HEARING ONE

COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS

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BEFORE: Pamela J. Walker, CSR (CA)
Notary Public, State of Florida at Large

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The Hon. John J. Gibbons
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The following proceedings were had and taken:

MR. KATZENBACH: Good morning. First of all, let me say how very pleased we are to be in the State of Florida and the Tampa Bay Area. The Commission has been warmly welcomed by state and local officials, community organizations, networks of concerned citizens, the media, and by all of you, indeed everybody, and that’s very encouraging. It’s encouraging because the problems we have to explore or
are here to explore - dangerous and even deadly conditions in correctional facilities - are not someone else's problems, they're our problems. They're Florida's problems, they're New Jersey's, New York's, California's, every state. They're the nation's problems. When a prison environment becomes dangerous or abusive, everyone in society suffers: There are those who are incarcerated, the men and women who work there, their families, their neighborhoods, the towns, the cities that prisoners and officers return to, whether at the end of a sentence or at the end of a shift.

There are serious problems in at least some of our prisons and jails, but right now our knowledge about those problems is based on impressions, anecdotes, and the relatively few high profile incidents and court cases that make the news. These individual stories are important -- and you'll hear moving personal accounts of violence and abuse later this morning -- but stories in isolation cannot tell us whether such problems are widespread, are highly prevalent in any single place or nationwide. Over the coming year, the Commission will continue to bring individual stories to light. We will also work to build on those anecdotes, gathering whatever evidence we can find and, I expect, make a strong case for better recordkeeping and transparency as a part in solving the problems. And we aim to work closely with corrections professionals
We have to remember that the majority, the great majority of corrections officers and administrators are dedicated, well intentioned, well-trained professionals whose performance -- often under extremely different circumstances -- usually equals their high intentions. But the admirable performance of the many obviously cannot be an excuse for ignoring the troubling or, in some cases, criminal actions of the minority of officers and administrators. We don't know the size of that minority. We don't know which problems are most common, where they are likely to occur, why and when. We don't know why well meaning individuals sometimes do awful things or fail utterly to uphold their duty. In short, we -- and when I say "we," I mean all of us, the American public -- don't know enough about what happens behind bars to the estimated 13 and a half million people who are detained annually in the United States. Nor do we know enough about the pressures on the 750,000 Americans who spend their days and nights working in our nation's prisons and jails and the dangers they face through inmates every day.

I've said the Commission will work with corrections and professionals at all levels, and we already have some enthusiastic partners. Three of them were so convinced of the merits of this inquiry that they joined the Commission. We have Gary Maynard, a 34-year correction veteran, now Director of Corrections in Iowa, and President-Elect of the
American Correctional Association; Timothy Ryan, Chief of Corrections in Orange County, Florida, not far from here, and a Past President of the American Jail Association; and we have Mark Luttrell, Sheriff of Shelby County, Tennessee, and formerly a warden at three federal prisons.

Other experienced corrections professionals are with us in Tampa as witnesses, and they'll testify later today and tomorrow. One of them is Ron McAndrew, former warden of a maximum security prison in Florida. You'll hear Ron describe some frightening, violent encounters and also patterns of degradation and physical abuse -- what he calls the "valleys" of his career and profession. But you'll also hear him define the "peaks" of that same career -- friendships, loyalty, honor -- and you'll hear him recommend the corrections profession -- and let me quote him here -- "to anyone of any employable age seeking a challenging and rewarding career path."

It's very difficult, but perhaps also a sign of wisdom and maturity -- and I think I can say maturity, even my grandchildren would acknowledge that in me -- to embrace and learn from life's contradictions. It's my personal ambition that this year-long inquiry and national discussion will be marked by that kind of wisdom so that we can reach a common understanding of the most serious problems in our nation's prisons and jails and be of real service.
MR. GIBBONS: Good morning.

I have to agree with my co-chair that it's a pleasure to be here today in Tampa, Florida, for the first meeting of the Commission on Safety and Abuse in American prisons.

Nick talked about the enthusiastic support the Commission has received from so many in the corrections field. And I want to build on that comment by emphasizing our commitment to an inclusive approach and to express my appreciation for the broad array of partners and allies that we are attracting to this Commission's work.

We have an extraordinarily diverse group of Commissioners, hailing from a dozen or so different states. There is tremendous diversity in their backgrounds and into their experience as well.

To single out just a few, they range from Iowa Corrections Commissioner Gary Maynard, whom Nick mentioned earlier, to Stephen Bright, a well known and admired advocate for the rights of prisoners, to the Honorable William Sessions, former director of the Federal Bureau of Investigation and former United States District Judge, to Saul Green, a former United States Attorney. They include also Ray Krone, who brings the perspective of an inmate who spent more than a decade in prison, a good part of it on death row.
before being exonerated, to Pat Nolan, who heads the Justice Fellowship, the policy arm of Prison Fellowship Ministries and to California Senate Majority Leader Gloria Romero, whom I hope will be able to bring the work of the Commission directly to bear on her ongoing efforts to reform the enormous California corrections system.

We have been equally aggressive in seeking diversity among the individuals we've invited to testify at this first public hearing, and thus to inform our inquiry both by their testimony and in other ways. You will hear from corrections veterans, from former inmates, from the Inspector General of the Department of Justice who oversees all federal prisons; from an attorney who serves in a similar role for Los Angeles County; from a journalist, a researcher, and from the Associate Director of the American Civil Liberty Union's National Prisoners Rights Project -- and that's just today's witnesses. Throughout this hearing you'll hear moving personal stories and broader expert characterizations of the corrections system that we've come together to study.

The commission is the beneficiary of extensive volunteer behind-the-scenes support. It is funded partially by private foundations, but we could not hope to complete our work without significant support of several major law firms that are generously providing...
pro bono legal assistance and even donating office
space for our headquarters in Washington, D.C.
Approximately a dozen law firms -- and indeed the list
keeps growing -- are working alongside the Commission's
staff -- and in some cases collaborating across
firms -- to gather information, to identify witnesses,
and to help us understand the breadth of the issues
raised by our inquiry. Even the service of recording
and transcribing this first hearing have been donated.
And we have universities that have offered to host
subsequent hearings and federal lawmakers who are eager
for our findings.

Now, why are we invested in this inquiry?
Well, in my lifetime, the prison and jail
population in this country has mushroomed to a size
beyond my wildest imaginings, and most of that growth
has occurred over the last decade.

As Nick mentioned, 2.2 million are incarcerated on
any given day and an estimated 13.5 million persons are
detained in the United States over the course of a
single year.

Much of today's testimony will paint a picture of
life in prison that doesn't fit with the core values
of our democratic society and that, therefore, should
trouble all Americans. Given the enormous number of
people incarcerated, we need to understand whether such
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problems and abuses are isolated or are widespread. It's clearly time for the study that's been undertaken by this commission.

I've spoken about the size of the United States prison and jail population, and Colonel David Parrish of the Hillsborough County Sheriff's Department who is here this morning knows firsthand the challenges of running a large facility. He's the Commander in charge of two jails here in the Tampa area that together hold more than 4600 people on a typical day and that holds tens of thousands over the course of a year. Now, personally, I wish there were far fewer people incarcerated across the country -- and I think perhaps Colonel Parrish agrees with me. But as a jail administrator, he can't control the number of people in his jails. He can only control how they're treated once they're detained. I'm pleased to introduce Colonel Parrish and to look forward to hearing his perspective on how to run a safe and humane correctional facility.

Colonel Parrish --

COLONEL PARRISH: Good morning, Commissioners.

(Several Commissioners respond with "good morning.")
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America's jails and prisons.

This Commission is about to undertake a year-long analysis of conditions and practices in America's jails and prisons, and to that end I'm very pleased that you're holding your first hearing in Tampa. Especially so because it gives us an opportunity to let you see how a large jail system can meet the challenges of processing over 70,000 arrestees in a year and holding more than 4600 on a typical day. And I'm especially pleased that some of you were able to find the time last night to take a tour, see firsthand exactly what I'm talking about. And just let me reassure you that throughout your stay here we're going to make that same opportunity available. So this evening we'll have a chance to do that at the close of today's hearing and tomorrow after the close of the final hearing. If your schedule permits, I encourage you to take the time to go through our tour.

I really intend to provide you with factual information in support of my comments. It's based on experienced gained in building and operating over 1.5 million square feet of jail space.

For the record, my professional background in field of corrections includes 31 years with Hillsborough County Sheriff's Office; 24 of those as the Commander of a jail system as I indicated, with a current ADB of more than 4600 inmates. I'm a graduate of the 119th Session of the FBI National Academy and

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past president of the American Jail Association and a past board member and treasurer of the American Correctional Association. And I currently serve as a member of the National Institute of Corrections Advisory Board and I was appointed by Attorney General Ashcroft.

The public's perception of corrections is based largely on what's offered by the entertainment industry, television and movies. Additionally, the average person -- the average citizen makes no differentiation between jails and prisons, that's really my pet peeve, and we need to differentiate between the two. The terms are used interchangeably. In fact, they're only marginally similar. Jails are primarily pretrial detention institutions operated by counties, usually Sheriffs or municipalities. They're characterized by short stays and very high turnover.

America's 3,300 jails process more than 12 million prisoners annually with more than 650,000 held in custody on any given day. By contrast the, prisons house inmates generally for terms of a year to life. They process far fewer inmates yearly than do jails, but they hold them for longer periods of time. They're operated by states and the federal government. And the national average daily prison census is well in excess of 1.3 million now.

I want to talk to you about the Hillsborough County Sheriff's Office jail system and share with you how we've addressed issues locally. In Hillsborough...
The problems that the Commission on Safety and Abuse in America's Prisons was created to study and have been addressed systematically through three initiatives, and they are: Direct inmate supervision, professional staff development, and compliance with accreditation standards. Let me take each one of them individually.

First of all, direct inmate supervision. In most traditional jails inmates control about 90 percent of the building, all the housing area. And the staff controls the hallways and the control rooms, ten percent of the building. Officers spend the majority of their time responding to problems and assaults after the facts. About 20 years ago the Sheriff's Office explored direct supervision as a solution to the age-old problem of being reactive, we wanted to be proactive. In committing to this concept, we were able to design a facility where we run the whole jail not just the hallways and control rooms.

Inmate housing areas were separated into 94 units or pods of 64 beds each supervised full time by a detention deputy. Now, let me make it very clear, direct supervision does not mean supervising through the glass or the bars. Direct supervision is where the officer is face to face with those inmates. I equate it to the teacher in the classroom no bars or glass between them. The podular-shaped units greatly improved sight lines, thereby making it more difficult
for inmates to commit infractions without being
detected. The direct interaction between staff and
inmates dramatically reduces vandalism, assaults, and
suicides. The deputies' constant physical presence
assures the inmates that he or she is in charge, not
unlike the teacher in the classroom.

Now, 90 percent of our jail system's capacity is
general population, pods or dormitories. Ten percent
is confinement housing for inmates who are noncompliant
or fit into one of several special management
categories such as protective custody, administrative
confinement or psychiatric observation. And basically,
that ten percent provides the leverage that makes
direct supervision work throughout the rest of the
system.

A proper classification system is essential to
ensure that all relevant data is collected and
evaluated prior to making housing and program
decisions. The Hillsborough County Sheriff's Office is
one of three agencies nationwide to help the National
Institute of Corrections develop the objective
classification system back in the 1980s. It's being
used all over the country today. The objective
classification system is finally based -- primarily
based on behavior, not necessarily charge. The
facility will make sure you stay there. Then if you
behave, you can go into direct supervision. It doesn't
mean just because you're charged with a serious crime
you have to be placed in lockdown. The direct
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supervision is recognized by progressive jail administrators as the most practical way to build and operate a detention facility. Direct supervision jails are more staff efficient and cost effective and they're safer than traditional jails.

The second topic is professional staff development. Properly trained and qualified staff are critical to the effective operation of a direct supervision facility. Officers have to communicate. They've got to have good interpersonal communication skills. It isn't their size that makes them successful. They have to function as supervisors not custodians, and the qualifications for our detention deputies was the same as those for all law enforcement deputies, they both go to a state mandated recruiting academy but are certified for different career paths.

Just as other professions have certification and licensing programs that recognize continuing education or advanced standing, correction professionals now have similar programs. I mean, the American Jail Association has a certified jail manager program and will soon offer a certified jail officer's status. The American Correctional Association offers several levels of proventing from certified correctional officer through certified correctional executive. In each case, extensive application documents must be completed to demonstrate the candidates having professional and educational
background and leadership experience where applicable to sit for the certification examination. And certification is valid for a period of four years, after which time recertification is contingent upon proof of extensive continuing education. Today there are 300 certified jail managers in the United States. I sat on the commission that helped create that for the American Jail Association.

Then we have compliance with accreditation standards. Hillsborough County Sheriff's Office recognized the benefits of accreditation in the early 1980s, as well as the need to make changes within the agency consistent with the philosophy of accreditation. It's really a process not an event.

The American Correctional Association and the Commission on Accreditation for Corrections administer the only national accreditation program for all components of juvenile and adult corrections. Their stated purpose is to promote improvement in the management of correctional agencies through the administration of a voluntary accreditation program and the ongoing process of developing and revising relevant standards.

I'm going to read to you something that comes directly from ACA as to the purpose, but overly simplified. I just want to tell you that accreditation is valuable because it makes you prove that you do what you say you do. You can have all the SOPs in the
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world, but you actually have to follow them and you
have to have somebody independent to come in and tell
you that it's being done properly. The accreditation
program offers agencies the opportunity to measure
their operations against national standards,
correct deficiencies, and improve the quality of
commercial programs and services.

According to the ACA Performance-based Standards
for Adult Detention Facilities, the 4th Edition, the
recognized benefits from such a process include
improved management, a defense against lawsuits through
documentation and a demonstration of a good faith
effort to improve conditions of confinement, increase
the accountability and enhance public credibility for
administrative and line staff. A safer and more humane
environment for personnel and offenders, and the
establishment of measurable criteria for upgrading
programs and personnel and the physical plans on a
continuing basis. Through documentation and record
keeping -- thorough documentation and record keeping is
an integral part of an accreditation program

The first facility in Hillsborough County to
receive accredited status was the Morgan Street Jail,
a linear, traditional, intermittent surveillance
facility built back in 1964. The accreditation process

led to more progressive ideas and jail design and
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operations. And the 1711 bed Orient Road Jail opened in 1990, and as the then largest direct supervision facility in the nation. And then the Falkenburg Jail opened in 1998 with a capacity of 768, expanded in 2003 to its current size of 2304 beds. The unique feature of this facility is the open-dormitory style designed for general population inmates, not trustees and misdemeanors, it's for everybody. All facilities are accredited by the ACA, Florida Corrections Accreditation Commission and The National Commission for Correctional or Health Care.

According to the ACA, there are 1,263 accredited correctional facilities in the United States. Of that number a hundred and 20 are jails.

Let me wrap up with a few comments. Direct supervision facilities are less costly to construct and operate than traditional jails. They provide superior security and control since inmate movement outside the unit is limited. They allow staff to manage the entire facility not just the control rooms and catwalks; thereby providing a safe environment for staff and inmates. Something a lot of people forget is the people who are really locked up for life are the deputies, they're there for 10, 20, 30 years. Our average length of stay is 24 days to keep them in jail, anyway. You need to have a safe environment for the staff.

A side benefit of accreditation is that
physical plant standards have been universally adopted by architects in correctional facility planning. Even newly constructed facilities not accredited are built to current ACA standards. It's unlikely that an architect today would put his or her name on a project that did not meet the minimum standards due to a liability involved.

Proper facility design is important, but properly trained staff is critical to the successful operation of any correctional facility. In the words of Austin McCormick, "If only I had the right staff, I could run a good prison in an old red barn." Now, I always change that, that I could run a good jail in an old red barn, but -- it's quotes from William Nagel's book, "The Little Red Barn, a Critical Look at the Modern American Prison," 1973.

Specialized training in the nine principles of direct supervision is, in fact, the critical element required to run an effective, safe, and secure correctional facility. Jail operations have a history of being off limits to outsiders. Such is not the case with accredited facilities, and certainly not here in Hillsborough County. Compliance with accreditation standards is a measure of how jails do business. It does not make them perfect, but an accredited jail is an example of a professionally run operation with an interest of some security, life safety, and sanitation.

The Hillsborough County Sheriff's Office encourages jail tours and is open to the media and the
public for a firsthand examination. Last year we hosted 326 tours with 4,063 participants. I've always said that if I could get all 1,100,000 people who live in Hillsborough County to come through for a tour of our jail system most of my problems would go away because then they'd understand.

Please be assured the Sheriff's Office will continue to remain a resource for the Commission on Safety and Abuse as it moves forward with its study over the next year. Additional assistance is available from three other outstanding organizations: They're the American Jail Association, The American Correctional Association, and The National Institute of Corrections.

I've provided some backup material for you which I'm sure Alex will get to you. One, for those of you who took the tour, it's already here, a little brochure about our jail system. An article, not just because I wrote it, but it's Cost Effective Jail Design and Operation, and it's the right way to build and operate a jail for the puritan corrections today. And then The National Institute of Corrections provides some outstanding resources. This one called Jail Resource Issues, What Every Funding Authority Needs to Know. You can read it in 15 minutes and it puts everything in perspective. There's a companion piece, there's video that's 22 minutes long, "Beyond the Myth, the Jail in Your Community." I encourage you to take
MR. KATZENBACH: Thank you very much. It's most interesting and a very good beginning.

COLONEL PARRISH: Thank you, sir.

**BREAK**

ACCOUNTS OF LIFE IN PRISON

MR. GIBBONS: The witnesses are Garrett Cunningham, Judy Haney, Scott Hornoff and Ron McAndrew.

MR. CUNNINGHAM: Good morning, ladies and gentlemen. I'm honored to be here today to testify before this most --

MR. GIBBONS: Move that microphone a little closer to you.

Thank you.

MR. BALCORTA: Why don't we just stop for a second so that we can really introduce you.

On behalf of the Commission on Safety and Abuse in America's Prisons, I want to welcome each one of you to the first of four hearings in Tampa, Florida. Before I introduce each of you, I want to thank you for your willingness to come before the Commission to discuss
your very personal and moving experiences to come
before this Commission with your experience in jails
and prisons and public.

I would just like to make the audience aware that
because of the nature of the testimony of these four
witnesses, each of them will be allowed to speak for up
to 15 minutes, at which time the Commissioners will ask
questions. For the rest of the panels today, witness
remarks will be limited to five minutes and to be
followed with questioning.

Today's panel, the first panel of witnesses
consists of Garrett Cunningham, Judith Haney,
J. Scott Hornoff, and Ron McAndrew

DR. DUDLEY: Our first witness is Garrett
Cunningham. Mr. Cunningham was released from the Texas
Department of Criminal Justice in April of 2004,
however, while in prison he was sexually harassed and
raped by a correctional officer. Despite
Mr. Cunningham's complaints to prison officials the
officer was never investigated or punished for the
abuse. The same officer went on to assault other
prisoners and was finally convicted of sexual contact
with an incarcerated person. Mr. Cunningham has since
founded and runs Pens, Friends & Services, which is an
organization that provides resources and information to
prisoners.

MR. CUNNINGHAM: Good morning, ladies and
gentlemen.
MR. CUNNINGHAM: I'm honored to be here today to testify --

MR. SESSIONS: Will you pull the mike a little closer to you? We cannot hear you.

MR. CUNNINGHAM: I'm sorry.

MR. SESSIONS: Thank you.

MR. CUNNINGHAM: Good morning, ladies and gentlemen. I'm honored to be here today to testify before this most important Commission. My name is Garrett Cunningham, and as a former prisoner within the Texas Department of Criminal Justice, I have firsthand experience with the violence and abuse that takes place within America's prisons.

In 2000, I was housed at the Luther Unit in Navasota, Texas. While at the Luther Unit, I worked in the prison laundry under the supervision of Corrections Officer Michael Chaney. After just a few weeks of working with Officer Chaney, he began to touch me in a sexual manner during pat searches. At first, I thought it was an accident, but as it continued every day I soon realized his inappropriate touching was intentional. He also stared at me when I was showering and made sexual comments.

I was afraid to tell anyone about my problems with Officer Chaney, but in March 2000, I finally went to the unit psychologist and told him about the touching and crude comments. He asked me if I thought it was an accident and I told him it could not be because it
happened all the time. He advised me to stay away from Chaney.

The prison psychologist's advice did nothing to prevent the continuing sexual harassment, so a month later I decided to go to the prison's administration for help. I approached the assistant warden and his second-in-command officer and told them about Chaney's sexual comments and sexual touching during pat searches. They told me that I was exaggerating and that Chaney was just doing his job.

I eventually confronted Chaney and told him to stop touching me. He only got angry and continued to harass me. I tried again to get help from prison administrators, but I was told to keep my mouth shut.

Officer Chaney eventually raped me in September of 2000. On that day, I had just finished my job at the prison's laundry and began walking to the back room in order to take a shower. Suddenly, Chaney shoved me, knocking me off balance. I screamed and struggled to get him off me, but he was too big. Officer Chaney weighed about 300 pounds. I'm 5 feet 6 inches tall and weigh about 145 pounds.

While I struggled, Chaney handcuffed both my hands. He then pulled down my boxers and forcefully penetrated me. When I screamed from terrible pain, Chaney told me to shut up. I tried to get away, but I could barely move under his weight. After it was over, I was dazed. He took me to the showers in
handcuffs, turned on the water and put me under it. I was crying under the shower and I saw blood running down my legs.

When he took the handcuffs off me, he threatened me. He said if I ever reported him he would have other officers write false disciplinary cases against me and I would be forced to serve my false -- have other officers write false assault cases against me and I would be forced to serve my entire sentence, or be shipped to a rougher unit where I'd be raped all the time by prison gang members. He also warned me not to say anything to the officials I had complained to before, because they were his friends and they would always help him out.

At first, I didn't tell anyone about the rape. But in October 2000, I was so afraid of being raped again that I told the unit's psychologist that Chaney had raped me. He moved me to another job with a different supervisor and told me that if anyone asked why my job was changed, I should say that I wanted "a change of scenery." A few days later, I was given a new position in the laundry, right next door to where Chaney worked. I continued to see him regularly and he continued to touch me inappropriately.

I wrote the Internal Affairs Department two times
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about Chaney's inappropriate touching. They never
addressed my concerns and failed to take the
precautions to protect me. I was too scared to file a
written complaint against Chaney because I feared
retaliation from prison officials. Instead, I
requested a private meeting with an Internal Affairs
investigator. I received no response to my request and
Chaney was never punished for assaulting me.

Officer Chaney went on to sexually harass and
assault other prisoners. One year later, Nathan Essary
began working under Chaney's supervision in the same
laundry where I had previously been assigned. On
several occasions, Nathan was forced to perform sex
acts on Chaney. Fortunately for Nathan, he was able to
collect Chaney's semen during two of the attacks and
DNA testing positively linked the samples to Chaney.
Chaney finally resigned from the Luther Unit in January
2002 when he was indicted for his crimes against
Nathan Essary. Last month, he pleaded guilty to sexual
contact with an incarcerated person. He will serve
no time in prison.

A civil lawsuit brought by the ACLU's National
Prison Project on Nathan Essary's behalf settled in
December 2004. Nathan received money damages from
Chaney and from the State of Texas for violating his

constitutional rights.

For me, I have found no justice. While I was in
prison, the fear of retaliation by staff or other
prisoners haunted me and prevented me from reporting
the rape right away. My fear led me to attempt suicide just to escape the pain of my situation. Because my previous complaints to prison officials resulted in sharp rebukes, and the prison psychologist's assistance was limited, I felt hopeless. I believe that openly pursuing my charges against Chaney would have led to retaliation from staff. They could write disciplinary cases to keep in one prison for years beyond my expected release date. They could ship me to a rougher unit where I'd be guaranteed to face additional abuse.

I was not even safe among other prisoners. If a prison gang member found out that I was raped, I would be marked as vulnerable or as a "punk." These labels practically guarantee being raped by predatory prisoners and gang members. When I first entered prison in Texas, and each time transferred to new unit, gang members threatened me with violence. Fortunately for me, I managed to fight off their attempts to prostitute me and steal money from me. Others have not been so lucky.

Many men and women in Texas experience sexual abuse at the hands of officers and other prisoners but their pleas for help go unanswered by administrators and staff. It seems that officials take action to protect the prisoner only when the victim has physical evidence, such as a semen sample. Individuals without this kind of proof are left to fend for themselves. Prisoners who file a complaint encounter a complicated
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8 grievance system that few prisoners can navigate, but
grievance system that few prisoners can navigate, but
9 you are shut out of the court forever if you cannot
you are shut out of the court forever if you cannot
10 figure out how to get your grievance properly answered
figure out how to get your grievance properly answered
11 and filed within a few days of the rape. Furthermore,
and filed within a few days of the rape. Furthermore,
12 victims of rape are usually too upset to figure
victims of rape are usually too upset to figure
13 out what they have to do to file a lawsuit; they're
out what they have to do to file a lawsuit; they're
14 thinking about lawsuits, they're thinking about how to
thinking about lawsuits, they're thinking about how to
15 get protection, since prison officials do not want to
get protection, since prison officials do not want to
16 listen to them. These factors result in very low rates
listen to them. These factors result in very low rates
17 of reporting among prisoners, which lead to the
of reporting among prisoners, which lead to the
18 inaccurate perception among prison administrators that
inaccurate perception among prison administrators that
19 there is very little rape in prisons.
there is very little rape in prisons.

20 The reality is that rape is widespread in
The reality is that rape is widespread in
21 prison -- widespread and prison rape victims feel
prison -- widespread and prison rape victims feel
22 hopeless because of officials' failure to prevent
hopeless because of officials' failure to prevent
23 additional attacks despite complaints. Officials must
additional attacks despite complaints. Officials must
24 do more; hire more experienced and well-paid
do more; hire more experienced and well-paid
25 professionals to oversee our crowded prisons in order
professionals to oversee our crowded prisons in order

1 to minimize opportunities for individuals to be alone
to minimize opportunities for individuals to be alone
2 and commit violent attacks; engage prisoners in
and commit violent attacks; engage prisoners in
3 constructive programming that includes employment to
constructive programming that includes employment to
4 discourage money-making activities of the prison
discourage money-making activities of the prison
5 gangs; separate predatory prisoners from non-violent
gangs; separate predatory prisoners from non-violent
6 and vulnerable prisoners; finally, take requests for
and vulnerable prisoners; finally, take requests for
7 protection seriously, address them quickly, and help
protection seriously, address them quickly, and help
8 victims by providing them with the medical and the
victims by providing them with the medical and the
9 mental health treatment that they need.
mental health treatment that they need.

10 Now that I'm out of prison, I have not forgotten
Now that I'm out of prison, I have not forgotten
11 the people still behind bars. I speak out about my
experience at the Luther Unit whenever I have an
opportunity and I have my own organization to help
prisoners. With the postage stamps that prisoners send
to me, I provide up-to-date and accurate resource
information to prisoners throughout the entire country
who are looking for legal help, books, pen pals and
aftercare services. The people I correspond with are
always so grateful for the assistance because no one
ever seems to be providing it.

My hope is that this Commission will hear the
pleas for protection from the abused and violated in
America's prisons and expose the widespread nature of
violence. Your scrutiny, along with the attention of
the media and government, is crucial to exposing the

violence behind bars and preventing additional abuse.

I thank you for your time and look forward to your
questions.

MR. DUDLEY: Thank you, Mr. Cunningham
What we're going to do formatwise is ask one or
two follow-up questions before we go into the next
witness, and then after we've completed all four
witnesses, open up for all of the commissioners to ask
questions of any of the four of you.

So for you, you've talked a lot about the -- how
hard it is for the victims of such experiences of abuse
to come forward. What about all the other people in
the prison who must have seen or at least know about
what happened to you and others, what's your experience
with regard to their speaking up on behalf of those that have been victimized?

MR. CUNNINGHAM: I think that a lot of the reason that the people aren't speaking out is in fear of retaliation from other prisoners and from staff. And I think that, you know, me being a voice for them will hopefully encourage people to start trying to speak up.

MR. DUDLEY: One more quick question before we move forward. The impact -- as we know, most people actually get out of jails and prisons, and what is the impact of this sort of experience either based on your own experience or based on those others that you've come to know and work with? How does it affect people in their ability to function once they're out?

MR. CUNNINGHAM: I think for myself personally it's a very traumatic experience. It's something that I have to live with for the rest of my life. And I think for anyone else who's been in my particular situation or a situation similar to myself without the help, you know, being offered that's needed, I think it's a very difficult situation to deal with.

MR. BALCORTA: Our next witness is Judith Haney. Judith Haney is the lead plaintiff in a class action suit against Miami-Dade County for unnecessary and invasive strip searches. She lives in Oakland, California, and has a BFA from California College of Arts and Crafts.

Ms. Haney currently works as the project manager for the California-based biotech firm
Ms. Haney --

MS. HANEY: Thank you.

Good morning. Can you hear me?

MR. SESSIONS: Barely.

MS. HANEY: Can you hear me now?

MR. SESSIONS: Yes.

MS. HANEY: How's this? There you go, right

Okay. Good morning. I'd like to thank the Commission for inviting me to speak today regarding my personal experience of being strip searched in Miami-Dade County.

I'm the lead plaintiff in a federal class action suite filed against Miami-Dade County in March 2004 for the unconstitutional and unlawful practice of strip searching and visually inspecting body cavities of women arrested for non-violent, non-drug or weapons-related misdemeanors in Miami-Dade County Detention Facilities.

I'm here today to speak to you about the details of my strip search, what it felt like, why I filed a class action suit, and what we discovered about Miami-Dade's practice of strip searching women prior to first arraignment.

What I hope the Commission will understand at the end of my testimony is that type of strip search that I and thousands of women experienced was about humiliation and control, not about safety, just as rape
I also hope that the Commission will understand that the people most likely to be subjected to this unconstitutional and unlawful abuse are very rarely privileged to seek a remedy. Finally, this practice is not limited to a county in South Florida but it happens across the country.

On November 21st, 2003, during the FTAA protests in Miami, I was arrested for Failure to Obey during a jail solidarity rally in front of the Miami-Dade County Pre-Trial Detention Center. Since I and the others that I was arrested with were already in front of the jail, the police were able to arrest us and march us over to the Detention Center about 100 yards away, where the police handed us over to corrections officers for processing.

We went through the routine process of giving our names, having our pictures taken, being frisked and asked to empty our pockets and so forth. Then they marched me and the three other women I was arrested with into a hallway and sat us down on a bench. I thought we were just sitting waiting to experience the next dull aspect of being "processed."

The hallway was not that long, with doors on either end and several doors that appeared to open into small rooms. There were three female corrections officers in the hallway with us. They opened one door and removed a woman from that room and moved her to a room farthest from us. The guard then took the first
woman from my group and put her into that room. I heard the guard tell her to take off her clothes. Hearing that startled and surprised me. We had not done anything that involved drugs or weapons; we were behaving peacefully and had been compliant with the requests of the corrections officers during the booking process. There had been no indication during our arrest and subsequent frisking and processing that the police or corrections officers considered us a threat in any way.

I leaned over to the young woman to my left and said in a very quiet voice, "Are they strip searching us? That's unconstitutional." I'm not sure I'd even taken a breath before the guard who had been standing nearest to me came over to me and in a very severe tone said, "Are you refusing?"

What happened next happened very quickly, but in my mind I had a lot to consider. I knew that the likelihood was close to zero that if I responded, "Yes, I am refusing -- this is an unreasonable search and is unconstitutional," that the guard would say, "Oh, all right, we won't do it then." I did know from the experience of individuals that have been in similar situations and had refused to be strip searched that the price of refusal could be high.
A friend of mine in a similar situation in San Francisco refused to be strip searched, and she told me that the authorities responded by putting her in what I understand to be called a "cold room." Her clothes were removed without her cooperation, and she was put naked into a bare room with a hole for a toilet and nothing to cover her except what she described as a small dirty mat that looked something like a catcher's vest. The lights were bright, and there was a window looking into the room so that anyone passing by could see her sitting there naked. It had a metal door and someone came by I think every 15 minutes and banged on it; their story was that she was behaving strangely and needed to be put into the room for her "safety."

With her story in mind, I had a brief moment to consider -- was I ready to go through that? If I had refused, would they punish not only me, but the women arrested with me? While I was considering what I would do, the other women on the bench responded to the guard for me -- saying in unison, "No, she's not refusing." This all happened very quickly, and I knew that I wasn't ready to risk the possible consequences of refusing to be strip searched as well as putting the other women in jeopardy.

When it came my turn to be strip searched, the guard led me into the same small room the others had been in; it was approximately six by eight, maybe smaller, and had a bench along one wall. The guard
stood in the doorway and ordered me to stand facing her and to remove my clothing piece by piece. As I did so, I handed a piece of clothing to her; she told me to put it on the bench. I started to fold my clothing and put it on the bench. She told me no, just drop it. I proceeded to remove each piece of clothing and drop each piece on the bench. While I was removing my clothes, the guard continued to stand at the door and watched as another guard stood behind her in the hallway; also watching me.

I go into this detail because it's important to understand that this is not the doctor's office, the gym or the spa. It is a highly-controlled process in which each movement is controlled by a person who has the authority and force over you. There is no consent and there is no agency.

After I removed all my clothes, the guard told me to turn around, bend all the way over, and spread my cheeks. Bending over and "spreading my cheeks" exposed my genitalia and my anus to a complete stranger, who had physical authority over me, so that she could visually inspect me. The only way I could cope with this was to stay very focused in my head and to just separate from my body. The feeling was sort of like floating and sort of like being a big lump.

The guard's next set of instructions were to squat and then to hop like a bunny. Remember, I'm still "spreading my cheeks," so I can't use arms to balance or assist me in the hopping process.
Hopping-like-a-bunny was physically very difficult for me because I've had bad knees for over 30 years. I didn't do it to the guard's liking, so I had to do it over several times, even though I explained to her that I was physically unable to do it. When that process was complete, the guard told me to turn around and to remove my navel piercing. I explained that it was unlikely that I would be able to remove it since it was not made to be removed. She told me to remove it or she would "cut it out." I tried to remove it, but I couldn't. The guard then left and returned with very large clippers and cut it out of me. She then told me to put my clothes back on.

I stood, bent over, and hopped naked under orders and in view of at least two guards in a small room with a door open to a hallway that passersby could see in for about ten to 15 minutes. My genitalia and anus were exposed and viewable to anyone passing through the hallway for over five minutes. I would ask the Commissioners to take a moment and imagine what that feels like.

After getting out of jail on bond about 36 hours later, I spoke with the men who were arrested at the same time and inquired if they had been strip searched; they had not. This is when I started to believe that I would consider legal action against the county. To perform an unreasonable strip search which in effect is visual rape is outrageous enough, but to do it to women
only and not to men arrested for the same minor non-violent charge revealed the practice was doubly unjust.

I did additional research and discovered that Florida state law had specific guidelines recording strip-searches, none of which were followed in my case or in the cases of the women arrested with me. At this point, I spoke with other activists who'd had similar experiences and who referred to me to an attorney who specialized in these type of cases. I retained the Law Offices of Mark Merin of California and then later added Randall Berg of the Florida Justice Institute.

After filing the complaint, my attorneys discovered that indeed women arrested for minor offenses, which were not drug or weapons related, were routinely strip searched prior to the first arraignment and that men were not subject to the same procedure. Additionally, they discovered that the practice had been going on for seven years despite being in violation of state and federal law. Miami-Dade's reason was that, due to overcrowding, they were housing pre-arraignment arrestees with the general population, and they were concerned about contraband. However, Miami-Dade did no study prior to instituting the policy that would indicate that strip searching pre-arraignment misdemeanants would reduce contraband in the jail.

During the process of the suit, we identified a
potential class size of ten-to-twenty-thousand women who were subjected to these dehumanizing searches over a four-year time period. Yet we know that the practice lasted seven years. That means it is likely that over 20,000 women were subjected to these searches in one county. These women may be elderly, physically or mentally disabled, menstruating, or pregnant while they were forced to expose themselves and hop around.

The other thing that my attorneys discovered that I think is important for the Commission to know, is that prior to filing the complaint no one knew about this practice. My attorneys, the Florida Justice Institute, a firm that deals specifically with prisoners' rights, had not known about it, the Public Defenders in Miami-Dade didn't know about it. If we hadn't filed the lawsuit, these unlawful strip searches would most likely be continuing today.

Miami-Dade has stopped strip searching pre-arraignment misdemeanants, as has Sacramento, San Francisco, and New York. But it took class action lawsuits to make that happen. These searches happen on the doorstep of the prison system, not deep inside. If this level of humiliation is happening to pre-arraignment misdemeanants, what's happening to the women who are spending years inside the system?

Thank you.

MR. DUDLEY: Thank you, Ms. Haney. I'm struck by your comment that no one seemed to
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18        know that this was going on before you brought your
19        suit, and I'm curious to know, based on, you know, what
20        happened since. Is it your sense that the women who
21        had been involved didn't know what their rights are and
22        therefore didn't report them or knew what their rights
23        are and there were other impediments to having reported
24        this or revealed this before?
25             MS. HANEY: I think it's a combination. Knowing

your rights is something that activists are kind of
focused on. But frankly, I think the general
popu- -- general public don't actually know what their
constitutional rights are, and I think that also the
people who are typically involved in being at a
pre-trial or a detention center also don't know
their rights.

But I want the Commissioners to be clear. There's
other factors that contribute to whether you come forth
and say these things. First, you need to know
whether -- that there's a problem that it's
not -- that it's just not part of the ride; that you
shouldn't be subjected to this. But then to be able to
get -- stand forth, know who to contact, understand
that it requires a great deal of focus and time, money,
those are not privileges that everybody has. I've been
privileged. I have the economic support. I have the
community support. I knew people that knew that this
was wrong and knew which attorneys I could go to to
process -- to file this lawsuit.

