Keynote Address
Hon. Cyrus R. Vance, Jr.
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REMARKS AS PREPARED FOR DELIVERY

I want to thank Howard University School of Law and Law Journal for inviting me to speak at this year's Wiley A. Branton – Howard Law Journal Symposium, on the topic of collateral consequences of the criminal justice system. You could not have picked a more vital topic.

I would like to begin by acknowledging the relationship our office has with this great institution, because over the years, the Manhattan DA's Office has recruited many young men and women from this fine law school. And we hope some of you may choose to follow in the footsteps of other Howard alums, such as Cornett Lewers, who after serving in our office for six years went on to become a Senior Counsel at ITT; or Keith Harvest, who after serving six years went on to head the narcotics unit at the Essex County prosecutor's office; or even Charles King III who is into his 22nd year as a career prosecutor in my office. There are many other examples; out of the thousands of applications we get each year for about fifty spots, on average, over the last 20 years we have been able to recruit one or more Howard law graduates each year. We are very proud of our relationship with this great law school, and hope it will continue far into the future. Permit me to acknowledge, and thank you, and Howard, for providing a pipeline of terrific lawyers to serve the people of New York County, and to play important roles in our justice system.

When I became District Attorney at the beginning of this year, I made a promise. I said that I would, in all my decisions, be guided by two principles: "Is it fair?" and "Does it make us safer?" We are here today because too often, the criminal justice system can impose penalties that may, on the surface, seem sound, but which, when the defendant suffers the collateral effects of those sentences, turn out neither to be fair, nor to make us safer.

In fact, scarcely had I taken office when I faced a particularly difficult decision raising precisely this issue in a case that had been prosecuted by the Manhattan District Attorney's Office before I became District Attorney. In 1984, a boy, four years old, came with his family from China to the United States. His parents were of modest means, and worked long hours in their new country. Too often the children were on their own, and eventually this boy fell in with a youth gang. When he was fifteen years old, this young man and his companions committed a robbery. He was arrested and charged with the robbery; he made bail and was set free -- and before he could be brought back into court, he had committed three more robberies.

I do not want to minimize the seriousness of those crimes. In one case, the young man displayed a knife and told the victim, " if you run, I'm going to stab you." In another

case, the defendant and a companion accosted a 60-year-old man, punched him, and went through his pockets, all to steal a total of eight dollars. When the young man was arrested, the dollar bills were easily identified: they had blood on them.

The defendant's cases were brought before Justice Michael Correiro, who ran a specialized youth court, and who prided himself on never overlooking an opportunity to make a positive impact in the life of a young offender. But under the circumstances, even Justice Correiro saw no alternative but to sentence the defendant to a term of three to nine years.

I have read the minutes of that case, and they are truly extraordinary. At one point, the Judge asks the young man why, after he had been released pending trial for his first robbery, he had committed three more.

The minutes note that the defendant's mother is crying as he gives his answer. "I was ignorant," he says.

"You are no longer ignorant?" the judge asks.

"I am trying to change," he says.

The judge notes that the defendant is a gifted student, with math scores in the ninety-eighth percentile. He challenges the defendant, "stick to reading, writing. That's what you have to do…use [your] energy positively, not negatively. If you do that," the judge promises, "I am here to stand behind you, make sure you get to do what I think that you can. That you are not prevented from getting a good job, taking care of your family."

he record shows that the young man fulfilled his promise to the judge in every way. He proved to be a model inmate, and earned his high school equivalency degree while incarcerated. When he was released, he furthered his education in the computer field, obtained an associates degree and a good job, filed his taxes every year, and eventually was engaged to be married.

And then, having achieved so much of the American dream, the young man applied for United States citizenship. That application for citizenship prompted the federal authorities to review his criminal history. When the immigration officials saw his convictions, they had no alternative under the law but to arrest him, and to seek his deportation.

Remember that this man had not lived in China since he was four years old, and that his family now lived here in the United States. Nothing awaited him in China. And yet now, the only hope the man had to remain in the United States was for the Governor to grant him a pardon.

