term of immigration. Well, let me ask you another question. Could you elaborate for us what are the cases or offenses that would present moderate to be deported? Is any offense or a specific type of offense?

TONY LU: There's actually a huge list of offenses. And, it's almost impossible to be completely certain that they're all clearly categorized and defined. And, the Immigrant Defense Project has, for years, been attempting to create a chart that will definitively sort of help defense attorneys and immigration lawyers figure out what might trigger deportation or inadmissibility. The problem is it's not just about aggravated felonies, which is one that is a term that's more commonly sort of known. There's also an issue of crimes involving moral turpitude, which could be a misdemeanor charge of shoplifting



1  
2 or a theft of services, which would be turnstile  
3 jumping.

4 One offense could trigger  
5 inadmissibility; two could trigger deportability.  
6 And, it comes down to the definition in the  
7 Federal law and how an immigration Court would  
8 interpret the criminal statute. And, in a  
9 jurisdiction like New York, where a criminal  
10 justice system is so active and the immigration  
11 system is so active, a lot of those have been  
12 defined through case law. But, oftentimes, say,  
13 there's an immigrant that moved here from, say,  
14 Arkansas. And, they have a past conviction, it's,  
15 you know, it suddenly-- it's about delving into  
16 the criminal statute of, let's say, of Arkansas to  
17 figure out whether or not that fits within the  
18 definition.

19 And, that's why a judicial  
20 advisement on the front end in the criminal  
21 context is so important because it's not clear.  
22 There is not black and white test. There's always  
23 a possibility that, you know, a Judge could come  
24 down a different way on a particular violation of  
25 the Criminal Code and decide well, actually, that

1  
2 is a crime involving moral turpitude. And, we are  
3 going to find that you're deportable because you  
4 have two of them.

5 So, I mean, the information  
6 available on the Immigrant Defense Project website  
7 actually is a very good guide for New York  
8 offenses. And, there are other states on there.  
9 But, unfortunately, a lot of the answers to the  
10 question is this a crime involving moral turpitude  
11 or is this an aggravated felony, a lot of the  
12 answers are maybe, or probably or, you know. And  
13 so, there's really not a lot of yes or no clarity.

14 JOANNE MACRI: I would even take it  
15 a step further to add that, you know, we talked  
16 very briefly about, or Michelle had mentioned, the  
17 alternative to sentencing programs. These  
18 alternative drug programs, mental health programs,  
19 DV programs, that steer people away from actually  
20 having convictions that they agree to go into a  
21 program. You know, one of the problems is when  
22 this individual subsequently decides to travel  
23 outside the United States, maybe to go visit  
24 family back home for instance, and they find  
25 themselves coming back in, the issue of making an

1 admission to a Customs and Border Protection  
2 Officer, these are the guys that are at the  
3 airports, right, or at the bridges, the moment you  
4 make that admission that perhaps maybe once you  
5 had possessed a marijuana joint, for instance, is  
6 enough for that officer to say, no matter how long  
7 you've been here, for example, with a green card,  
8 to say, you know, we're going to put you into  
9 removal proceedings 'cause we believe that you  
10 might have an immigration problem. So, the bottom  
11 line is state advisals across the board on any  
12 type of offense, whether it's violation,  
13 misdemeanor, felony is imperative.

14 MICHELLE FEI: And, I mean, your  
15 question about what convictions, what guilty pleas  
16 would be problematic, I think is a hard one to  
17 answer because perhaps the flip of it is the  
18 easier to answer, right, which ones are safe  
19 pleas, because the list of pleas that are  
20 problematic go on seemingly endlessly, right.

21 So, you know, we are often in a  
22 position where we're trying to help brainstorm  
23 guilty pleas that would be safer. And, the truth  
24 is there's a limited amount of-- there's a limited  
25

1  
2 number of options that we have to work with,  
3 right. So, for example, a disorderly conduct  
4 violation we think is typically safe. A trespass  
5 is typically safe. Beyond that, there's not so  
6 much that we can, you know, that we can say is  
7 categorically safe. And, even for a trespass and  
8 disorderly conducts, those aren't necessarily safe  
9 either.

10 Lately, what the Board of  
11 Immigration Appeals has done-- I'm sorry, the  
12 Attorney General had done right before he left  
13 under Bush's Administration is put out a decision,  
14 an opinion in a case called Silva Travino  
15 [phonetic] that really makes it much harder for  
16 immigration advocates, right. So, even, let's  
17 say, if you got picked up for shoplifting, but you  
18 pled it down to disorderly conduct, now what can  
19 happen is that the Judge, even if he sees a  
20 disorderly conduct, can still keep trying to dig  
21 and dig and dig and dig through the record to try  
22 to see if he can make that conviction a ground of  
23 removability. For example, as Tony Lu was  
24 mentioning, a crime involving moral turpitude  
25 because the original arrest was for the

shoplifting.

JOANNE MACRI: And, state advisals are not going to stop immigration from going after individuals. The only difference is state advisals just allow these individuals to have the legal right that they should have, which is when you're in Court, you should always have the right to make an informed consensual decision. And, that means part of the informed consensual part is that you know everything that's connected to that decision you make, i.e., I'm going to take this plea because if I go to trial, I might be, you know, I might have to spent five years in jail. I might only get a year probation. But, I also know, at the same time, I may be dealing with immigration and I may have to prepare my family. So, that's what the state advisal is so important to get across.

COUNCIL MEMBER EUGENE: You know, we cannot promote - - crime. But, we know that the deportation is a big crisis that affect productive and positive people, legal in the United State that came to United State, like many of us, maybe we know that America is the land of

1  
2 immigrant. Some of us came before others. Some  
3 of the people, they are first, second, third  
4 generation. But, this is the land of  
5 opportunities for everybody. And, we know also by  
6 deporting legal immigrant, that destroy families,  
7 traumatize children and destroy also the American  
8 way of life, the American ideal, the American  
9 dream. I know that elected official, leaders,  
10 community leaders, we are all fighting to see if  
11 we can resolve that situation, stop the  
12 deportation.

13 Based on your expertise and, you  
14 know, what you know, we know that we got to change  
15 the laws. But, do you have any comment, anything  
16 that you believe that can work? You know,  
17 anything that, any suggestion, you believe that  
18 any approach to that, because that should start?