Most people in the corrections system don't have
those privileges, and I think that that's a big factor
in whether people stand up and speak out.

MR. BALCORTA: Ms. Haney, is there a reason why
you, or did you attempt to file a civil rights

complaint at a state or federal level, and why was that
not done?

MS. HANEY: I filed a class action suit. I filed
it as a class action suit as opposed to any other
kind of suit because I believe that there were
potentially large numbers of women most likely that
were affected by this, and a solitary civil rights
would not address or open it up to this larger group.
And I felt that for people to really see what was
happening, we needed to file it as a class action suit
so that they could understand that this was happening
to thousands of people. This didn't just happen in
Florida. As I mentioned, I mentioned several cases.
It is happening across the country. Often it's
happening because -- the lawsuits are filed by the
people who know that they can do this, and it's only
because of these lawsuits that we may get the knowledge
that the general public knows about these things.

MR. DUDLEY: Our next witness is
Jeffrey Scott Hornoff. Mr. Hornoff served over six
years of a life sentence in a Rhode Island prison until
he was exonerated. Because he had been a police
detective before his arrest, he served that time in
protective custody. Since his release he has been
been a tireless spokesperson against wrongful convictions. And in addition, a spokesperson against abusive and degrading conditions of confinement. However, he remains committed to law enforcement. He is seeking reinstatement with the Cranston, Rhode Island Police Department, but believes that the ways in which we treat those who are incarcerated are wrong and counter-productive.

Mr. Hornoff --

MR. HORNOFF: Good morning.
MR. SESSIONS: Good morning.
MR. HORNOFF: My name is Jeffrey Scott Hornoff, and as mentioned, among other things, I am a police officer, a convicted murder, an exoneree, and now an advocate.

Rather than read from the statement which I submitted to the Commission members, I would prefer to speak from my heart and simply share with you a few of the experiences in which I was subjected to and I witnessed others being subjected to during the nearly six and a half years of my wrongful imprisonment.

In 1989, I was a newly promoted detective with the Warwick Rhode Island Police Department. I was also for a short time a murder suspect by my department during a murder investigation of a friend of mine. After I
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1 requested a polygraph test -- in which I passed -- an
2 all-too-quick investigation, I was cleared as a
3 suspect.
4
5 A few years later the state police took over the
6 investigation. They testified at my trial that they
7 were only assigned to investigate me, so a single and
8 focused investigation took place. On June 19th, 1996,
9 after a six-week trial, I was found guilty of first
10 degree murder. I was subsequently sentenced to life
11 in prison, and I was transported to the Intake Service
12 Center.
13
14 During this short time of testifying you will not
15 hear me use the words "criminal justice," "Department
16 of Correction" or "correctional officers" because I do
17 not believe that any of those words truly exist and can
18 be applied properly. I was transported to the Intake
19 Service Center, which is part of the Rhode Island
20 prison system
21
22 I was strip searched again. My shoelaces, my
23 belt, my tie were taken from me. I was placed in a
24 "cold room" similar to what Ms. Haney described.
25 Fortunately, I was allowed my underwear. But there
26 were bright lights. I was kept in there for 48 hours.
27 It was considered observation for my protection.
28
29 After that time, I was taken to the lieutenant's
30
31 office and I was told that because I am a police
32 officer I was going to be placed in protective custody.
33 It is a unit which houses police officers, prison
34
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4 guards, convicted child molesters -- a couple of who I
5 put in there -- convicted rapists, juveniles, gang
6 members, confidential informants, anyone who cannot
7 make it in general population or who poses a security
8 risk to a prison.

I was initially housed with an elderly man who
9 actually probably saved my life, but after I started to
10 complain about the conditions, I was rather quickly
11 placed in a cell with one of the most vicious and
12 proud pedophiles that I'd ever come in contact with.

The guards would routinely harass the inmates,
13 including myself. Fortunately, I was treated
14 indifferently by most of the guards; no better, no
15 worse, and that's what I wanted. I didn't want
16 favoritism. Other guards, possibly trying to prove
17 a point, went out of their way to go through my cell
18 the few times I did go down to the chow hall. I didn't
19 eat very much in prison because I didn't trust leaving
20 my room and what little possessions I had there,
21 including my legal work. When I did return from the
22 chow hall, oftentimes I would find everything thrown
23 out into the module, the common area, and I would have

24 to go through the photographs, the legal work, and
25 whatnot and retrieve it.

During the first couple years of incarceration, I
26 was a mod porter, a custodian, if you will. And part
27 of my duties was cleaning up after the frequent cell
28 searches. I understand that cell searches are an
important part of maintaining safety and security, but when the guards go to extreme measures of laughing at and ridiculing the inmates while they are handcuffed to the railings outside of their cells in various forms of dress and undress, and they proceed to throw all of their personal possessions out into the common room and mix them together, joking that it would be fun to watch the inmates scurry like mice to find photographs of loved ones, important legal documents. It was just another form of humiliation.

Also as a mod porter, during one occasion a mentally ill inmate attempted suicide. It was one of several suicides and suicide attempts that I witnessed. This inmate nearly severed one of his hands off. And the next day I was told to clean his cell. I was given a face shield and some rubber gloves and some cloth booties and with two other mod porters we were told to bag all of the inmate's personal property, his mattress, pillows, sheets, which were all blood soaked.

We had no training. I didn't know if this individual had any type of communicable disease. I was ordered to do this, and if I didn't do it I was going to go into segregation. So I decided to obey the order.

In mentioning "segregation," I would share with the Commission that above protective custody was where the segregation unit was housed. Nowhere in the prison facility is there more abuse and degradation than in segregation. I could hear the frequent beatings of inmates above me as they screamed for help, their cries...
coming through the air vents as guards would relentlessly pound on them, and you could hear the laughter.

Approximately two years after I was in prison, I became a law clerk. This was a step up. Because of my legal background, they decided to move me into the law library. As part of my duties, I was to take a law book cart to segregation. Now I was seeing these inmates firsthand, and I would see the bruises on their face. I would see them stripped bare in cells that did not have a blanket, a pillow, or the water turned on. And I began to understand why these inmates would sometimes reach a breaking point in which they would defecate and urinate in their toilets and then shove their sheets and pillows into the toilets creating a mixture that would stop up the system. Then they would begin to flush their toilets, and this would overflow and rain down on us in protective custody.

Besides the abuse in segregation and the other humiliations which I witnessed and endured, I also spoke with the guards; and one of the reasons I will not refer to them as "correctional officers" was I constantly asked them if they had a degree in sociology or psychology or anything that would put them in a position where they could motivate an inmate, whether they're innocent or guilty, to break the cycle that they were in. Some of the inmates would go in and out of the prison system five or six times, which was
rather frustrating for me, being innocent. None of the guards would admit to any type of degrees. They actually laughed and scoffed. 

I could go on and tell you about guards who took food out of the cafeteria for their summer picnics. I could go on and tell you about guards who just for the littlest look from an inmate would find some type of retaliation. Whether it's coming from Florida, California, Texas or any of the other areas in which you're going to have people testifying before you, I can tell you it's widespread. I can also tell you that the prison director in Rhode Island, who I have been told by one of the Commission members here is actually looked upon as a bright spot and a model of reform, is nothing even close.

Actually, after my release in November of 2002 when the real killer finally came forward, the prison director approached me and reached out to me, and after spending some time with him in his office and trying to share with him my experiences and what was going on on a day-to-day basis -- not only in intake but also in high security and every other facility -- I was frustrated when he said that the government of Rhode Island would give him all the money he wanted for bricks, for barbed wire, for confinement and control. Because truly all America's prisons are is a warehouse.

We are not interested in rehabilitation. We haven't been interested in rehabilitation since
President Nixon was in office and used the campaign platform of "Get tough on time." We need to refocus our efforts and we need to break the cycle.

I'll close by sharing with you something that an inmate shared with me just prior to my release. I found out on November 4th of 2002 I was going to be released, and another inmate was sitting with me in the day room and he looked at me, and said, "Scott, they're creating monsters, and I'm one of them and they're going to reap what they've sown." We are reaping what we've sown. I do not want those individuals being released from prison, treated like animals, to be my neighbors again.

We certainly need this Commission. It is long overdue. I applaud any efforts and any advances that you can make because I've seen a similar Commission in Rhode Island fail miserably.

I did send a rather critical e-mail to the Commission when I initially found out that you are going to be having these testimonies take place. It was at a time when Rhode Island's Commission was disbanding. And since then I have reviewed the Vera Institute and the power that the institute does have as far as policy reform and it is in policy reform that we're going to see the necessary change.

Thank you.

MR. BALCORTA: Before you were incarcerated and were working as a police detective, did you
MR. HORNOFF: I decided to become a police officer when I was 12 years old, and I devoted my life to the judicial system. When I heard of an individual receiving ten years or twenty years for a sentence, usually I would think that that was justified. After having experienced the judicial system from the many angles I have -- including jury duty since getting out -- I wasn't chosen -- I have come to find that judges throw out these sentences without a true regard for how much time ten years truly is. One day of freedom in reality is like three days in prison. That's pretty much how slow the clock moves when you are incarcerated.

Instead of looking for short-term relief by holding somebody accountable and putting them in prison, besides focusing on finding the one who is truly responsible for the crime, we need to focus on rehabilitation and reintegration. I can tell you that the two and a half years that I have been released, besides the guest lectures I've been doing pretty much for free, I have been putting out employment packages, and without the love and support of my loved ones, I could see me, a police officer, committing crimes to survive. So now I understand why there's a high recidivism rate as well.

MR. BALCORTA: You know, it's individuals that
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come before the public and share experiences like yours. I'm pretty sure that in the past two and a half years you've learned from a lot of individuals who share experiences like yours, and even when you were a police detective you would hear about experiences, I'm pretty sure. What do you think it's going to take, besides Commission hearings, for people to start believing these human beings?

MR. HORNDOFF: I brought with me just a folder of sample letters from the inmates from Rhode Island who were requested to write in and share the abuses that they were suffering. These individuals are as brave as any I know because they basically put their lives on the line by daring to send these out. Most of the individuals' letters never even reach the Commission because they were thrown away by the mail room guard, who has a great deal of power and likes to use it. These letters come from every facility in Rhode Island. If you were to solicit letters from inmates around the country, you would see the same experiences. You would see the same suffering and abuse. It's really difficult for me to see and to understand why our human race can treat other humans the way we do. We don't treat each other -- there are profound and immeasurable numbers of acts of kindness, but on the same token, we can be pretty cruel to our fellow men and women.
MR. BALCORTA: Thank you.

Our next witness is Ron McAndrew. Before his retirement in 2002, he was the Interim Director of Corrections for Orange County, Florida. He was responsible for overseeing 1,651 employees; the custody, care, safety, and rehabilitation of over 4,000 inmates, and the direction of a budget that exceeded a hundred million dollars. Prior to that, Mr. McAndrew worked for more than 20 years in the Florida Department of Corrections, starting as a correctional officer at the Dade Correctional Institution. He was an investigator for five years at the Tomoka Correctional Institution, and warden at the state prison facilities in Wewahitchka.

MR. McANDREW: Wewahitchka.

MR. BALCORTA: Wewahitchka -- I'm sorry -- Starke, and Orlando.

Mr. McAndrew --

MR. McANDREW: Thank you, sir.

Good morning Co-Chairs Nick Katzenbach and Gibbons and honorable members of this Commission.

MR. SESSIONS: Good morning.

MR. McANDREW: Before I go further, let me say as a weathered warden, I am still troubled to hear the first three witnesses and the accounts that they have presented to you today. I'm stirred emotionally by what each person has said.
Let me dedicate my written statement today to the two correctional officers that saved my life at Dade Correctional Institution back in 1980, Sergeant Robert Erhenkaufer, now a lieutenant at Tomoka Correctional Institution, and the late Sergeant George Leone.

Further, please let me make it clear that I am not a disgruntled, retired Department of Corrections employee from the State of Florida. I had a wonderful career that I enjoyed very much. I liked this profession so much that I strongly recommend it to anyone at any employable age. I've hired people well over 60 to start out as a correctional officer. Turned out to be some of the best employees I've ever known; if they're seeking a challenging and rewarding career path.

If during this presentation "ax-grinding" should appear, please know that it's nothing more than resentment for those that feel they're above the law.

The very notion of having the opportunity to come before such an honorable commission with such an honorable purpose has been but a personal dream of mine for many years. Thank you. Thank you very much for this privilege.

It's of central importance first to compliment the many honest, hard working correctional professionals that do in fact exist in the Florida Department of Corrections. During 23 years I had the distinct honor and pleasure to serve with thousands, that including
correctional uniformed staff and senior appointees
that have left in me in a state of veneration. This
honorable group is not the group of whom I shall speak
today.

Arriving in Florida in 1978 as a very modest
retiree from private business, a second career was
necessary for health insurance and supplemental income.
I didn't realize that this new employment as a
correctional officer would become the most enjoyable
walk of life. The peaks and valleys were strongly
highlighted with friendships, honor, rapid from
promotions, recognition and praise, but they were
definitely perplexed with racism intimidation,
violece, prisoner abuse, theft, safety violations,
drug smuggling, perjury, and records falsification,
to include the purging of personnel records of the
correctional officer disciplinary records from the
files of goon squad members.

I experienced direct involvement in putting down
two major riots in my first year as a correctional
officer, finding a near dead fellow correctional
officer, unconscious and bleeding from razor
slashes over his face and entire body; it was a scary
site. Finding myself being beaten with iron rebar and
steel chairs and personally observing both physical and
mental torture of those under our custody and care, and
it was that that spurred me on toward a goal of better
corrections. I knew it could be done better, and it
It was during the early days that I began to learn that the Department of Corrections had a two-core staff assembly throughout the department. There was the first core group who did the work as required by rules and regulations, but often with the exception of "not reporting" certain incidents observed -- I'll get into those incidents -- for fear of job loss or retaliation. The second group was certainly the minority core but the group illustrated that they owned the law and could enforce at will without regard for its content. Though not a core group, a third and very small group did in fact give their full work toward excellent corrections as demanded by the law. Many of this group are still good friends of mine today, that small group, and which we communicate on a rather regular basis.

Taking an early career stance against the second group, second core group, resulted initially in the poisoning of our pet Doberman, the slashing of tires of our personal vehicle and telephone threats, serious telephone threats.

In the years that followed at other locations around the state of Florida, it became obvious that prisoner abuse -- more than anything else -- was systematically chronic. The large prisons were plagued with "goon squads" that were well known to, and feared by, both prisoners and staff. Another important observation collected over time was a definite psyche or mentality belonging to "goon squads" as a
whole. This comment is based on quotes and actions
that I personally observed during this period. Such
quotes as, "It's us against them" meaning, of course,
that it's us against those who would fault us; or "they
want it done, they just don't want to know about it."
In other words, upper echelon staff want us to keep
order with brutal force, and that's truly believed by a
number of uniformed staff around this state, that they
don't want to hear about it. In other words, keep it
quiet; or the wearing of partially visible
self-designed insignia implying "goon or special squad
member"; or a group of such members meeting a staff
member suspected of "informing" at his personal vehicle
at quitting time. That's very intimidating to walk
out to your car in a large parking lot where there are
three or 400 cars and there are ten or 12 goons sort
of surrounding your car. They don't say a word to you,
they just look at you real hard like. You better be
going the message, bubba. Telephone threats, as I
mentioned; meeting at local watering holes and partying
after an "eventful" shift. That eventful will coincide
with the incidents that I'm going to get into in just a
minute.

The following sample incidents will give basic
detail of a number of incidents where goon squad
tactics that I personally observed and were
attempt -- attempts were made to address the violators:

During the opening of Orange Correctional
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Institution (later to become Central Florida Reception Center there in Orlando) a goon squad was observed during this -- I observed a goon squad in its formation process. And with that -- I was an assistant warden at that time, and with my warden's full support, tireless efforts were made to apprehend those responsible for the beating of prisoners to little avail. They were just too slick for us. But when the trail did become "hot", many of the goon squad leaders transferred to yet another newly opening prison in Charlotte County.

These very officers were later tried for the murder of a prisoner at Charlotte Correctional Institution. Those who pled guilty and turned state's evidence -- they had not come from Central Florida Reception Center -- they were found guilty and sentenced; the others who went to trial were acquitted by a jury.

The Florida State Prison Assistant Investigator John Doe Bobby, as I call him, observed a correctional officer strike a handcuffed prisoner's head with a gloved fist, knocking the prisoner to the concrete floor (the assailant was over six feet tall and weighed approximately over 250 pounds). Only the investigator, the assailant and the prisoner were present, but within just a few hours nine sworn affidavits were placed on my desk indicating that the prisoner was never struck by the correctional officer in question.

Prior to my departure from Florida State Prison in 1998 to new assignment as the warden of Central Florida
Reception Center, I spoke with my successor, James V. Crosby, III, indicating that Florida State Prison was being run by a "goon squad," that beatings were chronic, that I had the suspects under investigation and that if something was not done to stop this activity, it would only be a matter of time before a prisoner was killed. Crosby was advised that the investigators on this case had little time at that point to make any conclusive charges. I advised Crosby that I wanted to do a "desk audit" before my departure and would he prefer written or a verbal audit. Crosby rejected the idea of an audit indicating that he knew FSP (Florida State Prison), and that he had grown up in that area and knew the staff from childhood. The threat of a possible killing was repeated, I repeated it, mentioning that if something weren't done in terms of getting the suspects under control and out of corrections entirely, Florida State Prison and the Department of Corrections would suffer.

Crosby asked for the names. I advised him that the top names were a correctional officer lieutenant, a correctional officer, and a correctional officer captain (at least one other name may have been mentioned at the time).

Crosby had once previously attempted to pressure me into promoting the correctional officer lieutenant to correctional officer captain, but I had refused to do this for obvious reasons. Crosby stated I should
just put these names on a "piece of paper and place it in the warden's desk." And following Crosby's arrival at Florida State Prison in March of 1998 the following actions evolved:

The correctional officer lieutenant that I've just mentioned was promoted to captain later led a goon squad into the cell of prisoner Frank Valdes, resulting in the death of this prisoner, an international scandal. This correctional officer lieutenant and four others were acquitted by a jury that came from the same small village and were led by a jury foreman who was a retired correctional officer living within their grip. This was a trial where I was never called to testify on what I'm talking to you about right now, even though I notified the State Attorney's Office twice that I had relative testimony.

The correctional officer captain was promoted to major. Today he's a warden appointee by Mr. Crosby.

The correctional officer was promoted to sergeant. After I personally forced Crosby's hand by demanding an investigation our Central Office in 2000 -- through our Central Office 2000, this correctional officer sergeant was demoted to correctional officer for yet another crime against my person and that of my wife Lynne. Several months later this demoted correctional officer was promoted to sergeant again. In the past month, some 30 days ago, this same correctional officer has
been arrested and jailed on federal drug charges and is
awaiting trial. Remember, this is the correctional
officer who bashed the inmate in the back of the head
with a gloved fist.

The first female assistant warden ever in the
history of Florida State Prison, ever, appointed by me
during my tenure, was moved to another institution
almost immediately upon Crosby's arrival.

Crosby gave the purchasing agent found to be
taking graft a promotion to a new job in Gainesville.
He did grow up with these folks. This graft case had
my direct involvement as the warden at Florida State
Prison having obtained hard evidence through the
business manager, the purchasing agent's supervisor.

Minority staff that I had promoted or assigned to
key Florida State Prison positions was moved. Note
that I promoted the first Afro-American lieutenant in
the history of Florida State Prison. I'm not
talking -- we're not in the year 1800, this is 1996,
'97, '98. The first Afro-American lieutenant in
the history of Florida State Prison who was assigned to
and allowed to supervise shift work at the main unit.
I was blatantly informed when I was about to make this
appointment that a black man had never worn a white
shirt past Times Square. Times Square is a famous area

at Florida State Prison. It's where you start making
inmate contact. You've gone through about five or six
very intimidating cell doors that make that hard clinging sound behind you, and then you're at an area where you can actually get to the cells of inmates. I hired and promoted the first female assistant warden also in the history of Florida State Prison assigning her over operations at the main unit of Florida State Prison.

The trend or mentality I'm depicting thus far is quite simply that if one surrounds him or herself with enough followers who are willing to provide alibis and affidavits relative to misconduct in connection with the care and custody of offenders, full power and full reign will be constant. The horrifying part of this story is there are not enough correctional professionals who are willing to go after the goons. Retirement, DROP accounts, college tuition for the kids (or even one's own past as a goon squad member) or being fired to cover central office tracks, quells fears that only the owner can fully understand and appreciate.

Racism certainly does exist in the Florida prison system. The horrible "N" word was used without caution until around 1990. Thereafter the word was used without caution in the so-called "protected areas" of Florida State Prison and numerous other places where they felt protected. After sending the following e-mail to Governor Jeb Bush on July the 3rd, 2003; the results were almost instant promotion of a number of
And I'd like to read that e-mail that I sent to Governor Bush. "I urge you to have someone from your legal office question the Department of Corrections, demanding a detailed list of all DC staff above the rank of captain."

I'm getting a zero there. I'm sorry. I mistimed myself on this. I have at least another three minutes to finish my statement, but if the zero's there and I'm not allowed to go further it's okay.

MR. SESSIONS: Well, I would suggest you go ahead and do it.

MR. McANDREW: Thank you.

MR. SESSIONS: I'm not presiding, but do it.

MR. McANDREW: "Dear Governor Bush: I urge you to have someone from your legal office question the Department of Corrections, demanding a detailed list of all Department of Corrections staff about the rank of captain (to include wardens and assistant wardens) who (by gender and race) have since January 2003:

"Resigned, forced to resign, fired, demoted, taken a voluntary demotion, retired prior to completion of the DROP program or normal retirement age, required as a result of any pressure from Central Office.

"If you are given an accurate listing, I'm certain you'll see that not only is trouble in the making, but definitely on the horizon. Sincerely, Ron."

I felt comfortable in sending this to Governor Bush because I worked on his campaign in both '94 and
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10 '98.
11 During my tenure at Florida State Prison, male staff in general gloated over the idea that the USA vs. Florida lawsuit allowed for "male gender only" past the Times Square (inmate contact) area of the prison. Note this meant that female correctional officers could not work in contact with male prisoners at Florida State Prison and thus were assigned to "behind the scene" locations such as the control room. I have little doubt that the gloating mentality of male security staff alone contributed immensely to the removal of the female assistant warden from Florida State Prison upon Crosby's arrival.

12 By the way, her number one assignment when I put her in that unit is, "You get to work on this brutality thing." She had worked as a very serious investigator for Volusia County for a number of years. She was the past director of Volusia County Female Corrections, and she was quite an incredible professional and was making good progress at Florida State Prison in putting down some of the beatings. I had a little doubt that the gloating mentality of male security staff alone contributed to the removal of the female assistant warden from Florida State Prison upon Crosby's arrival. This lawsuit did not apply to this female assistant warden as she was not a uniformed officer nor did it apply to female nurses and medical employees.

12 I've maintained contact on an almost regular basis
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with the Department of Corrections staff around the state. I've observed the leadership these days of the majority of prisons in Florida at least over the last five years involves very close Crosby allies from the Columbia, Union, Bradford Counties...or, that close Crosby allies have been given key positions in those prisons which implies that "big brother" is watching. In some cases for some areas I dare say that panic exists because of the cloud of fear. "See nothing, say nothing, know nothing," was recently recounted to me by a mid-level correctional professional.

Medical services in the Florida Department of Corrections has improved tremendously over the past 15 years thanks mainly to full support of Secretary Harry K. Singletary, Jr., Dr. David Thomas, Dr. Matthews and Dr. Dianne Rechtine, the American Correctional Association, and without doubt, the Costello vs. Wainwright lawsuit settlement. There does still exist very serious problems with access to medical services because of the "second core" group -- that I mentioned -- uniformed staff that challenge offenders' claims of illness. If the information is correct, there are a number of prisoners who died, and just recently. And that -- there may possibly be claims of access denial to medical services. I'm still trying to confirm all this information.

On unions, the Police Benevolent Association is presently the union in Florida Department of Corrections
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17 Corrections uniform staff. I believe they were very
18 helpful 25 years ago when conditions and wages were so
19 poor. In the years that followed unions have in this
20 opinion, seriously hampered the firing of many brutal
21 correctional staff that assaulted prisoners. In fact,
22 in some cases, officers that were successfully fired
23 for internal criminal activity were then hired by the
24 union to go back to the same prison and defend the
25 union contract.

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1 Each Florida warden is faced with how to deal with
2 the union once evidence is conclusive that a uniformed
3 officer has committed a crime. The central office
4 legal department is very weak and prone to cave too
5 often in favor of unions. Unions, instead of going
6 on and prosecuting, unions at least at this stage have
7 but one single interest -- to collect as much monthly
8 dues as possible.

9 In this maze of Florida Correctional Institutions,
10 I've asked myself time and again for an idea or a key
11 that would open the door to better and safer security.
12 I have visited prisons around the United States and in
13 Europe, spoken to wardens, staff, and offenders at all
14 levels. One single thought continues to surface: A
15 legal observer representative from an agency headed by
16 an elected official, not a governor or a department
17 head but by an elected official, such as the Attorney
18 General, who would monitor certain activities of
19 uniformed staff in major prisons:

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If each major prison in Florida was assigned a legal observer from the Attorney General's office and:

- No. 1. Given unlimited access to the entire prison.
- No. 2. Given the authority to see all records at any time.
- No. 3. To visit at any time of the day or not night with any prisoner or staff member in any location of the prison.
- No. 4. To privately converse with anyone inside the prison.
- No. 5. To temporarily overrule decisions by uniformed supervisors when suspicious activity is detected.
- No. 6. To have access to private telephone numbers of the warden, ranking staff of the Attorney General's office, the State Inspector General's office and the Florida Department of Law Enforcement.
- No. 7. To require all DC shift staff supervisors (lieutenants and captains) to notify the legal observer prior to "suiting up" for a "cell extraction." That means putting on all this heavy gear that protects officers when they have to go into a potential volatile situation. To allow the legal observer the opportunity to observe the extraction when at all possible.
- No. 8. To develop rules within Chapter 33 of the Florida Administrative Code outlining the authority of this legal observer position.
- No. 9. To transfer each legal observer on a
frequent enough basis to prevent fraternization with correctional staff. In other words, this would be an independent body.

The cost of such an operation by the Attorney General's office -- and I went into detail on how many attorneys would be needed and what have you, but because of this extended time which I really do appreciate, let me just say that $4 million would cover it each year, and that would provide for 40 attorneys and a whole lot of security and safety for -- not just for the offenders under our care in the State of Florida but also for the staff who have to work with these offenders.

The Frank Valdes case alone has probably cost the Department of Corrections $4 million by now. And probably more as time goes on and the lawsuits develop.

The budget of the Florida Department of Corrections is almost $2 billion, so four million wouldn't break the bank but it would certainly be a great tool, and I believe it would save the state a tremendous amount of money in lawsuits and damages.

Again, thank you folks very much for this privilege. I pray that your efforts will produce the ideas and hopefully laws to give those unfortunate enough to be under our care and custody in the prisons around the country a safer environment, and by doing so, creating a safer environment for the staff who work
for these folks.

God bless this Commission. Thank you.

MR. DUDLEY: Thank you, Mr. McAndrew.

A quick question: You mentioned explicitly racism and sexism and certainly suggested a range of other "isms" that are involved in perpetrating the kinds of problems that you've described. I'm wondering whether, in addition to your recommendation to us, do you think that there needs to be -- could be or should be some better way of screening potential corrections officers for some of this that you seem to be suggesting contributes to the behavior?

MR. McANDREW: Well, I wish I had a magic answer for that, but it requires a little bit of a detailed answer inasmuch as that the -- it's a question of supply and demand. The demand for correctional officers in the State Prison System is so dear that they actually advertise out of state. They advertise in New York; places where they may advertise in the wintertime, by the way, in New York. And it draws people down to Florida for interviews, and some of these folks wind up working as correctional officers. If you hired -- and I have hired 50 correctional officers in one single day in the past, and within 90 days I'd be down to five out of the 50. Ten percent.

And then after six or seven months, I might only have
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one. That's how quickly people come and go from
corrections. It's a little better these days. And I
think it has a lot to do with the accreditation of
prisons in Florida and the fact that the accreditation
process consists -- the training be such that prepares
people better to handle the stress and the demands of a
correctional officer's job. It's a very
difficult -- it's a very difficult job.

MR. DUDLEY: Thank you.

I think now we're opening up for questions from
any of the commissioners to any one of these four
witnesses.

Yes.

MR. MAYNARD: Mr. Chairman, I just have a question
for Mr. McAndrew. The proposals you suggested about
access to certainly seem like they would make a
difference. What, as a warden yourself on three
occasions, what hindrances would you have had in doing
those same kinds of things?

MR. McANDREW: You have to physically -- you must
physically seek Florida State Prisons to understand
just how long it takes you to get inside the prison
where prisoners are located or to get to some of the
nooks and crannies where these activities I've
described seem to take place.

By the time I would park my truck in the parking
lot in front of the administration building and walk to
the Tower No. 1, and the tower guard had to open the
first two chain link gates for me to get in -- that's
two gates -- and he had to recognize me and that sort of thing; the next gate I go through lets me into a control room where there is an officer behind links and recognizing me and wanting to see my ID card because it's a requirement that they do that, and asking me if I have any metal objects or knives or whatever in my pockets; and then I go through two more gates just to get past his station, and then there's a long corridor of about 50 yards to the main control room of Florida State Prison, and that's the Times Square area. Well, Times Square is like a big box and it's nothing but bar stock all the way around and there are doors that are handled electronically and with keys. And then the main control room has to let me through that and then I decide which area of the prison I'm going to from that particular point. Before -- long before I get to that main control room not only does every staff member in the prison know that I'm there, but every prisoner knows I'm there. If I dropped on the building by helicopter and chopped my way through the roof, it would be faster than getting in there to see what's going on. So, you know, by the time you pull up in the parking lot they could mop up a quart of blood, wash a man's face, put him under the covers and tell him what's going to happen to him later if he doesn't just go to sleep and be quiet. That's the story at Florida State Prison and the real armpit of abuse as I have seen and known it in the Florida
MR. RYAN: Mr. Cunningham -- I'm sorry.

Mr. Cunningham, as a correction professional I can only apologize for, just say, events that obviously you have gone through.

I do have a question as to how you might have -- how someone might have been able to contact somebody on the outside. In a couple of the jails that I've been involved in, we have created phone numbers that could be called out, 800 numbers, even in the world of technology, e-mail, something.

Is there anything that you could see for us today to help the individual make contact in some secret manner and clandestine effort to get the information out so that if you are having problems on the inside that -- and you're not getting any response, how can we help you?

MR. CUNNINGHAM: That is a rather difficult question to answer because any mail, outgoing mail is always opened -- it's not opened, actually, it's not allowed to be sealed before it leaves the building. So I think that having some type of office where complaints, specific complaints going to an outside agency would be delivered, you know, or addressed to a specific individual, make it that one individual's responsibility to see to it that this communication gets to its location.

MR. BRIGHT: Mr. Cunningham could I ask another question, if you've answered that one?
MR. CUNNINGHAM: Yes, sir.

MR. BRIGHT: Over here.

MR. CUNNINGHAM: Sorry.

MR. BRIGHT: I notice you said in your statement, "You're out of court forever unless you can figure out how to file your grievance there in the prison system."

How many days did you have to file a grievance after an incident?

MR. CUNNINGHAM: You have approximately, I believe it's seven days, seven to 14 days to file a grievance.

MR. BRIGHT: And I take it you don't have -- in terms of who's available to you, you don't have any lawyers available, do you?

MR. CUNNINGHAM: No. It's you -- you just have to do all the paperwork yourself and -- when you're in that particular type of situation, my experience, that's nothing that you want to ask another offender for assistance with; that's something you really don't want to discuss with anybody. And, you know, it's something that you have to feel comfortable discussing with officials, you know, or anybody and that's why I chose to go to the unit psychologist and discuss it with him I felt I could do it in confidence, you know, without the retaliation from other offenders and from prison officials.

MR. BRIGHT: And that's the reason not to file a grievance, you're saying, right?

MR. CUNNINGHAM: That's right.
MR. BRIGHT: And if you don't file a grievance, you can never file a lawsuit for what happened to you, you're barred from ever bringing a lawsuit, right?

MR. CUNNINGHAM: Yes, that's correct.

DR. GILLIGAN: I had a question for Ron McAndrew. I was very interested in your detailed summary of the role of a legal observer and the authorization that he or she would have to perform the functions. I was reminded of a similar set of rules that apparently are in place in western European nations that comes with Europe, and the Committee for the Prevention of Torture has set up a similar practice of openness to any prison they choose to inspect; but they did set up one requirement, which is that the people doing the inspections should be nationals of a nation other than the ones whose prisons they're inspecting as a way of insulating them from the -- both the personal and political risks that could be involved there.

I was wondering if it were legally possible to do that in the United States. I assume it might regard a federal law or something. But if it were possible legally in this country, would that idea as one of the conditions for such an observer position make sense to you? Would you imagine that might have any advantages or not or disadvantages?

MR. McANDREW: Doctor -- I think I lost sound here.

Doctor, it's amazing that you -- you -- you asked that question because I'm very familiar with
corrections in France. I lived in France for 12 years. I have family in France. I'm going to France next Saturday. And I have friends that work in corrections there, and I'm familiar with this observer. And I tell you, it's amazing you asked this question because that's quite where I got the idea for this legal observer representative.

The person from the other country came into play in France, I believe was the first place that this came up as a possibility, and the reason it did, of course, was that the European union was finally formulating a common currency and common ideas of trade and they're doing a lot of stuff for each other. They sort of accredit each other, you might say, from one country to the other, and they're borrowing ideas from each other the same way Florida borrows ideas from California in terms of good corrections, and that's where I got this idea.

The legal representative would come from the Attorney General's office, hopefully, and the Attorney General's office is like a foreign country because he's an elected official. And no matter what the governor wants to tell Charlie Crist, Charlie Crist, although he's a good friend of Jeb Bush's, can say, "I don't agree with that and I'm not going to do it or I'm going to do it another way." And hopefully, and I believe he would be continued to be respected as he is by the governor. But an attorney working out at that
office -- and I visualize this as young attorneys
beginning to build a legal career within government,
perhaps just out of law school, a member of the Florida
Bar and working these areas around the state and being
available and being on call so that -- when I say "suit
up," it's when they put on all this armour and a large
squad goes into a prison exactly as they did the night
Frank Valdes was beaten to death. He would have to be
notified before they suited up. Unless that inmate was
hanging by a sheet and it was a suicide in progress or
something that was truly life threatening, they would
have to pick a cell phone up and call this
representative and say, "We need you now," and that
person would come to that scene and observe as a
representative of the Attorney General's office.

Now, when I was a uniformed officer, if I knew a
prison inspector was somewhere in the area or
if -- certainly if an attorney was in the area, and if
he came from another department other than our own, I
was going to be on my best P's and Q's. I was going to
be very courteous and very polite not only to him but
to the inmates. That's just -- it's human nature when
you have an outside source like that looking over
your shoulder, and saying, "You do your work, I'm just
here to observe. I'm not going to tell you how to do
it, you've already been trained. But if you start
kicking this inmate in the head because he made a
reference to a member of your family, I'm going
to" -- and that's another thing, are the names that
officers wear on their uniforms. In Florida they have
metal name tags and it has your name on it and it's
very nice, very pretty. I would recommend that all
uniforms in Florida have a patch sewn onto the uniform
like the U.S. Army does because the first thing a
goon squad does when they're up to no good is everybody
removes the name tag and you stick it in your pocket
and that lessens the possibility of identification.
When you've got several thousand prisoners, you know,
"Well he was an officer. Well, yeah, he was a white
male. He was -- oh, you know, he sort of looks like
everybody around here." In other words, he had on a
uniform like everybody else. That name I believe is
very important.

MR. HORNOFF: Doctor, may I answer your question
just for a second?
In theory, having an agency from another country
investigating abuses or allegations of abuse --

DR. GILLIGAN: Former independent of -- from
another state.

MR. HORNOFF: Well, in Europe I could see that
possibly working because they cooperate a little bit
better, but do you realistically believe that President
Bush would allow an outside country to come in here and
tell us what we're doing wrong?
DR. GILLIGAN: No, not an outside country. I meant somebody from another state within the U.S.

MR. HORNDOFF: All right. From another state that might work because, as Mr. McAndrew's was speaking of a legal representative from the Attorney General's office, I can tell you in Rhode Island, which I refer to as "little Texas," the Attorney General's office works very closely with the Rhode Island State Police. The Rhode Island State Police investigates allegations of abuse within the Rhode Island prison system. The Rhode Island State Police allocates two state troopers to drive the governor around. It's a very small state, the smallest.

DR. GILLIGAN: That's why I was asking this question, exactly.

MR. HORNDOFF: If we could get, perhaps, a prisoner advocate or a legal representative from Connecticut or another part of the country that would be great. We definitely need a prison commission -- a prison review commission in every state.

SENATOR ROMERO: I'd like to comment that I've been struck by the testimony. And I'm from California. If I were to change the names, the faces, the letters again, too, I get stacks of letters from inmates and families of inmates writing to me, the stories are the same nationally; and yet, I think sort of the weight of this Commission and something that we must consider as we move forward is that state statutes
vary not only by prisons, by jails, correction standards, training, it's completely different. And I think perhaps part of the work of the Commission could be to take a look nationally at some of these statutes and laws and access to media, for example, which we'll talk about a little bit later, which is completely different depending on where you are in the country; and yet the story remains the same. That is a major challenge for us to address, and I hope that as the Commission moves forward we can take a look at this nationally as far as moving forward with rehabilitation and corrections.

Ms. Haney, I'd like to comment as well. I appreciate your testimony. Even something that you said struck me that -- the question was asked, "Well, did you know your constitutional rights," and in a sense those are questions that, yes, we want to ask, we want to provide, but in a sense it's sort of blaming the victim mentality as though the inmate is the one who's supposed to say "I know my rights", when it's really -- we should turn it back to the focus being the trained officer under color of authority is responsible for knowing the rights and carrying out the laws. So I think we have to turn that language around, but again, in California I've heard it as well.