The question I faced, so soon after I became District Attorney, was what position I would

take with respect to his application to the Governor. After reviewing his case carefully, I wrote in support of his application for pardon to the Governor, and, perhaps, in part because of our support and the support of many others, the Governor granted the application. The young man was released from his immigration hold and was not deported.

That is a dramatic example, but only one example, of how a criminal conviction can have collateral consequences that go far beyond -- in fact sometimes can even dwarf -- the impact of the original sentence.

In my Office, we now train prosecutors in the immigration consequences of their charging decisions. This is by no means a simple proposition. Our nation's immigration laws are as complex as anything you are likely to study in law school, with so many intricacies that sometimes it is hard for anyone but a specialist to predict with confidence what will happen in a particular instance.

And even aside from legal complexities, the equities of these decisions are by no means simple. I believe that in many instances deportation is an eminently reasonable consequence for committing a serious crime. To be allowed entrance into this or any nation implies a duty to obey the laws that keep us all safe. But with the great power the law gives to prosecutors to make decisions that affect the lives and liberty of so many people comes the responsibility to exercise that power wisely, and why it is incumbent on prosecutors to at least be aware when a charging decision we make today might lead to a conviction that would mandate deportation, leaving federal immigration authorities no discretion to exercise mercy.

We deal with this issue every day. You all no doubt know about the United States Supreme Court case Padilla v. Kentucky. In Padilla, a non-citizen defendant, a lawful resident of the United States for 40 years, pleaded guilty to a crime after advice from his lawyer that he need not worry about the immigration consequences of the guilty plea. In fact, his guilty plea made him subject to virtually mandatory deportation. The United States Supreme Court held that bad immigration advice from a defendant's criminal lawyer may constitute a violation of the Constitutional right to effective assistance of counsel, and could be grounds for vacating a conviction. In announcing the Court's decision, Justice Stevens wrote, "[t]he importance of accurate legal advice for non-citizens accused of crimes has never been more important… [D]eportation is an integral part – indeed, sometimes the most important part – of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes."

It will not be hard for you to imagine what has occurred in the wake of this historic decision: my office ─ which handles 110,000 cases a year ─ has received many petitions from defendants who pleaded guilty, often years ago, but who now seek to have their convictions vacated because, they say, their criminal lawyer at the time of the guilty plea gave them bad immigration advice.

My Office is in the process of examining these claims and dealing with each one on its

merits. But every day we continue to negotiate guilty pleas on our cases. What do we do now to prevent this problem from recurring as we go forward? How can I, as a District Attorney, without interfering with the attorney-client relationship, ensure that the defense attorney on the other side of the table is giving his or her client sound immigration advice?

Here is what we are doing: My Office places on the record and in open court, a statement warning of the possible broad immigration consequences of his or her plea during the plea process. We have no right to offer the defendant our legal advice, but we certainly have the right ─ and I think the responsibility ─ to do our part to ensure the defendant is entering into the plea apprised of the rights he or she is waiving, and we can better assess for ourselves whether the defendant is truly making an informed decision in pleading guilty.

We have talked a lot about immigration cases. But in any case we handle, the consequences of conviction and sentence can have devastating consequences for an offender, and even for innocent parties such as the defendant's family.
What impact will conviction have, years from now, on an ex-offender's ability to find a job? What effect will years of state prison have on a person's job skills, physical health, and mental health? And perhaps most tellingly of all, what impact does incarcerating many thousands of men have on the families they leave behind?

Many of these consequences are, as a defendant stands before the court, invisible to us. Because you never know the impact of the decisions you make, exercise the power humbly. Other consequences are clear to see – but the question is do we have the will and intelligence to deal with them.

I recently visited Bedford Hills Correctional Facility for women, in New York State. As I toured the facility, I asked the Commissioner of Corrections what I could do to help him meet the daunting tasks he faced. His reply was, if you can do only one thing, find a way to treat non-violent mentally ill offenders in the community, rather than sending them to my prison.

he Commissioner's remark identifies one of the most urgent issues we face in the criminal justice system. A recent report from the U.S. Department of Justice reveals that, nationwide, over one-half of state and federal inmates exhibit symptoms of mental illness, including approximately one-third with symptoms of major depression or mania, and approximately one-in-ten who report psychotic delusions. Those nationwide statistics were borne out by what I have seen at Bedford Hills and other state penitentiaries ─ men and women with acute
mental illness cycling in and out of prisons and city jails ─ punished for crimes they committed, but in many cases as a consequence of serious mental illness.