19 MICHELLE FEI: I cannot claim to  
20 have any easy solutions.

21 COUNCIL MEMBER EUGENE: I know. I  
22 don't know - - .

23 MICHELLE FEI: I do think you've  
24 made a wonderful point. It's, you know, totally  
25 on target. And, you're right, that when we deport

1  
2 immigrants, we destroy families. We destroy  
3 communities. And, you know, we work with a lot of  
4 immigration advocates, but some who might not have  
5 as much exposure to criminal immigration issues.  
6 And, even they can be amazed at how a country  
7 that's built by immigrants can treat their own so  
8 shamefully so much of the time.

9 JOANNE MACRI: I-- oh, go ahead.

10 MICHELLE FEI: One of the problems  
11 that we often see when people have talked about  
12 comprehensive immigration reform, which we think  
13 could be, you know, fantastic in so many ways, is  
14 I'll put it crassly, but that immigrants who have  
15 any kind of encounters with the criminal justice  
16 system are always the first to be thrown under the  
17 bus, right. And so, we really need, I think, to  
18 reshape the debate about immigration reform and  
19 who immigrants are. Yes, immigrants are  
20 hardworking people who come to this country to  
21 support their families. But, they are also human  
22 beings. They are people who make mistakes  
23 sometimes. They are people who sometimes don't  
24 understand the situations that they get themselves  
25 in. And, for us to hold them to a higher standard

1  
2 than we do anybody else in this country, is  
3 patently unfair. And, that's something I think  
4 that we really need to start talking about; that  
5 the debate cannot just be limited to immigrants  
6 only being hardworking individuals. We have to  
7 see them as full functioning human beings, as  
8 well.

9 JOANNE MACRI: And, I would address  
10 the Council Members, to review, there's a really  
11 great report that's produced by the Human Rights  
12 Watch. And, it's called Forced Apart, Families  
13 Separated and Immigrants Harmed by United States  
14 Deportation Policy; a 2007 report. And, in that  
15 report, and again, they're looking at estimated  
16 statistics from 2000, 1.6 million U.S. citizen,  
17 children and spouses and other family members have  
18 been affected by removal of their loved ones.

19 CHAIRPERSON STEWART: I have--

20 COUNCIL MEMBER EUGENE: Thank you  
21 very much, Mr. Chair.

22 CHAIRPERSON STEWART: Yeah.

23 COUNCIL MEMBER EUGENE: And, thank  
24 you [crosstalk]

25 CHAIRPERSON STEWART: I just have a



1  
2 few more question before I let you go. Do you  
3 think the State is doing enough on the issue of  
4 that we spoke about so much about earlier of  
5 really advising? Think the State-- and if not,  
6 what do you think the State should be doing?

7 TONY LU: Well, I mean, I think  
8 that the statute that's already in place does not  
9 include misdemeanors and violations. And, I think  
10 that's one of the main points is that I think  
11 typically, or maybe it's not fair to say, but I  
12 think somebody who's charged with a felony and who  
13 is a non-citizen probably thinks well, wait a  
14 minute. This might be a problem. But, somebody  
15 who's charged with a misdemeanor or being offered  
16 a plea to a misdemeanor, you know, they may not be  
17 thinking about it at all. And, I think that  
18 that's where the real gap is. In addition to  
19 giving teeth to the Judicial Advisement Statute  
20 that's already in place so that there's some  
21 remedy for the Court's failure to advise an  
22 immigrant of their potential-- the potential  
23 consequences of taking a plea.

24 I think that, you know, the Statute  
25 is-- or, the provision is a good first step. But,

1  
2 I think that there's a huge gap because without  
3 including misdemeanors, which could also lead to  
4 deportation and have immigration consequences, you  
5 know, that's probably half of the cases that are  
6 sort of being-- are not even on the radar.

7 CHAIRPERSON STEWART: Well, we did  
8 the resolution. We sent it to the State. And,  
9 I'm trying to figure out if there's something that  
10 can be done for them to, at least, change the  
11 Statute, to really include that to make sure that  
12 people advise defendants when they come before  
13 them; the Judges advise. And, should it be the  
14 Judges to do that? Or, only the Judges or, should  
15 be the District Attorney or, you know, who should  
16 be advising it?

17 JOANNE MACRI: I think that, in  
18 terms of advisals, I think, first off, getting the  
19 support from the judiciary is one thing. I think  
20 that we're in a position, since 2004, I might be--

21 CHAIRPERSON STEWART: Yeah.

22 JOANNE MACRI: -- cautiously  
23 optimistic, but since 2004, and as I mentioned  
24 with this increased collaboration problem, the  
25 fact that people are getting picked up everywhere,

I think that you're going to see a little bit more additional support for the possibility of putting up these safeguards earlier. I think that--

CHAIRPERSON STEWART: [Interposing]  
Right. But, the point is it's not everyone going to be doing it if they're not mandated to do it. They just want to get through the cases. And, a lot of folks, these folks who might be vulnerable may get caught in it.

JOANNE MACRI: I think if the Legislation is aware that Bar Associations across the State, Public Defenders Associations across the State, Immigration and Criminal Justice organizations across the State--

MICHELLE FEI: And, across the country.

JOANNE MACRI: -- and, across the country, members, as yourself, from City Council would support this type of legislation, I think that we'd even be possibly in a position, because we've, I mean, our organization's been going out already talking to District Attorneys offices about this issue, not necessarily about the state advisal, but they're starting to pay attention to

1  
2 understand that, you know, when those cases, they  
3 want to try to help out. They're trying to figure  
4 out-- we actually do get calls from DA's offices  
5 sometimes about well, how do we avoid the  
6 immigration situation.

7 So, I think that we're in a good  
8 position, I think, now versus 2004 to really start  
9 advocating for this change. And, I think with  
10 change in administration, you know, perhaps the  
11 time is right.

12 CHAIRPERSON STEWART: Do you think  
13 the City is, we, in the City Council, are doing  
14 enough?

15 JOANNE MACRI: I think having this  
16 Committee, as I mentioned earlier, I applaud this  
17 Committee for actually having this hearing today.  
18 This is not a dead issue. And, I respect the fact  
19 that this is one of the few organizations, you  
20 know, City Councils across the state that actually  
21 appreciate how severe the consequences may be. I  
22 mean, this is a rare opportunity. I think that  
23 you set an example for other cities across the  
24 state.