And then, Mr. McAndrew, you talked about, do people want to know, keeping quiet. Does the American public really want to know? And I have mixed feelings on that, but I certainly think that the response that
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we saw at the international level with Iraq, although
it was -- the discussion came, as we all know, with the
collection of physical evidence like semen; when we saw
the videotapes; when we saw the photographs, the
American public -- and I am very proud of how the
American public did respond in California; likewise,
I think, too, that when we have seen the evidence,
we've had to respond, but I think it poses some very
interesting questions for all of us in terms of the
role of the media and an open access. We shouldn't
have to wait for that; we shouldn't have to wait for
the actual evidence to be there, but perhaps until we
do have that evidence coming forward there will be
lulling into silence because to a large extent I think
much of the public doesn't want to know. It's a closed
world. And part of the Commission's work, I think,
could be to provide sunshine that's very much needed

into a very dark, dank, closed room

MR. DUDLEY: Okay. We're running short on time,
so we have maybe time for one more question so that we
can take advantage of this opportunity of having this
group of witnesses with us.

Does anybody have an additional question?

MR. KRONE: I've got one. I'd like to make a
comment first and extend my deepest respect in regards
to all of you. I've experienced everything you've
said firsthand in one way or another.

Since we mentioned the Iraq war, you know, I
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wonder if you were as surprised as me -- or not
surprised as me when we've seen the abuses that went
on over there to the prisoners of war because I've seen
it happen right here. What surprised and angered me
was the immediate response, the immediate response, the
quickness to finding and bringing those people to trial
for what they were doing, and yet when we -- we, our
own prisoners are over there are suffering that same
type of abuse right here in our prisons nobody wants to
hear about it and nobody is interested in it.

I'd like to know if you have a suggestion on how
we can get that public interest right here in our
country as what we're doing for our own people?

MR. HORNFF: I'd like to say that it seems like

Americans just want to feel safe and want to hold
somebody accountable and feel safe.

Nick Yarris spent 22 years on death row in
Pennsylvania. The Iraqi prison guard who was brought
up on charges was a prison guard in Pennsylvania and
oversaw Nick Yarris. For the first two years
Nick Yarris was incarcerated, he wasn't allowed to
speak, he wasn't allowed to talk, because Pennsylvania
was founded on an institutional philosophy of
separating the inmates, of letting them contemplate
their errors and the ways of their life. So for two
years he couldn't speak. And then after that time he
was abused and degraded as much as any of the Iraqi
prisoners. If you want to hear him say this in his own
words, I invite you to try and find a theatre that's
showing "After Innocence." It's a documentary profiling exonerees, and he's one of them. And I was very fortunate in meeting him and to hear what he endured from one of these Iraqi guards, who was also his guard, is just -- it's very heartbreaking, but it goes on and not just in Pennsylvania and not just in Florida. It goes on every day while we're sitting here, it's going to go on tonight, it's going to go on tomorrow.

MS. HANEY: I think one other comment that we could make is that what all of us here have been talking about is really giving voice to the people who are having these experiences, but we're also hearing why there is real barriers to that voice. Speaking out can really mean that you'll be subject to retribution and additional violence.

From Abu Ghraib we saw pictures. The reason we saw those pictures is those pictures were taken as part of this torture process.

While I'm not recommending that people in -- that documentation be part of the torture process in the United States, I think that we do need to actually find a way to give the people who are subject to the abuses in the corrections institutions voice, and that has to be a safe way to do that. And I think that that should be something that the Commission should consider, is how to give voice to those people who are having these experiences in a way that they can feel safe to do that.
because I think that is a critical aspect of getting that information out to the public so that they know what's going on.

The people who are experiencing these things know that it's going on, their family knows that it's going on, their friends know that it's going on, but it's not getting out beyond that and we do need to make a very big effort to make sure that everybody knows what's happening so that we can stop it.

MR. DUDLEY: Mr. Cunningham, Ms. Haney, Mr. Hornoff, Mr. McAndrew, please know that the Commission is extremely grateful for the time that you've taken to come and meet with us and the openness with which you've shared your experiences with us. It's been enormously helpful, and hopefully the responses that we can develop from this and the other work that we're doing will make it worth it.

(All witnesses responded with "Thank You.")

(A luncheon recess was taken.)

**BREAK**

WITNESS PANEL: SYSTEM "INSIDERS"

(Hearing resumed.)

MR. SESSIONS: Good afternoon. My name is Bill Sessions. I am sitting here with Gary Maynard and Stephen Bright on my right. We're very pleased to have before the Commission on Safety and Abuse in America's Prisons three exceptionally qualified witnesses: Glenn Fine, Mike Gennaco, and Jack Cowley. This distinguished group has been asked to help us
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understand two issues critical to this Commission's work:

First, what is the nature and prevalence of serious abuses of inmates and serious safety concerns for staff in our nation's prisons and jails?

And second, how do those who work within the government structure get access to information they need to answer these questions? How do they keep abreast of what is going on behind the walls, and where are the important gaps in our knowledge and how do we begin to fill those gaps?

This is the first of two panels to answer these questions. The following panel will address the same issues from the perspective of those working outside of government. From this panel we will hear from insiders about various approaches to the oversight function both within the prison management and from independent bodies within government. By "oversight" we mean very broadly aspects of record keeping, responding to complaints and allegations and abuse, crafting preventative mechanisms, disseminating information so that managers and line staff are held accountable and report to the public on the state of the facilities operated in their name.

To begin to tell us about the nature and prevalence of the problem and the ways of which we respond to those problems, we have two people who are charged with overseeing a correctional system.

One, the U.S. Inspector General Glenn Fine
oversees federal prisons, and the other, Attorney Mike Gennaco, overseas the largest jail system in the United States. Additionally, we have as a witness a man who has as a warden was responsible for the operation of the state prison, and then as regional director oversaw internal oversight of more than one prison.

Let me thank each of our witnesses for taking the time to come here to Tampa and to appear at our first hearing. Our goal is to learn from your many years of experience and many years of hard work. We have only one year to learn as much as possible of what you and many others have devoted your careers to. We are grateful for your help in giving us a start in understanding what goes on inside America's prisons and jails and how that information can be used to make these institutions more productive and humane for those incarcerated and safer for the men and women who work inside those prisons and jails.

Glenn Fine is the first person who will testify for us. He was confirmed by the United States Senate as the Inspector General of the Department of Justice on December 15th, 2000. He served as Acting Inspector General since 1990 - 2000 -- from August of 2000, and has worked for the Office of the Inspector General since January of 1995. Initially, he was Special
Counsel to the Inspector General. In 1996, he became
the Director of the Office of the Inspector General's
Special Investigations and Review Unit.

Before joining the Office of Inspector General,
Mr. Fine was an attorney specializing in labor and
employment law at a law firm in Washington, D.C. Prior
to that, from 1986 to 1989, Mr. Fine served as an
Assistant United States Attorney in Washington, D.C.
In that office -- in that capacity he prosecuted more
than 35 criminal jury trials, handled numerous grand
jury investigations and argued cases in the District
Court and the United States Court of appeals.

Michael Gennaco served as the Chief Attorney for
the Office of Independent Review in Los Angeles County.
The Office of Independent Review's mission is to ensure
that allegations of misconduct by members of the
Los Angeles County Sheriff's Department are
investigated and reviewed in a fair, thorough, and
impartial manner.

In the three years of its existence, the OIR has
reviewed hundreds of internal investigations and has
made numerous policy recommendations and
implemented -- as implemented by the Sheriff's
Department. Most recently, Mr. Gennaco was appointed
by a federal judge as an expert consultant for the

court to assist in designing an oversight body for the
California Department of Corrections.
Mr. Gennaco served for over six years as an Assistant United States Attorney for the Central District of California. As Chief of the Civil Rights Section, Mr. Gennaco was responsible for overseeing all investigations and allegations for federal civil rights violations and has prosecuted judges, police officers, and white supremacists. Prior to that, Mr. Gennaco was a prosecutor with the Civil Rights Division of the United States Department of Justice.

Jack Cowley, the third witness who will testify, has more than 20 years of experience in the Oklahoma Department of Corrections as inmate counselor, deputy warden, warden, and assistant regional director.

Mr. Cowley is currently the National Director of Alpha for Prisons and Re-Entry, part of Alpha USA, an interdenominational non-profit ministry. Alpha for Prisons and Re-Entry trains, equips, and connects volunteers to deliver a basic Christianity course to prison inmates and to assist offenders into successfully reintegrating into their communities after release. From 1996 to 2003, Mr. Cowley worked as Director of Operations at the local, state, and national levels for Justice Fellowship and the InnerChange Freedom Initiative in -- pardon me, at Fellowship Ministries.

The Commission will now be pleased to hear from you, Mr. Fine, for the remarks you find to be appropriate.

MR. FINE: Thank you, Judge Sessions and members
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of the Commission.

I appreciate the opportunity to appear before the Commission to discuss the work of my office, the Department of Justice Office of the Inspector General relating to safety and abuse issues involving federal prisoners.

The OIG is an independent office within the Department of Justice that has broad authority to investigate violations of criminal and civil laws within the entire Department of Justice and to review department operations and programs. In furtherance of our duties, the OIG receives many allegations of misconduct both in the Federal Bureau of Prisons and throughout the entire Department of Justice.

For example, the last two fiscal years the OIG received about 16,000 allegations of misconduct throughout the entire Department of Justice, and not just the BOP. But of those total allegations, approximately 10,000, or 60 percent, involved the BOP.

During the same time, my office, the Office of the Inspector General opened approximately 500 investigations of misconduct involving the Bureau of Prisons.

The most common allegations investigated by the OIG involving BOP employees related to sexual and physical abuse of inmates, introduction of contraband, use of unnecessary force, and other official misconduct.
My written statement provides further statistics regarding the numbers of allegations as well as examples of substantiated cases of misconduct. But in addition to individual investigations of misconduct, the OIG reviews programs and systemic issues within the Department of Justice. Examples of recent reviews conducted by our office involving the BOP include a review of the treatment of aliens held on immigration charges in connection with the investigation of the September 11th attacks.

Reports required by Section 1001 of the Patriot Act concerning civil rights and civil liberties violations in the Department of Justice.

An examination of the Bureau of Prisons disciplinary system and a review of the Bureau of Prisons efforts to prevent drugs from entering into federal prisons.

I would now like to provide a few brief observations regarding the issues of safety and abuse in federal institutions. I think it is important to note first that the number of BOP employees who commit such a misconduct represents a small percentage of all BOP employees, and that most BOP employees perform their duties in a professional manner.

While there have been problems of prison abuse in BOP institutions, my perception is, that likely it is a more serious problem in some state systems than in the BOP.

However, that does not mean that abuse does not
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occur in federal facilities or that it is an
unimportant issue. I believe it is a critical issue
that must be aggressively addressed.

First, I believe that one of the most effective
ways to detect and deter prison abuse is through an
independent, well-funded oversight entity, such as
an Inspector General's Office. In my view, an
independent office outside the prison system provides a
greater likelihood that objective investigations of
misconduct will be pursued. Every federal government
agency has an Inspector General's office, as do some
states and localities. I urge the Commission to

consider the wider use of this model.

Second, discipline and prosecution for those who
commit misconduct is critical. If an employee who
abuses inmates is not criminally prosecuted or
disciplined administratively, the likelihood of abuse
escalating is stronger.

Third, the OIG has found that prison abuse often
occurs in facilities in which other forms of misconduct
are prevalent.

For example, we found that nearly half the
subjects in OIG sexual abuse cases also had
smuggled contraband into prisons for the inmates with
whom they had sexual relationships. The contraband
ranged from food, toiletries, cigarettes, cell phones,
and jewelry to drugs and weapons.

Fourth, the hiring and training of prison staff
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is critically important. A few corrupt employees within an institution can result in incredible damage to the safety and security of both inmates and staff.

We have found that when corrupt individuals are prosecuted or removed from the institution, the level of misconduct and allegations of abuse decline dramatically.

Fifth, the laws criminalizing service prison abuses must be sufficient. I make this comment with the federal laws regarding sexual abuse of inmates in mind. The OIG has investigated hundreds of allegations of sexual abuse of inmates by BOP staff.

However, I believe that the current federal laws criminalizing staff sexual relations with prisoners are deficient. The crime of sexual abuse of a federal inmate is only a misdemeanor punishable by a maximum sentence of one year unless the staff member uses force or overt threats. Because prison employees control many aspects of inmates' lives, they can obtain sex from inmates without resorting to the use of force or overt threats.

The OIG currently is seeking to have the federal laws strengthened to provide greater penalties for sexual abuse of inmates by federal prison employees and to cover inmates housed in contract facilities. I believe the Commission should support these proposals.

In conclusion, abuse and safety within prisons -- for both inmates and staff -- are critical
issues. I believe this Commission can have an important impact by making recommendations to assist in these areas, and in this testimony I've highlighted a few of the issues I believe are worthy of further explanation. I thank the Commission for inviting me to testify, and I will be glad to answer any questions that you have.

MR. SESSIONS: Thank you, Mr. Fine.

The commissioners will have an opportunity to question all three of the witnesses as a group, and so we'll proceed directly now with the testimony of Mr. Gennaco.

MR. GENNACO: Thank you, Judge Sessions.

It is a privilege to be offered the opportunity to spend some time with this august and distinguished panel of commissioners, and I am pleased to be able to start a dialogue on issues of common interest with regards to addressing the issues of safety and abuse in our correctional facilities in the United States.

A year ago yesterday, an inmate by the name of Raul Tinajero was murdered in his cell. While five other cell mates watched, another inmate was able to break the system down and get into that cell and kill him. The reason that this inmate killed Mr. Tinajero is because Mr. Tinajero had just prior, a week prior, testified against the killer in a criminal proceeding.

When this allegation became known, media interest
was directed at the jails. And unfortunately, this murder was the fifth murder over the course of six months in the downtown Los Angeles jail complex.

The Sheriff, when alerted to the media interest, held a press conference and instead of simple lotted -- plotted about "we'll get to the bottom of this, we'll make sure that the right thing is done," instead conducted a full debriefing of not only that murder but what was known with regard to the other inmate murders that occurred in the weeks previous.

In addition, this Sheriff opened his doors, opened the jail doors to interested members of the media and elected officials. This kind of response is unusual in the correctional -- in the correctional organizations -- in correctional organizations. But this kind of response, in my view, was exactly what was needed so that additional light could be focused on the issues that were plaguing the jails during that six-month period.

In addition, Sheriff Baca, because of the oversight group that he had agreed to incorporate into his disciplinary and oversight system and allow independent observers to come into the system and work and shape investigations, turned over the investigations that ensued of each of those five inmate murders to the Office of Independent Review, which I have been entrusted to lead.
Independent legal advisers, six of us, get to work on a daily basis as outside observers in shaping internal investigations of misconduct by LA County employees, including jailers, and also not only shape those investigations but have a meaningful voice in the disciplinary outcomes of those investigations.

On every case we are able to offer recommendations as to how this case ought to come out, and we are able to use the evidence that's collected during the investigations to shape principal decisions in discipline. As an outside voice, we are able to work outside of the Sheriff's hierarchy in order to provide some information and recommendations about these outcomes.

Perhaps, though, the most important thing that we have been empowered to do, in my view, is to be able to provide a bridge of transparency from the shielded shutter world of the jail system and the correctional system and provide a bridge of information to the outside world about what is going on in that jail system. We have a continued presence there. We have an office there. We're able to walk the rounds. We're inside the perimeter. We get to talk to inmates. We get to talk to guards. We get to talk to the management staff. And we can drop in on them any time we'd like.

More importantly, or as importantly in my view,
we are able to report out to the world what is going on in the disciplinary system. The jails and prisons themselves are a cloistered shuttered world, but within that shuttered world even more shut down is what's going on with regard to discipline. What is happening about accountability? And as a result of our efforts, for example, in the five murders that we oversaw the investigations of, over 25 employees received discipline as a result of accountability failures that allowed those inmates to kill other inmates during that period of time.

We have been able, as a result of our involvement, to offer systemic recommendations. In every case that we are able to work on, or that we have worked on, we will assess the adequacy of the department's investigation, our recommendations on disciplinary outcomes, and whether the department agrees to us -- agreed with it. That information, over the course of four years, has provided the public with unprecedented access and information that appears on our website on a quarterly basis about what's going on in the jails and, more importantly, what's going on with regard to accountability and systemic failures.

I think it's only through this transparency, only through this ability to provide a bridge of information from the shuttered world of the jails to the outside world that confidence can be re-established among the
public about the way in which an important part of our governmental functions; that is, the care and custody of people who have been incarcerated can be restored.

I have to say that I'm pleased to report that on the anniversary of the murder of Mr. Tinajero, which will be tomorrow, God willing, that if we last another day there will not have been another murder in that downtown complex.

I appreciate the ability to spend time with you and certainly welcome and entertain, as I said, a continuation of dialogue with my colleagues up at the table. Thank you.

MR. SESSIONS: Thank you, Mr. Gennaco.

It was very interesting testimony, and we'll question you further concerning yours and others' testimony.

Mr. Cowley, we'll be pleased to hear from you, sir.

MR. COWLEY: Thank you.

I'd like to think that I'm here representing hundreds of thousands of correctional professionals that are tired of "business as usual" and a system that's failing nationally. I'd like to think that I'm here representing future crime victims who are so labeled because the system continues to fail more than it succeeds.

I was a warden for many years, and I absolutely loved what I did, but it becomes very tiresome to see the revolving door of corrections; and yet, when we're
not held accountable, corrections professionals, the
culture inside the prisons becomes a place that is so
foreign to the culture of the real world that we
develop our own way of doing things.

There are horrific abuses that have taken place.
We've heard about some of them. It happens every day.
But they're not "usual." I would like to think of the
system however, as an abusive system. Tear it out by
correctional professionals who want to do the best job
they possibly can. But quite frankly, they're only
surviving every day themselves.

I recently spoke with the warden of the women's
facility at a state jail in Texas, who on Easter Sunday
had 48 critical posts to fill and only eight staff
showed up. In a condition like that, there is no way
possible that they can begin to deal with the delivered
indifference that's taking place in our prisons. She's
only just trying to survive herself.

The system has become out of control, and yet,
it's the greatest job in the world because there's
really no expectations for you to succeed. Very few
wardens are held accountable for things that happen in
their prisons. Until that changes, there isn't any
outside influences that can be imparted strong enough
to change it. You could have a herd of lawyers
descending on prisons with oversight authority, and
it's not going to change it. It's not going to change
the result of incarceration.
Prisons can work. They can only -- and by that, I mean that fewer people leave badder, worse than when they came in. Prisons can produce citizens that will not break the law again, and they can do it more than they don't. But we have to begin to believe in ourselves, that it's possible, and that can only happen in a system from the governor to the Secretary of Corrections, to the warden, to the deputy warden, to the correctional officer on the shift.

When I came to the one prison, I decided to go eat breakfast with the inmates, so I had my jeans on and I walked out to the unit and we had satellite feeding so we carted all the food to the unit. It was a pretty good breakfast, eggs and pancakes. And after they go through the line, they would dump their trays in this slop bucket and put their silverware -- obviously, spoons -- in a bucket of what used to be hot, soapy water. So as I'm going through the line to get my breakfast, there's no more silverware. So watching what the guy in front of me did, he goes over and puts his hand into what used to be the warm, soapy water, which is now a cold, murky substance, and put his hand down in there and get his spoon and go eat his breakfast. So I stuck my hand down in the water, and amongst all the bits and pieces of eggs and pancakes, I found me a spoon.

Now, is that abuse?

But if you live that way, thinking the people that are there to help you get better don't care any more
than that about you, then to live that way every day becomes abusive.

If you really want to change the system you know, where everybody's got an answer, if you really want to change the system and produce ex-offenders who will not re-offend, in prison, all you have to do is hold wardens accountable for recidivism. That's all you have to do is say, "We will arrange the system in which we can tell how inmates re-offend, and for those wardens and directors of corrections who are operating a system that fail more than they succeed, guess what, you're not going to have a job any longer, and it will change the entire system into one in which we can be very proud. And prisons can become as positive as colleges.

Thank you very much.

MR. SESSIONS: Gentlemen, we have sufficient time for all the commissioners to ask questions. I'd like to start off with one that relates to the reporting of offenses that are observed by one officer where the offender is another officer, and nothing in many instances is done. And we heard testimony this morning about gangs that operated not from the prisoners side but actually from the officers' side.

Now, what do you do about reporting? What can you recommend for us that might be an encouragement to assure that those people who are the jailers and who are the prison officials actually know about and can
deal with officer abuse or abuse by officers?

MR. FINE: I think one of the most important ways is to provide an outlet for those officers, to provide an entity that they can have confidence in that will not immediately turn over their names to management of the facility, but will take their allegation seriously;

will try to get to the bottom of the allegations; will do it in a confidential and aggressive way, and then hold people accountable. Both of the other witnesses talked about accountability, and I agree with that tremendously.

If they see that they report and nothing is going to happen to them if they're not going to be taken seriously; if the investigations are not going to be aggressive and thorough, there will be a breakdown of reporting.

So I think that is one critical aspect that needs to be, have happened before there is a culture of, "We're not going to tolerate it. We're not going to tolerate it by inmates. We're not going to tolerate it by others." It's a significant problem that needs to be addressed. And I don't think there are easy answers, but I think that's one facet of the problem.

MR. SESSIONS: Mr. Gennaco--

MR. GENNACO: Yes, Judge. Thank you.

As a build off of Mr. Fine's comments, I would add the following, which is:

One, one thing that I think is long not acknowledged is that most of the complaints that -- or
investigations that are initiated that we see in the Office of Independent Review are generated by employees within the organization. There are employees that do have the courage to come forward and report misconduct, but there continually needs to be encouragement of that. And I'm not suggesting that there aren't times when that kind of -- there's a significant pressure placed on a deputy or any other correctional officer not to report in order to remain within the group of colleagues that are there backing them up every day with regard to a very dangerous occupation.

Another thing that can be done, I think, and is important to do to sort of ameliorate that pressure is to have a timely and detailed response protocol when there is an incident in which force is used. Very detailed reporting and rollouts by Internal Affairs or an outside organization such as ours, I think helps capture that information in a timely fashion before the blood can be cleaned up, before the physical evidence can be removed, and before the inmates can be discouraged from providing information, as well as the deputies.

I think those kinds of standardized best practice investigative techniques are important to the solution.

MR. SESSIONS: Mr. Cowley --

MR. COWLEY: Well, it's a cultural issue. And the way I did it is that we promoted those staff persons
that we knew wasn't a part of that culture. We were on the yard. I opened the prison up to tons of volunteers. We had eyes and ears all over the institution. They -- through our training -- we all are trained, correctional officers are trained. They are trained. But it isn't -- it's what happens later. And in order for them to understand, we have to model the kind of behaviors that we want them -- you see, correctional officers really don't believe that inmates can be good in prison or normal in prison, they're not trained that way. So we have to model that behavior. And when there is the use of force or when there is the idea that there has been some type of abuse occurred, not only would we probably know it before anybody else did, but that it would be -- at the warden's level, at the superintendent's level, at the jailer's level, it would be dealt with in a very discriminating way. It's just not acceptable.

The reporting -- we have reports. We have -- we use cameras in use of force incidents, most states do that now. Planned uses of force are videoed. We know the officers generally that are problematic, so it's -- it just comes down to the administration, the director, in talking about corrections, we're just not going to take it anymore.

MR. SESSIONS: Is there sometimes that an event
Involves multiple correctional officers?

MR. COWLEY: Sure.

MR. SESSIONS: And what uniqueness does that bring to the discussion that you've had now?

MR. COWLEY: I think it's a -- correctional officers generally will do what they think they can get by with doing. You will have a rogue correctional officer every now and then, but primarily if a correctional -- if they do it in concert with one another, they generally know -- regardless of what the training is and what the warden says, they know it's okay because it's the unwritten, "Do what you have to do."

Now, they know they're doing things wrong. They're not -- it's not a mistake that an offender is beaten in his cell because he tried to tell something or because of what they thought he might tell, that's not a mistake, but they believe they can get by with it.

MR. SESSIONS: So you're saying that if three officers were involved, they would all rely upon the fact that it would not be reported?

MR. COWLEY: That's correct.

MR. SESSIONS: Mr. Gennaco --

MR. GENNACO: Well, I think that that's a problem and that's certainly an initiative that continually needs to be dealt with.

I would agree with Mr. Cowley, though, that -- and I would just put a little more of a gloss on it with...
regards to the issues that we've seen at least in the correctional system that we oversee; and that is, there are a number of times in which bad intent or bad deputies or bad jailers are certainly involved in force and other integrity issues in the jails, there's no question about it.

But another thing that we see that I think is just as potentially dangerous to the inmates is neglect of duty, inattention to one's duties, inability to address the Title 15 monitoring requirements and to do your work on a daily basis. That kind of inattention can be just as destructive and potentially violent because you are in a violent population and housed with people who are violent.

The other thing that we think contributes to this problem is neglect of supervision. If you don't have supervisors that are willing to come up to the forefront and actually supervise and make sure that the job gets done and don't simply sit in their offices and don't get out on the floors, you're going to have the environment that's going to lead to violence and abuse.

MR. SESSIONS: I'll have your answer, Mr. Fine, and then we'll move on to our Commissioner Maynard.

MR. FINE: Just briefly in response to your issue of -- when the incident or misconduct involves multiple officers, it is true, as in any law enforcement investigation, and that's in some sense what it is, it's a -- basically, you do a thorough investigation,
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you try to separate the officers. You look for corroborating evidence, and you will often find one who is willing to expose wrongdoing.

There is tremendous pressure within an institution to keep quiet, but if you are aggressive about it, if you take these things seriously, if you apply law enforcement investigative techniques to something that is clearly a wrongdoing, you often can determine and corroborate and prove the misconduct that occurred; and that's, I think, the important factor, to have an entity that's willing to do that and not willing to simply accept the initial statements of "nothing happened here."

MR. SESSIONS: Thank you.

MR. MAYNARD: Yes, I have a question for Mr. Fine and Mr. Gennaco.

The first question, I'm sure the bureau keeps a lot of records. What kinds of records do you find helpful in investigating the abuse or safety issues that currently the bureau has?

MR. FINE: The bureau does keep significant records. They keep incident reports on every incident that happens. They keep reports on complaints. Every complaint that an inmate makes is supposed to be kept by the Bureau of Prisons. We have unfettered access to those records at the Inspector General's Office and the Department of Justice. We have access to all records within the Department of Justice, and the Bureau of Prisons does turn that over to us.
One of the things that's critically important is technology. We heard a little about cameras. Video cameras are very important within an institution, and we find within the Bureau of Prisons, the newer facilities have more video surveillance throughout the facility. It doesn't mean there are not blind spots here or there that are taken advantage of, but with video surveillance you often can see what happened before or after an incident, so that's very important, and we have relied upon that kind of evidence very strongly.

MR. MAYNARD: Mr. Gennaco --

MR. GENNACO: Yes, Mr. Maynard.

To answer your question -- and not to be redundant -- we also have access to documentation, force reports, incident reports and the like. But one thing that is missing and has been missing, I think, in the correctional setting that does exist in some of the more progressive police departments is a computer tracking system of employee behavior. The City of Los Angeles is finally developing one, but some of the other larger progressive law enforcement departments have this computer tracking system that captures every use of force the officer uses, every lawsuit in which the officer is named, every citizen complaint lodged against the officer, every time in which the person's named actually engages in use of force.
MR. SESSIONS: Does the testimony give an indication of where those departments are that we might look at?

MR. GENNACO: Yes, I can give you a list of them. But certainly the County of Los Angeles has a very good one, an early one. The City of Phoenix has a good one in their police department. Tampa has one, the City of Tampa Police Department has a good model. But there are models that are there. Unfortunately, this kind of model hasn't moved over to the correctional setting, and there's no reason why it can't. That kind of information that's available to managers can be used in a number of ways, not only for accountability but also to early on detect some issues involving particularly new employees or older employees that seem to have gone arey and all kinds of ways this information can be used for the benefit of the correctional setting.

MR. MAYNARD: Thank you.

MR. FINE: Mr. Fine, did you have any others that you -- recordkeeping that you might need that you don't have that might be helpful?

MR. FINE: No. We -- as I say, we have access to all records. We too keep track of all the complaints that are made to us. We have an electric moni -- investigative case management system that is very important to determine. When a case comes in, we don't have the resources to do every complaint that comes in, but we do see whether there's a pattern here or a pattern of an individual being involved in certain
types of behavior, and that is very important, it's very helpful to us. I think that is a critical aspect to it.

MR. GIBBONS: I have a question.

MR. SESSIONS: Oh, go right ahead, please.

MR. GIBBONS: In the cases where there is internal recordkeeping, are those records accessible to the press?

MR. FINE: No. One can file a FOIA request for them, but the detailed records would not probably be released to the press. They are available to us and we provide reports on trends and systemic issues. The Bureau of Prisons also issues an annual report that accumulates the information and provides overall statistics about types of complaints and how they're handled, but the individual complaint of an individual inmate I would presume would not be available to the present.

MR. GIBBONS: Even under FOIA?

MR. FINE: Even under FOIA. I -- and there would have to be a balancing test there. But my guess would be that a FOIA would probably be denied by the Bureau of Prisons.

MR. GIBBONS: Mr. Gennaco, what about under the state open record laws?

MR. GENNACO: The Public Records Act of California does provide some relief to the media. Although, I have to say that the information that is made available...
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is rather minuscule and is certainly -- for example, the identity of the deputies involved is redacted pursuant to other privacy statutes and exceptions to

the Public Records Act in State of California. Even so, my perspective is that there are ways to provide access, if you wanted to provide access, if you were a correctional facility or an institutional organization in the State of California, but police managers, correctional managers are not so inclined. They read the interpretation of the statutes very narrowly and protect that privacy of their people as much as they can.

We have, on the other hand with a different perspective, taken the interpretation of the statutes that allow access to its ultimate limit, in our view. We have a whole different interpretation of the same wording of the statute.

MR. GIBBONS: Would you favor more press access to the internal records of the correctional systems?

MR. GENNACO: I think that the public is entitled to know about what's going on in the correctional systems throughout the country, so therefore I'm always going to be on the favor of more transparency. I do understand and respect that there are certain privacy issues with regard to the individual employees that must be considered. All I'm suggesting is, you don't necessarily, necessarily need to divulge the names of the individual actors in order to give the public an
idea about what's going on. And for me, that's more important.

MR. GIBBONS: Of course, CEOs of publicly-traded corporations claim to have privacy interests, too, but they yield. Why should privacy issues of correctional individuals be treated more favorable?

MR. FINE: Well, I do think it's a balance to be drawn and that there does need to be some recognition of the privacy of correctional officers; some of whom are accused unfairly or unjustly. By the same token, I agree with Mr. Gennaco that there does need to be transparency as well.

So getting the information out in a form that's meaningful is important while respecting the privacy interest of the correctional officers.

MR. BRIGHT: Could I follow up on that?

Which is, I gather that the way in which your office goes about investigating is somewhat different than what Mr. Gennaco described in terms of its openness, and I know there are reports that are issued with regard to things, but then there are other investigations that don't lead to reports. If you could describe that process a bit.

And then to the extent to which the inmates, their families, and the public are able to find out what's going on. I mean, I'm-- you know, I'm sure you
know that in the penitentiary in Atlanta, the special housing unit, for as long as I can remember, allegations -- or not allegations, but it's been proven of people put in four-point restraints improperly, rapes, beat ups, stabbings, all that, and the FBI won't even tell you whether they're investigating or not. So what's your answer to that?

MR. FINE: My sense of it is, as there is an ongoing investigation it would be unlikely that the FBI would divulge that type of information, and as would we. On the other hand, when the investigation is complete, then that's a different matter and normally we do both provide to the Bureau of Prisons and also to the complainant, we have a routine use to be able to let them know what has happened to their complaint.

There also is -- are FOIA statutes and there are times when the balance will allow information to come out without -- with some redactions, and I think that's very important.

Then finally, I think in aggregate, there needs to be reports on what is happening in institutions and there needs to be that kind of transparency, and we try to provide that as well in terms of systemic reports about what has happened and what we've done.

For example, with our review of the Metropolitan Detection Center in Brooklyn, we provided a very detailed report on what exactly happened there. We didn't provide the names of the officers in the report,
but we did provide our conclusions about the misconduct that occurred. I think that's critically important.

MR. BRIGHT: And I wanted to ask about that.

As I understand it, you provided your report in June of 2003 --

MR. FINE: Uh-huh.

MR. BRIGHT: -- a detailed report on it, and I know what you said, the four or five things ought to be done and there ought to be swift action when these reports come out. Apparently, the Bureau of Prisons is still determining what to do about that report for almost two years now.

Am I -- do I read your statement right about that?

MR. FINE: Well, the timeline is not exactly that. But you're absolutely right, there has not been swift action on that report. We produced the report in December of 2003. The Civil Rights Division of the Department of Justice reviewed the report and declined prosecution in the spring of 2004.

The BOP has had it since the spring of 2004. They have not imposed discipline, they're still in theprocess of doing so. As we reported in one of our reports, they recently found additional videotapes.

And what -- that report relied very heavily on videotapes of what happened. And they found additional videotapes and we and they are going to find out how that happened. But in effect, you're absolutely right that the discipline in this matter has been delayed and too slow. And that's one of the failings of the
system, when it is not swift and sure, that's an example of it.

MR. BRIGHT: And when that report comes out, is it public then or does it remain confidential or whatever during the time the Bureau of Prisons is trying to decide what to do?

MR. FINE: We issued that report publicly. We issued the report publicly in December of 2003. We put it on our website and provided it to the press and to anybody who asked for it. We think that was important to provide sunshine on that problem. So, no, it's a public report.

MR. BRIGHT: There's great public interest in that.

MR. FINE: Absolutely, and that's the problem

MR. BRIGHT: But just a run-of-the-mill complaint about a prison, would that be the same thing, that you found that there was some misconduct, abuse in prison you refer that then to the Bureau of Prisons to take some action on it, would that become public at that time?

MR. FINE: Certain reports do. And we -- and we provide information about certain of our reports.

For example, under the Patriot Act, section 1001, we're required to receive and review civil rights and civil liberties violation through the Department of Justice. We are also required to report on that every six months. So in each six-month report we provide
information on the case, where it is, what the status of it is, and when they're completed and either substantiated or unsubstantiated, we provide that information as well. That's not every case we do, but in terms of civil rights or civil liberties cases arising under Section 1001 of The Patriot Act, we try and do that as well.

MR. BRIGHT: Those wouldn't be prison cases.

MR. FINE: They are prison cases, yes.

MR. BRIGHT: They are.

MR. BRIGHT: A significant majority of them are prison cases.

MR. BRIGHT: Oh, they are.

MR. FINE: In fact, we had one where it was presumably described and was described failings of the warden in that prison to adequately address complaints of discrimination, and provided that report -- well, provided the information about the report in our Section 1001 report just recently.

MR. COWLEY: I don't think there's a -- I don't think there a lack of reporting on those things that are reported. But there's a lack of concern about anybody reading the reports by those in central office. Most states, every use of force, every misconduct, the number of volunteer hours that's in the prison in that month, most Departments of Corrections receive tons of information from facilities.

MR. BRIGHT: Yeah. The problems, somebody else receives them
MR. COWLEY: Well, it's there.

MR. BRIGHT: And you've got to file a lawsuit and subpoena them to get them there.

MR. COWLEY: No, no, not those kinds of reports. I mean they're there. Then to get particulars then you would probably have to file some Freedom of Information, but the reports are there. You will not have trouble finding the reports on the issues that are reported, a lot of information.

MR. NOLAN: Yeah. I have an observation and then

a question for you.

As a member of the State Assembly in California, I visited eight prisons. I was an inmate following that in two prisons, fed facilities, and since coming with Prison Fellowship I visited over 30 prisons.

In fact, just like the U.S. Prison at Leavenworth. My observation is that while we call it a prison system it really isn't. They're individual death SHUs with the warden as Duke, and he rules everything within his domain. And my observation, too, is there are two types of wardens:

Those who view the inmates as human beings in need of correction, and those who view them as non-persons, people without hope.

I'd like to hear from the different perspectives of you both investigating and, Jack, you overseeing an institution, the difference in atmosphere of that attitude at the top. You know, they say vegetables
take on the flavor of the stew pot, and there are two
different types of stew pots in the different prisons
I've been in. They fall very clearly within one of
those two categories, usually.

And so where there's that leadership from the
warden, that sets the tone. Do you have difficulty
getting the information and getting to it?

And then secondly, Jack, I know you've been
involved with InnerChange Freedom Initiative and the
fascinating thing for me watching that is, the life of
the COs is so different because the atmosphere is
different. But I'd like your observations. Am I
correct in that, and do you find it depending on the
leadership of the warden whether there's access that
you have in cooperation or resistance and do you find
that they tend to -- the incidents tend to cluster
reports and then what the different atmosphere makes
the life of the CO different?

MR. GENNACO: Very interesting observations. I
would agree with you that the institutions and the
individual facilities do take on a culture in and of
themselves and a large part of that culture derives
from the leadership at the institution itself. It's
interesting, even in a hierarchical organization like
the Sheriff's Department and in my more limited
experience with the California Department of
Corrections, you see that phenomenon happening in the
prison environments where essentially the leader of
that facility essentially can close him or herself off
exist and the fact that they are closed down and
insular. So as a result of that, I think that it's
important to again open up to some degree those
facilities; not only to outside groups, but also to
members within the hierarchy to make sure that the
management philosophy comes from the very top of the
organization and not allowed to have it depends on the
character of the individual at each institution.

I think oversight groups can help with that as far
as develop some consistency on systems and also develop
some consistency on accountability.