That is why I have proposed, and hope to have operational by the end of this year, a mental health court in New York County. Created in cooperation with New York's Office of Court Administration, this planned initiative will divert non-violent mentally ill

offenders from regular courtrooms to a special, designated court part. There, a mental health professional will evaluate the defendant, and under the guidance of a specially trained judge and in collaboration with defense counsel, we will seek to formulate a course of treatment tailored for the needs of the individual defendant. If we are successful in providing treatment that addresses and, perhaps, cures the underlying illness that caused the crime to occur, it will reduce the chance of re-offending. This makes us safer, and it is a fairer approach than merely warehousing the mentally ill.

The mental health court is part of a new perspective on criminal justice that uses "problem solving courts," not just to adjudicate guilt and mete out sentences, but to address the constellation of problems that lie beneath the surface in so many kinds of criminal cases.

What we have learned is that a one-size-fits-all approach to sentencing just doesn't work in these instances. For example, in a substance abuse part, or as it's popularly called, "drug court," we enter into a contract with a defendant promising that, if she completes a prescribed course of treatment successfully, her case will be reduced or dismissed outright.

But we have learned that each defendant presents a special challenge. Many in the addicted population also have been diagnosed with a mental illness, and so we have to find a program that can treat the addiction while providing mental health services. Others are homeless. Still others have medical conditions that require active treatment. Some have children who must be cared for when the parent enters a residential facility. Some women are due to give birth during their course of treatment. It is, frankly, more art than science to find the program that best addresses the needs of the defendant before the court, and it requires the most dedicated professionals to create treatment plans that work.

But the rewards are enormous. Some of our courts have graduation ceremonies ─ which I gladly attend ─ in which the graduates receive diplomas, a valedictorian gives a speech, and public officials congratulate the graduates on their achievement. Men and women, who not long before seemed doomed to live out a downward spiral of addiction and criminal offending, are reunited with their families, and are, sometimes for the first time in their lives, optimistic.

Even in these success stories, there are collateral consequences to prosecution, but some are very positive ones: addictions overcome, families reunited, lives restored. Oftentimes, it takes an arrest and a criminal prosecution to bring a team of professionals to focus on a person's addictions, illnesses, and needs.

In a better world, no doubt these services would be much more widely available, and many would be spared the anguish of entering the criminal justice system altogether. But by the same token, we hear time and again from defendants that they simply were unwilling to address their addiction or other problems until they had no alternative but conviction and incarceration.

The criminal justice system affords us many such "teachable moments." These, too, are resources we must not squander.

But what of the defendant whose case is not diverted, whose indictment or complaint is not dismissed? What happens when that ex-offender is released from jail or prison, and applies for a license or tries to find a job? A previous conviction can serve as a bar to future employment, and the offender enters that terrible cycle in which a conviction closes off possibilities for lawful employment -- which in turn leads to re-offending.

I won't pretend that this is an easy problem to solve. We face an economy in which many well-qualified applicants with faultless records justifiably complain they cannot find work. But there is an essential principle here that must not be overlooked. In New York, the law generally forbids discriminating against a job applicant on the basis of a previous criminal conviction, except where the conviction is specifically related to the duties and responsibilities of the job. But what good is this legal assurance, if the potential employer has access to the very information they are mandated by law to ignore? Even employers acting in good faith may have difficulty making decisions free of this form of discrimination.

I would like to explore a system in which criminal convictions are sealed, except in those circumstances in which the law says they may or must be considered. For instance, if an ex-offender is re-arrested, both my Office and the Court should immediately have full access to his or her prior record. If the ex-offender applies to the bar for admission, or seeks to be bonded, or wants to run a child-care facility, certainly the convictions should be unsealed, and the full record of the applicant fairly considered. But where the law specifically says the conviction should be ignored – including in many employment situations – shouldn't that record be invisible? In the age of the internet, in which many jurisdictions post their court dockets online, it is a truly daunting challenge to ensure that information required by law to be confidential remains confidential. My colleagues in IT tell me that making this a reality will be no easy feat, but it is an idea that we should explore if we are serious about reducing recidivism and bringing greater fairness to our justice system.