25 CHAIRPERSON STEWART: What more can

1  
2 we do? Tell us what we can do so that at least we  
3 can get some more mileage off of this thing.

4 JOANNE MACRI: I think this is the  
5 time is, excuse the expression, but to start to  
6 rally the troops. I think now it's time to really  
7 start to coordinate the efforts not only within  
8 New York City, but across the state to get as much  
9 support for the change in legislation, 'cause, as  
10 I mentioned, I think with the new Governor, I  
11 think that, you know, there is a very strong  
12 possibility that this particular piece of  
13 legislation, especially, I will say, it might even  
14 add some economy to the judiciary. What I mean by  
15 that is if you provide the state advisal, we cut  
16 back on the possibility of people trying to come  
17 back to Court to do post-conviction relief, which  
18 saves money. So, I think that in this era of  
19 concern of our economy, I think that that might be  
20 one of the factors that we put behind this  
21 proposal. But, I think now's the time to really  
22 start going out to these organizations to get  
23 their support, outside of New York City, as well  
24 as within New York City.

25 CHAIRPERSON STEWART: All right.

1  
2 Well, you know, the only area that I feel that we  
3 didn't touch is the area of providers, those  
4 service providers. Apparently, you know, we have  
5 different sets of people who help in terms of  
6 immigration. And, sometimes some of us who  
7 provide the services are not trained properly to  
8 help provide the service. And, what can we do to  
9 make sure that people who are providing the  
10 service, other than the bill that we have passed,  
11 what can we do, because right now, let's take, for  
12 example, there are even attorneys who know very  
13 little about immigration.

14 Yes, I was saying, we have, you  
15 know, it's like a doctor who is, he's a doctor,  
16 yes. But, he's basically an eye doctor. And,  
17 he's trying to do maybe dental work. You  
18 understand what I'm saying? So, we know that  
19 their lawyers are there. Some of them may not  
20 know all, may not even know much about  
21 immigration. And, they, because, maybe because,  
22 of the economy, they try to make a quick dollar.  
23 And so, they fill out forms, sometime the wrong  
24 forms. And, sometimes, they may do something that  
25 may put the client in jeopardy. In many cases

1  
2 that happen. I'm saying how can we really, I  
3 don't know, stem that or try to advise people or  
4 deal with that issue? How can we do something  
5 about that?

6 MICHELLE FEI: Well, we work with a  
7 range of service providers across the City, across  
8 the state, across the country. And, you know, we  
9 recognize that a lot of-- lots of times, when you  
10 have a problem and you need help, you go to  
11 somebody who you think is trustworthy. It might  
12 be an eye doctor. But, it might be an eye doctor  
13 who will go all out to learn what they need to  
14 learn about immigration and criminal immigration  
15 in order to help out.

16 So, what we don't want to do is  
17 discourage, you know, advocates from trying to  
18 help out, even if they're lay advocates, from  
19 helping out immigrants. Of course, when you have  
20 examples of lawyers who-- people who represent  
21 themselves as immigration lawyers, when they are  
22 not, in fact, lawyers, when you have notarios who  
23 are filling out applications that they should not  
24 be, that's a huge problem, right. And, that  
25 immigrants who are already in vulnerable positions

1  
2 are exploited basically, right, in their greatest  
3 time of need.

4 I think, you know, and perhaps this  
5 is part of our failure at the Immigrant Defense  
6 Project, but, you know, our goal is to try to get  
7 out there and to educate service providers and to  
8 have them be aware of the immigration consequences  
9 before they start filling out those applications,  
10 right. We don't want to tell people not to fill  
11 out applications. Sometimes those applications  
12 are the most useful thing that an immigrant could  
13 have and exactly what they want. But, we want  
14 service providers, just like we want immigrants,  
15 to be aware of what the risks are, right.

16 So, you know, last year, we had a  
17 big training for DYCD grantees who had funding  
18 from the Immigrant Opportunities Initiative, so  
19 that we-- and, that training was solely focused on  
20 the criminal consequences of-- the immigration  
21 consequences of criminal dispositions. And, that  
22 included, you know, when you need to be careful  
23 about trying to apply for your green card. When  
24 might you want to wait or think twice about trying  
25 to apply for naturalization? Should you be



1  
2 careful about even going back to your country of  
3 origin to visit a sick family member? And, that's  
4 because, you know, we do think that there has to  
5 be a lot more education of service providers out  
6 there about what the consequences would be.

7 And, that's why, you know, as  
8 Joanne and I had mentioned earlier, you know, we  
9 are happy to do as many trainings as possible to  
10 really get the word out. You know, we already  
11 hold what we call these Deportation 101 trainings.  
12 They're free, all-day trainings. Our Deportation  
13 101 trainings are free, all-day trainings that we  
14 give to community-based organizations. And,  
15 they're open to everyone who's interested in  
16 immigration. And, we focus on what the criminal  
17 justice system means to immigrants; what detention  
18 and deportation means and how all three of those  
19 intersect. And, our goal is to raise awareness  
20 among all types of service providers about the  
21 immigration consequences.

22 CHAIRPERSON STEWART: I do  
23 understand all of that.

24 MICHELLE FEI: Yeah.

25 CHAIRPERSON STEWART: But, I was

trying to address the area whereby attorney may fill out a form for someone for asylum.

MICHELLE FEI: Yes.

CHAIRPERSON STEWART: Or, as a refugee, and they may not be from a-- it's somebody coming from Trinidad and Tobago. I don't see under what condition they will get refugee.

MICHELLE FEI: You're right.

CHAIRPERSON STEWART: And, if you fill out that form and many times you fill out the forms, you're saying things that are not correct and that it makes it even more-- it makes it worse for you.

MICHELLE FEI: Exactly. Instead of getting asylum, you might be on your way back to Trinidad, right.

CHAIRPERSON STEWART: Exactly. So-

-

JOANNE MACRI: One of the problems we've had recently, Council Member, is in the past, there was a procedure that's in place that you could actually, for example, the attorney makes a mistake on an application or does something that's visibly wrong on the application

1  
2 or in your immigration process, you can go back.  
3 You could try to claim that the attorney made a  
4 mistake; file a grievance and then, go ahead and  
5 ask the immigration Court to revisit your  
6 application or reopen your immigration case.