MR. FINET: I agree. I think it matters very much.
And that there are differences in wardens and the
attitudes of wardens towards outside oversight and
rooting out misconduct that exists within the
institution, and that has a dramatic impact on the
institution. It has a dramatic impact on us and our
ability to do it. Some wardens will delay reports,
they won't report everything and try to keep things
in-house. That's not a good thing, and it hurts us.

Some wardens will not cooperate to the extent they
should with us. Other wardens want us in there and
want us to find out any problem and want to cooperate
and get rid of the few bad apples that put a tarnish on
the institution and on the entity. Some wardens will
allow us and cooperate with our proactive investigations when we'll do a proactive operation to put a wire on someone or put a video surveillance on a certain entity. We have to go through hoops to do that. Some of them make those hoops so high and so long that by the time we're through them the opportunity to catch the wrongdoing is over.

So the warden does matter. And it matters how the institution, in our case the Bureau of Prisons, deals with each of the wardens, if they enforce accountability; if they hold them accountable for the problems in their institutions; if they move a warden out when there are significant problems, that will set a tone. If they don't, then I do think that the problems is in fostering an institution, and they we see more problems in that institution.

MR. NOLAN: Actually, could I just ask you about InnerChange and the COs because -- I mean, it's so dramatic they're seeing -- their relationship with the inmates versus other prisons.

MR. COWLEY: We do now have models. Unfortunately, when I was -- when I was a warden for eight years at a particular prison we went for almost three and a half years without a use of force or a serious incident. I became known as the "hug-a-thug"
Now, we didn't have any uses of force or any serious incidents, and the overtime of our staff went to zero. But because that wasn't the typical thing, then we began -- in fact, I was investigated because we didn't have any overtime and they thought perhaps I was keeping books under the table. So even if you do the right thing, in some systems it's, "Oh, my goodness, it's working so something must be wrong."

But we do have models. InnerChange Freedom Initiative is a faith-based Christ entered program that was started in Texas under then Governor Bush. The program is now -- actually, every inmate at the just -- or what is now the Carol Vance Unit outside of Houston is in the program, 390 inmates, a very intensive program from sun up to sun down; lots of volunteers going in, open to the media. Correction officers from all over that area are wanting to come to work there. As we now are seeing in Iowa, with the establishment of that program there, and the union I understand -- I've been gone now several years -- but I understand now that officers are bidding to get on that unit because it's a wonderful place to work.

So again, you have to start with the end in mind and understand. In some state systems, the training for correctional officers is they use this book called "The Games Convicts Play." They're trained, don't touch, don't even shake hands, don't call them by their name, call them by their number. We've written books
on how inmates -- or how people become convicts, but we have -- there's not been a book written yet on how inmates can be people, normal people and still be confined in prison. It's not the paradigm that we have in corrections.

So -- but now I'm very encouraged. The director of corrections in California, Jeannie Woodford, has asked me to come out and speak with all of her wardens in May to talk about how -- what's possible in institutional environment. Because we know the culture dictates the outcome, finally, and to say that we expect inmates to leave better than when they came in, I think it's starting to resonate across the country. I hope.

MR. KRONE: I have a question.

Mr. Fine, just to get a scope of this bureaucracy -- (Inaudible) -- this resistance, I understand here it says here to detect and deter ways involved in abuse in our systems. It sounds like you go and you do your reports, you write it up. Well, now it's up to somebody else to implement that.

So my question is, what percentage do you think of your work product is actually being used and implemented within our systems and for a change of the better?

MR. FINE: That's a good question. There are many ways that our work gets -- results of our work get implemented:
One, we work with prosecutors to prosecute wrongdoing and we have a significant number of our cases which we work with U.S. Attorneys, we work with the Civil Rights Division, and the offender gets criminally prosecuted and removed from the institution.

In other cases, we provide the report for discipline to the Bureau of Prisons and we follow up to determine what kind of discipline has been imposed. Now, we don't -- we don't have the ability to impose the discipline, we provide that to them. But we do monitor and follow and there is a significant number of them who get removed or resign in lieu of removal or get suspended for periods of time.

We also do, as I said, systemic reports. We look at the BOP disciplinary system. We find problems in it and make recommendations for improvement. And the Bureau of Prisons is -- and we publish that. We publish that on our website. If you look on our Web site, you'll be able to see. And we publish the BOP's response to that. They have to -- each one of our recommendations they have to say whether they concur, or they agree or disagree, and we follow up with that. For the ones that disagree, we go back to them and ask them why. On the ones that say they agreed, we ask them, "Well, what are you going to do about it? What is your corrective action plan?" And then we follow through to determine whether they've implemented that.

In some cases, we'll go back and do a follow-up review several years later to see, "Well, did you
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actually implement the recommendations that we imposed?" We impose some pretty significant recommendations, for example, attempting to prevent drugs from entering the federal prisons, including random drug test of officers, including searches, random searches sometimes of officers, but sometimes correctional officers are the ones who bring the drugs into the institution. There is some resistance to that, but we push and we try to follow through to see whether they've implemented it and continue to apply the sunshine and pressure to it.

Again, we can't implement it, we can't do it, but we can provide transparency to the process, and we try and do that.

MR. SESSIONS: We have about 20 minutes left. I'm going to start right in with Ms. Schlanger, Commissioner Schlanger, and we'll go down the line on questions that each of us may have, and then we'll start over again with whatever time we have left.

As I've instructed to the witnesses, if there are things that you want to talk about that we don't ask, please respond on your own.

Ms. Schlanger --

MS. SCHLANGER: Thank you.

This talk about internal or quasi internal watchdogs, it sounds -- it sounds very attractive, but it -- I guess what I'm thinking about is it's obviously not entirely successful. So I'm thinking about the
situations that I remember reading about with criminal
prosecutions of the whole squad of folks in Florence,
for example, I think it was, in the Bureau of Prisons
or the five murders that you just mentioned.

So if these are the results in the systems that
have your kinds of offices at play, I guess I'm
wondering for us who are thinking about whether or not
that's a recommendation to make to other people, is
that -- I mean, is it that they're not entirely
successful because they're not implemented as deeply as
they need to be or because there's some things that are

beyond the scope of what you can do or -- I guess I'm
wondering, how do we come up with a system where you
don't have five murders in six months before you have
the solutions to that, you know?

MR. GENNACO: That's a tough question. I would
suggest that something is better than nothing. And
prisons and jails are certainly by nature potentially a
powder keg of violence.

That said, I do think that the jail is in a better
place April 20th, 2005, than they were April 20th of
2004, because of a number of things:

One, is because of the kind of way in which those
murders were assessed and systemic issues and
accountability issues were addressed.

Two, the simple fact of continuing to shine the
light through public reporting, through explaining to
the public what happened and what went wrong certainly
in and of itself provides, I think, a benefit because

it causes the jail and the jail managers to really think about ways to prevent future murders from happening.

I didn't have a lot of time, but Title 15 is now actually being enforced. There are actually people dedicated to roaming the jails and ensuring that suicides don't become successful; that homicides don't become successful; that weapons are found before they are used, and all of this kind of activity didn't exist prior to a year ago and now do exist. And I have to say that it's not just us, but it's us in concert with the ACLU and other watchdogs and media attention and focus and progressive management at the top that has all worked in a concerted way to make the jail a safer place than it was a year ago.

Will a murder happen tomorrow? Maybe. But I think the likelihood of it occurring is certainly significantly less as a result of the year of work that we and others have put into that have directed to the problem.

MR. FINE: I agree with Mr. Gennaco. I also think that there will be incidents in prison, and you do need an entity to aggressively investigate it and hold people accountable for that. But you're absolutely right, through the prevention of those incidents and those problems are also critically important. And the Bureau of Prisons does and it should do many things within the institutions to
try and prevent that from happening, ranging from drug
treatment for those who need it, making it available;
prevention of drugs from entering the prison; work
programs so that people are productively engaged while
they’re in prison. And The Bureau of Prisons does do
that, they try and make sure that there’s work
available for people who are able to do it.

Intelligence within the prison. There are gangs
within prisons. There needs to be a sort of knowledge
of what is going on and the intelligence to prevent it
from escalating into violence.

So there’s a whole series of things that the
prisons need to do to prevent it from happening, but
when it does happen, and it will inevitably happen no
matter how good the management is, there needs to be
aggressive oversight and investigation to hold people
accountable for that.

MR. COWLEY: There’s nothing better than to bring
inmates and correctional officers together than a good
court monitor. Most states who are under federal court
order from one time to the other from 1970 to the
middle of the late eighties, most had court monitors,
oversight, well meaning, and we came up with all kinds
of good documentation and it all went away.

You can’t -- there’s nothing wrong with
monitoring, but if you think -- if we have a piece
that, oh, now things are well because we’re monitored,
believe me, it will not help a lot. It might give us
confidence for a while, but we know how to get around
the monitors, believe me. If we're so inclined to run institutions that way, we're going to get around them. And they can wait the monitors out. And that's my concern is monitors is a finite period of time that the monitors are in existence, the three, five, even ten years, that's a blink of an eye in the length of any law enforcement organization or correctional institution or organization, and they will wait them out.

The sad thing is that the transparency that the monitor provides and that the public is then used to also disappears when the monitors go home. I think there needs to be permanent, meaningful oversight in every institution, and that can't go away because you need -- if we went away tomorrow, I would suggest that the Sheriff's Department would go back to where they were in the blink of an eye.

MR. SESSIONS: Okay. Questions.

MR. RIPPE: Mr. Cowley, you talked about leadership, accountability, vis-a-vis the recidivism rate. Could you expand a little bit on your comments about faith-based re-entry programming? I'm assuming that you consider that one of the important tools that would help a warden.

MR. COWLEY: Yes. We've done amazing things in
prisons. Let's just say that we offer VoTech, we offer GED, we've got psychologists, we've got counselors. But because the prison environment is so different than the real world, we develop a culture inside the prison, our own language, our own way of doing things; that even if you get your GED, even if you get your VoTech -- now, the one thing that does make a difference is college hours, and we repealed to Pell grants so now very few inmates have access to that. But then once they get out, it's almost like they were never in because they go from one culture to the next.

What Faith Based opportunities provides the warden and the inmates is that they bring the outside culture in prior to them going home, and they begin to create a culture that's as much like the streets as possible and they make this relationship.

One of the things -- if you really wanted to do something, most states have a policy which prevent a volunteer from having access to the inmates' families while they're a volunteer on the inside; as well as, they cannot volunteer and mentor that inmate once he's out. Now, that policy came about, I'm sure, because some volunteer was abused by some inmate that got out of prison, I'm sure. But the reality of it is, Faith Based Programs provide the opportunity for all of these staff, unpaid staff, to come in and -- as if we've heard today -- open up the prison and then provide access to jobs to support, have their families
already involved with the community before they get out. It works wonders. I mean any -- well, I say that.

A lot of volunteers are just sort of tolerated, too, by wardens, and they just come in and they do -- they -- don't misunderstand it, just because you're a Faith-Based volunteer coming into prison that that has anything at all to do with release because a lot of these wonderful people, they don't deal with inmates after they're released.

So I'm talking about Faith-Based Programs that connect from inside to out. A world of difference.

MR. SESSIONS: Thank you.

SENATOR ROMERO: In fact, especially for Mr. Fine and Mr. Gennaco. And let me just acknowledge that the legislation I carried last year as part of the reform of the California Department of Corrections to create a Bureau of Independent Review was based on the very successful work of Mr. Gennaco in Los Angeles County, and I'd like to publicly thank him.

But Mr. Fine and Mr. Gennaco, you do talk about oversight and you talk about independence and yet it is certain -- at a certain point independence meets and sometimes clashes with the political will, whether they're supervisors or they're senators holding your purse in terms of how much money you get to be independent. So given that, and especially in a state like California or Los Angeles County where we're facing an $8 billion deficit, there is push to maintain
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educational services, health care, hospitals, you name it. What do you -- what do you find yourselves arguing to the supervisors or to your chieftains who ultimately control that purse to argue for the integrity of independence for the funding? Because you can be as independent as you want on paper, but it takes money to give you the teeth in order to truly have the independence.

I'd be interested in having you share your views with the Commission as to the resource question and its role with your independence.

MR. FINE: The resource question is a critical question and we have a fair number of people, we have 415 employees of the Office of the Department of Justice -- the Office of the Inspector General. Now, that sounds like a lot, but you have to realize that we have oversight over the Bureau of Prisons but we also have oversight of the FBI, the DEA, United States Marshall Service, the ATF, the U.S. Attorneys' Offices. It is a daunting and wide-ranging task, and we could use more resources.

Having said that, at no time in my tenure has anyone in Congress, the appropriators or the authorizers, made any indication that they were going to take action or reduce our budget because they didn't like one of our reports. And I think you have got to have the attitude of independence and to make clear you're going to do what you believe is right. We've
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been set up to do that and to continue to do that
regardless of the consequences; and to make the calls
objectively and as fairly and aggressively as you can
and as transparently as you can. And that has worked
for us, that really has. We have increased our
resources. We've gone from 330 to about 415 over my
tenure, and I've been very gratified by that.

So I think it's very important to maintain your
independence, and it's been successful for us. That
doesn't mean, you know, there aren't others who have
had problems with that. But the resource question is a
critical question. And it's not the first priority
when you sort of think about it. When there needs to
be resources infused with the Department of
Justice, they won't think -- initially the Office of
the Inspector General, the FBI, the DEA, and the
counter-terrorism but we have a good return on any
resources that are given to us because we help improve
the efficiency and effectiveness for the rest of the
Department of Justice, and that's why -- that's our
argument and it's been successful.

MR. GENNACO: To follow up, in California or at
least in Los Angeles County it's an interesting dynamic
and one that concerns me all the time. Survival is, I
think, critical to ensuring that the department
continues to stay on the straight and narrow and for
budgetary resources who rely on the County Board of
Supervisors, they're elected officials the Sheriff
is an elected official. That dynamic in some ways
helps because, quite frankly, before we came into existence the County Board of Supervisors had really no real way of knowing what was going on at the Sheriff's Department. And so we provide a bridge to our clients, the County Board with regards to letting them know earlier about before the LA Times learns that there's a significant event, that there's something that probably will show up in the paper in a couple days, or could likely. That's one resource that we provide. I think it's one reason that I think that we will continue to be maintained.

Another thing that is important is to educate county officials, elected officials about the value of oversight, and sometimes you can talk about the intangible values of a good government and accountability and issues like that, but sometimes they want to see bottom lines and sometimes if we can find bottom lines that help suggest that we're on the right track that also is going to be helpful in order to maintain the resource dedication.

Last year, for example, in our annual report we reported that lawsuits alleging civil rights violations and violations of people's constitutional rights and payouts from those lawsuits had gone down from 13 million to five and a half million. And if we -- and I'm not suggesting that our group should take total or even the majority of the credit, but we'll take a little bit of the credit for that kind of turnaround in
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18 payouts. And suggesting that, in fact, it's
19 advantageous if you're just looking at the bottom
20 dollars and cents to continue to fund our organization.

21 But there are -- you're right, Senator, there
22 are -- it's important to continue to sell, if you will,
23 to elected officials the value of this kind of
24 oversight.

25 MR. SESSIONS: We've got ten people and 15

1 minutes. Let's go.

2 MR. GREEN: This question is also directed to
3 Mike Gennaco. I wanted to make sure I understand the
4 Office of Independent Review in terms of why you exist
5 and what your structure is. We keep talking about LA
6 County, but are there the equivalent of your offices
7 for the other Sheriff's Departments in California, and
8 also, how much are you really in an aberration when you
9 look around the country for oversight in relationship
10 to state and county jails and prisons?

11 MR. GENNACO: The answer to your question, saul,
12 is that -- I can call Saul by his first name because
13 we're friends.

14 MR. SESSIONS: You're not friends with the rest of
15 us.

16 MR. GENNACO: Judge Sessions.

17 It is an anomaly. There are no other Sheriffs'
18 organizations that have any kind of meaningful acts,
19 meaningful oversight in the state of California. And
20 unfortunately Sheriffs' organizations, as a general
21 rule, have almost no oversight throughout the country.
As opposed to police departments which have different forms of oversight, as you are well aware. That's even more so if you look at correctional state-wide systems. There is again almost no real meaningful oversight to correctional state-wide systems, or what there has been -- has not really -- at least in the eyes of legislatures in the public work very effectively. So it is an anomaly. At least the way in which we do our work is unique. But as Senator Romero has said, one of our functions under the guise and ownership of the legislature and also a federal Judge who's overseeing some litigation is to develop an office like ours for a 40,000 employee organization, the California Department of Corrections.

MS. ROBINSON: I'd like to put my former colleague from the Justice Department, Glenn Fine, somewhat on the hot seat here.

MR. FINE: I am thinking of the broad leadership of the Justice Department, not just the Office of Inspector General, and as we look at the broad mandates of the Commission, what are other ways that the Department of Justice can and should be exercising leadership in addressing this very broad problem of safety and abuse in America's prisons? And I don't mean this Justice Department at this time, but in a very broad sense.

MR. FINE: I think through the range of support for the Bureau of Prisons initiatives that we attempt
to address these problems. I think with adequate funding for the Bureau of Prisons, one of the issues that we see is when there's reduced staff and overcrowding abuse can increase and flourish more than when there's a full complement of staff, so I think that's important to make sure that the resources are provided so that there can be safe and secure facilities. So I think it is important despite the enormous tasks that the Department of Justice has in many, many areas, in many respects, to continue to provide sufficient resources and attention to this issue; to continue, as I mentioned previously, to provide for initiatives in the Bureau of Prisons that can help ameliorate conditions that can lead to abuse, whether that is drug treatment, whether that is inmate release preparation programs, whether that is adequate work for the inmates.

I think the leadership of the department and the Bureau of Prisons in particular needs to keep attention focused on those very important issues.

Ms. ROBINSON: What about the bully pulpit of the Attorney General?

MR. FINE: The Attorney General does have an enormous influence, and I think it's important to make sure that this is a priority of the Department of Justice, and I think it is. I think it's important for
it to continue and that not to lose focus on this issue amongst a myriad of other duties that the Attorney General has.

MS. ROBINSON: Thank you.

MR. KATZENBACH: You have to understand that you have 415 more people than when I was in the Department of Justice a century ago.

My question is somewhat philosophical. Ideally, you would wish every agency in the Department of Justice, every corrections agency to be doing the job correctly themselves without any oversight. I'm not opposed to oversight.

What steps do you take in your oversight function to be sure that you are encouraging every piece that in this case the department runs, the Civil Rights Division, I guess to some extent, that you're encouraging them to do the job they should have done in the first place?

MR. FINE: That's a good point. Sometimes we say we're here from the Office of the Inspector General and we're here to help, and people laugh, but it is not humorous. We are trying to help improve the Department of Justice and help them ensure that their programs are running as efficiently and as effectively as they can.

I think it's important that they measure what they do and oversee what they do and not simply rely upon, oh, the OIG is going to be coming in here, we have to do something, but to have it internally as part of
their culture, as part of their DNA to do things the right way.

But having said that, it is never going to be perfect. There is never going to be --

MR. KATZENBACH: Well, it used to be.

MR. FINE: For a few shining years, I'm sure it was. But other than those several years, it wasn't perfect. And so there needs to be an oversight entity to provide impetus to hold people accountable, to provide recommendations for improvement. We don't always try to come in after the fact. We try and sometimes come in and look at programs on the inception, as they're developing programs, to see whether they have adequate processes in place. So I think that's very important as well.

MR. GENNACO: And I would just very briefly add to that by saying the philosophy of oversight and the way that you conduct oversight can really be consistent with your suggest that the departments need to continue to take ownership to doing a good job. And so instead of having independent or parallel or subsequent investigations, we work with the investigative resources the department has to ensure that they do the best they can to do. And we also don't take away their disciplinary determinations from them because they should retain ownership of those decisions. Good managers should continue to hold their people accountable. And as a result, what we do is an outside
MR. GIBBONS: Senator raised the question of fiscal restraints that limit the ability of the institutions to protect their inmates. Would general reduction in the length of sentences solve a lot of the problems that you have observed in the corrections system?

I'll address that to all three of you.

MR. COWLEY: There is a point in time when -- when a person is -- 93 percent of the people in prison are going to go home anyway. So there is a length of time that I think that it's appropriate, sort of the punishment matches the crime, and I think the victims, those that have worked through their issues, would say that it's time that a person left.

Quite frankly, that's where our increasing incarceration is coming from that we're just keeping people a lot longer. I really don't -- it's not a matter of fairness on the part of -- on the part of the system to supply wardens with the resources that's necessary, and wardens march to the drummer, so to speak. The warden that had eight staff people there when she should have had 48 without working the post. If nothing else, I think that we should say, "If we're going to incarcerate for the length and the extent that we do, that there really does have to be resources that match that program of incarceration."

We are seeing correctional officers at greater risk in this country. There is absolutely no question
of that. And as well as inmates. But it's all -- it's
almost like, here's the thought, and I think that not
only the taxpayers but also perhaps the politicians.

An inmate made a choice himself to go to prison,
so whatever happens, he chose it. A correctional
officer chooses to work there, so whatever the
condition, he chose it. And that's how we get out of
really being held accountable for what we're
doing in our nation's prisons and jails.

MR. GENNACO: One part of the system impacts on
others. And let me give you an example of what I'm
talking about, Judge Gibbons. But I think it's
something that has been -- not enough attention is paid
to it. In the county jails -- jails traditionally
were supposed to serve two functions:

One is, they're a wait station for people that are
awaiting trial, going to prison, coming back from
prison, and also they are there to serve as the
custodial situation for rather minor offenders for
short-term. Because of some of the ways in which the
system has been bogged down, perhaps because of its own
weight, inmates spend months, sometimes years in those
jails, those inns that are supposed to be hotel/motels,
are there awaiting trial, awaiting sentencing, awaiting
to be picked up by the prison authorities, state
authorities to go to the prisons. And as a result of
that lodging, the jails are no longer available for a
lot of the minor offenders who should be serving their
time and then getting out. So it's an example of how again the system impacts on the system.

MR. FINE: Judge Gibbons, I don't really know the answer to that question, but I do believe that regardless of the length of a sentence, the institution should be safe, secure, and humane, and that's the critical issue.

MR. SESSIONS: Are there more questions down the line? Put your hand up if there are.

Yes, go ahead.

MR. DUDLEY: It's been suggested that part of the problem is the ease with which inmates can be viewed less than human and, therefore, not necessarily deserving of humane treatment. To the extent that any of you think that that's at least a factor, what can we do about that?

MR. COWLEY: I think it is the factor. When I was in Texas, at least inmates were thought of as something. Then I went north and was there in that prison system for nine months, and the inmates were non-entities. So it -- the roots of that even is different.

But yes, when we were at the gate going into the prison in Texas, and this was a well-cared -- the warden was well-caring, but we were strip searching inmates and they were pulling down their boxers and then pulling them up, but they were out in view of anybody that came into the prison. And as the director of the Faith Based Program I said, "No, no, no, you're
not going to do that to my guys." And I explained to them, "Those are people. You can't" -- so they put up a screen. So when brought to the -- when it manifests itself, when somebody says, generally, "You can't feed bloody chicken to inmates. Would you eat that?" Then sometimes they will say, "Oh, you're right," but that's just the culture that's developed inside prisons, and it -- I think a lot of everything that happens stems from that because if the -- the more you are around inmates that do the things they do to one another, and have to grapple with the blood and the yuk, in order to survive you have to begin to see that -- we don't call them by names, or that you have the convict names, Goose Lips and Killer and Home Boy or their number, but once you start calling them Johnny -- in fact a lot of systems won't let you -- then it brings them a little -- starts bringing them up to at least a basis of humanity. But that's where it all comes from I think. I don't know which one came first, but that's where it comes from the whole prison culture comes from that very thing.

MR. SESSIONS: Okay. Have we run out of hands?

Go right ahead, please.

MR. RYAN: I'm deeply troubled by the events that go down, and obviously they were first line supervisors, second line supervisors, sergeant, lieutenant-type concepts there. And the supervision level apparently failed to do what it was supposed to
MR. COWLEY: Wardens -- in my opinion, wardens and supervisors have to be involved and held accountable for everything that goes on in that prison. I had a correction officer that was -- and I knew he was a correctional officer II and he wanted to be promoted to lieutenant, and I began to look at all the misconduct reports, or I looked at all the misconduct reports and I noticed that he was writing reports every day. So I called him in, I said, "What in the world are you doing?" And he said, "I want to be promoted to a lieutenant."

And I said, "What's that got to do with anything?" And he said, "Because I know that if I write up convicts that means I'm doing my job."

So again, I think the message -- what I've been told in California -- I mean it may be political rhetoric, I'm not sure, but Schwarzenegger said, "We're going to deal with the recidivism rate. I cannot handle a 70 percent recidivism rate in the state." And the director of corrections has got that word, and she is going to make some changes. She's determined.

And I think that -- I think as a profession we've kind of given up. Nobody really cares. We just thought, how can we make money off the system you
know, with these, you know, private prison management funds.

So to answer your question, somebody higher up, and if that comes down I hope to the taxpayers, eventually have to say enough's enough, and corrections can work. And now we've got the models to prove it, where before perhaps we didn't. We do now. They can work.

MR. SESSIONS: I'm not sure we've run out of hands, but I think we've run out of time.

Mr. Cowley, Mr. Fine, Mr. Gennaco, you should have no question about the significance of your testimony and the help you've given to the Commission. I would encourage you -- and I think co-chairman would suggest -- that if there are additional thoughts that you have and want to add to your testimony that you not hesitate to do that in a format that's acceptable to the chairman. E-mail is a wonderful thing, but reports are maybe more appropriate.

The second thing is, I would say that if you have websites that you want this Commission to take note of and use that would allow communications with your institutions, fine. But the Commission thanks you very much for your testimony.

MR. GENNACO: Thank you.

MR. FINE: Thank you.
MR. COWLEY: Thank you.

(There was a recess.)

(The hearing is continued in Volume II.)
STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, PAMELA J. WALKER, Certified Shorthand Reporter (CA), certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 4th day of May, 2005.

PAMELA J. WALKER, CSR

HEARING ONE
Page 141
DATE:                     April 19, 2005
TIME:                     9:00 a.m. to 4:36 p.m
PLACE:                    WEDU Television Station
                         1300 North Boulevard
                         Tampa, Florida  33607
BEFORE:                   Pamela J. Walker, CSR (CA)
                         Notary Public, State of
                         Florida at Large
                         Volume II
                         Pages 159 - 227

COMMISION MEMBERS:
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Laurie O. Robinson
Senator Gloria Romero
Timothy Ryan
(Hearing resumed.)

The following proceedings were had and taken:

MS. ROBINSON: Good afternoon. I'm Laurie Robinson, and I want to welcome all of you to this afternoon's hearing. With me on the afternoon panel here are Senator Gloria Romero and former U.S. Attorney Saul Green. And I want to welcome our panel this afternoon, Alan Elsner, Margaret Winter and Barbara Owen.

As Judge Sessions stated at the beginning of the last panel, this outsider panel will be exploring with our witnesses some of the ways that outside organizations and individuals learned about what happens inside of our prisons and jails. We're interested in what kind of obstacles there are to
finding out this information and what can be done to
make it easier for people to understand the challenges
confronting corrections officers and inmates.

We'll also get these experts' views on the nature
and prevalence of abuses and safety failures in our
correctional facilities. Jails and prisons, as we
know, are public institutions, and as public
institutions there is a need for those on the outside
to fully appreciate what happens inside.

For most of the 13 and a half million people who
are incarcerated every year and the 750,000 employees
who work in these places, their stories are rarely
heard by the American people. For the public to
gain an insight into this system we depend on people
like the witnesses we had before us this afternoon.
These witnesses and others try to answer the questions
that administrators, families, concerned citizens, and
legislators keep asking about our jails and prisons:

What's the real extent of violence and abuse? How
dangerous and stressful is it to be a corrections
officer? How do families deal with their lives when
their loved ones work or are housed inside a prison?
What's the impact, direct and indirect on society at
large? Are there ways to make jails and prisons safer
and less abusive for everyone inside of them?

Alan Elsner is a journalist. Barbara Owen is a
research and writer. Margaret Winter is an attorney
who handles civil cases involving prisoners. While not
Transcript of first hearing - FULL.TXT

representing the full spectrum of people who teach us
about prison life, these three witnesses do represent
some of the significant sources for the information we
have about jails and prisons. So we want to thank each
of them for taking the time to appear at our first
hearing this afternoon.

It's our hope that the lessons that you've learned

in your respective jobs will serve as part of our
foundation for our inquiry into what we know about our
prisons and what we don't know.

Before proceeding, I want to describe briefly the
format we're going to be using. Senator Romero is
going to be introducing the witnesses. Saul Green is
then going to begin the questioning with inquiries to
all three of you. Then Senator Romero, Saul Green, and
I will individually question each of you and then we'll
be opening it up to the full Commission.

So let me begin now by turning to Senator Romero.

SENATOR ROMERO: Thank you.

I also want to personally thank each of the
witnesses for traveling here to appear before the
Commission on Safety and Abuse in America's Prisons.
Albeit the commissioners can certainly only benefit
from the testimony that you're going to provide to all
of us today.

As outsiders, the three of you have spent the
majority of your careers in trying to peer into a world
that most people don't know about or perhaps want to
try to avoid.

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Author and reporter, Alan Elsner, has a distinguished 28-year career in journalism. His 2004 book, "Gates of Injustice: The Crisis in America's Prisons," has been widely praised as a hard-hitting book at a major problem. Senator Edward Kennedy called it "a wake up call" for America. The book was short-listed for the Robert F. Kennedy Book Award.

Currently National Correspondent for Reuters New Service based in Washington, D.C., he also served as that agency's Chief Political Correspondent from 1994 to 2000. From 1989 to 1994, Mr. Elsner was Reuters State Department Correspondent. Mr. Elsner was one of the first reporters to draw attention to the Rwandan genocide and helped the U.S. government to change its policy.

Thank you so very much, Mr. Elsner. We'll look forward to your testimony.

Barbara Owen is a Professor of Criminology at California State University, Fresno, and is a nationally known expert in the areas of women and crime, prison culture, gender-specific programming, and substance abuse and drug treatment systems.

She has provided training for the National Institute of Corrections in such areas as operational practices for women offenders, staff sexual misconduct, women and community corrections and improving health care for women offenders. Dr. Owen is the author of over 12 articles and two books, including "In the Mix:
Struggle and Survival in a Women's Prison." She is developing an international Collective for the Study of Women's Prisons.

And I will say, as the first woman in California in the legislature to oversee corrections in California, I applaud the contributions you have made to raising the profile and the need for us to be aware of women in the correctional system.

Margaret Winter is Associate Director of the National Prison Project of the ACLU. She has argued and won a prisoner's rights case in the United States Supreme Court. And for the past three years, she has been involved in the National Prison Project's special initiative to investigate and challenge conditions resulting in prisoner rape. She is lead counsel in a case involving sex slavery in a Texas prison, which resulted in the first federal appellate court decision recognizing the equal protection rights of gay prisoners not to suffer discrimination on the basis of their sexual orientation. In collaboration with Holland & Knight, she brought a class-wide challenge on behalf of Mississippi Death Row prisoners to their conditions of confinement, resulting in a sweeping injunction that was legally affirmed by the Fifth Circuit.
She helped prepare reports and recommendations that resulted in an end of HIV prison program segregation in Mississippi in 2001, and in Alabama in 2003.

We look forward to your testimony as well.

We're going to go ahead and begin with Mr. Elsner then hear from Dr. Owen and followed by Ms. Winter. I would like to remind each of the witnesses that we are asking that your opening remarks be limited to five minutes. That gives us then an opportunity for us to, of course, question, to engage in dialogue with you, and I'd also like to encourage in fact dialogue amongst yourselves as well. Just because the question may be posed to one, does not necessarily preclude that the others cannot address the question as well.

I also want to take this time to remind everybody here in the audience today and anybody who may be watching that the full written statements of each of these witnesses, and in fact all of the witnesses who are participating today and tomorrow, will be available on the Commission Web site, and that address is www.prisoncommission.org. Let me repeat that, www.prisoncommission.org. And all of the witness' testimony should be available anywhere from seven to ten days.

All right. Let me go ahead and ask Mr. Elsner if we can begin hearing you.

MR. ELSNER: Thank you, Senator Romero.

SENATOR ROMERO: If you can please speak directly
MR. ELSNER: Thank you very much.

It's a real honor and a pleasure to be able to testify here.

In the course of my career I think I must have covered thousands of hearings of one kind or another. This is the first time I'm sitting on this side of the microphone, and I must say that it feels kind of weird. My big disappointment was, I was not asked to stand and do the oath thing.

MR. SESSIONS: We can arrange for that.

MR. ELSNER: I was asked to share my perspectives on journalists' access to the U.S. prison system and on our ability to report on developments behind bars.

Over the past five years, as a reporter and also in researching for my book, I relied on a wide variety of information and sources: Official reports, statistics, the two states' reports by human rights organizations, legal transcripts and judgments, academic studies, memoirs and personal accounts and of course my own reporting gathered through numerous visits to prisons and jails around the country. I have visited many prisons and jails, mostly on the East and West coasts, but after a certain point, I made a deliberate decision to stop making these visits because I came to the conclusion that their journalistic usefulness for me was very difficult -- had run out,
Transcript of first hearing - FULL.TXT

I've been a reporter for 28 years and covering the U.S. prison system in some ways takes me back to the early days of my career as a foreign correspondent when the Cold War was still at its height. And it reminds me a little of what it used to be like trying to cover the former East Bloc, where one's access was limited and movements were strictly monitored, and they basically took you to where they wanted to take you and showed you what they wanted you to see and that you speak to who they wanted you to speak to.

To visit a prison, the procedure is something like this: You apply in writing to the Department of Corrections stating exactly what kind of a story you plan to write and who you want to talk to. When I went into a prison, I was usually accompanied by officials who controlled where in the facility I could go, who I could talk to, and what I could see. Before I spoke with a particular inmate, the official made sure that that inmate signed a personal release form. Often the inmates I spoke to were carefully selected in advance by prison administrators.

This obviously gave me a very limited idea of what was actually happening in a particular institution. For example, a few months after I visited Bedford Hills Women's Prison in New York State, I learned that several inmates there were complaining of brutal sexual abuse at the hands of correctional officers. I only discovered this because of some of the women had...
Transcript of first hearing - FULL.TXT

launched a lawsuit against the State of New York, the Department of Corrections and individual guards. The alleged abuse was in full spate while I was visiting the facility but I had come and gone without even an inkling that it might have been going on.

Only once did I gain access to a facility where I was able to speak to inmates freely. This happened in April 2002, when I joined a group of pro bono lawyers visiting Piedmont Regional Jail in Virginia where they were representing foreign citizens seeking asylum or fighting deportation. On entering the facility, I was not asked whether I was a reporter and I didn't volunteer that information. You can read the text of the story that I wrote and is appended to my

written testimony.

There had been allegations of abuse at this jail and inmates did in -- sorry -- did indeed describe horrific abuse. When I filed my story, the response of the authorities was to close the facility to civil rights lawyers for over a year. That meant that inmates had no access to legal advice, and I should note in parenthesis here, that as foreign citizens they did not have a constitutional right to have a lawyer. So they had no access to legal advice until the authorities finally relented and allowed the lawyers to visit again. The message to the lawyers was never to do this again if they wished to represent their clients. The message to inmates was never again
to speak to a reporter unless they wished to lose access to lawyers.

Recently, the Atlanta-based Southern Center for Human Rights filed a lawsuit alleging abuse of elderly and sick prisoners at the Hamilton Aged and Infirn Correctional Facility in Hamilton, Alabama. The suit alleges that the facility is severely overcrowded; inmates lacked access to adequate medical help; the facility is allegedly filthy and unhygienic and some inmates often lay in their own feces for days on end. In response, the Alabama Department of Corrections has said that the level of health services is well above federally mandated standards.

Knowing that I'd be testifying before this Commission today, I submitted a request to the Alabama Department of Corrections on March 23rd, asking to visit Hamilton, and my request was turned down the following day. That means that I and other reporters have no way of verifying what's actually happening in that institution. In fact, if you guys want to make a field trip, it would be interesting to see what their response to you would be.

I should note here that turning down reporters' requests is all too common. I've never gained access to a so-called Supermax prison despite many requests. To extend my metaphor from the beginning of this testimony, if the prison system as a whole is like the former Soviet Union in its attitude toward reporters, the Supermax prisons are pretty much like North Korea.
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We basically have no idea what's going on in them today.

I still believe that, having written a book, I know painfully little about what's happening in our prison system. You see, these are some of the things that I would like to know.

I would like to know how many men are raped, and

I'm anxiously awaiting a forthcoming report from the Bureau of Justice Statistics.

I would like to know how many people have Hepatitis B and C.

I would like to know how many people commit suicide and how they do so.

I'd like to know how many test positive for tuberculosis and the sexually transmitted diseases.

I would like to know how many suffer from diabetes and hypertension.

I'd actually like to know how many people die in our prison system each year and what they die of.

I would like to know how many times correctional officers use Tasers and stun guns, and how many times they carry out cell extractions.

What goes on in our prisons seems distant and removed, as if it's happening in another country, almost on another planet. And you all's major task, in my humble opinion, is to remind us that prisoners are not on another planet, they're not in another country, they're part of the United States and they're


SENATOR ROMERO: Thank you.

Dr. Owen --

DR. OWEN: Thank you, Senator Romero.

I too would like to extend my thanks to the Commission for the opportunity to testify today.

I'm speaking from my experience of being a prison sociologist for over two decades. I have a lot of different kinds of experiences. I've been employed by the Federal Bureau of Prisons as a research analyst. I've approached prison systems hat in hand begging for access. I've done funded and unfunded research. I've done theoretical and descriptive work. I've also done applied work.

