



NEW YORK STATE BAR ASSOCIATION

# State Bar News

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## Mass incarceration's impacts reach beyond those behind bars

By Christina Couto

Incarceration rates in the United States are so high that one in four American women—and one in two black women—have an incarcerated loved one. This causes “overwhelm-

ing” harm to communities, particularly communities of color, according to panelists who spoke as part of the President’s Summit program, “Race, Slavery and Mass Incarceration,”

on January 24 in New York City. “When we talk about the impact, it’s not just the people who are behind bars, but whole communities that are crushed, that are oppressed by this system,” said Chantá

***“I want to say that I am angry and I’m angry because none of this is new.”***

**—Jeffrey Robinson**

Parker, special counsel for new initiatives at the Innocence Project. “And when we look at the children—the number of children who have incarcerated parents is skyrocketing.”

Clark, who grew up in New York City, said she saw first hand the

### Poverty

Poverty plays a role, explained Bronx District Attorney Darcel Clark. “I don’t think that you can separate the high rates of incarceration without looking at the high rates of poverty in these communities as well as the lack of education, employment and housing opportunities,” she said. “So they go hand in hand, and when you have factors like these, it’s going to lead to an environment that leads to crime, because there’s desperation in our communities.”

Clark, who grew up in New York City, said she saw first hand the

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**Effects of mass incarceration**—Chantá Parker of the Innocence Project discusses the impact mass incarceration has on communities, during the President’s Summit program “Race, Slavery and Mass Incarceration,” held on January 24 during Annual Meeting in New York City. Panelist Darcel Clark, Bronx district attorney, is center and moderator Hilarie Bass is at far left. Jeffrey Robinson of the American Civil Liberties Union, not pictured, was also a panelist. [Photo by Jacques Cornell]



**Gold Medal**—Civil rights litigator Roberta A. Kaplan speaks at the President’s Dinner in New York City on January 27, where she was awarded the State Bar’s highest honor, the Gold Medal. [Photo by Steve Hart]

## ‘Extraordinary’ civil rights litigator Roberta Kaplan honored with Gold Medal

By Christian Nolan

When Roberta A. “Robbie” Kaplan was just 3 years old, her mother “kvelled” that Robbie liked to talk a lot.

Even her grandmother wrote in a July 1969 letter to Robbie’s uncle, who was serving in the Peace Corps in India at the time, that “Robbie is a doll and bright as a whip. I asked her to please stop talking for 15 minutes.” To which she responded, “I really can’t, grandma, I’m a big talker.”

“I liked to talk,” said Kaplan. “And I had heard somewhere that lawyers actually get to earn a living by talking a lot. So at the ripe old age of 12, in the

suburbs of Cleveland, Ohio, I plotted out the rest of my life: I would move to New York City and become a lawyer.”

But Kaplan is no ordinary lawyer. She’s been a difference maker.

### U.S. v. Windsor

Kaplan is best known for representing Edith Windsor before the U.S. Supreme Court in *United States v. Windsor* (2013), which held that the Defense of Marriage Act (DOMA) violated the Constitution by barring the federal government from recognizing legal same-sex marriages and denying these couples

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### Annual Meeting 2018

Were you seen?

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Dialogue in D.C.

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## 2018 President's Summit: Mass incarceration impacts families, communities

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impacts of mass incarceration, which were detailed in the movie, "13th," the award-winning documentary by Ava DuVernay, which was screened prior to the panel discussion.

"I saw crimes happening, I saw drugs and the devastation that it can bring, and I saw people being arrested," Clark explained.

"And you know the impact of it is that people will be taken away and still are being taken away in large measure, being incarcerated, which leaves a void in the community and we never get to recover."

The film "13th" explores how the wording of the 13th Amendment effectively created

a second institution of slavery and is acknowledged as a basis for the mass incarceration of people of color in the United States.

In addition to mass incarceration, the film explores the issues of implicit bias and wrongful conviction.

These issues, together with the imposition of fines and fees and other punitive measures, have resulted in the incarceration of many men and women of color.

"This film colorfully and powerfully reminds us where we have come from as a nation and forces us to come to terms with how far we still have to go, and as so vividly laid out for us by activists, politicians, histori-



**All-star panel**—President Sharon Stern Gerstman, center, stands with members of the President's Summit panel, "Race, Slavery and Mass Incarceration," on January 24 in New York City. From left, Chantá Parker, Darcel Clark, Jeffrey Robinson and Hilarie Bass. [Photo by Jacques Cornell]

ans, and previously incarcerated men and women in the film, we have a very long way to go," said moderator Hilarie Bass, president of the American Bar Association.

"Bail set without consideration of the financial circumstances of the defendant can result in the detention of the poorest rather than the most dangerous or those that actually pose a threat as flight risks as bail was initially intended to do," Bass said.

"Minor infractions such as traffic violations often can result in fees that spiral into thousands of dollars and that can lead to unnecessary incarceration for individuals who are simply unable to pay."

(See related article on bail reform on page 3).

### Understand how we got here

"I cannot imagine anyone in this audience not being incredibly moved and concerned that this is our justice system," said Bass. "Nothing is more important to me than making progress on these issues."

Yet Bass and the panelists agreed that nothing is going to change until the past is understood.

"I want to say that I am angry and I'm angry because none of this is new," said Jeffrey Robinson, deputy legal director of the American Civil Liberties Union.

"We're all acting like, oh my God we've just

figured this out . . . think about America's history because that film we just saw [13th] is a nice slice of it, but we are so desperate to deny what our history is that we close our eyes and come up with excuse after excuse after excuse."

"And so if there is one thing that I say today—that I'm asking you to think about—is asking you to deal with our true history about race in America," Robinson said.

"If we don't recognize and deal with the history that has brought us to this point, then we won't solve it."

Robinson encouraged attendees "to be very uncomfortable as you walk out of here

today, because it's when people are in states of discomfort that they are willing to try solutions that have not been tried before."

As for prosecutors distinguishing between those who should be incarcerated and those who should not, Bass questioned Clark how best to balance it. "I think the most important thing is that we have to understand that each person who is accused is an individual and, as prosecutors, we need to look at things in a way that it is no longer just a name on a file," Clark answered.

"That's a person, that's a family behind that." ♦

Couto is NYSBA's State Bar News editor.

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### Fact check

State Bar President Sharon Stern Gerstman created the Task Force on School to Prison Pipeline in 2017 to examine the policies and laws that have contributed to the United States' large prison population and the disproportionate incarceration of people of color. Findings of the task force are expected to be presented in a report later this year.