7                   However, the Attorney General,  
8 former Attorney General McKay, say a week before  
9 he was completed his position, had actually issued  
10 a decision saying as far as we're concerned, there  
11 is no effective right to counsel in immigration.  
12 So, even that is becoming more limited. So, you  
13 see the, you know, I get what you're saying. The  
14 value of this is mistakes can be made and they're  
15 being made. And now, we're actually seeing this  
16 force, this push against us that even if mistakes  
17 are made, even if they might be intentional, the  
18 fact is is that there is no avenue right now to  
19 deal with it. That's why we're saying we need to  
20 step up. And, we need to make this all go a  
21 little quicker. We need to get as in front of  
22 this issue as possible. Rather than being on the  
23 defensive, we need to be on the affirmative.

24                   That's why I think these state  
25 advisals, for example, are such a key element.

1  
2 You have to be in the affirmative if you want to  
3 properly address these problems. It's not going  
4 to solve all your issues, such as individuals  
5 filing applications, perhaps tax, income tax,  
6 providers deciding to help people out with their  
7 applications because they know how to fill out  
8 forms. It's not going to stop that. But, at  
9 least, state advisals are one element to many to  
10 try to resolve these issues.

11 CHAIRPERSON STEWART: And, the  
12 famous one, the religious worker?

13 MICHELLE FEI: Yes, that's one.  
14 That's also, I've, recently on our hotline, got a  
15 few calls from Latino clients who were clients of  
16 somebody who has represented themselves as a  
17 lawyer and, in fact, is not a lawyer here in the  
18 United States. And, I believe that person is now  
19 being prosecuted by the Manhattan DA's office.  
20 They have an Immigration Fraud Unit. And, you  
21 know, that could be one possibility to try to, you  
22 know, to try to confront that problem, right. It  
23 might not necessarily help immigrants who are in  
24 the removal proceeding stage. But, it might at  
25 least, you know, put the word out that people who

1  
2 try to take advantage of immigrants like that will  
3 face severe consequences. And, in fact, I know  
4 that, under the program that the DA's office has,  
5 what they are trying to do is offer immigrants who  
6 step forward and complain about those immigration  
7 fraud, some type of form of relief, right, whether  
8 that's trying to coordinate with immigration to  
9 try to slow down or to postpone or put off  
10 indefinitely an imminent deportation. And,  
11 perhaps those kinds of programs can be replicated  
12 throughout the City, too.

13 CHAIRPERSON STEWART: Well, I want  
14 to thank you folks for such a vibrant presentation  
15 and discussion. We going to try to follow up on  
16 this and we hope to see you again at another  
17 hearing.

18 MICHELLE FEI: Thank you.

19 CHAIRPERSON STEWART: And, Joanne,  
20 I'm going to reach out to you, again. I know  
21 you've helped me in the past in the district. I  
22 hope that you will have time now, again, to come  
23 out and let's do some more forums.

24 JOANNE MACRI: All I need is a  
25 phone call, Council Member, you name it.

CHAIRPERSON STEWART: All right.

Thank you.

JOANNE MACRI: That's my

[crosstalk]. Thank you.

CHAIRPERSON STEWART: And, thank you.

JOANNE MACRI: Thank you.

MICHELLE FEI: Thank you.

CHAIRPERSON STEWART: Is there anyone else who would care to testify? Seeing no one, I call this meeting to a close. You going to testify? Yes, come on. Come on up. It's re-open. We didn't know. You didn't sign-- did you sign the form?

EUGENE GLICKSMAN: There was no form [off-mic]

CHAIRPERSON STEWART: Yeah.

FEMALE VOICE: Okay. I have very bad handwriting.

CHAIRPERSON STEWART: You have to fill out a form.

FEMALE VOICE: Do you have a card?

CHAIRPERSON STEWART: Yeah, upstairs, yeah. - - still across the street?

1  
2 It's going on? Can you have those folks move on?  
3 Yeah. Yeah. All right. If you can just identify  
4 yourself, and then, we can take it from there.

5 EUGENE GLICKSMAN: Of course,  
6 Councilman. My name is Eugene Glicksman. I'm a  
7 member of, and partner of, the firm of Glicksman  
8 and Cardoso here in Manhattan. I'm also Co-Chair  
9 of the Immigration and Nationality Law Committee  
10 of the New York County Lawyers Association. I'm  
11 appearing today not on behalf of the Association.  
12 Unfortunately, before I could get permission from  
13 the Association to appear, they needed to review  
14 my oral testimony. That not being able to be  
15 done, while I hold the position, I am appearing  
16 more today as a practicing immigration attorney  
17 for over 30 years; someone who's intimately aware  
18 of the problems in this area. As you know, I've  
19 appeared before you at other times. And, this is  
20 an area that I wanted. I got the invitation from  
21 Miss Beckford, your counsel. And, I wanted to  
22 participate in this to help the Council understand  
23 the problems that there are in the immigration  
24 community.

25 Now, you, Councilman Eugene and the

1  
2 other members, immigrants yourselves to this  
3 country, have an acute awareness of the problems  
4 that are faced by the immigrant community. There  
5 is nothing that we, as members of the practicing  
6 bar, by ourselves can do individually, other than  
7 what we try and do, those of us who practice on a  
8 daily basis to try and do things right. I can  
9 tell you that through New York County Lawyers  
10 Association, we have many times done CLE courses  
11 on the intersection of immigration and criminal  
12 law. We do this to get criminal lawyers aware of  
13 what they do not know, that there is an overlap  
14 between immigration and criminal law. We do it to  
15 make sure that immigration lawyers are more aware  
16 of the possible problems and the necessity for  
17 asking questions of people when they ask whether  
18 or not they've had any criminal background. We  
19 need to do this to get the bench aware, as well as  
20 the private Bar. People such as Miss Macri,  
21 Miss Fei and Mr. Lu, who were here before me, are  
22 painfully aware of the problems in this area. So  
23 are those of us who practice on a daily basis.

24 The idea of the overlap is not new.  
25 There are overlaps on immigration and employment



1  
2 law, immigration and criminal law. Immigration  
3 overlaps into every area of the law that there is.  
4 The problem is that not enough people understand  
5 that. And, it's not just the formal  
6 practitioners.