My first book was on Correctional Officers of San Quentin, where I met the current director of the California Department of Corrections. She was one of my respondents initially, and we've enjoyed a colleague-like friendship over the years. I've also written extensively about women, as the Senator pointed out, and I've also done research in men's prisons. My work, I would characterize not only as sociology but also as policy.

I'm here today to speak about the utility of social science research. I feel, along with my esteemed colleagues, social science research has a...
place in the prison along with investigative reporting, along with legal research. I feel that social science research is one piece of the complex puzzle of safety and abuse in American prisons.

I feel strongly that social science research, with all its aggregating aspects, is one way to permeate the walls of the prison. Very often people forget, the walls are designed to keep people out as well as in.

There has been much testimony about the human face of safety and abuse in American prisons, and I submit that social science research, particularly qualitative and ethnographic research of the kind I and many of my colleagues conduct does put a human face on the problem.

I'm also here to advocate for sentencing reform. In my view, safety and abuse are highly correlated to the overwhelming number of men and women who are overwhelming our system. There are too many people serving too long of sentences. These are women and men who have committed nonviolent property and drug crimes, and it's that huge number which I think has crushed the prison and brought the problem to the floor.

The commissioners asked the question earlier, if shorter sentences was one solution. I'm here to add my
vote to that approach.

I also feel that there are three principles in increasing safety and decreasing abuse I would like the Commission to consider. First of all, as Alan has pointed out, these are American citizens and they deserve to be treated decently.

Secondly, they are human beings, and they deserve to be treated humanely.

And finally, all of us need to develop mutual respect for prisoners and for staff.

As a former employee of the Bureau of Prisons, and naturally they'll always claim me, I learned that staff deserve respect just as prisoners do, and I think if we talk about mutual respect we further our endeavor.

I was asked specifically to talk about questions of access for prison research. And I'd like to bring up the myth that prison research can't be done. I'm living proof that prison research can be done, but it is a bisontine process shaped by a bureaucracy that's often suspicious of the motives of the researcher, and the process itself is very difficult to access.

Another key issue I would like to bring to the Commission's attention is what's called the Human Subjects Approval Process or the Institutional Review Board. This is a misunderstood process and it's needs careful review itself.

The two main points of my testimony are these:

First, prison research is best undertaken in a
spirit of collaboration and heartening. It's my experience that wardens and correctional managers want to know what's going on in their institution, and they sometimes turn to correctional researchers, to social science researchers to answer those questions. I believe that social science research can be critical of the prisons. In my work on women's prisons, for example, I've been highly critical of the way California treats its women's prisoners, but I believe good science and professional ethics overwhelm that idea of being critical.

It's important for us as researchers to learn how to frame questions in order to get our information to and out of the prisons. Very often researchers are guilty of creating very obscure research reports and making their findings very inaccessible, and I believe that's something we should all pay attention to.

My second concern involves the time it takes. It takes an enormous amount of time to conduct prison research. The question of access takes a lot of time, and there's many processes I describe in my written testimony. In terms of Alan's comment about the one-time visits, I think being in the field for a long period of time is also critical to getting one of the multiple stories that happens in prisons. Prison is about doing time, as is research.

Finally, I'd like to conclude by saying that knowledge is a powerful tool. And I have three specific recommendations, also contained in my written testimony.
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testimony for the Commission:

First, I would hope the Commission would consider developing a research agenda, and this research agenda should have some substantive findings based on the conclusions of their investigation and also address the very bizarre, bizarre process of gaining access to the prisons.

Second, I hope the Commission would consider the question of sentencing reform. There is too many people doing too much time, and again it's overwhelming the capacity of our prisons.

And finally, I would like to make a special plea to the Commission to embrace the fact that imprisonment is a gender experience.

I've submitted other testimony that describes the genders' dimensions of harm, and I would urge the Commission to consider the equally compelling case of the women in prison.

Thank you very much.

SENATOR ROMERO: Thank you, Dr. Owen.

MS. WINTER: It is a very great honor to appear before this Commission. I have felt for some years that some body-like system was sorely needed.

SENATOR ROMERO: Can you speak into your mike more directly, please.

MS. WINTER: I felt for some years that a Commission of this kind was sorely needed, and when I
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heard that one was being convened, I was very happy.
And I'm very honored to appear before it.

Three years ago the National Prison Project of the
ACLU filed suit on behalf of a young gay
African-American man, a nonviolent offender, who was
sent to serve his time in one of the most violent
and gang infested prisons in Texas. He was immediately
raped, and for the next 18 months he was literally
enslaved, made a sex slave by prison gangs and degraded
in every possible way.

Month after month repeatedly he pleaded to prison
officials from wardens all the way down for protection.
He said, "Lock me up. Put in the me in your darkest
protective custody or asetake cell, but get me away
from this horror."

And they told him repeatedly that he had three
choices: Either to act like a man, fight, or to get a
man; meaning get a boyfriend, a protector, or submit to
the sex. Those were his three choices.

I am very keenly aware that not all prison
officials are callously indifferent; far from it. To
the contrary. Some of the great shining lights
of -- I've met in the process of litigation, I'm
finding that there are people at every level in most
systems who want to do the right thing and are doing
their utmost to do that. Some of them have already
tested to this Commission, and there will be more
that will appear, including a very great man, Don
Cabana, who I believe will appear tomorrow.
Transcript of first hearing - FULL.TXT

But these are prison officials. The ones who make a good difference, they are the ones who refuse to turn a blind eye. They understand that the first step to solving the staggering problems of abuse and violence in America's prisons is simply to admit to it, to face up to it.

What happens to our client, Roderick Johnson, in a Texas prison is not a sporadic isolated event, it's commonplace in Texas, which I believe is probably the prison rape capitol of the USA. But it's not just Texas. There are many prisons around the country where this kind of scenario is commonplace.

I ask myself, what do these prisons have in common that makes it possible for rape and beating, extortion and sexual slavery to be the pattern of daily existence for so many vulnerable prisoners, thousands of them. What do these systems or prisons -- what do these facilities have in common? And the answer that I keep coming back to is that they are in denial, they are willfully blind. In the very same prisons that are under virtual total control of violent gangs, there you will frequently find prison administrators who most loudly insist that rape is sporadic; that violence, rape and extortion are -- they're like natural phenomena like a bolt of lightning out of the blue, they can't be predicted and so essentially they can't really be prevented. And it's not true. I know that that's not true. I know from the hundreds of
cases that we have investigated that unfortunately in
all too many prisons, in all too many facilities, it's
not a sporadic, it's not a bolt of lightning out of the
blue, it is the pattern of daily life.

Record keeping and good policies are of course
tremendously important for accountability and
transparency. But those things are so far from
sufficient -- and I just want to give briefly two
examples:

In January of 2003 a Supermax at Mississippi State
Penitentiary in Parchman was accredited by the American
Corrections Association. Great records, great
policies. Four months later a federal Judge declared
that the conditions there were so cruel and so inhuman
that they drove sane men mad, and prisoners who entered
there with mental illness into profound psychosis.

There is not time for more examples, but I believe
that the bottom answer that we are all looking for is,
light, light, and more light. I don't believe that
there's a single permanent monitoring independent
institution that we can set up that won't become
atrophied and have hardening of the arteries like the
other mechanisms.

What we need is the coming at it from different
ways, the power of this Commission, the power of
courageous reporting, a social scientist doing
research; a litigation that depends on federal Judges
who have lifetime tenure to take the heat; and
responsible, good wardens and Commissioners and
superintendents and correctional officers who say, you know, thank God that there's somebody who is going to look into this mess and give us the backing and the support that we need to change it.

MR. GREEN: Thank you, Ms. Winter, and thank each of you for your opening testimony.

As Laurie Robinson indicated at the beginning of this panel, we wanted to address some questions initially that we would like each of you to reply to, and then we will talk to each of you individually on certain questions that we have.

The first question is that we're wondering to what extent things have changed from the beginning of each of your respective careers and the different disciplines that you use, in terms of the amount of knowledge that we know about what goes on inside prisons and what prison officials and correction officers and the general public knows. Has that knowledge increased, and if so, what are the factors that have led to that?

Why don't we start -- actually, I'd like to start with you, Alan.

MR. ELSNER: Well, I've been doing this for a relatively short time. I really only wrote my first prison story I think in early 2001, so I don't have a lot of perspective to bring to this, but in my opinion the public basically knows very, very little about the U.S. prison system.
it, and I get questions that you can't assume any knowledge at all. And I think that in our media coverage as a whole the amount that's written about the prison system or the amount that's covered about the prison system is minuscule compared to the constant barrage of sensationalist coverage of crime. The old adage, "If it bleeds, it leads." Every day people are bombarded with images and words about crime that gives them the idea that they are all constantly under threat all the time. And any coverage of the prison system just pales in comparison to that. And the crime coverage very, very rarely does it put it into perspective. You don't hear, for instance, that crime is down 70 percent over the past ten years or that murder is drastically reduced or that we're basically much safer than we ever were before. Still, you know, the constant barrage all the time. So I think that what we do is a pinprick in relation to that.

MR. GREEN: Ms. Owen --

MS. OWEN: I think there has been a net total of increased knowledge, so my short answer is yes, but I think the form of this knowledge and the accessibility of this knowledge is the problem I can name for you -- because I'm a researcher -- five experts on any issue you that you want to bring up on prison, but
whether or not their reports or their materials is read
by folks in positions as you all hold, whether the
public knows about it, whether even researchers outside
that specific discipline know about it is the
fundamental question.

Research -- researchers don't always deliver their
findings in consumable or useable form. And I think
there's several organizations within the federal
government -- the National Institute of Corrections,
the National Institute of Justice -- who have that
value of turning social science research into some
useful form. But I think the complexities of the
prison community limit the distribution of that
material.

So I think one of the things I would recommend is
learning how to talk across disciplines and across
these kind of isolated components. So, yes, there is
more research, but whether it's useable and applicable
is an open question.

MS. WINTER: Six years ago in Texas a brave
federal Judge, Judge Justice entered a hundred-page
long opinion describing violence and abuse in Texas
prisons, and he said that part of the problem was that
there weren't -- there was sort of a willful blindness
there. The records weren't being kept. Statistics
weren't being kept. Reports weren't being kept. And
prison officials were turning a blind eye. He entered
this magnificent opinion, and shortly -- within a
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couple years -- the Fifth Circuit terminated the decree under the Prison Litigation Reform Act. And I can tell you, that was -- as far as I can see, there was not -- not for a moment was the problem solved or even lessened.

Today, in the cases that we bring, we find that there is better recordkeeping as a result of that class action lawsuit, and it's hugely important, but it hasn't yet made any difference in the way the prison is run. There are incident reports documenting -- you know, documenting in magnificent detail the trail of deliberate indifference, but nobody sees those reports. It took us three years and a trip to the Court of Appeals to finally get those incident reports a few weeks ago. And it's staggering the information that's in them. But the Office of Internal Affairs never looked at those incident reports, you know, the Office of Inspector General.

It was a huge problem to get those records. And so it's again the question of how do people get the will and the energy, change it once they've got the information. And it's not just prison officials. I mean, my God, it's state legislators, it's courts, it's the people, it's the public. Without the will and the energy, nothing changes. And I think that the will and the energy comes from occasions like this Commission where it's borne in on the public consciousness that they're real human beings who are suffering atrocities,
MR. GREEN: I hear you saying, and I think this Commission believes that it's going to be very, very important to put a human face on this issue that we are trying to examine. We heard in a previous -- in the previous panel about the fact that we look at prisoners as subhuman and that that has a great deal to do with some of the actions and activities that go on inside our prisons and jail.

Do you have suggestions on how we can go about trying to put a human face and making the public to understand just how serious these conditions are? And along those lines, does that human -- putting that human face, are there ways that you all collaborate in an effort to try to get that story out and to impact the public?

Alan, I'm going to go back to you as the media person.

MR. ELSNER: Well, obviously putting a human face on it is what I do, given our stock in trade is to find people, talk to them and try to tell their stories without glorifying them obviously, or glorifying the crimes that they may have been committed -- they may have committed.

You know, obviously, I'm the kind of -- you know, the sharp end of the stick. These guys go out there and labor for months and years on end, and I turn it
into 500 very highly polished words. And I mean that quite seriously because, you know, I -- when I was writing my book, they basically haunted my responses and went through their files and tried to extract from them stories which I thought: A, illustrated some wider truth that was somehow typical; and B, brought home that this is really happening to real people.

And the same with the social science research. You know, there was dramatic studies by one of Dr. Owen's colleagues in Bedford Hills Prison about sex -- about abusive of women prisoners. And I was looking at the abuse these inmates had suffered prior to coming into the prison system spousal abuse, abuse when they were children, and the figures were just astounding. And when you broke them down, you broke them down into how many had been kicked; how many had been struck; how many had been threatened with a knife; how many had been threatened with a gun; how many had been shot; how many had been bitten. And then when -- but just giving the statistics in a table, you know, you look at that and you think, oh, you know, terrible. When you actually talk to people and find out that this is the fabric of their lives and these are real people and they -- but for the grace of God -- go on.

I mean, I'm often asked when I speak about the prison system in promoting my book -- I'm going to be very brief -- I'm often why asked by people, "Why
should I care about this? After all, my kids are never
going to go there. I'm never going to go there. My neighbors are never going to go there."

Well, first off, "Don't be so sure." You know, one in every 30 Americans is going there, and your
kid might be picked up on a DUI or something and given
72 hours in a local jail. He might be thrown into a
cell with a rapist, and that's happened.

But the second answer is that, you know, we all
are one people. Of course we should care. We care
about our education system even though many of us
don't have kids in the education system anymore, and

prisons is part of our education system. It's where we
educate our future prisoners, our future criminals and
sociopaths.

MR. GREEN: Barbara --

MS. WINTER: I would also suggest that we widen
the frame when we have these conversations about the
prisons. I believe quite strongly that we expect the
prisons to solve a whole host of the social problems.
We've layed at the feet of the prisons the problems of
women and children being abused, the problems of
unemployment, the problems of substance abuse, the
problems that all of us who work in the criminal
justice system are well aware of.

I think we need to think about the ways in which
we can come to understand the context and the pathways
in the prisons for both women and men in order to fully
address this picture. There's many advocacy
org -- advocate organizations such as Families Against Mandatory Minimums, such as Stop Prison Rape Group that work very hard at trying to convey a different message. But the reality is that -- as Alan describes it, and that is the media, Hollywood, the news makes us think everybody in prison is Charles Manson. And while we certainly do have a handful of Charles Manson types in the prisons, the sheer fact is that over 70 percent of

the people locked up in America's prisons is in for nonviolent offenses. So we need to think about the ways in which those specific facts can become more lively than the table.

I'd like to tell Alan that I can show you a table on the Bureau of Justice Statistics' website that tells you how many people were killed in custody or had died in custody, but we don't know the details behind them.

Again, American's are kind of sound bite people. So we need to think about the ways we can move behind the numbers, move beyond the numbers and think about how these are human beings. In Australia they refer to the term "etherizing." How prisoners are "etherized." And I think it might be one task of the Commission to unetherize and to bring out in a very public way with some very high profile folks sitting on this Commission to talk about the ways in which prisoners and staff are human beings, too.

MS. WINTER: I think it was Senator Romero who
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this morning talked about giving prisoners themselves a
voice, the importance of that. And I don't think
anybody could have heard Garrett Cunningham or the
other witnesses this morning without "getting it;"
that these are human beings and that there -- and that

there are literally, you know, thousands of Garrett
Cunningshams. And how their voices can be heard is for
me a very big issue.

In litigation, the public education angle of civil
rights litigation is tremendously important, and to get
the press to cover it at all, to be interested is a
big mountain to climb. And as our public education
person is constantly telling me, "You've got to be able
to get the reporter in to talk to the prisoners or
you're not going to get a story." And of course, most
prisons make that absolutely impossible for prisoners
to talk directly to the press. And I actually think
that that would make a huge -- I mean, to me that would
be a very, very significant thing if prisoners had
direct access to the press; not simply through letters,
but by telephone, in person so that their voices could
actually be heard.

DR. OWEN: But I'd also like to add at the same
time, researchers need to understand how prisons
actually operate. I served during probably the last
eight years on the California Department of Corrections
Research Review Committee as an outside person, and
very often researchers come in with a naive
understanding thinking that prisoners are going to be
purposes. And one of the things you realize, a very small example, is that many prisoners work, and when you pull a prisoner off of his or her job, they're going to lose that very important 13 cents an hour they're making. And so researchers get very frustrated, "oh, they won't bring the prisoners out so I can talk to them" but at the same time researchers aren't realizing maybe the time to conduct their interviews is not during the prisoner workday.

In my testimony I describe in some very tedious details about collaborating with institutions on figuring out the best way to access prisoners. I am highly aware that investigative reporting has different kinds of needs and different kinds of constraints, but I think part of doing the time, spending the time to do prison research is understanding how prisons actually operate. And I think that will go a long way into making them a little more transparent.

MR. GREEN: Can each of you comment briefly on how your work in fact may help the men and women who manage and supervise our jails and prisons in this country? I know Dr. Owen talked about actually being enlisted to a certain extent by different institutions to work with wardens who wanted research done. But maybe if each of you could just briefly talk about that.
Margaret, do you have a sense of how your work actually helps the management and supervision issue?

MS. WINTER: Yes. I feel that there is certainly many, many enlightened corrections officials who would fervently like to be sued by the ACLU. They are -- they have to accept these thousands of prisoners who are sent to them, you know, more and more under these crazy sentencing laws, and they're staying longer and longer. So the prisons, no matter how many they build, are always bursting at the seams. Violence is almost inevitable in situations like that. No matter how much money is poured into this crazy machine, it's never enough, it's this hungry law that can never be adequately fed. So somebody's got to take responsibility for this.

There's people passing these sentencing laws to lock up all of these nonviolent offenders so that the prison population keeps burgeoning. Somebody has to take responsibility, and that is finally where the federal courts do play an extraordinarily important role. Somebody has to be willing to take the political heat.

There are people who are so -- of such superior caliber in some corrections, high level and not so high level corrections positions, who know that they can't do it by themselves. There's got to be public support. If they're surrounded by a public -- of --
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( unintelligible ) -- who doesn't understand that these
are human beings, they have no support for trying to
treat prisoners humanely, and so they want it aired.
And a very good way to air it, among other ways, is
through litigation, through litigation, through
journalism through research.

And I think that the ones -- you know, the
examples that -- you know, shining examples of great
corrections officials are the ones who want
transparency, who know that they must have it
if they are to run a humane system

MR. GREEN: Ms. Owen --

DR. OWEN: I too have had many prison managers
tell me, "Why don't you call up some of your friends
and have them sue me?" And the first time I heard
that I was quite sad. It was the warden of the women's
prisons in California who thought that she should be
sued over the way the women are treated in death row in
California. And that's such a surprising thing to
hear, but very often litigation is the only way that
they can get money and they can get support from
their own system

In my testimony, I said this, "I firmly believe

t hat most contemporary managers aim to run a fair and
humane system. Few managers want to cover up incidents
in their facilities." It's my view that professional
correctional systems are increasing to evidence-based
practice, to empirical data to help them make
decisions. And I feel that researchers, journalists,
litigators need to partner with these symptoms to collect and use this variety of data to help them solve the problems of safety and abuse.

MR. ELSNER: Well, my book is written for a general audience. But again, I've been very surprised when speaking about it -- the first time I went on a call in and somebody called in and said, "I'm a correctional officer." I said, "Uh, oh, you know, what's this going to be?" And he said, "Well, I couldn't agree with you more." And I think what I -- and that's being repeated again and again. I've done talks in which heads of the Department of Corrections or wardens have come up to me and thanked me for writing the book.

What we need is to empower these people to speak out and think within the correctional industry, so to speak, that people realize that the system is dysfunctional and needs reform. The problem is coming from the politicians who keep passing it on man -- on these unfunded mandates and more and more laws and running on being tough on crime and on all the other easy slogans. And we need to empower them.

Also, by looking at the financial aspects of the system because in a state which has to balance its budget, every dollar that's spent on corrections is a dollar that can't be spent on roads or recreation or education.

I think what Margaret said, you know, is -- is
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10 absolutely right, but we need to give people a voice.
11 And I'm hoping that -- that, you know, that my book
12 helped generate enough debate to give people a voice
13 because they have a voice, they just haven't had an
14 opportunity before to say what they think.
15 And again, this Commission is doing a wonderful
16 job on that.
17 MR. GREEN: Senator Romero --
18 SENATOR ROMERO: I want to direct my questions to
19 Mr. Elsner in particular. The last year I wrote
20 legislation ended up on Governor Schwarzenegger's desk
21 to facilitate and to basically open up the prisons
22 to allow media access in the California prisons.
23 The measure was vetoed. The governor did
24 come back and write me a vetoed message stating in part
25 my bill would help to glorify criminals.

In researching this, and I'd like to ask you,
2 Mr. Elsner, just as we talked about that there is
3 no -- a prison system there's 50 different ways of
4 doing things, probably. I too have learned in the
5 research, because I am bringing back the legislation
6 again this year, that states respond to media access in
7 very different ways.
8 Up until a few months ago California journalists
9 couldn't even walk in with paper and pencil. Now you
10 can have some paper and pencil, but your tools of the
11 trade are not allowed. You also have to compete with
12 family members in order to have access to inmates.
13 And what you've described in your testimony is
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very -- very much describes the California system.

North Carolina, that blazing liberal state,
actually appears to be the most open in terms of media access.

So, Mr. Elsner, I'd like to ask you, when you do talk about the media and in your experience, what have you found in terms of trying to access correctional facilities across the states, and perhaps some factors that you have found that have contributed to having a more open access system than other states or jails, for that matter?

MR. ELSNER: I wouldn't say I found a particular
different difference in -- between one state and another. Although, I was able to go into San Quentin without any problem at all.

I think it really depends on the actual institution. I referred in my testimony to the difficulty in gaining access to the Supermax prisons, which I think is a huge problem. I mean, basically walling off these institutions to the extent that even family members have so-called video visits and can't have any face-to-face contact with their loved ones. It's -- and I know that from my discussions with various representatives from human rights organizations that they have had great difficulty in gaining access to these institutions. The idea that there are parts of America that are just walled off to everybody, not just to the press and, you know, allowing the media
In is no panacea, but it would be a start.

So, I mean, I think that that's where we have to work. Even if we were able to gain access to, let's say, 75 percent of the prisons in California but we couldn't get into the other 25 percent, you would wonder what's going on in that other 25 percent.

SENATOR ROMERO: But even in your written testimony on your visit to San Quentin, you acknowledge that you were followed everywhere.

MR. ELSNER: I was. And I do acknowledge also that you probably can't have reporters just wandering around in prisons. Prisons are dangerous places. So that, you know, I totally understand that there are security aspects there which have to be solved, but, yeah, I was followed around everywhere.

I was there to do a specific story about a peer counseling program for Hepatitis C, and that's what I did. I came in and got my story and I left.

SENATOR ROMERO: How do you check the accuracy of your sources, and likewise as well, I know that when I visit prisons, as I frequently do, I try to be very cautious, but I know that my visit even when unannounced and I show up causes a ripple effect throughout the prison and has ramifications for those inmates or correctional officers who speak to me because word gets around fast in a prison.

How do you -- how do you control for that to ensure the safety of people with whom you might speak in prisons into which you go? What recommendations
MR. ELSNER: Well, I think that if people realize if you state up front, as you're ethically bound to do, that you are a reporter, that anything you say to me you know I'm going to write down and use, possibly, and you give people the opportunity if they would prefer not to be quoted by name or to be quoted anonymously or in some other form or to use a different name. And if you give everyone those choices, then they really have to take responsibility themselves as to whether they want to speak to you. I'm not there to act as the sensor. So, you know, I'm assuming that I'm speaking with responsible adults who can weigh the ramifications and try to make a judgment as to whether or not they want to speak to me.

And as to the accuracy of sources, yeah, people have told me stories which I have then gone back and tried to check against trial records, by going through -- going through written records and calling the Department of Corrections, but that would be, you know, a normal journalistic practice. And if you get two disputed stories, you basically would put both of them out there and let people make their own minds up.

SENATOR ROMERO: Dr. Owen --

DR. OWEN: I'd like to tell the Commission a little story. I spent three years in a very large women's prison in California writing my first book.
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about women in prison. And when I first started coming into the prison -- and by the way, I was allowed

unfettered access once I passed several security clearances and the like. And when I was in the Bureau of Prisons as an employee, I was allowed certainly unfettered access.

When I would go into the prisons, it was very clear that, as you said, there's a ripple effect. She's coming through the gate; she's coming in that unit, and I realized that officers were calling down because it was very unusual for someone to wander around with a tape recorder, as I was allowed to do. So the women told me in the beginning that when I would come into a unit one particular officer would say, "We're having company. Everyone be on their best behavior."

Well, over a period of three years visiting this same unit, this "best behavior" caution went away, and one day the very same officer who said that earlier in the period saw me -- because I always check in with the officers when I come in, saw me and got over the loudspeaker and said, "The yard's open. Get out. I'm sick of looking at you." So as I said in my earlier testimony, as you heard, when you spend a lot of time in an institution you're no longer an unusual thing. And I did observe officers saying things and doing things that you wouldn't observe in a one-shot kind of
visit.

So again, time. Doing prison research is about time.

SENATOR ROMERO: Let me ask just one last question.

MR. ELSNER: Just one very briefly.

SENATOR ROMERO: Sure.

MR. ELSNER: It's not only a question of speaking to people, you can observe a lot with your eyes and you can feel a lot, you know. If the place is 98 degrees, you feel that. And I believe that a lot of prisoners in this country die of heat stroke or of hypertension exacerbated by heat stress. If the place is filthy, filth is filth, you see that. So even if you weren't to speak to anyone, if you were able just to observe these things that would be valuable in its own right.

SENATOR ROMERO: And again, too, we talked about "the prison" as though it were the same. We talk about "the media" as though it were the same, and nothing could be farther from the truth. We also have broadcasts and print media. There tend to be some very different depictions in the depth to which a story can be investigated.

I know that at a later point we're going to have a Hollywood hearing talking somewhat about how the -- how prisons and jails are presented to the public. If I just think about my images, I can go anywhere.
Elvis swiveling his pelvis to the "Jailhouse Rock," you know, Catherine Zeta-Jones, "Dancing on Death Row," "America Me," which perhaps could be a linear depiction in prison.

MR. ELSNER: I actually found a website that lists all the prison movies, and I would say 80 percent of them are porno.

SENATOR ROMERO: Well, we're going to have to get that for the Hollywood hearing.

But the media shapes that. You know, the media shapes that overall.

What do you -- in terms of looking at that, what recommendations or guidance would you give to fellow journalists, being the broadcast or print media, in terms of try not to just do the -- you know, "If it bleeds, it leads," which captures the attention of the public oftentimes, but what advice and guidelines would you give to the trainee of the ethics of reporters if they attempt to portray this world that you never really see?

MR. ELSNER: I don't see any particular advantage to me answering that question. I'm not here to preach to other journalists, I'm really not, and certainly not to preach ethics to other journalists. I think the ethical standards of the U.S. media are extremely high, I really do.

I think that the problem is, having the desire to write the story in the first place. You know, there
have been some extraordinary journalistic efforts at exposing abuse and neglect in U.S. prisons. The New York Times series just recently on health care in the prison system. And I believe that health care is the single biggest abuse in the U.S. health -- prison system, bigger than rape, bigger than, God, brutality and violence, bigger than cell extractions. I think more people die of either outright inept or neglectful health care than any other single reason in U.S. prison systems. So I think that it can be done. I just think that you -- having the media response to what they perceive as the public appetite. We just have a great example right now on the Michael Jackson trial. When everyone thought it was going to be a huge story, but the media is ramping down its coverage because the public just basically doesn't want to know about these yucky things that are going on in his ranch. So the media responds to what they think the public wants to see. And we have to engage the public and make them realize that this affects them, and this affects all of us. The fact that 600,000 people come out of the prison system every year with tuberculosis, who carry tuberculosis. This affects all of us. We can get on a bus tomorrow and we don't know who is standing next to us. The fact that 600,000 people are released back into our communities every year is something which affects all of us. So our job -- and include all of us -- is to make people realize that
this isn't some problem that is separated from them by walls. This affects all of us. There is no wall between them and us. They are moving backwards and forwards and they are us, and there's no barrier at all.

SENATOR ROMERO: Thank you.

MS. ROBINSON: Dr. Owen, I want to focus some questions for you, but first I want to go back to the issue you raised about women offenders because I think this is a terribly important issue. It's one I've been interested in for many years, and do want to state that the Commission is going to give some very focused attention to this in one of its future hearings. And I hope we'll have an opportunity to engage with you on that in the future.

DR. OWEN: I'll look forward to it, too.

MS. ROBINSON: I do want to ask you, in the time when evidence-based government is on the lips of people looking at the government across the country and with that the notion of cost-effective government, the findings from social science and criminology it seems to me are particularly important. And building on some of what you've shared with us already, what are some ways that social scientists like you can share with correctional administrators ways of making our prison systems more effective in terms of reducing recidivism?

DR. OWEN: First of all, let me say that the physical argument is one that I think many of us felt...
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would be a winning argument as long -- when we could explain and describe how expensive imprisoning the millions of folks that are in prisons is. When we could explain the fact that -- just as Alan said -- "every dollar you spend on corrections is a dollar not spent somewhere else." In the late '80s, the early '90s most of us thought that would be the winning argument.

Well, here we are 15 more years later, and the fact is that states aren't acting rationally when it comes to fiscal policy in prisons. The fears and concerns that the media has shaped, that politicians very often don't want to come off as "soft in crime," these have really contributed to the irrationality of the physical issues.

When we understand that we're not getting what we think we're paying for within the prison, a reduction in community safety, rehabilitation, you would think that those facts would make our citizens, would make our politicians pay attention. To date, that has not been the case. We are very irrational in terms of how much money we're spending on prisons and very irrational in thinking about building prisons and continuing to populate that.

To answer your question directly, again, partnering with professional organizations is one way to make social science research acceptable to decisionmakers.

Pairing researchers with correctional systems in a
variety of ways. Fresno County Jail has approached me recently to help them develop a profile of their inmates because they're thinking about building another jail and they've decided they don't really know who's in their jail and maybe they need some social science to help them make that decision.

In the next year I'm going to be working for the California Department of Corrections to help them develop what I'm calling "a more rational approach" to managing female offenders. However, in California we had a commission, the SER-3 Commission that issued its final report in 1992, that said some of the many things that are restated in the report that Barbara Bloom and Stephanie Covington and I have conducted on gender responsiveness. So the information is out there. It's how to connect it to the policymakers.

In these times of fiscal constraints, most Departments of Correction have denuded their research departments. California Department of Corrections had one of the best research departments in the nation in the '60s and the '70s. In the '80s it started being cut back. In the '90s it was cut back. I can show you a memo that said, "Due to fiscal constraints, we have now eliminated the research departments in the California Department of Corrections." So I think focusing on the importance of social science research, but equally important, having researchers and policymakers entering a dialogue, entering a
I go to probably 15 conferences a year, and I've just started going, for example, to the American Correctional Association conference wherein that's where the policymakers are. That's where the decisionmakers are. So I think crossing these disciplines from the academic -- who, believe me, I understand we can be very tedious and esoteric on many, many matters -- and the policymakers who want to know the bottomline, just tell me what to do. I think creating dialogue, creating partnerships and cutting down this etherizing.

Very many people in the research community don't like the correctional administrators. Very many correctional administrators don't like researchers. But I think there's existing avenues, professional organizations, the wardens organizations, et cetera, that can create these dialogues. So welcoming research and also welcoming policymakers to the table I think is one way.

I feel that much of the research is there. There has been a mountain -- not a mountain, there's been a quite large hill of research on sexual assault, there's been litigation on sexual assault. It's only now under the PREA federal legislation that these players are coming together. So that would be my suggestion, promote collaboration across these different folks.

MS. ROBINSON: Yeah, I think your dialogue idea is terrific, and would also encourage you to start going
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to the National Conference of State Legislators, that
would be a good avenue as well.

DR. OWEN: I talked to them about women offenders
last year in Salt Lake City.

MS. ROBINSON: Excellent. That's great.

Let me also ask you, wearing your social science
hat, can we look at other countries across the world
and draw some lessons from them either as to
substantive approaches they've used or on these access
issues?

DR. OWEN: Again, the short answer is yes. The
U.S. incarcerates, as you all know, many more people
than other western industrialized countries. But I
think the sad fact is that most of those countries are
now turning to the United States.

The fad on Supermax prisons is certainly something
that we've created and exported in this state and in
this country. The move toward more criminalization and
derug offenses is happening in many countries in Europe
that previously decriminalized those types of
activities.

So unfortunately, the United States seems to be
influencing those policies that I might see as more
rational policies. But I think that's another issue of
dialogue. The inter -- a very important international
conference on criminology is going to be held in
Philadelphia in August, and I urge --
MS. ROBINSON: I'm glad to know you're coming since PENN is putting that on.

DR. OWEN: Oh, yes.

Yes, I think that there's ways to solve some of the language problems being a product of American education. I'm not bilingual in any language, but through international conferences and through the power of the Web, I know that many of the women researchers are trying to come together on some of these issues. So yes, I believe there's a place for international dialogue as well.

MR. ELSNER: Can I just say very quickly here and steal a story. The U.S. State Department issues its Human Rights Report every year, and it covers 196 countries this year. One of the criteria that we judge other countries on is their prison system. The state Department produces a report from the prison system of every single country in the world except our own. And I was just leafing through it. This was last year's version. I got to the chapter on Iceland, and I saw that they had 110 inmates. So we do a report on the Icelandic prison system and their 110 inmates. We don't do one on the U.S. prison system with its 2.2 million inmates.

I wrote a little off pendulum in the Christian Science Monitors pointing out this absurdity, and I got
an irate e-mail from an official at the U.S. Embassy, Ray Clavich (Phonetic) saying, "How dare you cast dispersions on the very kind of work that I did in writing -- (Inaudible - laughter from panel and audience) -- prison system."

MS. ROBINSON: That is a great jail.

DR. OWEN: And I'd just like to add that offend pieces are a very productive way for litigators as well as researchers and investigative reporters to reach a larger audience. These 500 polished words often have a bigger impact than our 500 not so polished pages in our books and in our reports.

UNIDENTIFIED SPEAKER: All right. Bringing journal articles --

MS. ROBINSON: And that will be actually the last question that I have for all three of you is, are there other avenue news of public education that we really haven't addressed here that could also be effective in getting this broader word out that we really have not addressed today?

MS. WINTER: Well, there are, it seems to me, state legislative hearings are a very valuable possibility. There's all kinds of meaningful legislation that could be proposed and debated in state legislature. It would give an opportunity for there to be some real public debate on these issues, and I think that's a forum that I'm hoping that we will see more.

MR. ELSNER: I would say very briefly, Town Hall meetings involving the families of people who are
incarcerated is a very, very powerful tool. Because then you do see some of the human hardships that the prison system puts not only on the inmates but also on their families. And the Victims Rights Movement has really utilized this tool very, very powerfully.

One example is the outrageous phone charges which various Departments of Corrections impose on inmates who have to call collect to their families. They're often charged $3.50 connection fees, and then they can be charged up to a dollar a minute for these calls. You know, that to me is outrageously unjust because it's punishing not only -- not only the inmates but their families, often poor people. But it's also discouraging inmates from staying in touch with their families.

We know that one of the ways to reduce recidivism is by having inmates stay in touch with their families. So I think involving -- I think there's a vast army of people out there who have no voice, and I think it would be extremely powerful to give them a voice and to have some of these people testify to you.

Another very small example, charging people co-pays inside the prison system to see a nurse or a doctor. Again, it sounds great, you know, politicians stand up and say, "You have to pay to see a doctor; why should they get health care scott free?" Well, of course, they have no income. So charging them $9 to see a nurse -- you know, what are they going to do?
Transcript of first hearing - FULL.TXT

They're not going to see a nurse. They're just going
to get sicker and then they're going to infect other
people and they're going wind up in the emergency room
If you explain that to people, get beyond the slogan
and say, "Look, this, not only is it not just, but it's
stupid, it's dumb," then I think the people can
understand it.

MS. WINTER: There is something else I think very
important that could happen to give prisoners more of a
voice. There's very, very -- actually, very little
litigation -- contrary to popular opinion -- by
prisoners, serious litigation about prison abuse that
ever gets anywhere because they are not represented and
they can't be represented. The prison
litigation -- so-called Prison Litigation Reform Act
has been a huge weapon for silencing prisoners. The
provisions that mean that attorneys can't get the
standard statutory attorneys' fees as prevailing
parties, so they can't get civil rights attorneys to
represent them. The provisions that make decrees
terminate after two years after massive effort's gone
into obtaining the decree. The provision that bars the
door to so many prisoners like Garrett Cunningham
because it requires them to exhaust biontine
administrative remedies that not even the best lawyer
could figure out how in the world to do this within
five days, and then exhaust stage II and the stage III
appeals.

Prisoners can't get lawyers, partly because of
Transcript of first hearing - FULL.TXT

the PLRA, and they can't litigate themselves -- these cases themselves in part of the -- because of PLRA. And simply rescinding some of the more draconian issues for prisoners who are not complaining about crunchy peanut butter but who are complaining about, you know, desperate to have relief from -- medical relief from rape, from violence and abuse. That could make a significant difference in having prisoners' voices be heard.

DR. OWEN: I only have two very quick suggestions. One is inviting a range of actors to the table, a range of folks who are concerned. We talked about families. There are advocacy groups in the community, there are union groups. I think we need to realize that safety and abuse in American's prisons is a multifaceted issue and that everyone has their story. There seems to be little bit of evidence that the human brain is hard wired to hear stories. So I think by bringing folks together to talk at the same table -- which is a strategy that governments use all the time.

I also think that as a final word on research, we need to think about how prison research can be mutually beneficial to all the parties involved, to the system to the theoretical and applied field of criminology into the community as well because so often researchers, advocates, union members, politicians, the media, prisoners, prison managers have been cast as
Ms. WINTER: I wanted to add a little story to what Barbara just said.