And everyone in the criminal justice system, especially including prosecutors, must go further to consider the full range of re-entry services that ex-offenders need to become, once again, productive members of society. I believe we may be the only prosecutor's office with an Executive Assistant for Crime Prevention Strategies, whom I have charged to devise, among many other things, a comprehensive set of re-entry proposals for my Office to adopt. And beyond that, as Co-Chair of a new Permanent Sentencing Commission in New York, I hope to be an advocate for adoption of sentencing laws with a horizon beyond a prison door being shut. Surely, if we are sending someone to jail, then after they have served out their punishments in prison, we have to support their re-entry to their communities, to assure ex-offenders don't become re-offenders.

But let me be honest: even if we divert every appropriate case into a treatment program

rather than a jail or a prison; even if we help restore ex-offenders to their pre-conviction status; even if we go the extra mile to provide services needed by ex-offenders as they make their re-entry into our communities; still there are going to be left a lot of people going to jail and prison. Still there will be lives interrupted and families separated. These will continue to be the costs of protecting our communities from violence and crime. We still need to remove from among us those who prove unable or unwilling to live within the bounds of the law. Yet, if we leave this symposium with a heightened sensitivity to the real costs of conviction and sentencing, then we will bring a new perspective to criminal justice. We will continue to examine our policies and continue to ask: are our decisions fair, and do our actions make our communities safer?

Since I took office in January, I have tried to recast our approach to prosecution to a more community-based approach. I have divided up Manhattan into zones, and assigned a named prosecutor to each zone, and charged that assistant district attorney with the responsibility of establishing direct relationships with the neighborhood leaders and police officers in each community. We have assigned analysts to keep us apprised of specific crime problems neighborhood-by-neighborhood, and even block-by-block. And we have forged database connections with the Police Department that give my lawyers real-time information about what is happening on the streets. The focus, in short, is to try to utilize everything we know about "what works" in law enforcement, so that we no longer see our role as just prosecuting crime, but as preventing crime. The measure of success should not be just on the number of convictions we achieve in the courtroom, but in our ability to affect long-term and sustained crime reduction by keeping ex-offenders out of the courtroom again. I hope to be judged on whether or not I succeed in this goal.

Because when we prevent crime, we don't just make our streets safer, we start to empty out our jails and prisons as well. Much has been written about the dramatic drop in violent crime in New York in the last fifteen years. But what has perhaps been overlooked is that there has, in recent years, been an equally dramatic drop in our prison populations and our jail populations. Fewer people are incarcerated in New York today than at any time in the past 24 years.

Together, these facts represent a turning point in the life of our communities. It is up to all of us to ensure that sound policies keep step with this trend.

One last thought: today's symposium, as you know, is named in honor of a legal giant and a civil rights hero: Wiley A. Branton. Not long after his service in World War II, Wiley Branton joined the Pine Bluff, Arkansas chapter of the NAACP, and worked in a voter registration drive. It did not take long before local authorities tried to stop him. He was arrested, and convicted of violating an Arkansas ordinance that prohibited the printing or distribution of ballots for the purpose of instructing voters how to vote.

Imagine, for a moment, that his conviction had prevented Wiley Branton from attending the University of Arkansas School of Law. Imagine that his application to the bar had been rejected because he was an ex-offender. Imagine, that Wiley Branton had not been able to represent the high school students seeking to integrate Central High School in

Little Rock. Imagine that the case of Aaron v. Cooper had never been brought, and never appealed to the U.S. Supreme Court. Imagine, in short, that the nation had been denied the services of one of the most talented and courageous lawyers of his generation. This would have been not just collateral consequences; it would have been a profound loss for the civil rights movement and for the progress of our nation.

In the spirit of Wiley Branton, then, let us join together in a common endeavor, by using the law, to bring fairness and safety to our communities.

Thank you.