7 A number of years ago I had a  
8 gentleman who had filed a petition for his son to  
9 get a green card. We finally got an appointment  
10 for him to go back home, to the Consulate in  
11 Georgetown, and pick up his Visa. When the time  
12 came to prepare the papers, I suddenly found out  
13 that a couple of months earlier, a friend of this  
14 young man had invited him to go out riding in this  
15 nice brand new car. Problem was, it wasn't the  
16 friend's car. The owner of the car didn't even  
17 know that the car was gone. Possibly the  
18 screwdriver sticking out of the side of the  
19 steering wheel column should have alerted this kid  
20 that he shouldn't be going along with his friend.  
21 But, he did. And, the cops in South Ozone Park  
22 knew about it, unfortunately; pulled him over.  
23 They both got hauled in and they both were  
24 arrested.

25 This young man, because he was a

1  
2 minor, first time offender, he was given the  
3 chance of an adjournment in contemplation of  
4 dismissal, an ACD, six months. This happened in  
5 June. His Visa appointment was in September. I  
6 told his father do not let your son go for the  
7 interview. He will not get his green card at the  
8 Consulate in Georgetown. His father said words to  
9 me, which I still remember to this day. That's  
10 criminal law. This is immigration law. One thing  
11 has nothing to do with the other. Well, despite  
12 my strenuous suggestions and legal scholarship, he  
13 sent the kid down for the interview.

14 The same afternoon, I got an angry  
15 phone call from the father, what did you do? They  
16 didn't give him a Visa. I didn't do anything, I  
17 explained to him. I told him the problem was his  
18 son's adjournment in contemplation dismissal. The  
19 case was not closed yet. It wasn't dismissed.  
20 And, again, he repeated this is immigration law,  
21 not criminal law. One has nothing to do with the  
22 other.

23 To mollify him, I made a phone call  
24 down to the Consulate. And, I had a large number  
25 of clients at the Consulate at that time and I was

1  
2 about as close to a first name basis with the  
3 Consular officer as you can be with a  
4 representative of the State Department. When he  
5 got on the phone, he asked me why did you send  
6 this young man down. You knew he couldn't be  
7 issued a Visa with this over his head. I, then,  
8 repeated to him what his father had said to me. I  
9 will swear to you, Councilmen, I think I heard him  
10 fall off his seat. And, it took him five minutes  
11 or so to stop laughing on the phone. He knew how  
12 ridiculous the comment was.

13 Now, young man spent Thanksgiving  
14 and Christmas down in Georgetown; spent New  
15 Year's. Right after New Year's his criminal  
16 attorney finally got the case dismissed. We got a  
17 certificate of disposition for the ACD; got sent  
18 out to him. And, he got his Visa and came back.  
19 But, to this day, and this is close to 20 years  
20 later, his father still blames me for his son not  
21 getting his Visa.

22 The overlap of immigration and  
23 criminal law is nothing new. The public knows  
24 that there is an intersection. Prosecutors know  
25 there is an intersection. Everybody knows it's

1  
2 there. But, it's like the 800 pound gorilla in  
3 the room, you try and ignore it. It can't be  
4 ignored. As Councilman Eugene put out earlier in  
5 his statements, the American Dream is still there  
6 for everybody. But, we're making it harder and  
7 harder for people to live that dream, to achieve  
8 that dream and to keep that dream.

9           The definition of aggravated  
10 felonies, which is strictly a term of art in the  
11 immigration world, is woefully misunderstood by  
12 most people, because aggravated felonies can  
13 encompass misdemeanors as well. Until we educate  
14 the Bar, until we educate prosecutors and, until  
15 we get the Bench onboard by mandating warnings, by  
16 mandating questions prior to an allocution, prior  
17 to an admission for a conviction, this problem is  
18 going to haunt us continually. And, as was  
19 brought out, it will haunt generations of U.S.  
20 citizens, whose family members are unfortunately  
21 made to suffer because they've done something  
22 which they were told, or they believed, wouldn't  
23 hurt them, but later on comes back to bite them.

24           We can take steps to prevent this,  
25 Councilmen. The City can take steps. If the

1  
2 Federal government will not, this City, through  
3 the Council, can propose legislation which can  
4 advance safety for the immigrant community. One  
5 thing which this Council could try and do would be  
6 to put a bill to put the onus on the District  
7 Attorney's office. Insist that ADAs request that  
8 a Judge question the defendant on the record. If  
9 the Judges are not mandated to do it by the State,  
10 because State law doesn't do it, the City's  
11 employees can be mandated to do it.

12 Many times end runs are pulled by  
13 the Federal government against the states. Maybe  
14 it's time for the City to step up and give them  
15 their own medicine in return. There is nothing,  
16 Mr. Councilman, that says that the City cannot  
17 mandate its employees, its Assistant District  
18 Attorneys, to request that the Judges make the  
19 inquiry on the record and make the questions on  
20 the record and put them on the record. The Judges  
21 may not be required to by State law, but City law  
22 can mandate ADAs to insist on it being done. And,  
23 that won't be violating anyone's terms.

24 The City can take a stand. The  
25 City can lead the way. This City, which basically

1  
2 was one of the birthplaces of the United States,  
3 which was the first capitol of the United States,  
4 which has the original entry point, just a couple  
5 of miles away from here, in the Statute of  
6 Liberty's shadow, the original entry point for  
7 immigrants at Ellis Island, we can lead the way  
8 again. The fact that the Feds don't want to do it  
9 or are reluctant to do it or have no interest in  
10 doing it, doesn't mean we can't.

11 To use a phrase that we've heard  
12 over and over, over the past few months,  
13 Councilmen, yes, we can. And, yes, we should.  
14 And, yes, we must. It is high time that we  
15 realize that all of us are immigrants, the  
16 children, grandchildren of immigrants, sons and  
17 daughters-in-law. The only ones who have a right  
18 to say something different with that is anyone who  
19 can raise their hand. Same way when I used to  
20 lecture for a friend of mine at NYU Law School. I  
21 would ask let's see the real American citizens  
22 here. How many people are Cherokee? Apache?  
23 Iroquois? Mohawk? If you can't claim some part  
24 of American Indian blood, then deep down enough  
25 inside, yourself or a generation or a couple

1  
2 generations back, you owe thanks to the  
3 immigration laws for being here. Before you  
4 complain about what's being done, do something to  
5 help. Take a stand.