Ms. ROBINSON: Very quickly.

Ms. WINTER: A dozen years ago when I started doing prison litigation, I was visiting the lead plaintiff, and a very extraordinary-looking prison guard, a woman at least six foot four weighing about 280 or 300 pounds came by with a terrible scowl on her face, and when she passed I said to my client, "Boy, I bet she's a real piece of work."

And he said, "Actually, she is a ray of light in a dark place." And I kept that with me over -- and I keep it with me 12 years later, not to stereotype people, to try not to think that it's us and them, but to realize that riches are possible to build, but there's dialogue and that there are people who are on the other side, so to speak, who are very eager to enter into a dialogue and worth trying to find a way into it.

Ms. ROBINSON: A good word to end that on. Thank you.
MR. GREEN: As we began our year-long study, I'd like to ask each of you to give us your views about the prevalence of abuses and serious safety failures in American prisons and jails. And what are the most serious forms it takes in addition to the inadequate medical care that Mr. Elsner referred to earlier? So if each of you would -- in addition to the medical care, what you think the most serious issue is. We'd like to hear that. I don't know if you want to add to that at this point.

MR. ELSNER: I'll go last this time, if that's okay.

MR. GREEN: Margaret, what would you say?

MS. WINTER: I think Supermax prisons are a huge issue. They are systems that are practically designed or guaranteed to drive people mad, insane, irretrievably insane. There have been a lot of studies on this. It's been known for at least a hundred years, the psychiatric effects that that kind of isolation and deprivation from all human contact and stimulation has on the human psyche, and there's more and more of them they're proliferating. They are intrinsically cruel and create extreme psychosis, and I think that's a major issue we need to focus.

MR. GREEN: Dr. Owen --

DR. OWEN: I think it is an area that we need to expand our definition of safety and abuse. I think we need to come to some understanding of the obvious
Transcript of first hearing - FULL.TXT
and the subtle harms that prisons produce to human
beings, both human beings who work there as well as
human beings incarcerated there.

I think in terms of women, we need to look at the
range of the facts that imprisonment has on women and
their children. And as Alan pointed out, almost
everyone in America's prisons comes home, and we need
to think about the damage that incarceration --
particularly with the longer sentences, is introducing
on the folks who will come back to our communities.

MR. ELSNER: Well, if I could just reiterate what
I said earlier. I believe the single biggest threat,
the biggest abuse is the health issue, the management
of infectious disease. Prisons are an incubator of
diseases. It’s not just that we’re dealing with a very
unhealthy population, which we are, but that the
conditions within prisons, the poor ventilation, people
crowded together, encourages the use of tattoos, for
instance, using shared needles for tattooing and also
for drugs hastens the spread of diseases like Hepatitis
and HIV, obviously.

I think a lot of people live in fear that the drug
resistant form of tuberculosis will eventually take
root in our prison of system, which is going to cost
billions and billions of dollars to root out if it ever
does.

So I think that the abuse cases in a way
are -- don't take this the wrong way -- sexier, from
a journalistic point of view than the silent killers which are spreading through the system. But I think that if you were to be presumptuous enough to offer you some advice to you, I would concentrate a lot on this health and hygiene aspect of things.

MR. GREEN: We have a few minutes left, and so -- I don't know if we have questions from members of the Commission.

MR. GILLIGAN: I'm wondering if we aren't proceeding on a basis of mistaken assumption, which is that the purpose of American prisons is to decrease the rate of crime and violence. If that were the purpose, then what we're doing, of course, is irrational, but what if we make the opposite assumption and say that pretty much the purpose is really to engage in a maximal amount of revenge on the part of the public regardless of whether that increases the rate of crime and violence, or even more, that perhaps the purpose is to -- how can I put it -- if the purpose were to increase the rate of crime and violence to the highest possible level in our society, one might have to say that we could hardly have designed a more effective system.

What I wanted to ask you is, if that's the purpose then, is there anything we've overlooked? Is there anything where we could add to make prisons more...
Transcript of first hearing - FULL.TXT

Criminogenic and more violence provoking? Can you think of anything we could do that we're not already doing that might make them even worse from the standpoint of preventing violence?

MR. ELSNER: (Laughter - undistinguishable) -- which even I as a journalist find it hard to credit.

You know, I think we're doing a pretty good job from your point of view. I had -- a number of years ago I was doing a talk in Albany, New York, and this guy came up to me and said he was in the federal prison system and he had a little story:

He had Ph.D., and he'd been incarcerated for a white collar crime. He said when he got there, they said, "You've got to take the GED."

He said, "I already have a Ph.D., I don't need the GED."

He said, "No, everyone's got to take the GED."

So he goes into this room and he sits down and starts picking boxes, and there are these guys on either side of him and when he picks box A, they all picked box A, and when he picks box D, they all pick -- and as it goes up, he sees this graph on the wall, and it's "GED pass rate" in this particular prison.

So I think, you know, we could do a much better job if we cut out even the meager education and vocational side training that we had there and just warehouse them all all day doing nothing, that would
DR. OWEN: I understand the spirit in which you raise this issue, but my answer is, for so many years there was a movement towards truth in sentencing. I think we should have truth in incarceration, and prison budgets, correctional budgets need to be much more transparent than they are. I don't think most people realize exactly how much money is being spent and what little bang folks are getting for their buck.

I was at Records University last week attending a sentencing conference and some earnest young graduate student -- one of which I was once -- has done a pretty good thesis -- a dissertation on the optimal number of months and doing all kinds of fancy math and all kinds of figures. She came up with this figure of 30 months seems to be the optimal prison length before you actually start increasing crime rates. And again, it's a lot of that funny math that dissertation people do, funny statistics. But I think her point is worth emphasizing.

We actually know the point at which this harm is super-sized -- to use a current colloquialism -- and I think we need to start thinking about how we can satisfy -- and I agree with you, doctor -- that we do have a strong revenge component driving our corrections systems. We need to do some very specific calculations in thinking about exactly what are we doing, what are we getting; how much does it cost, and how can we do it differently.
Ms. Winter: Well, I think we all know -- it's no mystery here, there have been plenty of studies -- what it is that makes recidivism go down, education, drug treatment, vocational ed. We know it. There have been studies. There's no question about it. And with the amount that it costs to incarcerate someone in a high security prison, I think it's also been proven many times that they could be sent to Harvard for the same price.

In answer to your specific question, I was going to say, well, we could send them out naked in pink underwear, but, oh, whoops, no, they did that yesterday. I saw it on the news. It's very hard to think of anything that hasn't already been done that would make the situation worse, but the odd thing is we do know what would make it better. Drug treatment, my God, seems such a huge proportion. I don't want to say here, but I want to say 40 percent of people in prison it's strictly because of drug -- you know, addiction problems, it's addiction. And that people go into prison, they either are deprived of drugs while there and get them the minute they get out because they've had no serious treatment or they are plentifully supplied within because it's permeable for drugs.

So since we know what the answers are and since the resources are clearly there, all they have to be is reallocated. That seems to me one positive thing. No
Transcript of first hearing - FULL.TXT

huge studies need to be done to prove what would make
the situation better and what makes it worse and worse.

DR. OWEN: But I would also caution the
Commission, in thinking about those types of
approaches, to understand the experience of programs in
prisons. Just as Margaret was talking about, very
often these oversight agencies become kind of neutered
over time. Very often prison programs are just in fact
paper programs. They say they have drug treatment,
they say they have vocational training, they say they
have forms of mental health, and without really paying
for quality programs, without really putting the
resources, very often you create treatment failures in
which the individual’s blamed, when in fact there was

no viable treatment delivered at all.

MR. GIBBONS: No more questions?

Well, with that, this is the end of this
afternoon's session. I want to thank everybody who has
participated, attended today, the witnesses, the press,
and the spectators for joining us.

We'll begin tomorrow morning at 9:15. I'd ask for
all of the commissioners to remain in their seats for a
few minutes so our staff can review some logistical
details with us.

Thank you all.

(The hearing was adjourned at 4:36 p.m.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, PAMELA J. WALKER, Certified Shorthand Reporter (CA), certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 4th day of May, 2005.
HEARING ONE
COMMISSION ON SAFETY AND ABUSE
IN AMERICA'S PRISONS

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TIME: 9:00 a.m. to 1:19 p.m.
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The following proceedings were had and taken:

MR. GILLIGAN: On behalf of the Commission on Safety and Abuse in America's Prisons, we want to welcome our witnesses, Don Cabana, Steve Martin, and Don Specter.

This morning, I along with Tim Ryan and Pat Nolan have the pleasure to lead a discussion with three distinguished witnesses on the violence and the use of excessive force in our jails and prisons. Following this panel, Commission Margo Schlanger will conduct a roundtable that will also involve a discussion of violence in our jails and prisons.

Our objectives here this morning are modest ones, but hopefully by the end of this panel the commissioners, the people in attendance today, and others who are following our work will have a better understanding of some of the challenges and possible solutions to the problem of violence in our prisons.

Over the course of the next 90 minutes, we hope to discuss some of the various forms of violence in prisons and jails including inmate-on-inmate, inmate-on-officer, and officer-on-inmate violence, which I should add by no means exhausts the range of violence in prisons. I've seen visitors who have been killed in prisons. Non-infractitional staff who have been raped, wardens who have been attacked, people taken hostage. Everybody who goes in and out of the
prison is potentially vulnerable to this. Some of the particular forms of violence that we will hopefully have the time to address include the excessive use of force by corrections officers, gang violence, and sexual violence; additionally, when talking about the prevalence of each type of violence, its causes, and the methods of control that are currently being used. We hope to begin to explore some possible methods to make the jail and prison environment safer and less abusive for both correction officers and inmates and everybody else who visits, works in or goes in and out of these institutions.

Before my colleague, Pat Nolan, introduces the panel, I want to stress one point: I believe that the vast majority of the men and women who work in our prisons and jails are committed, well-intentioned professionals doing their best under often very difficult circumstances and sometimes amazingly succeeding remarkably well. While I'm certain we'll hear some powerful anecdotes drawn from the experiences of these witnesses, we must also make sure that we put these examples of abuse or misbehavior in context.

MR. NOLAN: I'd like to start by noting that the discussion today will focus on male inmates. We have other panelists at subsequent hearings that will more thoroughly discuss the very important and distinct issues that confront women prisoners in our jails and prisons.
We're pleased to have these distinguished gentlemen join us this morning.

In the 1980s, Donald Cabana served for five years as warden of the maximum security, death row prison in Parchman, Mississippi, until his distress of having to carry out executions overwhelmed him. He detailed his experience in a 1996 memoir, "Death at Midnight: The Confession of an Executioner." In 2004, he resumed control of Parchman before retiring in early 2005.

Mr. Cabana has a long history in corrections, beginning as a guard at Parchman in 1972. He was also a warden in other facilities in Mississippi, as well as in Missouri and Florida, and was Acting Commissioner of the Mississippi Department of Corrections from 1986 to 1987. Mr. Cabana is currently Chair the Criminal Justice Department at the University of Southern Mississippi in Hattiesburg.

Steve Martin is a corrections consultant and is actively involved in prison litigation in New York, Mississippi, Georgia, Ohio, Maryland, Utah, and Puerto Rico. He is involved in jail litigation in New York City, Ft. Lauderdale, and Gulfport, Mississippi. He serves as an expert to the U.S. Department of Justice, Civil Rights Division, in both prison and jail cases in Georgia, Mississippi, Maryland, Guam and Saipan. He has worked as a consultant in more than 30 states and has visited or inspected more than 500 confinement facilities in the U.S. He has served, or currently
serves as a federal court monitor in three prison
systems and four large metropolitan jail systems.
He's been involved in class action litigation involving
staff use of force in Texas, California, New York,
Puerto Rico, Wyoming, Montana, Pennsylvania, Maryland,
Georgia, and Florida.

During his 32 years in the criminal justice field,
Mr. Martin has worked as a prison guard, probation
and parole officer, and prosecutor. He is the former
General counsel of the Texas prison system as well as
having held gubernatorial appointments in Texas on both
a sentencing commission and a council for mentally
impaired offenders. He co-authored the book "Texas
Prisons, The Walls Came Tumbling Down" and has written
numerous articles on criminal justice issues. He has
served as an adjunct faculty member at six different
universities including the University of Texas School
of Law.

Donald Specter has been Director of the Prison Law
Office based in San Quentin, California, since 1984.
Mr. Specter manages and directs the legal and
administrative operations of a nonprofit 11 attorney
office providing free legal services to California
state prisoners. With support for many Bay Area law
firms, Mr. Specter has successfully litigated many
institution reform cases including federal and state
class actions challenging various conditions of
confinement system wide at all 32 state prisons, and
at individual prisons, including Pelican Bay, San
Quentin, and Vacaville.

He has also served as chair of the State Bar's Commission on Corrections.

We'll begin with Donald Cabana.

MR. CABANA: Thank you, Mr. Chairman, Commissioners. I appreciate the opportunity to be here this morning.

In thinking about the Commission's work, it occurs to me that you all have an opportunity to perhaps carry out the most important function relative to the corrections field in over a century. In 1870, a group of zealous prison reformers led by Isalien (Phonetic) and Brockway and future president Rutherford Hayes came together in Cincinnati, and they issued a Declaration of Principles that was intended to guide corrections and reform corrections, and out of that compost in 1870, the first most immediate result was the evolution of the reformatory system starting in Elmira, New York.

Over the years, the organizations that came together in 1870 served as the foundation for what today is the American Corrections Association. And over the years in the corrections field, there have been many who have labored long and hard in the vineyards, mostly in obscurity, who are professional, who are dedicated, who are honest and driven by integrity, and want to do the best jobs that they can and find ways to improve the system and make it what it
should be; make it what its Quaker founders intended it to be.

In the 20th Century, a number of wardens have been very outspoken critics of the very systems that they were responsible for operating. Lewis Lawes at Sing Sing in the 1930s; Thomas Montosborn at Sing Sing in 1920s; Clinton Duffey in the 1950s and '60s at San Quentin. Even as they were on the payroll, something that would be difficult to imagine in today's political landscape.

I had the privilege of spending 35 years in corrections. I actually started my career as a correctional officer in the Massachusetts State Prison in 1969, and I quickly began to learn some valuable lessons.

I did early on what I thought every officer was required to do, I reported a fellow officer for beating an inmate, an old man of 80-something-years old that he woke up in the middle of the night and beaten because he could. That was my first introduction to what I have over the course of my career referred to as "rogue staff." That very small minority of people in the business who have no place having any position of authority or responsibility over other human beings.

My experience as a result of reporting that incident was not a particular happy one. I was not harassed or threatened by fellow staff, I was basically shunned and given the silent treatment. And I'm sure my departure several years later from the system made
Transcript of first hearing - FULL.TXT

quite a few people happy.

My first stint as a correctional officer at the Mississippi State Penitentiary, I ran into much the same kind of process. And so here we are today. We think we've made so much progress with regard to

violence in prisons, and what we have is a situation that I like to refer to as "back to the future."

Prison started out in the late 18th Century under the Pennsylvania Solitary System with hope. And as we discovered within a few decades, they were driving inmates to insanity, they were driving soaring rates of suicide, and basically they became everything that the founders intended them not to be.

We spent in this field the next 150 years trying to get away from monolithic solitary confinement-time maximum security institutions. And then some 20 to 30 years ago, because of a number of people, including elected officials, discovered that crime is a great battle box issue. Being tough on crime means votes. So we started instituting something, quote, "new' called "supermax." Benjamin Rush and Benjamin Franklin today, if they saw Pelican Bay, would simply think it was a modernized version of the Walnut Street Jail in Eastern State Penitentiary.

The level of violence in these places is unconscionable. What I found in the supermax units when I took the reins back as warden of the Mississippi State Penitentiary was extremely disturbing and I
MR. MARTIN: Good morning.
I'm going to focus somewhat more narrowly. My remarks today commensurate with Don Cabana.

MR. SESSIONS: Pull the microphone up, please.

MR. MARTIN: Yes, sir.

While we did not plan this, I think it's a wonderful segue from pure eloquent overview to a more narrow topic, which is, staff use of force and confinement settings in America.

One thing I'd like to do very quickly is to give the commissioners a frame of reference for the prevalence and the scope of use of force incidents in confinement settings. It is what I would, I think, fairly characterize as a commonplace event in operation of confinement centers or prisons or jails.

In my statement, I have footnoted three separate systems to try to give the commissioners an idea of the scope. For instance, in Texas, I believe in 2001, there were in excess of 6,000 reported staff uses of force in that system. In the New York City jails, I believe in 2002, there were in excess of a thousand incidents. In the LA County Jail in 2004, there were in excess of 2000. So in three systems, admittedly
large confinement operations in one calendar year there were almost 10,000 incidents, reported incidents of force. So the commissioners should understand that it's a commonplace, frequently occurring phenomena in our institutions. Because it is one of the few commonplace events in prison, the jail environment in which there is immediately attached a risk of harm to both inmates and staff, it is an area of operation that tends to merit more scrutiny by the courts and by professional standards.

I'm going to leave it to my more learned colleague, John Boston, who is on subsequent, to talk a little bit more detail about the legal standards, but suffice it to say that the Constitution prohibits the wanton infliction of pain on persons in custody. The sadistic and malicious infliction of harm is not permitted.

Secondly, corporal punishment, physical punishment is not permitted since 1968 in a Supreme Court case. So it is an area that is closely scrutinized and guided by court law. Professional standards also -- I don't know of any professional standards, ACA, American Jail Association, that do not speak to staff applications of force.

What I want to focus my remarks on is not the rogue officer, the rogue commander or the rogue shift. Those cases, while they can fly under the radar, they
Transcript of first hearing - FULL.TXT

don't tend to fly under the radar for long. Once
they're discovered, they speak for themselves. I mean,
they bring about certain responses from the confinement
operations; people were fired or policies are
revisited or whatever. Hopefully, those events, while
they've always been with us and they always will be,
will be relatively infrequent where you just have the
type of Hudson v. McMillan beatup where somebody was
just singled out and they're whooped on. Those are
deplorable and speak for themselves.

What I want to talk about is what I call
"sanctioned balance in America today. That's
instances in which under the guise of lawful exertion
of authority by correctional officers, that is used to
visit basically punishment or retaliation on an inmate.
That's what I've dealt with in my career more than
anything else in terms of court monitoring where you
have officers that force not to control and immobilize
and neutralize a threat, but they use it to control and
punish or control and deter or control and retaliate,
and sometimes it is very, very difficult to find that
bright line of where it moves from control maybe into
control and punishment or control and retaliation.

So my experiences have been in large systemic
cases in which what I found most difficult to deal with
is to try to move a particular agency from just -- from
the tandem of control and punishment strictly to
control. Pelican Bay was a classic example, to which
Don made reference to it, that under the guise of enforcing lawful order, say, getting a dinner tray from an inmate locked securely in his cell, they routinely used very high degrees of force to do a relatively simple act of retrieving a tray, where they would use Tasers, wood blocks, gas all simultaneously to get a dinner tray back. Well, there’s no question that the dinner tray needs to come out of the cell, that’s the law and so forth, but the question is the proportionality: Was the objective risk in touch with the action. And it’s a very, very -- sometimes very subtle phenomenon in our prisons. It’s very difficult to detect and control. That’s what I hope to maybe have a chance to talk about a little bit more in the question and answer session.

Thank you.

MR. SPECTER: Thank you very much. It’s an honor to be here and a privilege. And I hope my testimony provides some useful information.

Before I talk specifically about violence, I want to talk -- I want to mention the intersection about violence and safety and health care and put violence in perspective for you all.

Mr. Martin, very eloquently, explained how many -- that uses of force there are in the prisons around the country. It’s a fact of everyday life. But what is the harm? In California, I did a quick study for numbers and figures in 2003, and I found that 14 prisoners were killed by force or violence by staff.
or inmates in 2003. On the other hand, at least 13 prisoners in that same year were killed from medical neglect, malpractice, and 25 were -- died from what has been called "preventable suicide." So we have a total of 38, at least 38 prisoners who died in 2003, which is almost three times as many prisoners who died from neglect as died from force and violence. So I just wanted to -- I just think that's an important fact when the Commission is discussing its recommendations.

I'm not going to provide you with a list of horror stories. Some are in my written statement, some are -- many are in cases that have been recorded.

In California we have had our -- more than our fair share of them from videotapes of beatings of young wards to people who have literally been boiled in water at Pelican Bay. I'm not going to also explain how violent prisons are because Mr. Martin and Mr. Cabana just did a very good point of that.

But my point is, that prisons are violent only because we want them to be, I believe. And they don't have to be as dangerous and as violent as they are. If you put poor underprivileged young men together in a large institution without anything meaningful to do all day, there will be violence. If that institution is overcrowded, there will be more violence. If that institution is badly managed such that some of its systems, such as poor mental health care, there will be more violence. And if there is inadequate supervision
of the staff, if there is ineffective discipline, if there is a code of silence, if there are inadequate investigations, there will be even more violence.

And as we saw at Pelican Bay and as we've seen in other places, which Mr. Martin alluded to, if the administrators of the facility passively approve of the violence, there will be chaos. All of this means, I believe, that controlling violence in prison is not a secret, it's not difficult; it's well known how you do it. You need adequate resources in terms of staff and you need to use standard management techniques that have been around for a very long time, and you will be able to reduce violence to acceptable levels.

So the failure to do so in some cases is deliberately indifferent, I believe. As a lawyer, all I can do is get the courts to enforce prison officials to not be delivered indifference and to meet the constitutional standards, but I believe the Commission should advocate for more. I completely agree with Warden Cowley's remarks yesterday that the culture of our prisons virtually dictates the level of violence that you will have in them. And if you change that culture, you will reduce the violence.

So the question that comes up from that remark is, how do you change that culture? Well, I think there are two main ingredients to doing that: One are programs, and two is -- oddly enough -- conversation. Programs make prison life more meaningful and they give people something to do and they help recidivism.
and will reduce violence in the institution.

Conversation, what I mean by that is talking, talking to prisoners in ways that promote change. This communication can take place among professionals who are trained as part of a structured program or it can take place with correctional staff who receive minimal training but are properly screened to do so. On a more basic level, it can take place in any prison at any time if staff are obligated to interact with the prisoners in a useful way.

The reason I believe that culture is so important and that conversation takes -- is so important is that I've seen it work in very tough prisons, Pelican Bay for one, Missouri Juvenile System is another, and Connecticut is another, where they have the toughest of the tough people who are transformed to some degree by this type of a program and conversation. Gang members, gang violence, if you have a structured program and you talk to the prisoners in a way that helps them, they will be able to change and be transformed. So the lesson here is that prisons are what we want them to be. They can either be factories of hate, retribution and violence or they can be safe facilities that promote positive change.

Thank you.

MR. RYAN: Thank you, gentlemen.

What I'd like to do is ask a couple of questions with my panelists and then open it up to the rest of
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the Commission to ask them a couple questions as well.

The first thing: Mr. Cabana, you've been in the
administrative side of the business for an extensive
period of time, and you mentioned some historical
perspective, a hundred years of process here. Is there
something different today than there was a hundred

years ago? Where are the leaders today and what would
you recommend to this Commission at the end of our
process to assist us in moving ahead?

MR. CABANA: You know, it's kind of interesting
that in the 1930s Lawes wrote a book while he was
still a warden at Sing Sing called "Twenty thousand
years in Sing Sing." It became a huge hit, made into a
movie and stuff. Clinton Duffey at San Quentin in the
'50s and '60s, an outspoken advocate of prison
reform "Abolition of Capital Punishment."

After I retired the first time, I wrote my first
book, and I was giving a speech at a university and a
young lady came up to me afterwards and said how much
she enjoyed the book and she admired me for speaking
out but deplored the lack of courage that I showed at a
time when it could have counted most. I responded
that I presumed she meant that as a warden I should
have refused to carry out executions because of any
personal objections I may have had.

The political landscape has changed significantly.
Any warden today that thinks they can speak out
publicly in terms of attacking the ills of the system
without running the risk of political retribution
probably is coming from another planet.

What governors and the legislators consistently send is a message to prison officials, is, number 1, I want a system that's run well, and my definition of a well-run prison is one that I don't read about on the front pages of the newspaper. And generally speaking, of course, what good things do occur inside these places are not reported and the negative things are.

Over the course of my career, I have been taken hostage, shot at, stabbed at. As a warden, I've had to negotiate no fewer than eight hostage situations, deal with riots, et cetera. Invariably, those all get into the news. But there have been success stories. And even when you try to offer that to the media, they're not interested in feeding off of that. They're interested in feeding off of the negative.

So the landscape has changed, and I think the environment is such that -- on an individual basis, Commissioner, it would be very difficult for prison officials to individually speak out, but collectively, organizations like the American Correctional Association and the North American Association of Wardens and Superintendents can and should make themselves heard very clearly.

At some point in time in the last 25 years, ACA should have been speaking loudly to, "We don't support the notion of building any more supermax prisons that
are going to take people and make them worse when they
get out -- if they ever do -- than they were when they
came in. We're not going to profligate the inhumanity,
we're not going to profligate the inappropriate
conduct.

MR. RYAN: Any response as well, Mr. Martin?

MR. MARTIN: I know would just briefly add, I know
what drew me into the profession over 35 years ago was
basically as a caregiver. Rehabilitation was a model
employee in correctional administration, and that's
what drew me into the business as a caregiver. I've
written articles in which I have said, "We have
abandoned that caregiving era of correctional
administration, and we now are in the caretaking
industry." We've placed tremendous emphasis on the
pure literal custody of offender populations. I think
that can be demonstrated by the rise of high-tech
weaponry; that is, non-legal weaponry that is employed
in our prison environments that is all geared towards,
you know, controlling, luting, et cetera, that I have
characterized that -- as others have -- as where I
believe in what could be fairly described as the "mean
season" of correctional administration.

And while obviously corrections has a custodial
function and that can safely be said that's probably

their primary mission, that should not preclude still
the approach that custody can be maintained alongside or in tandem with fair treatment, programming, and all the other things that hopefully prepare these offenders for ultimate release, because as we all -- most of us know, 95 percent plus of all offenders, incarcerated offenders -- whether they be in jails or prisons -- ultimately are released to the street.

So it disturbs me that we build prisons and we build supermax prisons, and I think that exemplifies what I'm talking about. The supermax prison really is an exemplar of pure literal custody, of taking large populations and limiting their movement to the extent possible by the physical architecture to minimize movement, and it has consequences. It has consequences especially when you flood some of these facilities with the mentally impaired, mentally ill offenders, in which you put them in a setting where the natural progression is decompensation, and then you move into a cycle of balance with those folks. So it's that type of thing, I think, that -- Don, that you were talking about maybe, and I'd like to cast it as -- I'd like to see a little bit more balance between caregiving and programming and rehabilitation and the custody function. I think they can work in tandem. I think

they can work in a complimentary fashion where they both can be maintained. But we've come up with these wonderful phrases like "super-predators" and "supermax facilities," and it's been my observation -- you know, I've said this both in my
writings and other testimony and presentations, I've worked probably around in as many maximum security facilities as pretty much anyone around, as far as having some limited exposure to a wide variety of them. I don't know that our populations over those 35 years are that much more difficult to manage. Certainly, there are dynamics, you know, of gangs, prevalence of gangs and so forth that made it more difficult, but I don't see offenders being dramatically more difficult to manage than they always have been. Yet, look at the rise of management devices that are omnifarious, limiting over that same 35-year time span of high tech weaponry, of supermax facilities, of all this equipment that we employ use and so forth and surveillance and everything else. So, you know, I think through, you know, is the population that much more difficult or do we compensate for our failures as administrators by building supermax facilities, by getting more equipment and so forth. I think if we concentrate a little bit more on just shared improved management, fair play, listening, dialogue, common-sense type of approaches to treating people decently, that we might not have to rely so heavily on our supermax prisons and we might not have so many, quote, "super-predators."
I'll leave it at that.

MR. RYAN: Mr. Specter.

MR. SPECTER: Well, I have three points I want to
One is, I empathize with the student who approached Warden Cabana because I have had numerous prison officials come up to me after the trial or after the case is over and express appreciation for what we have done or regretted what they haven't been able to do rather -- after the fact that they have actually been an adversary and prevented my ability to effect legal change because of their testimony. I attribute that quite a bit to the bureaucratization of America's prisons; where in Warden Duffey’s time the warden was pretty much the king of the prison then. And in the ’60s and ’70s and ’80s, the control has shifted more from the wardens to the central office, so I agree with Warden Cabana that those people would be fired if they did what they thought, if they testified about what they thought.

I actually had one doctor call me up after the Pelican Bay trial and basically tell me he committed perjury on the stand during Pelican Bay, which wasn't that bad because nobody believed him anyway.

The other part I want to echo is Steve Martin’s point, which is that I think custody and control of prisoners is consistent with programming. If you program prisoners, it’s not only -- it will reduce violence, it will increase public safety. And what we had in the -- especially in the ’90s is this law and order approach and this mean approach which is exemplified by prisons like Pelican Bay, in which
programs are taken away, just austere prisons were put in its place, restrictive. And I think if you talk to most, if not virtually all, prison administrators these days you will find that they all decry that and they don't believe it's working and they think it's inhumane and they think that we should go back to the days where we had more programs.

The third point which ties into the violence, I just wanted to give anecdote about the violence at Pelican Bay, which Steve described and which we tried in our case in the early '80s, which were just horrendous levels of violence in which the court found there was a pattern and practice of using violence as a means of administrative control.

The interesting thing that happened was that after Judge Henderson issued his order in '95 -- we tried the case in '93 or '94 -- Judge Henderson issued his opinion in '95 with those statements in it. They sent a new warden to Pelican Bay, and he went around -- he told me this later. He went around to all the units and all the watches and met with all the correctional officers, and he gave them one simple message, "The violence has to stop and it will stop, and you are not to commit these kind of violent acts with our prisoners anymore; and if you do, you're gone." And guess what? The violence plummeted overnight and Pelican Bay has never been the same, thankfully, since. So it's possible and it's
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reasonable, and it can be done quickly if there's a
will to do it.

MR. MARTIN: If I might, I'd just like to very
quickly follow up with another experience very similar.

Norm Carlson and I, a former director of Bureau of
Prisons, monitored the New York City Riker's Island
in correctional time action in central periods in the
segregation unit in the recent past, a four-year
monitoring termin which we began. It was routine for
officers to deploy as a first response hard-impact

weapons to vulnerable areas of the body; in other
words, bone-on-bone, fist-on-skull, et cetera. It was
a situation in which more often than not, literally, in
the majority of cases either inmate or staff were
harmened; and in some cases, very, very serious arm
fractures, perforated eardrums, and I could give you
a whole huge litany of horrible injuries. It was
contended at the outset that that was necessary to
control that difficult population. That was sanctioned
violence. These incidents, of course, were typically
approved both by the administration and by the
so-called independent Internal Affairs people. And
they said, "Well, this is a tough population; it's you
unfortunate, but we have to do this in cases."

After four years of monitoring, that response was
virtually totally eliminated. They did not use
hard-impact strikes to control the population. They
had not compromised their security in any fashion. In
fact, we contended to the Judge when he terminated that
remedial decree, I think had a record--a factual record in which that was indeed a safer operation both for staff and inmates, and the injurious force was virtually totally eliminated.

It just so happened that when we started experiencing some success in monitoring term it wasn't what Mr. Carlson and I were doing, it was an administrator, it was a corrections person that was made deputy warden and started going back to the facility itself and basically giving the message that the new warden did at Pelican Bay. And what that tells me is, it reaffirms my belief that the most insidious feature of use of force is not the rogue events, it's not those that clearly are an indefensible, it's those events that fly under the radar, under the rogue bridge of sanctioned -- I mean of lawful force, when it in fact is a pattern and practice of what I have come to term in my writings as "de facto corporal punishment."

Officers know that they may be able to exaggerate or manufacture a reason to apply force, and under that guise actually what they're doing is inflicting punishment or they're engaging in an act of retaliation. That is what I've seen more in terms of patterns and practice and in systemic problems as opposed to that isolated rogue event.

MR. CABANA: Commissioner, can I make one very brief follow up?

There's two bottomlines here. One is leadership,
and whether you’re talking about correctional officers, case managers, clerks in the records office or whatever, the warden sets the tone.

I spent about 25 years officiating high school and college football, and I learned early on when you stepped on the field that the behavior of the athletes told you what kind of leadership the coaching staff provided. Now, that’s a management principle that flies across the board. Corrections isn’t so different that it can’t adhere to that kind of principle.

The other thing is communication. When I returned to the penitentiary, the first unit I went to was the supermax unit. I was the Commissioner of Corrections that convinced the legislature to pass a bond issue to build the thing, but it was never intended to be what it became. It was supposed to be an open max unit where inmates would have the opportunity for programs and work to get their way out of there. Somehow, over the course of years it became a 23/7 lockdown.

The level of hostility between officers and staff, between inmates -- officers and inmates, between other staff and inmates, between inmates and inmates, was astonishing. Constant verbal and physical confrontations. Inmates throwing feces and urine and boiling hot water or whatever else they could get their hands on, constant confrontations that required use of force. And yet, in the time that I was there I went through that unit virtually every day. I never had the
first inmate so much as raise his voice at me in anger, let alone curse me or throw anything at me. And I think that's largely due to the fact that I was there to listen and let them vent some.

The other thing is that they knew that we were working hard to put some programs into place to give them the opportunity to get out of there, to change the classification structure. So that everybody wasn't regarded as a rogue inmate who required supermax confinement.

The bottom line in running a correctional institution, and I think especially a maximum security prison is, you cannot do it from behind a desk and do it effectively. You have to be visible. You have to listen to the officers, to the counselors, to the people who are on the frontlines. You have to listen to the inmates. The gangs are absolutely a concern and a rightful concern of any prison official, but you have to communicate with them. To lock them down and throw the key away, and say, "Until you get released from this institution you're not coming out into population," flies in the face of good practice. You have to communicate with them. I was discouraged from doing that, frankly, because communicating with gang leaders meant that you were giving them credibility, and somehow the notion never occurred to some of my
superiors that if I locked down a hundred gang leaders, there were a hundred other lieutenants out there ready and willing to take their place, number 1.

And number 2, most of the gang leaders continued to give orders from inside lockdown. And as a matter of fact, locking them down frequently gave them greater status and power within the institution, which was the very thing you were trying to reduce.

MR. GILLIGAN: I want to ask the question of Mr. Martin, but I also want to open up the question to or all three of the witnesses this morning.

You’ve all mentioned the high level of violence within prisons in the U.S. today, and the fact that many or some people have felt desperate enough about this problem that they resorted to the extreme solution of all the solitary confinement, all the time, supermax prisons.

I wondered if you could summarize for us what experience has shown the effect of these things has been on violence in prisons of all types, not just homicide but also suicide and the various other kinds of violence. And what would be a more recommendable, systemic response as a means of reducing the level of violence within prisons at a systems level so that we’re not just a dependent on an individual either, a bad actor or an individual, you know, humane administrator or guardian?

MR. MARTIN: A very good question. The well-run
supermax prison can no doubt drive down significantly
inmate-on-staff balance. Because a well-run supermax,
such as Pelican Bay, the whole design and philosophy of
that is to minimize physical contact between inmate and
staff so there's barriers everywhere. So it can do
that. It clearly can reduce the inmate-on-staff
violence.

It likewise, I think, can reduce inmate-on-inmate
violence because of the same reasons, because they're
single cell, typically they're often recreated
individually in individual cages or rec pens, whatever.
But the consequences of that I believe are higher
rates of mental illness manifested by attempted
suicides, manifested by when those folks return either
to the general population or to the streets that they
oftentimes quickly and seriously re-offend, and we
saw that in Pelican Bay when they were releasing
mentally -- seriously mentally impaired, ill people
directly from the SHU lockup, too. Now, they've held
them successfully while they were in SHU lockup, it
just so happened they deteriorated to such a degree

that they were an immediate danger once they were
released from prison.

I believe that our custodial managers or
correctional managers have an obligation -- in fact, I
would suggest theoretically an argument could be made
that their primary obligation is to render that inmate
in a fashion where there's a higher likelihood that
he will not re-offend when he hits the street and
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victimize further people; that's as important as the actual custodial function. So that answered the first part.

The second part of "what could we do," I think -- what both Don's have made reference to and what Warden/Professor Cabana attempted to do at the supermax in Mississippi or what he had in mind when he supported the construction of that, was this phased type of -- that there's a way out. What disturbs me is, it's been my experience, being involved in quite a number of these cases, that once that label is applied to that offender, that he needs to be in SHU lockup or in the supermax, it is very, very difficult for him to shed that label. So what you end up with are very, very extended terms of very lengthy 23-hour-a-day confinement.

If, on the other hand, you had some type of step program in which, you know, if you -- and that's what we did at the CP action (Phonetic) up in New York City. One of the things we did is we raised some incentives for these folks to accelerate their release from that type of confinement. Then you've created, you know, some measurable, you know, incentives and you've also given that offender hope.

If there's one thing I've learned in 35 years -- my entire adult life of being in this business -- the inmate that is dangerous is the inmate that has literally no hope; for whatever reason, he has
checked it and said, "I've got nothing to lose." And for the life of me, if you look at the mechanisms in the legislation and other strategies we employ, their effect basically is to remove that hope, the three strikes and you're out; the commitment to supermax. It seems like we always -- that pendulum constantly swings in our business from left to right, but seldom does it do it in a gradual, methodical, well-orchestrated manner. It's usually these hard swings. And that's to me -- you know, we had -- went through this law and order era in '70s and '80s and we had some problems in the Federal Bureau of Prisons at Marion; and what do we have, we have the supermax. That's where it came from. In Florence, Arizona, and into Pelican Bay, and now there was an explosion of that.

