

## Jeff Rakover Interviews Maurice Emsellem

### TRANSCRIPT

#### State Progress

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**J:** Hi, this is Jeff Rakover. I'm here with Maurice Emsellem who's the Policy Director with the National Employment Law Project and also the Director of the Second Chance Labor Project.

The National Employment Law Project is a nonprofit research and advocacy organization that specializes in [the] employment rights of people with criminal records.

So, I had a few questions for you about state practices and the general issue of employment barriers for people who are released from prison or who have [arrest] records or a criminal record. [The] first question I had for you has to do with the fact that the United States has the highest incarceration rates in the world and that 2/3 of released prisoners are rearrested and about half return to prison. What do you think are some of the broad, underlying causes of our problem of incarceration rates and recidivism rates?

**M:** Well, I think there's a lot going on there especially around prosecution of drug offenses. That is still a major issue for criminal justice enforcement. And what we find is that a lot of the folks who are getting incarcerated—a large percentage of them—are for disproportionately nonviolent crimes.

So, it's [about] the types of crimes that are being prosecuted. You also have issues of employment. And now, more and more, because of someone's record it makes it harder to find employment which then helps produce a cycle of crime. So, [these] issues are linked up ... . Despite the fact that there's relatively low unemployment today for the economy in general, it's a major issue for ... cities and elsewhere where there are large populations of people with records.

**J:** And studies seem to show that people released from prison who gain employment immediately or soon after release are more likely to stay out of jail. What are some of the barriers—and I know there are some barriers in the federal law and state laws—but what are some of the barriers that people who are reentering [communities] face?

**M:** Well, you're right on about the employment issues ... What the studies actually show [is that those] who enter either low-pay jobs or jobs with short job tenures don't necessarily end up staying crime-free and out of jail. But definitely those jobs that are better paying jobs, that have some longevity, those can produce major gains and significantly reduce recidivism. So, it's important to focus also [on] the quality of the job.

In terms of the barriers, we spend a lot of time on barriers in federal and state laws ... Our project is devoted to looking at those barriers in laws, especially in entry-level occupations, especially growing occupations in this economy, like health care, transportation [and] security ... that now are heavily regulated in terms of background checks. So, for example, for private security, most states, 40 or so, require background checks including an FBI background check.

And in most of the states—30 or so—if you have a felony record of any kind it's a lifetime barrier to employment in that occupation. So, the laws have really developed. They've expanded to lots more industries, industries that used to be open to communities of color and people with records, like transportation and trucking ...

And, in our work, we focus ... [on] trying to develop a more rational system, a more effective system of background checks that balances the public safety concerns with opportunities for employment for people with

records, and really those are public safety issues. The more you deny [people] with records jobs, the more public safety risk you've created.

**J:** In what senses would you say that creating these major barriers to employment is actually bad for public safety?

**M:** Well, let's just take some examples. We've been helping out a lot of workers who are now subject to background checks under the USA Patriot Act. And they're transportation workers—[those] who drive trucks for a living. 2.7 million truck drivers now have to pass a TSA background check. If they have a felony that is more recent than seven years old, you can't drive a truck in this country and haul hazardous material. Most every truck driver has to have that license that allows them to haul hazardous material.

So, we represent some workers who are going through the [waiver] process with TSA that is included in the law, that if you have one of these disqualifying offenses, you can appeal that and demonstrate that you're not a security threat ... So we've helped several workers who were by no means any terrorism security risk, they had a felony usually for a serious drug offense, but they'd been working for several years, they'd been out of prison. But if you deny them this license, and took this good job away from them—often union jobs, even—there's a good chance they would have a hard time finding another job, and there's a good chance that there would be an opportunity there to go back to crime, if that's all the other options ... available to them.

So it's [very] concrete ... You find that job after prison ... that job means a whole lot to you and it can [make all] the difference between whether you stay out of prison or be a productive, law-abiding citizen.

**J:** And, to that end, what are some of the campaigns that advocacy organizations like your own are trying to advance in either states or localities? What are some of the goals that you are trying to achieve in terms of legislation or court cases or things to that end?

**M:** ... It has been a very exciting and dynamic time [these] past several years around this issue of reducing employment barriers for folks with records.

There's a lot of effort to take a serious look at how state laws are set up to deny people with records jobs. Literally, to inventory those state laws and try to create a more rational system that also includes basic protections like age-limits on offenses.

[Removing the idea of a lifetime barrier to employment involves] ... creating waiver procedures for folks who may have a record but they're denied [the] opportunity to produce evidence that shows [their] individual situation—that they've done what they need to do to clean up if they have a drug habit [and that they've done what they need to do] ... to find employment, to stay employed. All those things that really make a difference in someone's life.