6 CHAIRPERSON STEWART: I would want  
7 to, you know, you're talking about do something.  
8 Do you think if we have maybe an inquiry, a number  
9 of questions that must be answered by the client  
10 and signed before you take a plea, let's say, if  
11 it's the ADAs doing it, that that would suffice,  
12 because when we say that they should be informed,  
13 sometime they just tell them something?

14 EUGENE GLICKSMAN: I would say it  
15 should be way before it comes to the plea--

16 CHAIRPERSON STEWART: Right.

17 EUGENE GLICKSMAN: -- Councilman.  
18 I would say it should be at the original  
19 arraignment.

20 CHAIRPERSON STEWART: Right.

21 EUGENE GLICKSMAN: That at that  
22 point, an inquiry should be made by the Court as  
23 to whether the person is a U.S. citizen. And, if,  
24 and there should be an advisory given to them, on  
25 the record and in Court, that if you are not a

1  
2 citizen, if you are a permanent resident or  
3 unlawfully present in the country, then before you  
4 enter into any discussions, you should obtain  
5 legal counsel regarding the immigration  
6 consequences. And, if they have counsel, whether  
7 retained or 18(b) appointed, they should be  
8 directed by the Court to make an inquiry into the  
9 person's immigration status and to contact an  
10 appropriate legal source to advise them as to  
11 whether there may be any immigration consequences  
12 to any plea which is contemplated.

13                   When we do the CLE at NYCLA, the  
14 one thing that we try and do is tell the criminal  
15 Bar you're not becoming immigration specialists.  
16 You're not becoming immigration lawyers. What we  
17 want to do is open your eyes and make you aware of  
18 the consequences so that should this situation  
19 arise, should you have a person come in front of  
20 you, a potential client, you find out they're not  
21 a citizen or national of the United States, they  
22 hold a green card or they don't have any status,  
23 first thing you're going to do is pick up the  
24 phone and call an immigration lawyer that you  
25 know and say this is the problem I have and bring



1  
2       them in, either as co-counsel or at least as an  
3       advisor, an eminosgli [phonetic], if you will, to  
4       coach them and let them know, okay, if you take  
5       this plea...

6                       And, I do this all the time. I get  
7       I don't know how many phone calls each week from  
8       criminal attorneys I have met, who ask me look,  
9       I've got this charge going. If I get it reduced  
10      to this, will this keep him safe? Will an ACD be  
11      okay? I tell them ACD is the equivalent to IGWT,  
12      In God We Trust. You get an ACD, that's fine. I  
13      don't care what the charge is. Get it reduced to  
14      an ACD, that's wonderful. A dismissal's even  
15      better. But, most people that I know, most  
16      criminal attorneys I've dealt with already know  
17      that their limitations end when a green card shows  
18      up. And, that's when they call for help.

19                      And, this is what we've got to  
20      mandate. It's not enough to let people know there  
21      are consequences. We've got to get, as you say,  
22      you don't want the dentist doing optical surgery.

23                      CHAIRPERSON STEWART: Right.

24                      EUGENE GLICKSMAN: And, I tell  
25      people the same thing. When you have a leak in

1  
2 your house, you're not going to call the  
3 carpenter. When the lights start flickering,  
4 you're not going to call the plumber. You need to  
5 call somebody who knows about the particular area  
6 of law. Now, it may be an overlap. You may need  
7 both a criminal and an immigration attorney, for  
8 one to advise the other. But, things have gotten  
9 so fragmented and so specialized today that it's  
10 not possible for one person to do everything.

11 I'm sure in your job, out of the  
12 City Council, you see patients where they have  
13 problems where it's not that you are not a  
14 competent practitioner, but their problem is  
15 beyond your ken. And, I don't mean that as a pun  
16 on your name, Councilman. It is beyond your  
17 capabilities 'cause it's not your area of  
18 practice.

19 CHAIRPERSON STEWART: Right.

20 EUGENE GLICKSMAN: We have to make  
21 people aware of that. It is also important, in  
22 this area, that we make the Bench, not just aware;  
23 they know what the problem is. But, they have to  
24 take a more active position. There aren't many  
25 Judges who, on their own, will go into this area.

1  
2 It has to be mandated. If we can't get the State  
3 to mandate it with the Judges, we can do a fully  
4 legal and practical and simple end run. Require  
5 that the ADAs have the Judges make the inquiries.  
6 They're City employees. The Council can make that  
7 kind of a mandate. So, if the Judges won't do it  
8 themselves, get the ADAs to insist on it.

9 CHAIRPERSON STEWART: So, your  
10 recommendation is that we should introduce a bill  
11 that they can place into law. I'm not too sure  
12 that it can be done in City Council. If we should  
13 done it in here or it should be done in the State  
14 in terms of, well, you know, to mandate that the  
15 ADA do exactly what you're asking. I don't know  
16 if-- maybe we'll have to speak to counsel.

17 EUGENE GLICKSMAN: The District  
18 Attorneys are employees of the City, not the  
19 State.

20 CHAIRPERSON STEWART: Yes, well, we  
21 know that. But, there are certain laws. I give  
22 an example. I introduce a bill and I try-- been  
23 trying to do that for about five, six years now,  
24 whereby, have the City change its law from having  
25 people with green cards going to Iraq, fight a

1  
2 war. But, when they come back here, they cannot  
3 be a policeman or fireman, because they're not  
4 citizens. And, I tried to see if I can do it in  
5 the City Council. And, we had problems with that.  
6 And then, I was told something that has to be done  
7 in the State. So, even though I'm not looking to  
8 do something in the entire State of New York, just  
9 New York City. The fact is, you take our young  
10 men and women and we send them over there. They  
11 have their green card. But, they're not citizens.  
12 But, the fact is when they come back here, they  
13 try to apply for the job, they can't get the job.

14 EUGENE GLICKSMAN: One of the  
15 reasons for that is 'cause there's a State law  
16 that mandates citizenship for law enforcement  
17 officers.