When you stop and think about the work that was done in conceiving and implementing that, which we researched in the Pelican Bay, Don, remember, we -- you know, it's one of the things, we traced the exact origin. It was done, I would suggest, almost haphazardly. It was not well thought out. And it was -- it had the facial validity and attractiveness to the public of supermax to put super dangerous predators, there you create an entire system from that kind of ideological, political type of blessing. That's what that was because -- Don, you pointed out Benjamin Rush, et cetera, would look at Pelican Bay as it's just a more modern version of the Eastern State
Penitentiary. The total bill came over and said, gosh, what are you all doing? I mean, this is -- you know. So we've been down that road and so forth.

So there is a way -- and I see it in systems all over the country that can successfully manage dangerous inmates, and we have them indeed, but I think they're a smaller minority than the average public. And I would be interested in your observations whether that's true. I think they're a smaller minority than we believe. But I'm in institutions all the time where those people are effectively and safely managed in a way that doesn't require their 23-hour lockdown.

MR. RYAN: Go ahead, Mr. Specter.

MR. SPECTER: Okay. I think you can -- just to put a finer point on what Steve was saying, I think you can say in some ways that Supermaxes are a failure not only in the way they treat prisoners but in the -- for the purposes they were designed for. You know, they were designed to reduce violence in the system. Well, that's not true. That doesn't happen.

In California, for example, you have a few thousand -- well, a thousand -- 1500 of these cells and you have another couple of thousand of security housing unit cells. You have 165,000 prisoners in California. So you can't really control violence with those few cells with 165,000 prisoners and tens of thousands of gang members from street gangs and prison gangs in the system. It's just impossible. And in fact, the level
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of violence in California has been going up, notwithstanding these SHUs.

The second thing is, I think it's a failure in terms of gang violence because what you do when you put a gang member in a SHU with nothing else to do, with other gang members, is they will communicate with each other; and the since they have nothing, literally nothing else to do with their time, they will talk about gang activities. And the result of that is -- in California, for example, five of these gang leaders who are in the Pelican Bay SHU are now on trial for capital murder that they allegedly ordered in Los Angeles. So clearly it's not limiting their power or activities.

The other point that I wanted to make is very important for public safety, and that is, that when you release these prisoners from the SHU to the street, what's going to happen? What are they going to do? They haven't seen the sun literally for ten or 15 years.

In California they have an interesting program. They have what's called a Transitional Housing Unit, and that's kind of a step-down program into the general population, but they only use it for prisoners who snitch on other prisoners, and it's -- and the thing is, it's successful, and that's the odd thing about it. It's successful, it reduces gang activity. It lets these prisoners get a more normal life. They have an astonishing success rate, and yet they don't do it for every single prisoner who is going to parole, for that...
matter, or other things.

The last point I wanted to mention was your point about how do we reduce the dependency on the individuals and how do you create systems so that you don't have the warden that I mentioned that has to come in and say, "We're going to reduce violence, and that's the end of it." And my answer to you is, I don't think you can. Unfortunately -- and maybe my colleagues here have different experiences. I think it's a mixture of systems and people. If you have been or either you lose, which is maybe why there's such a great failure rate.

MR. CABANA: Commissioner, I'm not sure that you can't do that. What I am certain of is that it's impossible in the present circumstances because in the 200-plus year history of American penology, despite great lip service, neither legislators nor governors nor the public has ever expressed a clear, concise, cohesive corrections policy. This is what we want corrections to do. This is what we want to have happen.

Last year ABC did a pole in which people were asked should -- "Do you support treatment sentencing, the high rate of incarceration in the United States?" And the 80 percent of the respondents said, "Absolutely, be tough on them. Send them up the river and throw the key away for an indefinite period of time." And the same 80 percent responded, "And by the
way, when they come out we want them better than they
were when they went in." This kind of schizophrenic
lack of cohesive policy prohibits us from doing the
kind of thing that you're asking about. And Don's
absolutely right. I think it can be done, but not in
the environment that we're in right now.

MR. GIBBONS: Do any of the panel members have any
evidence or suspicion that psychoactive drugs are being
used as a control mechanism?

MR. SPECTER: There's no doubt about that,
that's a given.

MR. GIBBONS: "That's a given," you said?

MR. SPECTER: I mean, I can't point you to
specifics, but -- I mean one good illustration of that
is prisoners are -- not inappropriately, but they're
given medications against their will because
they're psychotic and they're acting out, they're
misbehaving, they're violent, they're a danger to
themselves and they give them these drugs in order to
calm them down.

MR. GIBBONS: Is that a positive thing?

MR. SPECTER: Well, in fact, we have actually
gone to court to make the prison officials do that
because otherwise they are luridly psychotic for months
at a time, and they literally can kill themselves or
hurt somebody else. It's painful being psychotic, so you don't want -- it's not a humane thing to do.

MR. CABANA: Commissioner, one of the problems that prison officials have with issues like this is that for a long time we thought -- because nobody told us any different -- that we were supposed to be all things to every need within the system, and corrections can't do that. And so part of the problem with dealing with inmates who are mentally ill is getting mental health professionals to get involved in the system to intervene, to provide assistance.

You know, the Massachusetts State Prison for the Criminally Insane is a unique institution. It actually has two superintendents, one from the Department of Corrections and one from the Department of Mental Health, and it's set up that way for a very specific reasons: Corrections folks don't do mental health, to simplify it, but the problems that emanate from that are tremendous.

You know, Parchman at the time I was running it was a 5,000-bed max prison, and I would estimate on any given day conservatively ten percent of the inmates were being maintained on psychotropic medications, some against their will. But the thing is, in terms of the kind of consistent follow up, the kind of therapy that's required, the kind of treatment that's required; administering the drugs every day is the easy part of it, but intervening to bring about some sense of improvement in this guy is not there. And frankly,
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unless you contract for mental health services, most
state departments of mental health are going to stay as
far away from corrections as they can. They don't want
anything to do with it.

MR. GILLIGAN: I'd like to ask a question of
Mr. Cabana, but again open it to all three of you
gentlemen.

It seems to be one consensus that's emerging here
is that the sort of "tough on crime approach" where
that's meant as retribution or just the infliction of
pain as -- for the purposes of punishing inmates really
has not been effective in reducing the level of
violence either within the prisons or after people
return to the community. If anything, it seems to
exacerbate it.

What I wanted to ask each of you to help us is,
what is the message that this Commission should send to
the nation regarding the appropriate role of
corrections? If it's not simply to inflict pain on
these people or if that is even counterproductive, what
should the role of our correctional system be in our
nation today?

MR. CABANA: Well, Commissioner, I -- while you
could sit and discuss all day cultural differences that
impact how an institution's run, you look at the
European nations and the rest of the western
industrialized nations, and they have their problems.
I've done consulting work for several systems in
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Europe. Having said that, however, they also have a
basic understanding that incarceration is the last
resort, and it is reserved for the so-called baddest of
the bad, the folks who because of the nature of their
crime have to be removed for some period of time from
society; some of them forever. Part of what "truth in
sentencing" and "three strikes" and "get tough" in
general has done is it has, unfortunately, put a damper
on other programs that work. Community-based
corrections, keeping the offender where there's a
support structure.

You know, when I ran Parchman in the 1980s,
people will probably react as they usually do, and say,
"Mississippi of all places," but Mississippi instituted
the first inmate furlough program in the United States
in 1941. And every year between November 1st and
February 1st, as warden and the commissioner, I would
sign off on somewhere between four and 500 applications
for inmates to receive up to ten-day Christmas
furloughs between November and February. The worst
year we ever had for violators was five people, three
of whom did not commit new crimes, none of which were
violent, but had violated administrative proceedings.
And then all of a sudden we had the Bush - Dukakis
election, and here comes Willie Horton. And
immediately, no discussion, the order comes down,
"Eliminate furloughs, get rid of them." They had
worked for 40-something years extremely successfully.
Other prison systems came to Mississippi to find out
what the heck there was about it that made it so successful. But one political venture and we had a knee-jerk reaction.

The "get tough on crime" thing has resulted in most states, as with mine, taking advantage of inducements dangled out through the Clinton Crime Bill for building prisons if you change your parole laws. And so in an eight-year period of time we doubled our prison population in the poorest state in America. And at a time when, frankly, right now, there is not enough money to adequately fund K through 12, when universities are being slashed by hundreds of millions of dollars, we spend four times as much to incarcerate each and every inmate in the system than we do on students in K through 12. And the public has been given this -- has received a steady diet of feeding.

Now, look, the bad guys ought to go to prison, that's what prisons are for, and there are bad guys out there. And inmates will be among the first to tell you they want them controlled. They want to be safe in there. But we've sold the public a bill of goods and we have converted millions, probably billions of dollars and we've built prisons -- I knew I need to hush, but interesting thing. I knew I was going to find a way to get this in sooner or later.

For the 150 years in American corrections, states built prisons on an as-needed basis, and they were fairly un plentiful. When I started my career in 1969,
the total prison population in America was a little over 200,000, prisons and jails, federal system and state system. Whereas today, it's over two million. Now we build prisons as an economic engine. Well, this community has got a depressed economy, let's put a prison in there. It's kind of like the argument that those of us who love athletes at the university I teach at has been using the support of expanding our football stadium: "If you build it, folks will come." If you build the prisons, the prosecutors and the judges will fill them.

Frankly, your original question about how do you get this out to the public -- I don't for a minute judge the American public to be so naive or dumb as to not realize what's happening here. I think the public bears as much responsibility as the people they've elected who engineered these policies, and they need to be told that. If it takes a verbal two by four between the eyes to get their attention, that's what needs to happen.

MR. KRONE: Chairman, I had some up close and personal experience with prison. As you may or may not know, I spent over 3700 consecutive days behind bars. I had some time to observe acts, procedures. I'm not going to sugar coat it. Some of this violence that goes on in prison is officer induced. I know the public's not really concerned about inmates fighting inmates, but they're certainly concerned about their own police or correction officers being harmed.
My question goes to the area of training. Now, I'm told there's anywhere from three weeks to three months training to be a correction officer, depending on what state. I'm not even sure you could get a job at McDonald's with that little amount of training. But nevertheless, I want to address the issue of just what have you experienced in the amount of training; is there a follow-up training, are they brought back on an annual basis or a monthly basis; is it a voluntary, is it involuntary? Just how far has training come along, evolved into improving officers? Are they understanding of the job or the difficulties of the job? And again, in the case of making their life safer and as a prison warden easier for you to maintain security in that prison?

MR. CABANA: Well, my personal view of training has always been that it ranks up there. I think the single most important function in the prison to make it go right is classification. At the 1A is training. And over the years, of course, we in the field have learned the hard way -- with the help of the federal courts -- that training is something that we're responsible for. Our training academy is approximately three weeks of classroom time followed by a couple of weeks of mentor with folks at AT. We have officers as young as 18 years of age walking out of a three-week training academy and going to work in a maximum security environment.
I will mention as an aside that in a 500,000-bed male prison, 68 percent of the guard force that I had was female. So there were recruitment and retention problems. The training -- I think the training staff wanted to do the very best job that they could. But lack of resources, in many systems, a lack of commitment and, you know, training folks historically in corrections gets very frustrated because they'll put out a training schedule that says you've got to have 40 hours of follow-up in-service training a year and stuff, and then administrators and supervisors will find all kinds of justifiable reasons to excuse people from going to the training; the security of the institution comes first or whatever.

I happen to think, in looking back now after having been retired a few months, that the level of hostility and the potential for violence, the overall danger, the absolute sense of hopelessness that I found in the supermax units -- not just among inmates but among staff as well -- could be at least partially directly attributed to training.

I referred earlier to the communication stuff. It doesn't take a genius to know that, you know, you usually get a little bit more with honey than you do vinegar. And to train officers in interpersonal communication skills, to train officers to recognize a gang activity when they see it and to know how to deal with it is a no-brainer. But the problem is resources.

In eight months' time, I slashed $10 million out
of the institution's operating budget, sent 300 people home off the payroll because the state had a budget deficit and the Department of Corrections' part of that was $34 million. And guess where part of the money came out of? Training.

MS. SCHLANGER: I have a question, which is, how do restraints of various kinds fit in this picture? I mean, it's not a real specific question, but different kinds of chairs and four-point restraints and this and that as uses of force that are used in both jails and prisons, I kind of wonder about both prevalence and problems and so forth.

MR. MARTIN: Well, there has been, as I've alluded to earlier, you know, with the advent of this high-tech weaponry. I put in that same category it's now a full kind of array of restraint devices, restraint chairs, the four-point, five-point restraint, the hobble devices. There's quite an array of fairly, you know, high-tech restraint mechanisms out there, restraint boards, et cetera. What I think comes from that is something that I think I referenced in my statement.

In the past five to seven years, I have worked probably 20-plus in custody restraint death cases in which inmates during the course of being placed in a restraint chair or a restraint board or four-points or
five-points, during that process have died. There's
two things that are kind of common with my 20 or so
plus cases:

One is, more often than not it's a mentally
impaired inmate, and they'll act acutely, ill inmate.

And two, it's from either positional asphyxia,
restraint asphyxia or compression asphyxia, all very
similar.

So that's one of the principles, I think, that
applies with all this weaponry. There's much of it
that I believe has a rightful place in the
administration of our facilities, and I do not take
hard positions against, say, a restraint chair or a
restraint board. But if you're going to use those
devices, with that comes the responsibility to define
the relatively narrow circumstances in which you use
them and employ them, and enforce that, because if you
don't, some of that weaponry is so attractive, it's
like a kid that gets a new Play Station. It's there,
it's -- you know, the type I can remember from when the
Taser came out in the mid-'80s and our wardens in Texas
were just so excited at the prospect of using that
Taser. It's the same thing with the restraint chairs,
it's the same thing with any type of weaponry that
comes into -- you know, onto the market and into the

system. And some of it, again, I believe has its
place.

Pepper spray, for instance, I believe pepper spray
is a very functional chemical agent device, but it is
so functional that it has a tendency to be
overemployed, or be used as a first strike weapon, and
from that when -- well, it just creates you more
opportunities to have more violent episodes when you
pepper spray an acutely mentally ill person. All that
does is escalate the matter into extreme violence and
somebody is going to get hurt. So it's the same thing,
Margo, with restraint devices, there are very, very
few instances in which somebody has to be fully
restrained. I mean totally, physically, immobilized
into four-points, five-points or a restraint chair.
But I can take you into facilities that at the drop of
a hat are placing people in restraint chairs. And when
you do that day in and day out with a high incidence of
frequency, because of the nature and the force that it
requires to do that sometimes -- and especially if you
throw in and overlay it with a mentally impaired,
you're going to have deaths. You're going to have
serious injuries, more than we've seen in the past.

So, again, as more of this weaponry comes into
play and comes into use, I think the responsibility is
greater that we have -- we employ very strict
guidelines, very narrow circumstances, oversight and so
forth within to use it. If it's done, it can be used
very successfully; if it's not, it can be abused and
misused so easily.

MR. CABANA: I think there is an irony to that
misuse or overuse, and that is, an inmate's no
different than anybody else. They're pretty ordinary folks in most respects. It's kind of like dealing with a recalcitrant teenage child, you ground them, you take privileges away, and the more you do the more the kid says, "I can do this. Take whatever you want." And what happens with use of force in an institution is the more frequently it's used, psychologically, the more you run the risk that the inmate population will get to that point where at least on an individual basis, "I can do this. I can do whatever time you put on me in the hole. I can handle the violence. Put it on me. It doesn't matter." So ultimately, the very effectiveness that you're looking for in terms of using this stuff ends up being exacerbated.

MR. NOLAN: I'd like to pick up on -- about the medication of mentally ill inmates.

During my incarceration, I saw plenty of folks doing the Thorazine shuffle in their Converse tennis shoes with no laces, but my observation was, it was for the convenience of the institution, not for their benefit. There were those who were medicated that didn't need it, but there were problems, and there were those that did need medication and treatment that didn't. And at least to a broader observation, which is that it appears some administrators view their job as the -- they wouldn't say this, they put it in terms of public safety, but it's really the convenience of the institution and the officers. Take the DMV office,
string barbwire around it and give the clerks guns, and that's the mentality of some officers. That same philosophy leads to Pelican Bay, which was astounding to me to visit. David Akerman -- I took in there from Time Magazine -- said it was "a sanitary dungeon."

And to take an inmate that's been in SHU and then release them to the street is cruel to that inmate and dangerous to the public, but under one philosophy of management of prisons, that system has done its job. They contained him while he was in there, and it doesn't matter what happens once he gets out.

Yesterday Mr. Cowley suggested that in addition to institutional security, the wardens be graded also on recidivism. I'd like each of your reactions to that as a possible tool to make it in the interest of a warden, that he has a stake, not just in keeping the person from rioting or acting out inside prison, but in addition having the public safe once they're released.

MR. SPECTER: Well, I think your point about mental illness is very well taken and the treatment. In my experience, the prisons do both things wrong. They give too many drugs to too many people, and they don't give enough of the right drugs to the right people. And I agree with Warden Cabana, that giving a pill to somebody is the easy part -- and in California, they don't even do that correctly -- but providing the staff and the therapy that you need for these very seriously mentally ill prisoners who, by the way, number between 16 and 25 percent of the prison.
population depending on what definition you use, is really a problem. It's very expensive. Prisons are a difficult place to provide therapy in because of all the security constraints, and the prisoners are difficult, there's no question about all that.

So it -- you really need to develop a complete mental health system that functions properly in order to do that well. And unfortunately, as you probably know, we've been criminalizing mental illness and using our jails as mental hospitals and so what you have is an increased demand for services while the population skyrockets; typically the corrections budget doesn't proportionately with the mental health services that they need. So I think your observations are exactly accurate.

In term of grading wardens, I have been a proponent of report cards for wardens for many years. Everybody else gets performance evaluations but wardens, it seems to me, at least in California, they're not fired unless they embezzle or they do something politically unacceptable to their superiors. Their prisons can run a deficit of ten and $20 million and nobody says a word to them.

And in terms of public safety, they -- most of them have absolutely no interest in promoting public safety because they're going to get in trouble if somebody escapes, if there's too much violence, if the staff get hurt. They don't get in trouble, they're not
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held accountable for high recidivism rates. They are given -- and in many states, to tell you the truth, it wouldn't be fair to do that because they're given absolutely no money or no help in providing these programs. You have to give them some help, too.

In California, for example, the now director of corrections is Jeannie Woodford, who has thousands -- when she left, had thousands of volunteers coming to at San Quentin on a monthly basis, and she did things without any money and, you know, she would get a high mark for that. But on the other hand, you have many prisons which were built in California in very rural areas, and they were purposefully put in in out-of-the-way places. You just don't have the resources to do that. So I agree completely you should do it, but they have to be given the resources before they can be held accountable.

MR. CABANA: This is going to sound like excuse making from an old prison bureaucrat. Report cards based on recidivism -- Um Don Specter actually just made some of the excuses for me. I'm sitting here thinking about in state after state legislatures taking the carrots away from the wardens so that what you're left with is a bag of switches, no incentives. We've taken parole and decimated parole concepts in this country. We've taken away earned time, good time. We've taken away furloughs. We've reduced community corrections. We have the highest incarceration rate of any nation in the world. We incarcerate more of our
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citizens longer than any country in the world. We
incarcerate juveniles, kids with adults. Up until the
Supreme Court got it right a couple weeks ago, we
didn't hesitate to execute kids. So when I hear people
talk about how we're not tough enough on crime, I
wonder what else is left to do.

In Mississippi, for example, prison officials were
directed a number of years ago, if somebody goes to
lockdown, if he's bad enough to be in supermax, take
everything away and he'll want to behave himself and
get out. So in the summer months, in the Mississippi
Delta where it's not unusual for the heat index to get
up to 115 or higher, I am prohibited from letting
inmates have a lousy fan in a cell that is an inferno.
That is unconscionable. There is no excuse under the
guise of being tough on crime for doing that sort of
stuff. And that is not good public safety. But the
problems, this whole thing revolves around the fact
that good politics doesn't always make good public
policy, and that's where corrections is hurting so
badly in many instances today.

But to answer another part of the question, my
first message to the staff in any institution that I
ever ran was, "Our first obligation here is to care for
these people who are placed in this institution."

The first warden I ever worked for said, "If you
don't ever remember another thing I tell you, you
remember the greatest gift that God can ever give one
human being is to be responsible for another one," and
that's something that corrections really needs to try
and remember from time to time.

But the other thing is public safety. Prisons are
supposed to be about public safety. But in order to
ensure that they do their part for public safety,
that means that inmates have to come out better than
they were when they went in instead of coming out worse
than when we sent them away, if we're going to insist
on sending all of them away, which is what we've been
doing now for two decades.

Mr. Luttrell: Dr. Cabana, early in my career I
worked for a warden who had loose lips and he talked
about roughing up inmates, and as a result of that
there were some inmates who were roughed up. It made
me very sensitive when I became a warden to be very
careful about the message that I sent to the troops and
how I carry myself in the institution.

Could you talk a little bit about the
responsibility that a jail administrator and a warden
has when it comes to really conveying the message and
how best to convey that message to the people that work
in that institution because the warden or the jail
administrator does not face the linchpin for everything
we're talking about? Could you talk about that
briefly?
MR. CABANA: That's a great question.

And again, not to oversimplify it, but as I mentioned earlier, leadership, leadership, and leadership by example and demanding accountability and then taking action when it's required.

I have on more than one occasion in my career intervened personally when officers were assaulting an inmate, once coming upon it, to stop it. I actually handcuffed an inmate to myself on one occasion and got him out of the situation and took him to the hospital. I figured if he was handcuffed to me that we might both be safe for a while. I think it's something that has to be continually reinforced.

And again, it's not enough for a warden to sit on the witness stand in court and say, "Well, Your Honor, I wasn't there. Obviously, I don't count in this kind of conduct and behavior. But I wasn't there, so I'm not responsible." Of course the warden's responsible. And it doesn't go on at the high levels unless the administration -- at least in an oblique fashion -- gives a wink and a nod, which indicates to the staff that it's okay.

One other thing, because we've talked a lot about violence, and officers always get thrown into the mix. But I want to make sure that folks understand that despite the fact that the correctional officer is the single most important influential person in the prison because he or she has contact with the inmates 24 hours...
a day, seven days a week, there are other staff who
have critical roles to play, and who can by virtue of
how they perform their duties, greatly contribute to an
effective organization or it can muddy the waters
tremendously.

I want to give you an example. At an institution
that I ran, an inmate had been locked down as a sexual
predator, and there was a program in place for inmates
in this classification to be reviewed and over a period
of so many days earn their way out of that lockdown
status. This particular inmate had completed the
process with no rule violations and had his review. A
case manager didn't like him, and so she didn't put his
name on the list of inmates who were ready to be
released from this program. It doesn't sound like a
huge big deal except four days later the inmate did
everything he could to commit suicide. Fortunately, he
did not succeed. I find that kind of action by
somebody in that kind of position to be every bit
egregious as some officer wailing away on some inmate's
head with a stick or getting a charge out of using a
Taser. Particularly, because classification is the
engine that's supposed to drive the prison and make it
safe.

So what I should have given you is the short
answer. Basically, that wardens have to reinforce
every day, day in and day out, they have to reinforce
with staff. Some people would say, "Geez, it sounds
like you're saying examples have to be made out of people." It got to the point at Parchman, frankly, where I had an officer that resigned one morning. She was very angry because she'd been questioned by Internal Affairs. But I found it somewhat illuminating. I said, "Why are you resigning?"

Basically she was just, you know, getting started, and the purpose is to arrive at the truth. If that exonerates you, then that's to your advantage. Well, but the staff know that if they're called out to Internal Affairs that their job is probably on the line and in serious jeopardy and, unfortunately, I think that's necessary to a degree. And I think that has to be constantly reinforced.

SENATOR ROMERO: This has been a very profound, thought-provoking, stimulating discussion; a lot of food for thought, and some of it quite upsetting, but let me comment especially on Warden Cabana's comments that you made.

You talked about the public was saying, "Take them in, lock the key, but make them better." I too want to say, speaking from at least from California where I hear in the legislature that sentiment exactly. There's a lot of stereotypes about California, it's left coast, but I would say it is a law and order state. I see it every Tuesday in public safety with the number of proposals coming forward to lock up, not only sentence, but to enhance now, super-size, maximize, et cetera.
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The banter that I've taken, though, in dealing with my fellow legislatures and with the California populous, and I think it's been effective is, I sort of champion the "we've been tough on crime, but we've got to be smart on crime" because I still do believe it's law and order to California elector it is, and probably the rest of the nation, that people understand taxes, they understand money. And budget deficit times the avenue that I've taken to talk about juvenile justice or prison reform is on the fiscal matters where we're seeing the fiscal safety issue to it more so than a public safety issue.

But I was surprised when I started chairing the Budget Committee that oversees corrections in California, I can't find line items. Over a $7 billion

agency in California and growing on health care -- health care is a billion dollars and growing, not a single line item. My staff has to piece it together.

On the SHU, likewise. I can only estimate because there is no line item. And so what I've done in talking about it publicly is to suggest that to incarcerate somebody in a SHU costs over $70,000. That's my best estimate. I think it's growing. For a typical inmate in California, it's about $33,000.

The question I would have for you is, you know, what -- at least for me when I pose the question of, what are you getting, what's the return on the dollar from taxpayer perspective? People start to question.
The question I would have then is, can we, in working with legislature, advocate, perhaps, or suggest that legislation should break out line items, whether it's health care or the maximum units, and are there instances in different legislatures where you've seen better truth in reporting in their budgets as to the true costs for incarceration?

MR. CABANA: Yeah, that's a great question.

One of the things that led to my experience with legislators in half a dozen different states is that -- and I'm sure you know, the vast majority of them really want to do a good job, but a lot of times they don't have the information they need to work with.

And the other thing is this: We were required, you know, to submit as an agency a five-year plan which really didn't get anybody's attention because legislators have a short span of attention. Every four years they've got to give the voters some answers at the ballot box, so to ask them to engage with a state agency in what long-term means and the projections are is something that's largely going to be ineffective.

I think, frankly, that every government agency in the United States -- I happen to be a proponent -- despite the headaches involved -- of zero-based budgeting, and I think also, frankly, for a number of years in Mississippi our Department of Corrections labored under a Sunset Provision. And every five years the agency was reviewed to determine whether it would continue to exist in its present form and I kind of

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like that idea. In fact, I like it so much I think it would be good for a lot of agencies other than corrections. I think it makes you, it forces you to truthfully examine yourself and take a hard look from year to year.

Now, one problem is, our legislature finds itself consistently -- I can't recall a session in the last 20 years in which they've not had to come back in session in January and deficit fund us for medical care, et cetera, because the department says, well, we just -- we can't project the budget for the year. If we have four inmates on renal dialysis for the year, unexpectedly, that's going to be a quarter of a million dollars for an inmate that we weren't able to project. The truth of the matter is, it's kind of like a shell game. I'm not sure -- well, the legislation knows that the Department of Corrections is going to have to be fully funded, but if they wait until January to engage in the deficit funding thing, then it equates better with the taxpayers back home.

The other problem I have is this: I debated with one of my senators, who was on an Education Committee, and I kind of took a chance because, you know, people tend to forget that prison bureaucrats -- like Don Cabana and Gary Maynard and other folks -- are taxpayers, too, and we feel the pinch. So I spoke to this taxpayer one day, and said, "You know what, if you'll start spending more money on K through 12, in
ten years I'll come to you and tell you I don't need as much money to run the prison system. Why don't you start putting money into VoTech, into education, into the universities, et cetera?"

His response was, "I'll be painted out by some opponent at some point in time as being soft on crime and I'll stand to lose re-election."

And my response to that was, "The last time I checked, Senator, nobody guaranteed you guys a retirement off the backs of the taxpayers. Go to the legislature, and if you give them eight years or ten or 12 or four, do the very best that you can." And I think where that becomes especially critical is that legislators sometimes have to lead and the public's not ready to follow, but the legislature has to take them where they need to go; and frequently that kind of thing is missing.

MR. GILLIGAN: I hate to interrupt, but I think we've run out of time. I want to thank you all extremely for having given us a remarkably productive and fruitful discussion.

I appreciate your presence here.

So we'll take a break for, what, about half an hour and resume.

Thank you all.

(There was a recess.)

MS. SCHLANGER: Like the other commissioners, I
want to begin this session, which is our last one of
the day, by welcoming and thanking our panelists, who
are Ken Adams, John Boston, Andie Moss, and Doug
Thompkins. I'll introduce them in just one
minute.

As you can, perhaps, tell from the fact that I'm
standing behind this podium, the format of this session
is going to be a little bit different than the other
ones that we've done. This will be a moderated round
table discussion. So we're not going to begin with
statements. Instead, I'm going to try to get some
things going with questions, but we'll hope to get
to a conversation among the panelists who have a wealth
of knowledge and experience to share. And after a
little while, like maybe 40 minutes, a conversation
including the other commissioners, too, if you want to
contribute to that conversation or you should feel free
to ask questions instead of that's more something that
you want to do.

I hope that -- what we'll be talking about are the
complex issues of prison and jail violence, obviously.
The second panel is directed to that topic. I hope
that we'll particularly be able to gain some insights
into what distinguishes systems with problem from
systems that have gone some distance towards solving
their problems.

We've been talking already this morning about
dividing the broad topic of violence in jails and
prisons into three categories of intra-inmate violence,
inmate violence against staff, and staff violence against inmates.

Let me start by just saying a word or two about this that can maybe can help set our conversation going. It seems, from what people say, that intra-inmate violence is one of the most frequent and most serious categories of violence in jails and prisons, and it ranges from beatings to rape to murder, and it inevitably it's even more serious than its numbers because it casts this wide shadow of extortion and coercion around it. So we'll talk some about that.

Inmate violence against staff also can vary. It can be caused by predatory inmates, by difficult inmates or by disturbed inmates, and those are very different in their dynamic.

And then staff violence against inmates raises really particularly thorny problems in some ways because some frequency and degree of force is inevitable. This is what Mr. Martin was talking about before. At the same time, to line draw becomes important here in a way that's not so true of these other categories.

On the other hand, staff violence against inmates has this very nice feature that because so many prison
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and jail officials and correctional officers try to do
the right thing in their difficult work, you kind of
expect training and investigation in other bureaucratic
-- a word I mean in a very positive form. Other
bureaucratic interventions to be especially efficacious
solutions to overuse of staff violence against inmates.
So it has some attractive features for solutions, too.

In any event, I guess what's clear and what I'm
hoping to develop in the course of this conversation
with the panel after this -- you know, all the talking,
is that each of these sources of violence has its own
dynamics that require its own policies and solutions,
so we need to be careful to keep things separate
sometimes; that gang and racialized fighting and
predation are dissimilar in many ways for more
individual situational violence, and that both of these
are distinguished from the serious problems facing and
caused by inmates with mental illness or mental
retardation. It's sometimes useful to pull these
things apart for the conversation.

In any event, I hope that in this panel we will
gain some additional insights into these dynamics.

So again, the format. We'll run for 80 or 90
minutes. We're ten minutes late, so probably will eat
that time in this panel, I suppose, and run for 80

minutes. We'll begin with something like 40 minutes of
correction among the panelists and then at that point
we'll open it up for the commissioners to both ask
questions or to also participate in the round table.
discussion. So that's how we'll do things.

Okay. So let me move on to introductions. I'll try to do this in order. Ken Adams has been working to further understanding of violent misconduct in jails and prisons for other 20 years. His current academic appointment is at the University of Central Florida, so he, unlike some of us, was able to drive here today.

Professor Adams is a co-author with Hans Toch with three books about inmates' maladaptive behavior in prisons including most recently, "Acting Out: Maladaptive Behavior in Prison." It's a book that was published in 2002.

John Boston has been counsel at the Prisoners' Rights Project of the Legal Aid Society in New York since his graduation from NYU Law School in 1976. He served as the project's director since 1991. In that capacity, he's been part of litigation that has challenged conditions at the very large jails that make up the New York City jail system and other correctional facilities in New York State as well. He's an author of the Prisoners' Self-Help Litigation Manual" and numerous guides for prisoners' advocates, especially regarding the intricacies of the Prison Litigation Reform Act.

Andie Moss was Assistant Deputy Commissioner in the Georgia Department of Corrections in the early 1990's, where she was responsible for ensuring compliance with the mandates of a major class action
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lawsuit, Cason vs. Seekinger, I think, which dealt with
staff sexual misconduct. Since then, she's remained
deeply involved in that issue, as well as intra-inmate
sexual misconduct issues. She's worked for the
National Institute of Corrections and also with the NIC
on implementation of the new Prison Rape Elimination
Act, which is one of the things that I hope she'll tell
us about a little bit.

She's consulted on site with over 40 correctional
institutions to help her come to grips with the
assessments and solutions of sexual misconduct behind
their walls.

Doug Thompkins is a faculty member of the John Jay
College of Criminal Justice as well as a doctoral
candidate at the University of Illinois. His academic
work and teaching is focused on violence behind bars.
He's done ethnographic work in the area and he also
has personal experience to draw on. He served time in

an Indiana prison and was a leader of the gang Gangster
Disciples, street gang.

Okay. So now we'll get started. I think maybe
I'd like to get started with Professor Adams. Maybe
you could start us off with an overview, you know, how
serious is inmate-on-inmate violence, in particular,
and how widespread and what are the basic dynamics
that we need to understand if we're trying to know what
that's all about?

MR. ADAMS: Well, in terms of inmate-on-inmate
violence, it's difficult to give a precise figure or
estimate of how often this occurs or what the incidence
rate might be in prisons throughout the United States.
I can say generally that, A, it's a substantial and
significant problem in that, B, the problem varies.
There is considerable variation within prison systems,
even within prisons by different settings within the
system, different cell blocks, different arrangements.
So there is no one figure that would capture all of
that variety.

But let me give you just a few examples of things
I came across yesterday just on a quick Internet
search. The New York City Department of Corrections,
which runs the jail system there, reported in 1995 that
it had 1100 slashing and stabbings, so quite a large
number.

A survey of U.S. prisons, in which 40 prison
systems responded, in 2001 indicated that there were
124 suicide attempts and 1830 attempted suicides, and
that 17 inmates were killed by other inmates in the
United States.

In the United Kingdom, one study found that 40
percent of offenders reported being assaulted, robbed,
or threatened with violence within the last month. So
two-fifths of the prison population.

And a study in Nebraska found that about ten
percent of the inmates reported being forced or
pressured to have sexual conduct within the last month.
So that gives you some idea of the range of figures.
Let me just briefly comment on why it's difficult to give precise estimates on this. First off, violence, even inmate-on-inmate violence that we now are concerned there, covers a wide range of behaviors, there's a wide spectrum of acts that are involved. For example, we have sort of standard-type crimes, murder, assault, robbery. In prisons, as in the street setting, these can occur with weapons or without weapons. We have sexual violence, which is of special concern within prison. We have group violence, riots and disturbances. And while sometimes those violent acts are directed against staff, very often inmate-on-inmate violence that occurs in a riot or disturbance context. We have gang-related violence, which varies by the prison system and we have self-directed violence, suicide and self-injury.

Now, in terms of capturing the range of those behaviors, we generally look for official records. Those records might be misconduct or disciplinary reports. Some prison systems have special incident reports in which they have procedures for recording disturbances or other kinds of events like that. We might have hospital or injury records that could be used, and we also have surveys of victims within the prison context similar to what we do in the community.

Now, in terms of understanding the numbers, you know, we have to recognize that the official records do not capture all of the events. They're subject to a...
number of non-reporting and other biases. In terms of
the non-reporting bias, for example, inmates are not
often willing to come forward and to admit or to make
known that they’ve been victimized. Depending on the
context, there may actually be norms in the prison
against this. I mean, if you’re a man, you take it as
a man and you deal with it later, you don’t go running
to the authorities for help. Sometimes activities are
sort of seemingly consensual, but they’re actually the
result of coercion and threats of violence. As in some
sexual activities, they might seem on the surface to be
consensual, but they’re not. And sometimes incidents
are presented in different lights such as inmates
getting assaulted, and the incident gets reported as an
injury or a fall or something like that, and it winds
up on the hospital record. So in that context, there’s
a wide range of activities. We have very an imperfect
and imprecise systems for monitoring this. In fact,
it’s very hard to know.

I’ll just give you one quick example. I found a
survey, which was sent to 50 states, and they were
asked about the number of disturbances in their prison
system. Ten of the states could not or would not
report, representing 20 percent of the states. Among
the other 40 states that reported, they had
approximately 2800 incidents, disturbances that were
reported as having occurred in that year, and of that
2800, believe it or not, 2300 came from Tennessee.
Now, I don't know what's going on in Tennessee. I doubt it's that dangerous of a place. I haven't been to their prisons. But as you can see, how they define an incident, how they -- the kinds of systems and mechanisms they have for recording these behaviors have a large influence on this.

Let me just say also, quickly, in terms of thinking about violence and types of violence, very often psychologists make a distinction between what they call instrumental violence and expressive violence. Instrumental violence is premeditated, it's calculated, it's motive driven, and it's goal directed. Expressive violence tends to be impulsive, emotional, spontaneous. And both of these types of violence occur. And the situations are very different between express and instrumental.

Also, I'll just mention quickly, some of the themes, the motives or the psychological themes that often come up in these violent incidents -- and this has been documented in a variety of observational and other studies -- sometimes the violence involves anger or retaliation or revenge. This may be a particular characteristic of gang-related violence, or protests, protesting the conditions. Intoxication, believe it or not inmates find access to alcohol and drugs within prison context. Mental instability, a mentally ill or perhaps mentally retarded inmates. There is self-protection or preemptive strike that may occur. There's fear often coinciding with that self-protection.
of preemptive strike. There's bullying, and then there's saving face, which has to do with how one is viewed and presented within the larger prison context, okay? And that actually is a very important theme because inmates are painfully aware of how they are viewed and how they are looked upon by other inmates. In fact, it's a very important feature of the prison setting. So this gives you some idea of the different themes and dynamics that go on. So, again, you would see that there's a lot of variety in terms of these behaviors. Different acts may have very different underlying themes. And if we're going to try to understand those behaviors, we have to dig a little deeper and try to figure out just what is going on.