[Most laws] deny that opportunity ... [So] ... if you have a record, that's the end of the road. We're trying to create a more fair system [that also rewards and promotes rehabilitation] ...

Florida under Governor Jeb Bush [issued] an Executive Order a couple years back requiring all the state agencies to document their practices, produce data that demonstrates the relationship between offenses and the particular areas of employment, to create more fair appeals procedures and all that. So that's one area.

[At the local level, many cities are taking a serious look at their own hiring practices to be model employers] ... Boston, Chicago, San Francisco, the Twin Cities—[have] created new policies that say they're not going to ask about a criminal record on the job application—they call these "ban the box campaigns"—and instead leave that question until later in the hiring process, when you've identified the finalists for the jobs. So the idea there is two-fold. Number one, not to discourage folks from applying for jobs—tree-trimmer jobs, other city type jobs where they very well may qualify for the job but for their record. And then, [when necessary, they still protect] ... public safety by conducting that background check at the end of the [hiring] process. So the idea is to reduce discrimination and encourage folks with records to apply.

And when you talk to city officials, human resources [directors] in these places where they've adopted this policy—for them, it's really a win-win situation because they're all about identifying the most qualified candidates for the job, and they don't want to artificially eliminate folks from consideration especially in big

cities where there are large populations of people with a criminal record. [So, we're working hard to promote these model city hiring initiatives, including the Boston ordinance which applies as well to city contractors] ...

The other area we haven't talked [about] is [the role of] private screening firms [that] conduct background checks for employers ... [Eighty percent] of the largest employers now conduct background checks and that's usually private screening firms that do it—firms like ChoicePoint and others. [They] are regulated by ... federal consumer protection laws, [that limit the type of information that can be reported to employers]—whether it's arrest information, old arrests, that sort of thing—[and impose requirements on] the accuracy of the information that can be produced. [Because the federal law is so under-enforced by the FTC, advocates are filing more lawsuits and complaints to require more compliance by this incredibly profitable and growing industry] ...

[Also], there are many states that are much more clear now about limiting access to old arrest records ... The mentality dates back to a criminal justice model of screening folks. So you get the rap sheet and you want to know everything about the person. But really this is not a criminal justice background check, this is a background check for employment screening purposes. So there needs to be more of a relationship, more of a connection, between the kind of information you're asking about the person's record and that particular job. So, there's a lot of work in states to be more clear about the types of records [that are considered] ...

And, lastly ... on the employer side, there's some interesting work going on in Illinois ... to try to create protections for employers against liability ... [related to employment of people with criminal records] ... [This concern] is often overstated—the idea that you're going to be sued if you hire somebody with a record who later does bad things on the job. And there's some good work going on in these states to create laws that protect employers against that kind of liability when folks can produce information that says they're not a security risk, they've been rehabilitated.

So there's [a] whole lot going on [both in the states and at the federal level] ... And really that's what's very exciting about this. Groups working, legislators at all levels very turned in to the issue, and looking for effective handles to promote employment of people with records.

**J:** And if you were talking to a state legislator or, say, a city council member in a state where the protections for people who had criminal records or arrest records were not very good, and they asked you—where do I start, this is an issue I'm interested in introducing some legislation around, or starting a campaign around ... what are some of the some of the initial thoughts that come to your mind given the really large number of strategies that are already at play?

**M:** There are some very good resources I should mention. There's the National HIRE Network, that has a great website with a lot of models of what different states are doing. [There are] some great reports—the Reentry Policy Council has put together a [major] report, very comprehensive, looking at employment and all the other issues that come up for people with records, with lots of policy recommendations formed with policy makers who are experts in these fields ...

What I would say—if you're interested in the employment side of things is to ... start by trying to get a handle on the way that the policies are set up either at the city level or the state level, even the federal level, to deny people with records jobs, just to have a basic understanding of how broadly the laws now deny folks with records employment. And from there, it's not a lot to find different handles to get at that issue. Really it's [just] about creating a more fair process to get at the more extreme barriers to employment.

Sometimes it's not easy, sometimes you're up against public safety arguments [which is a] major concern to most policymakers, [the] general public ... and [groups] like [ours] that work on those issues. We're talking about jobs where [it] may be school employees, security jobs, others that do involve safety issues. [So] it's important to create a rational system but also a fair system ... And, as I said ... there's no shortage of very good ideas once you have a handle on the scope of the problem in your community.

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