18 CHAIRPERSON STEWART: Well, that's  
19 what--

20 EUGENE GLICKSMAN: That's not the  
21 same for prosecutors.

22 CHAIRPERSON STEWART: I am not--

23 EUGENE GLICKSMAN: There are rules  
24 that prosecutors have to work by. They have to  
25 work under the laws of the State of New York.

1  
2 This is not a law of the State of New York. This  
3 is a regulation requiring an ADA for the City of  
4 New York to request that one of the things that  
5 the Judge asks is regarding this person's  
6 citizenship status. There's nothing wrong with  
7 that. There's nothing wrong mandating that an ADA  
8 request that the Judge make this inquiry. There's  
9 nothing illegal about it. There's nothing about  
10 the State that requires this.

11 CHAIRPERSON STEWART: Right. Well,  
12 this is something I'm going to speak to our Chief  
13 Counsel, Liz Fine, on this issue and to see how  
14 best... Maybe Julene, you can have a conversation  
15 with him to find out how this could be done and so  
16 that we will introduce this and see if we can have  
17 it done.

18 I'm glad you raised that because I  
19 am kind of-- this is something I have raised  
20 before that Judges should at least advise the  
21 clients before they take a plea what the  
22 consequences are as far as immigration is  
23 concerned.

24 EUGENE GLICKSMAN: If it's done  
25 early enough, at the arraignment part, it puts

1  
2 everybody on notice that there's a potential  
3 problem involved. That's the biggest part. And,  
4 I think that's where we could head off many  
5 problems. Doing it at the allocution, after a  
6 person has already agreed to a plea, that's really  
7 shutting the barn door after the horse has  
8 escaped.

9 CHAIRPERSON STEWART: So, you're  
10 saying it should be done at the ADA level?

11 EUGENE GLICKSMAN: Earliest  
12 possible moment.

13 CHAIRPERSON STEWART: Right. But,  
14 how is done? Is it done by them, the defendant  
15 having heard that something, some form that must  
16 be signed; a questionnaire must be answered and  
17 must be signed?

18 EUGENE GLICKSMAN: Simply at the  
19 arraignment part, the ADA could request that the  
20 Judge make an inquiry into the immigration status  
21 of the defendant. Is he a citizen or resident of  
22 the United States? And, if he is not a citizen,  
23 and if he is a resident or not a lawful resident  
24 of the United States, that any criminal conviction  
25 may impact on his status. Simple statement like

1

2       that.

3

4               CHAIRPERSON STEWART:  As far as  
[crosstalk]--

5

6               EUGENE GLICKSMAN:  And, the Judge  
can turn around and simply say, okay.  Are you a  
7       citizen?  Do you have a green card?  Do you not  
8       have a green card?  Okay.  If you're not a  
9       citizen, if you take a guilty plea on any charge,  
10      there may be an impact.  You'll need to discuss  
11      this with your lawyer.  Bingo, we're done.  And,  
12      that puts everybody on alert and it's done right  
13      at the inception before there are any discussions  
14      with the District Attorney's office, before  
15      anything else happens.  That, at least, puts  
16      people on notice.  It's a simple instruction,  
17      right from the start.  The ADAs could simply have  
18      it as part of the standard script they have to  
19      follow.

20

CHAIRPERSON STEWART:  All right.

21

22              EUGENE GLICKSMAN:  That might solve  
at least some parts of the problem, not all of  
23      them.  A lot of them are going to have to come  
24      from Capitol Hill.

25

CHAIRPERSON STEWART:  Right.

1  
2 Seeing that you're the last person to testify, I  
3 have one little question that I wanted to ask you.

4 EUGENE GLICKSMAN: I'm at your  
5 disposal, Councilman.

6 CHAIRPERSON STEWART: We have a new  
7 Administration in Washington, DC. And, the issue  
8 of the immigration, Comprehensive Immigration  
9 Plan, should a bill should come up and we are now  
10 preparing and trying to come up with new ideas and  
11 come up with ways in which is the best to really  
12 do justice to the situation at hand. Do you have  
13 any comments or anything to say of what should be  
14 done at this moment in terms of the immigration,  
15 with our Immigration plan coming up?

16 EUGENE GLICKSMAN: There's a lot  
17 that I could say. And, I'll try and clean it up  
18 in case this is being recorded, which I believe it  
19 is. We learned a lot from the 1986 Immigration  
20 Reform and Control Act. What we basically learned  
21 is similar to a friend of Tom Edison's who had  
22 looked at volumes of Edison's experiments for the  
23 light bulb. And, there were about 2,000 different  
24 things, which Edison listed as not being able to  
25 work for a filament. And, he said, Tom, why don't



1  
2 you give up? You haven't had any success. And,  
3 Tom said what do you mean? We now know definitely  
4 2000 things that will not function.

5 Well, IRCA, taught us how not to  
6 administer an Immigration Act. One of the biggest  
7 problems we had with the Immigration Reform and  
8 Control Act was whether somebody was here in a  
9 lawful or unlawful presence. And, that came down  
10 to a section of the Act which talked about being  
11 known to the government. Now, the problem, as  
12 with most legislation, the legislation was put  
13 into place by the Legislature. But, it's up to  
14 the agencies to then make its own regulations to  
15 interpret what the Legislature meant.

16 Well, with the Amnesty or  
17 Legalization Program in '86, the Immigration and  
18 Naturalization Service interpreted known to the  
19 government to mean known to the INS. So, if  
20 somebody worked illegally, got an individual tax  
21 payer identification number and paid taxes using  
22 that ITIN, that was known to the IRS. It wasn't  
23 known to the INS. So, therefore, Immigration  
24 didn't know they were here illegally. Therefore,  
25 it didn't count. Went to Court; had to go up to

1  
2 the Supreme Court for the Supreme Court to say the  
3 INS and the IRS are both part of the government.  
4 The legislation says known to the government.  
5 That means any branch.

6 We need comprehensive reform to get  
7 this straight. One of the things that should be  
8 undone, as aggravating as it may be for me to  
9 admit this, is to reintegrate the Immigration  
10 Service. Years ago, we said one of the most  
11 dysfunctional agencies was the INS. You had one  
12 agency which, on one hand, was grabbing people and  
13 deporting them and with the other hand, shaking  
14 their hand and welcoming them into the country;  
15 making them citizens; making them residents. Yes,  
16 that was somewhat dysfunctional. Yes, it was a  
17 little schizophrenic. Now, however, by splitting  
18 it up into the USCIS, Citizenship and Immigration  
19 Services, Customs and Border Protection, CBP, and  
20 ICE, Immigration, Customs Enforcement, you now got  
21 three mini agencies, each one fighting for turf in  
22 a battle that makes the one between the Sharks and  
23 the Jets in West Side Story look like a Cub Scout  
24 cookout. You've got three agencies that do not  
25 work in concert with each other, but stake the

1 same territory.

2  
3 A perfect example is one I had a  
4 couple of weeks ago. There's a friend of mine who  
5 does basically family immigration law. Young  
6 woman is a U.S. citizen. Her husband is a Turkish  
7 National who's here on a student Visa. They got  
8 married. He put the papers together, filed for  
9 him, for the husband, to get his green card.  
10 They're in process. Everything's going normally.  
11 Unfortunately, the young man was ill and had to  
12 drop a class last term. By dropping a class, he  
13 went below the limit, which is mandated by the  
14 Immigration Service, to maintain his student Visa.  
15 If you're familiar, there's a part called SEViS.  
16 SEViS is the part of the Immigration Service that  
17 reports on students. Well, when he dropped below,  
18 he was entered into the SEViS system.

19 And, while his papers are going, a  
20 few weeks ago, eight o'clock in the morning, three  
21 ICE agents showed up at his front door. He was at  
22 school. His wife was home. She had copies of  
23 some of the paperwork; the receipt, notices from  
24 Immigration showing he's going for his card. It's  
25 like okay, but we'd still like to talk to him.

1  
2 And, this attorney called me and asked me to come  
3 in of counsel to him.

4 And, I went down with this man.  
5 They arranged an appointment for him to come down  
6 and see the investigators. The investigators said  
7 well, we have to talk to him. And, they treat it  
8 like a booking, so lawyers are not present at the  
9 time. We're going to take him and talk to him.  
10 We're probably going to issue him a notice to  
11 appear, invitation to go see an Immigration Judge.  
12 And, I said to them you're really shoveling sand  
13 against the tide on this. Number one, he's got  
14 his papers in for his green card. In all  
15 likelihood, he's going to get it. Number two, if  
16 somebody falls out of student status, they have  
17 150 days, five months, to apply for reinstatement.  
18 He's been out of status less than 90 days. If you  
19 take action now, you're circumventing what the  
20 rules and the regulations allow him to do. And,  
21 in fact, he had already applied for reinstatement.

22 I didn't say that to argue with  
23 them, 'cause, as I told them, you're following  
24 your orders from upstairs. And, that's what they  
25 told me, as well. What I did give them was some

1  
2 ammunition to use when they went back to speak to  
3 their own bosses. And, they came back less than  
4 an hour later saying we're not going to put him  
5 under proceedings. We're letting him go. Just  
6 let us know if anything else goes on. Keep in  
7 touch with us. Bid us farewell. I had to give  
8 them something to use with their bosses. I was  
9 successful in doing that.

10 But, the problem is, years ago,  
11 when you had just the INS doing all three jobs,  
12 enforcement, inspection, benefits, the District  
13 Director, something like this, would never have  
14 sent the investigators out. Would have said he's  
15 out of status, but he's applied for his green  
16 card. Leave him the hell alone. Pardon my  
17 language. Would have said let it go. But, you've  
18 now got three mini agencies, each one trying to  
19 show, to use a colloquial phrase that you'd  
20 recognize from the neighborhoods, Councilman,  
21 whose is bigger.

22 CHAIRPERSON STEWART: Yeah.

23 EUGENE GLICKSMAN: Because by doing  
24 that, they get funding. They get better  
25 appropriations. They get bigger staff. They show

1  
2       them to be the bigger kid on the block. But, it  
3       doesn't help anybody except the agencies. It  
4       doesn't help the people that they're supposed to  
5       be looking after. It doesn't help anybody. Sure  
6       as hell doesn't help the taxpayer who ends up  
7       footing the bill for all this.

8               If we're going to have laws on the  
9       books, if they're going to be properly enforced,  
10      they must be properly enforced. We've read enough  
11      stories about ICE agents in Nasa and Suffolk. I  
12      don't think I have to repeat to you the stories  
13      about the "cowboy tactics" they used out to the  
14      East. We know enough about what ICE agents have  
15      done in some areas of Brooklyn and Queens. The  
16      cowboys have to be reined in. Maybe the best way  
17      of doing that is to reintegrate ICE, CBP and CIS  
18      back into the Immigration Service; have one head  
19      over everybody and make sure that that head is one  
20      which is sensible.

21             I see Miss Macri and Miss Fei have  
22      just reentered the room. There's somebody who  
23      worked with Miss Macri, who's one of the best  
24      people in the State, Manny Vargas [phonetic]. I  
25      know Manny from when we both had offices down at

11 Park Place. He was down the hall from me with Legal Aid Society, Immigrant Division. I remember I used to go in there whenever we got the priority dates each month. And, I'd deliver it to Manny and, please give Manny my regards when you see him.

CHAIRPERSON STEWART: All right. So, we will conclude this meeting. And, if we need to talk more about immigration, we will continue another time. But, I want to thank you for your insight and your testimony.

EUGENE GLICKSMAN: I'm at the Committee's disposal, Mr. Chair.

CHAIRPERSON STEWART: Right. So, we will be, you know, my Counsel here will talk with you about how we can maybe fix that and see if we can accomplish something and give it to our Chief Counsel, because it sound like we can do something there. Thank you.

EUGENE GLICKSMAN: From that, I, well, let me repeat words that were written that were written years ago by a gentleman who passed away about 18 years back, Gene Roddenberry. Let us boldly go where no man has gone before.

CHAIRPERSON STEWART: Thank you.

EUGENE GLICKSMAN: Not timid steps,  
bold ones.

CHAIRPERSON STEWART: All right.

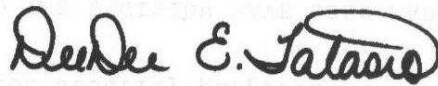
Thank you. And, this meeting is concluded. Thank  
you.



C E R T I F I C A T E

I, DeeDee E. Tataseo certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "DeeDee E. Tataseo". The signature is written in dark ink and is positioned above a horizontal line.

Date

February 13, 2009