MS. SCHLANGER: So I guess I'm interested just to build on that with Mr. Thompkins --

MR. THOMPKINS: Okay.

MS. SCHLANGER: -- Professor Thompkins.

So what's the connection do you find, the policy to the stuff that Professor Adams was just talking about?

MR. THOMPKINS: Excuse me.

When we talk about policy, my concern is with the effect of the policy changes over time and the changes in institutional structures. Some of these policies
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can in fact create new opportunities for types of
prison violence and also increase levels of prison
violence. When we think of -- as we heard earlier
today -- shifts in policies such as are creating the
supermax facilities, we have higher levels of violence,
different types of violence across these types of
institution, and a lot of the violence that is
expressive is in response to increased levels of
perceived deprivation and so forth.

MS. SCHLANGER: One of the things that
Professor Adams just mentioned -- this is also for
Professor Thompkins -- was about gang violence. And
I've heard from a number of commissioners that they'd
like to talk more about gangs and the particular
issues. So I don't have a specific question, but could
you tell us about that?

MR. THOMPKINS: Well, first of all, when we talk
about gangs -- whether it's a prison gang or a street
gang -- we have to consider that that term "gang" is
not a catchall, okay? When you talk about prison
communities, any group of two or more people could be
classified a gang. They support each other. They
defend each other. The correctional officials, the
guards can also be considered a gang.

I recently came out of the field in June after

three years of conducting research looking at some of
this. And in response to that, we're finding that many
guards within many states have now created or they're
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acting out gang behavior in response to certain
policies such as the tobacco ban. Every state in the
country including the federal system now has a full or
partial tobacco ban. So what we're seeing is that
some guards in some states have come together and
collectively worked to both traffic as well as they
work to defend their turf.

The policies in terms of a cross-race, those gang
policies that we find being implemented and used within
society, those criminal justice policies, are used
within correctional facilities. So if you look across
race, for example, the largest percentage of persons
within the supermax facilities happen to be men of
color. And when you say they're "men of color," it's
because we're talking about this racism proxy for
dangerousness. It's uneven in terms of who's going to
be placed within these facilities, and then once there,
if you're talking about a facility within a rural
community, the staff, they act out gang behavior
because they know each other. So this us versus
them ethos is created, and gang activity becomes a
means by which offenders can survive.

Not all members of gangs within prisons are
actually full-fledged committed gang members. It's a
means by which they can survive within the institution.
If you have the us versus them ethos created where
the guards defending themselves, the guards are acting
out the inmate behavior, and they tend to unify a
cross-race.
Recently we're finding in some states that the differences that have divided in the population, they're going away. There's a common sense identity in terms of the pressures and the problems that are being encountered. So the policies, when I think of tobacco ban, the literature tells us when we talk about prison violence that it is management practices and changes that often lead to an increase in this type of behavior. It also tells us that the informal economic structure, the informal inmate organization has helped to reduce levels of violence.

Well, some of these policies for the first time since the Antisocial Organization was allowed to develop, we now see that the guards control the black market, not the inmates, the guards control the black market. Now, what does that mean?

MS. SCHLANGER: So are you saying that one of the things that a Commission like this should think about is recommending doing away with the tobacco ban?

MR. THOMPKINS: I'm not here to promote smoking. What I'm saying to you is, if we look at mandatory minimum sentencing laws, all right, years after they were implemented we began to question the effect of these policies, okay? And I'm saying that when we talk about a tobacco ban, and not the tobacco ban, but it's an example, right, of a policy that's led to shifts in the organizational structure of these facilities.

We have to consider the potential harm we know
the Departments of Corrections are unwilling to allow us access to data, they're unwilling to allow us to go in and to question. So no, I'm not saying do away with the ban. I'm suggesting to you that we must step back and look at the real effect. The cost benefit analysis must be done.

MS. SCHLANGER: To sort of continue to lay the basis of this conversation that we're having, let me move to sexual violence in both men's and women's facilities. So this is a question really direct at Ms. Moss. And the question is just, you know, again, what are the general dynamics, how are they different? And maybe here, since you've been so involved in the solutions, what are the promising solutions?

MS. MOSS: that's sort of a big charge, but I am up to it.

First of all, let me thank the Commission for the work that they're doing and let you know how much I appreciate being here. I have had a journey of some 13 years of being involved particularly in staff sexual misconduct. And as my bio included, I came out of the Georgia Department of Corrections in the early nineties before going to the National Institute of Corrections where I was given the opportunity to develop national initiatives to address staff sexual misconduct.

So let me respond. I think there has been a lot said in the two days. It's very consistent with my experience. And I think the thinking of really looking at how to build capacity -- capacities systemically to
deal with some of these issues.

I think in your introduction and the setup of this panel I have the following comments: It's very clear that there are -- it's multidimensional when we look at these dynamics, when we're talking about violence and then when we talked about sexual violence. And then you talk about male facilities and female facilities. So you're really looking at many sort of layers of issues. And I think that's really important in informing us because the strategies have to be multiple strategies. One size does not fit all. I think that what -- we've learned a lot, and I'm a great support and fan of Dr. Barbara Owen's work, and I know the Commission is going to look at women offenders more specifically later, but I think we have learned a good bit about women's cultures and women's prisons and that they are dramatically different. The correctional goals are the same where we still want safety, we still want security, but when we look at the dynamics and the relationships that women form -- I mean, they are driven -- I mean anybody who's worked at both a male facility and a female facility in their career will tell you, as a practitioner, how dramatically different they are.

So what we've learned is that sexual activity and violence in each of those settings really needs to be looked at and understood as -- and in the path that they've already followed. So I think when we do that
we learn a lot more about who are the women, who's coming into the institution, what are they bringing in terms of their histories and what kind of dynamics does that setup in terms of interplay with the staff. And there are wide training indications for that.

And when we look at male violence or look at male institutions and sexual violence, I think we had some very intense testimony here yesterday. I think we understand that the dynamics do tend to bring more physical violence than you would see in a female facility, but I think they're great implications for how we look at working with our staff, preparing them to work with the population. And also I'm a great believer that we have to do inmate orientation. We have to give them multiple ways of reporting sexual activities and violence. There's a strategy that I think is very important for a leader to look at in terms of, do I have certain management tools in place to begin to address these issues. And I'd be happy to expand on those a little bit more when it's appropriate.

MS. SCHLANGER: Maybe now is a good time, actually. I guess, really, the question is, what are -- what seems to be the promising solutions to sexual violence or is sexual violence the wrong place to look at? Is it really sexual misconduct on the spectrum and sexual violence is not the right thing for us to be thinking about?

MS. MOSS: Well, I think it's both. I think you
have to look at the sexual violence part of it because it's part of one continuum. I think you have to understand that. I think we have to understand that there is sexual violence that is physical harm and coercive. I think we really understand, which we have to if you're going to look at violence in institutions, I think you have to unpeel the onion, you have to -- we've heard so many people talk about we have to look at the culture, and that's so critical.

So I would urge that you look at the full spectrum there because what is sexual misconduct that may be not coerced that can turn into a coercive relationship. So I don't think that you can separate those out particularly.

I would suggest several things: One is, I want to provide to the Commission some materials that I think will give you a really good overview of some of the work that's been done in the last decade as far as sexual misconduct. Those of us working -- who have been working on this feel like there is a -- one model to look at, and I'm going to go through these very quickly. If I were to go into an institution, I would look at several things: Do they have written policies that addresses staff sexual misconduct, sexual violence? A lot of people will raise their hand in training if you ask them if they have policy. And what they really have is policy that may say "don't be unduly familiar with the inmates," but they don't...
And let me just go through, for the purposes of this discussion, and talk staff sexual misconduct and violence. So I would like to see if they have written policy, and is the staff trained on that policy, and not trained in a way that they’re just signing off on a policy, but trained in a way that the dynamics are discussed in terms of staff inmate dynamics, professional boundaries are discussed; people understand what is appropriate behavior as well as understanding what’s prohibited behavior. So look at training. Who gets training, and it should not just be custody staff, correctional officers. It’s a myth to think that sexual misconduct, particularly in women’s prisons, is about officers having sex with the women. It’s about psychiatrists, about food service, maintenance, any -- you know, I’ve seen every job classification involved. So looking at the training, looking at the training for staff, looking at the training for inmates; are they oriented towards reporting mechanisms. Do they know how to record any misconduct or violence? Do they understand their role in creating a healthy environment and healthy culture? And that’s very important training.

I would look to see if the programs are meeting the needs of the inmates or if they’re programs that
are on paper. And that's very critical, and someone else brought that up during our time here. That if the inmates are engaged with productive programs, they become very much a part of the solution.

Many, many of our inmates really want to turn their lives around. I'm very strong -- feel very strongly that if we can create hope-based environments instead of fear-based environments that all of these things will work together to provide the solutions that we're looking for.

In addition to -- a big piece that I would look at in a system, and other experts that I work closely with, is we would look at the investigative practice. And we would look at -- if there's an allegation, what happens to that allegation? How many steps does it take? What are the decision points? Who can stop an investigation or send it forward, and does the investigation come to a conclusion that then if there is misconduct or violence affirmed, is that sent on to prosecution or to the next step? So these are really important, I think, critical things to look at.

We've still got a lot of work to do, but I think if you look at the history of staff sexual misconduct in the last ten years, it will inform this conversation.

A very concrete examples is in the early nineties there were less than ten states that had laws prohibiting staff sexual misconduct. Today there are
only two that don't, and they've been working on their laws for the last three years, and that will soon happen.

And so when we talked about cultural change, whether it's organizational or institutional or working with the public, I think that we have to start with getting certain tools in place that sends the message that it is a new day and that staff understand the structure around what it is we're trying to create within the culture of the facility.

MS. SCHLANGER: I'm going to ask one more question related to this topic, which is, are there solutions that have been tried that don't work? I mean, are there false leads?

MS. MOSS: I think it's more -- it's more attitude and not following through. I understand why people say, "Well, this is about a few bad apples." And while that's true, because I'm a -- you know, I'm a very proud practitioner, I'm very proud of my profession and the people I work with. And so I understand that "it's about a few bad apples." But if we take that approach and don't put in systemic ways of addressing the issues, and if don't prepare ourselves and urge and hold ourselves accountable to create cultures where people can become healthy and the institutions can become healthy; then if we use the "few bad apples" theory and that we can't do anything about it, I think that's one of the things that is the
most difficult to break through because there is much
that we can do, and much of what we can do does not
cost money.

MS. SCHLANGER: I see you nodding, Mr. Thompkins.

MR. THOMPKINS: I agree with what's been said. My
concern is that for a long time we talked about prison
communities as total institutions as though they were
shut off from the outside world. Today, most of us
who do this type of work would agree that they're not
total institutions. There is great influence from the
outside. At the same time, they are total closed
institutions when it comes to illegal criminal deviant
behavior within the facility. There is a push, a
drive, a need to sort of hide, keep secret what takes
place. So we can talk about the number of reported
cases of X, Y, and Z, but the reality is, that's just a
small percentage of what is actually going on.

Another point is, to date we now have women
working in male facilities. So when we talk about

sexual violence, we talk about sexual misconduct. We
need to look at that as well. We need to look at the
gender issue in terms of how a woman's sexuality, who
is a staff member, how that's used to both gain
information from offenders. We need to look at the
relationships that are developing between male
offenders and female staff.

Again, I'm drawing from the research I just
recently conducted. I'm still trying -- not trying,
I'm still having some of the interviews transcribed and
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looking at the documents and so forth. But the
suggestion is that a lot of -- not a lot of them, but
some of the prisoners' conduct is now linked to that
relationship of female guard - male offender versus
male guard - female offender. It depends on the
institution. No two institutions are the same, all
right?

MS. SCHLANGER: Let me bring John Boston into this
collection. Do you want to speak to that or should
I?

MR. BOSTON: Well, I'd like to speak to that
briefly. I think that the point that Andie was making
about the systemic issues is correct. And I think that
there's another question that you have to ask. Are
there ways in which prison officials and prison systems
incapacitate themselves from being able to deal with
problems of sexual misconduct or other problems?

A very concrete example of that that we have
encountered in New York State is that the state prison
system takes the position, through its Inspector
General's Office, that it cannot proceed on a formal
disciplinary complaint of sexual abuse of inmates by
staff unless it has physical evidence. Well, you can
see that that's a problem. Some of the women that we
represent, of course, do have physical evidence. In
some cases they're several years old by now. But
typically, physical evidence of those kinds of crimes
is hard to come by. So you may say, okay, we
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understand the formal disciplinary process is a problem and some of you want to accept that sort of excuse. But then their position is, well, our union contract says that we have to allow the staff members to bid on positions, so we cannot take somebody that we have good reason to believe has engaged in sexual misconduct with the inmates and move that officer somewhere else. If that officer wants to stay in that position supervising women and inmates on the night shift when there's nobody else around, there is nothing that we can do about that. Where it's the fact that they signed on to that union contract sort of gets lost in the discussion on the question of whether they should agree to it when the next contract signing comes around is another question that we hope to pursue.

But the result of this is that there can be, and are, serial sexual predators continuing to work in women's prisons with wide knowledge of that fact and nothing being done about it by the officials who claim that their hands are tied, and in some cases have acted to tie their own hands.

MS. SCHLANGER: Let me just continue on sort of the topic that I promised you we would get today, which is a continuation of the conversation from the panel before about the excessive use of force in jails and prisons.

I wonder two things: One is -- this is something that Don Specter said. Is this -- is excessive use of force a problem serious enough that we should put it
high on our agenda? How serious is it?

And then the second question is just, again, what are the dynamics and what are the solutions?

MR. BOSTON: Well, I think it's a pretty serious problem and I think it's also serious to people like Mr. Sean Davis, who is involved in one of our pieces of litigation in New York City, who sustained a ruptured eyeball from being kicked in the face by a correctional officer while on the floor in a holding pen in one of the new York City jails. When he was kicked by a correctional officer, it was part of an incident where he was being beaten by several officers.

And I think that if you look at some of the materials that I have provided, particularly Steve Martin's expert report on staff-inmate violence in the New York City jails, and if you look at Exhibits particularly 6 and particularly 7 through 11, which gives the litany of injuries, the fractures, you know, the facial fractures, the lacerations requiring sutures, the internal injuries, the broken eardrum--it's very difficult to break somebody's eardrum accidentally. But we have cases where prisoners will come out of encounters with staff with both eardrums broken. I think that, you know, the shear quantum of injuries that occurs to officer--prisoners in these incidents suggests that, yes, it's a very serious problem and, of course, staff members get injured, too.
Sometimes staff members are injured because they are the victims of violence, other times you'll see again in many cases in the New York City system the prisoners will come away from a violent encounter with serious injuries, say, to their face, and the officers will come away with a broken hand. You can talk about that as being some sort of rough justice, but I don't think that that is a particularly good outcome for anybody to have an officer injured for whatever reason. So, yes, I think it's serious in that sense.

And I think there are other senses in which there's a serious problem. Whenever there is excessive force, there is likely to be false reporting or non-reporting. One of the cornerstones of correctional management is that when something serious happens the staff members involved have to say what it was, everybody has to speak up. Management has to review what happened, figure out if it was appropriate, if something should be done about it. And when you have non-reporting of excessive force by staff or false reporting, you strike really one of the foundations of correctional management. And it goes further than that because not only -- we talked about bad apples, and there may be a bad apple who beats somebody up and doesn't report it or falsely reports it, but chances are that person is not the only correctional staff member on the scene. So you have one or more other correctional staff members who are in the position of either blowing the whistle on their colleague -- which
you have heard there are intense pressures not to do -- or of lying.

So you have a situation where the actions of some staff members in effect have a widening, corrupting effect on the acts of other staff members. And it doesn't even stop at the use of force because if staff members become accustomed to lying or looking the other way, non-reporting about one thing, don't you think it's likely that they'll be prepared to lie, to look the other way about other things?

Doug's reference to staff gangs and staff's operation of, you know, of trafficking in contraband is pretty shocking, but you can see how that degree of corruption can start small with staff members who become accustomed to accepted dishonesty on the job in one respect and it broadens to become a way of life.

And the third aspect in which I think excessive force by staff members is important is, you know, these institutions are there ultimately for the purpose of trying to get people to obey the law. Even the pre-trial institutions -- such as the ones that I am primarily involved in -- are there as part of a process that is supposed to elicit lawful behavior from people in the long run. And what happens if the people that you are trying to correct go through the system and see lawless behavior that is covertly accepted and
that goes unpunished? What do they think if the
very institutions that are nominally trying to elicit
lawful behavior from them engage in unlawful behavior
themselves on a regular basis? I suggest to you that
the credibility of the idea that once you lead a law
abiding life is going to be seriously damaged when a
criminal offenders and accused criminal offenders
cement spectacle in the very institutions that are
supposed to be correcting them

MS. SCHLANGER: Let's get back to solutions a
little bit. I mean, all of you must have experience
with -- as I said, the instructional assistance that's
gone some distance towards solving the problem I'd
be interested to hear on each of these problems what
those systems -- you know, what seems to be the
promising steps that those kinds of systems have
taken?

MR. BOSTON: Well, let me follow up on my previous
remarks because we have seen some examples of how these
problems can be corrected in the New York City jails
where my office is engaged in a series of pieces of
litigation which have had very successful outcomes;
not just in the sense that we have a favorable judgment
that we can wave around, but that in fact they have
gone considerable distance towards restoring lawfulness

and peace to some of these institutions. And I say
"some of the institutions." One of the sad lessons we
have learned is that in the system we are dealing
with reform isn't rolled out. Reform is quarantined.
But nonetheless, it has happened in limited ways.

First, I think the thing that you have already
heard today from others is absolutely correct; that a
commitment by the leadership of the institutions to
stop excessive force and to require that force be used
only to the extent necessary is the absolute essential
sinequan known. That may sound paradoxical when I come
to you as a litigator who is bringing coercive pressure
from outside into the system but it’s not paradoxical
because sometimes it takes external pressure over
internal oversight to elicit internal leadership or to
make it clear that only a leadership on this issue will
make the external pressure go away. But within the
broad structure, that there has to be a commitment by
the people running the institution to curb lawless,
vicious behavior by their staff.

There are very identifiable steps that have to be
taken in order for that leadership to have more than a
rhetorical affect: One is supervision. The daily
actions of the people in charge, the daily statements
in dealing with their staff members; that is,

commitment has to be expressed not in press releases or
statements made when people are dragged into a
courtroom, but also it has to be stated and acted out
to the staff on a daily basis.

Second, the use of force incidents must be
reliably reported and they must be fairly
investigated. One of the things that we have seen entirely too much of is the nod and wink investigation where, for example, when an inmate says, I was struck by an officer in a particular place, and there's no mark there; it didn't happen. But when an officer says the inmate struck me and I therefore had to use X amount of force to subdue him, they don't even ask whether the officer has a corresponding mark or injury to document the claim that the inmate initiated the violence.

These kinds of examples of double standards in use of force investigations can be multiplied. I've given other examples in my written testimony. But an honest investigation system is absolutely essentially.

One of the best tools for assisting an honest investigation system -- and in some cases making more extensive investigation unnecessary -- is the use of video recording in places where one knows from experience that excessive force and violent incidents are likely to take place. That is an analysis that will probably vary from institution to institution, but places immediately outside housing areas that are out of view of other prisoners, stairwells, intake areas, which are always high-tension areas in prisons and particularly in jails which have just a higher traffic of people in and out.

Frankly, I think it's our conclusion that the widespread use of video recording is probably the
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single most effective technique in bringing excessive
force down, if not eliminating it. It's also a
management tactic in which there are no losers because
it not only protects prisoners against excessive force
by staff, it protects staff members from false
allegations of misconduct by prisoners, so there's no
legitimate objection to that as a management tool.

Discipline of staff who violate the rules is
absolutely essentially. And one of the things that one
sees -- this crops up in police organizations as well
as in prisons -- is that even when the organization
gets to the point of making a judgment that this person
has broken the rules and something ought to be done,
somehow nothing happens. Somehow the disciplinary
prosecution languishes, somehow a reason is found that
it can't be pursued, and they are left to wither

or they are left to odd. You know, they are delayed
for so long that the move -- the delay itself becomes a
reason to dismiss the disciplinary prosecution.

Disciplinary prosecution also must be carried
out in a competent fashion, and this has been a major
problem that we have observed in the New York City
system and I believe that it is prevalent in other
systems as well.

When you are attempting to prove to an
administrative tribunal that a correctional officer has
used excessive force against a prisoner, you are
pursuing the moral equivalent of a criminal prosecution
for a violent crime, and that prosecution ought to be

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conducted with the same degree of care, the same preparation, the same resources that a prosecution for assault on the street would be carried out with. I think that very often that does not happen and that that is a weakness of administration controls that is not looked at often enough. That's half the problem.

That's holding your staff accountable.

The other half of the problem is providing a decent environment in which prison staff can work and to avoid the sort of "occasions of sin," you might call them, the factors in the prison environment that may lead people to perform actions that while they are completely uncondonable, nonetheless they make the behavior understandable and they need to be dealt with in order to control the behavior:

No. 1 is, above all, to avoid overcrowding, a situation which puts enormous pressure on both staff and inmates, promotes violence by inmates, and promotes a sense on the part of the officers that they're overwhelmed and that they can only rule by intimidation.

Second, is classification. Dividing prisoners among those whom you know to be serious management problems and those who are not. Letting your officers know who they're dealing with and having architectural features of housing that promote greater control where that is needed. I think there also is essential to giving the correctional officer a manageable job.
Providing inmate services reliably to eliminate the flash points that sometimes lead to staff-inmate violence. The person who can't get the medical care, the meal that is delivered late, cold or not at all, those things add up and create an adversary environment where very often a correction officer may be held responsible de facto for things that the officer has no control over.

Training the staff adequately. Sometimes I question the importance of -- or I question the stress that some people put on the importance of training simply because training is kind of a kind of "mom and apple pie" issue that nobody can really be against. But nonetheless, there are very important aspects of training for solving this problem:

One is, reinforcing what the rules are on a regular basis, and the other is giving the officers the tools to do the job. One of the things we have been struck by in our work in New York City is the number of correctional staff members who really don't remember their training very well and can't give you a coherent account of it, which I think tells you something about how effective it is.

The other thing is that even though the New York City jail system teaches means of restraining prisoners without striking them by means of, you know, body holds and other techniques that are less likely to be injurious than punching them in the face; nonetheless, the standard response to a prisoner that's giving you a
problem is to punch them in the face.

In our litigation about the Central Community Segregation Unit, which Steve Martin talked about earlier and which he was most helpful in bringing about successful resolution, the Legal Aid Society suggested and persuaded the Department of Corrections that you require people to qualify every year in the use of firearms if they're going to carry a firearm. Well, you know, why don't you make them qualify in this unit that you say "holds the worst of the worse," why don't you make them qualify every year in the tactics of using their hands or not using their hands to control the prisoners, and that's been accepted, and I think that's made a contribution. Why that idea had to come from the Legal Aid Society as opposed to the Department of Corrections is a question that I leave as an exercise to the audience.

And finally, there must be a readily available supervisory backup for the correction officer at times of stress and conflict because very often the things that lead an argument to violence is simply that staff members and inmates get personally invested in what happens, and just having somebody with authority step in and tell everybody to "cool it" and let's deal with the problem will obviate the need for any further violent reaction from staff. And if staff members do not have available that kind of intervention, readily and quickly, then the consequence is likely to be a
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greater violence between staff and inmates.

So that in a nutshell is what I think our

experience supports. I'm sure there are other things
in other systems that need to be said.

MR. THOMPKINS: Excuse me. I want to suggest to
the Commission that we consider creating an independent
office, okay? Creating an independent office for
investigation of complaints. Currently we do have,
most Departments of Corrections do have an office where
inmates write their letters, family members write their
letters alleging violence, et cetera, et cetera, but
those offices were have not be empowered. The
individual holding that office has very little power.
The decisions, or rather the recommendations that are
made by these persons are usually just pushed to the
side. So if we can develop an independent office and
empower that person, give that person open access to
enter the institution to talk to people, both staff and
to offenders, to talk to staff in private, in secrecy,
we may come a long way and go a further distance than
trying to resolve some of this.

Prison violence is something that is kept secret.
When we talk about a peaceful facility, as long as
there's a -- there are a few escapes, a few reported
incidents of violence, there is a visible sign of
control, but that visible sign of control is just on
the surface. Within the prison community itself there
are many numerous acts of violence that go unreported. And when they are reported, they're just pushed to the side. So this independent office would be in a position to really do investigations and make recommend.

MS. SCHLANGER: Let me ask about possible solutions of one more issue, and this is for Ken Adams. What about inmates with mental illness, mental retardation, are there solutions that you've seen that go some distance towards solving their vulnerability to other inmates or their -- the number of run-ins that they have with staff? What are some solutions there?

MR. ADAMS: Could I just make one quick comment?

MS. SCHLANGER: Absolutely.

MR. ADAMS: While I share my colleagues views in terms of thinking positively about things like reporting systems, investigation systems, particularly independent systems and things like that, I have done some work in terms of issues of excessive force and the mechanisms that are used there, and I can tell you that the track record in terms of the success of these mechanisms is not that great.

Even with video recordings, as you're talking about, which I endorse, and some systems...
cameras and they set them up. I mean it's like a whole TV studio, and they get this on recording and it's very useful. You know, we can see what's happened in LA that was recorded on the television and broadcast to the nation, and people have very different views about that event and about their judgments of it. So it's a difficult -- it's a very difficult situation of drawing that line and saying something is excessive.

I think the other thing to keep in mind is that -- particularly in maximum security prisons, you are dealing with people who have histories of violence. I mean these are not -- you know, schools or hospitals or things like that, these are people who are in there because of these kinds of behaviors, and it's very difficult to try to control. That doesn't relieve anyone of the obligation to be lawful and to be professional in how they do it, but it is extremely difficult to try to manage some people's behaviors.

In any case, speaking about the mentally ill, we're in a position -- thanks to the deinstitutionalization, which happened in the 1960's -- where many people were taken out of hospital settings, put in the community, and the support services are not there. Prisons tend to be the backup support service for just about everything in society. When we don't know what to do with people, they wind up usually in prison, and so prisons take on a whole host of social roles other than just punishment of
In this context with mentally ill, we've also moved to a sort of therapeutic regimens that heavily concentrate on drugs, on pharmaceuticals, and for the most part, this has been good. There are some wonderful pharmaceuticals out there that do amazing things in terms of helping people along, but that's not the sum total of treatment in terms of what these people need. They need more than that. Furthermore, we've gone to a system where we basically have acute care hospitalization for the mentally ill. They get committed, they do about 30 days or so, maybe 60 days in a hospital for the, quote, unquote, "criminally insane." They come back, they spend about -- as they used to -- as they used to say, "They go into the hospital for a tune-up." They're good for 10,000 steps when then come back, but then they have to go back for another tune-up. So you get this sort of shuffling back and forth between prison and the hospital, prison and the hospital where what you've got is a prison career that's punctuated by 30-day acute care hospital stays with no real follow up within the prison setting.

Many of the mental health professionals can't identify the needs of those people. They are committed professionals, they're working hard to try to deal with the very difficult problems, but the arrangements are not there. We need to think about a multiplicity of arrangements that provide different settings that are
tailored to the needs of people, okay? And we can
identify different groups of people with different
needs and put them in that context.

For example, New York State reoriented its
mental health care for inmates by turning it over to
the Department of Mental Health. It is no longer the
responsibility of the Department of Corrections. That
made a tremendous change because now medical
professionals who deal with mental health issues for a
living are setting the treatment standards, are setting
the standards for records and for use of
pharmaceuticals and things like that. And they also
established within the prison the group of units
called Intermediate Care Units, which is sort of a
halfway house, halfway between the prison and the
hospital. These are less intensive than hospitals but

provide more support than prisons, and this has made a
big difference in terms of facilitating the adjustment
of these people.

Mentally retarded, sometimes -- they were somewhat
different and distinct group. Very often they are
victimized within prisons because they're seen as
slow and vulnerable. They can be taken advantage of,
they can be conned or they can be manipulated.
Sometimes they run into problems because they get
frustrated because they don't understand what's going
on and there's lot of pressure for them to act. But
they tend to be need more of a protective setting,
simpler, manageable settings where they can negotiate the environment in satisfactory ways.

So when we think about prisons, you know, we have to think about creating multiplicity of environments within the organization that are suited and adapted to the needs of particular groups of people, and if we start thinking that way -- and prison staff can be very instrumental in helping to think about that and how to implement that. Or we can breakdown this notion of sort of the monolithic prison -- "the prison," right -- and think about the sub-environments within that prison and trying then to create environments that facilitate people's adaptation and increase their chances of success with them.

MS. SCHLANGER: Let me at this point open up to either questions or further discussion among the commissioners as well as the panel. I have been asked, although you can -- I'm just going to ask you to choose to try to keep us focused on violence so everybody gets to do their own thing, but that's what I've been asked.

Yes --

MR. MAYNARD: I have a question for Mr. Boston relative to violence. The training issue you talked about, I was not clear if you were saying the training was a good thing or that it was not effective or -- I may have misunderstood.

MR. BOSTON: I think the training is a good thing. I think that in these discussions of use of force by staff that sometimes an overemphasis is given to
training because managers are unwilling to confront the
more politically difficult issues of holding their
staff accountable. But I absolutely think that
training both before one walks in the door of a jail to
work as an officer and repeated training, you know,
in-service training during the career is essential.

MR. MAYNARD: And I would agree with the need for
leadership in front of training to enforce that and
make sure that it's understood and carried out.

Do you think most corrections administrators move
in a direction of organization improvement based on
litigation or coercion or do you think a lot of them
want to move that direction for it being the right
thing to do?

MR. BOSTON: I think that it's a very mixed
picture, and we have seen great progress made by people
who were put in responsible positions just because they
were responsible people, and we have also seen sabotage
by people who not interested in improving the situation
with respect to staff violence.

MS. SCHLANGER: Senator Romero --

SENATOR ROMERO: Again, thank you for everybody
that's been presenting.

Let me ask, too -- this is more of an observation
and maybe it's a little bit crazier, but I don't think
violence is a secret at all. I think everybody knows
it. We're well aware of it and many are graveling to
change it. But I would also suggest that I think to
some extent violence is dependent upon as a control mechanism.

I've visited many of the yards of our prisons in California, and I would say that if I go to our level 4 yards, our more maximum yards that to some extent prison gangs play a role in maintaining the management of the prison. So even if we talk out of one side of our mouths about reducing violence, it has been my observation that violence plays a very profound role. If I lock-down, I don't have to program, and if I don't have to program -- especially at the end of the fiscal year when again two legislators are going to come to the wardens and say, "You've overspent your budget. I don't have to program; I saved money."

So I'd like to hear your observations on that.

And then also again -- also on a grading note of 12, with respect to women and sexual violence, sex also is a strategy. And in terms of looking at how inmates survive and cope and live and exchange and gain powers, sex is a very powerful tool, and I guess the question would be -- whether one condones or not -- do we need to also think about sexual strategies for living in a prison; and if we look at it in this sense, and it's hard to put it out, but I think that at least from what I've observed -- I want to go ahead and say it, how do we respond and then what recommendations might we have?

MS. MOSS: I'd like to take that.

You said a couple really important things, but I
think I want to speak to the violence, that we know about it, and sometimes I think the only surprise to me is that we're surprised because the violence is in our society. I mean, as we unpeel this onion, there are a lot of factors that we do know about.

And I had officer say to me recently, "You know, I know what's going on and I see it, but I don't know how to correct it because it's about -- in the housing unit, so that if I try to protect this guy and do something, the invisible retaliation is going to be so critical." I think we have to be real honest when we look at strategies about how we're really going to give real tools to the officers so that the part that the inmates play in keeping things in control I think that has to be really looked at very carefully.

In terms of the women, I think -- this is where I'm going to do my little thing on the Prison Rape Elimination Act. I think that the Prison Rape Elimination Act, which was signed into law in September of 2003, is going to force us to look at much more in terms of definitions and the research that we have and looking at more research. I think it is a very complicated piece, and I'll respond to the women's prisons piece, because I know, I've been involved in so many cases and situations in women's prisons, and it is a survival skill. And the women -- looking at the pathways of the women who come into our setting, to
look at the dynamics they bring, and then they feel
like I have to have sex for cigarettes, you know, or
sex to get money on my books, but -- you know, for some
of the women this is not new behavior in terms of they
don't expect any different treatment. And I don't want
to overcharacterize that, but there are many women when
you sit with them you realize that they need to know
what are the boundaries, they don't understand that.

And it's also a very important training
implication for staff. If we go with a trained staff
and talk about that there's no such thing as consensual
sex between staff and inmates, and of course there
isn't, but immediately we go into, well, what about the
false allegations and what about the women approaching
us? You know, we've got women being raped that are
approaching us.

And so I think your question really has great
implications for how we talk about it. This
Commission's concerned about violence. There is a lot
that happens. The majority of sexual activity in a
women's prison does not have the dramatic violence
component to it. But I think that we have to be honest
about the dynamics that you're talking about.

And yes, I think there will be recommendation. I
think those of us who work in the area already have

some recommendations in terms of the -- that's why the
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importance of programming for women. If they start
understanding their own victimization cycle -- I've
seen it happen, it usually takes three to five years in
a facility where the culture really shifts and where
the women start monitoring themselves, when they really
have the tools.

And the other thing is that the staff meet those
tools. Many of our staff comes from very disturbed
or -- you know, environments where they're experiencing
some of the same issues.

MR. GREEN: How well prepared are we in our
prisons and jails to deal with all of these
complexities?

Mr. Adams talked about all of the different
environments, and we've talked about issues of
violence, we've talked about issues of sex and
sexuality and how it's used. If we're expecting
leadership to play an important role in this both in
terms of people's preparedness to deal with all of the
different issues that -- to a certain extent we talked
about even being dumped on prisons such as the mental
health issues, to the preparation and the resources
that are necessary to provide that leadership, are they
there? And anybody can --

MR. ADAMS: Well, let me take a couple. You know,
there are a whole range of possible solutions and
avenues we could take. Some are expensive and some are
not. I think what John talked about, some of the
policies that he was talking about implementing, these
are not expensive things to implement.

But one thing I can tell you is that correctional professionals from wardens on down are concerned about violence. They are looking for the tools to deal with it. They have a lot of experience in terms of trying to understand it. Sometimes that experience is not fully formed or in a form that they can implement, right? But if they choose to make violence reduction a priority and put that at the top of the list, I think that some really important strides can be made, and they don't have to involve tremendous outlays of money.

For example, in New York State, at least some of the prisons that I've seen, the staff will routinely rely -- the correctional staff will routinely rely on the mental health staff to come in and try to diffuse situations and try to work through potentially violent scenarios. Now, those people are on call, anyway. They're being paid, you know, they're available. But what we have to do is talk to the officer about how do you recognize when situations escalate? How do you begin to understand when things are going to go out of control? How do you analyze your range of options that you have and then select the option that's most appropriate for the scenario?

When I talk to officers, a lot of them are not very gung-ho on the use of force because they recognize that they can get hurt in that situation. And their safety is very important to them and they would prefer
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9 to have situations in which they didn’t have to use
10 force because it’s better all around. So I think there
11 are many things that they can do, reconfiguring roles,
12 having different correction officers assigned specialty
13 roles for specialty problems within that setting,
14 giving them special training. Officers would love to
15 have a group of people that they could call on to come
16 in and help them with these problems. Similar to
17 teachers, you know, where teachers are dealing with the
18 kinds of situations in their classroom that might
19 involve violence, they would love to have people they
20 could call on to assist them, you know. So it doesn’t
21 have to be overly expensive.

MR. LUTTRELL: Kenneth, let me take issue with
23 what you said just ever so slightly, if I could.
24 I would hope that we would not get to the point
25 where we consider it specialized training on how to
26 deal with problematic inmates, but it becomes part of
27 our routine training of staff and interpersonal
28 personal communication skills that we don’t take this
29 and make it a mental health issue, we don’t make it a
30 special issue.

MR. ADAMS: Right.

MR. LUTTRELL: We make it an issue that
32 correctional officers, counselors, teachers, nurses,
33 all the thread that runs so through to all the training
34 from interpersonal communication skills to how to
35 diffuse problematic situations.

My concern is that we oftentimes say, okay, if you
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got violent inmates let's train a response team to deal
with violent inmates, or if you've got an inmate that
you can't communicate, let's bring the psychologist in
to communicate. Let's bring some commonality to our
training so we can try to get some common skills among
all of our staff that can address these issues.

MR. ADAMS: I totally agree with you, and I think
that -- well, I think that there should be some common
level of training that deals with this issue and we
should try to set that level high in order to address
the problem.

In all these situations you're going to find some
need for more specialized training. And I didn't mean
to suggest it has to be turned into a mental health
problem or bring in a psychologist. Other correction
officers can be trained in terms of skills that they
have. Not everyone is equally flexible, adaptable or
suitable for dealing with all kinds of situations. So
we can find specialty niches for officers to deal with
this. But you're right, issues of communication of how
to diffuse situations, how not to escalate them, how to
know the warning signs, so to speak, the high risk
factors for various scenarios, these are things that we
should be teaching all officers. And in fact, I think
someone mentioned not just officers, all staff because
non-custodial staff are often in positions where
they're observing inmate behavior and can make
important contributions.
MR. THOMPSON: If we look at prison violence across institutional levels, we know that the lower security level facilities have lower rates of violence. So what's different? What's different is going to your question -- is if a group of offenders have something to believe in, something to work for, they're vested in that program, okay? So what we need to do is go back at a little bit and begin to reinstitute some of these treatment and educational programs because those are the facilities will receive lower rates of prison violence.

At the same time, if we talk about high rates of violence in supermax facilities, level 5, level 4 facilities, what's different about that facility? You have violent offenders in institutions around this country, and prison managers are able to manage those facilities with low rates of violence. What's different? What's going on here?

If we looked at these maximum security facilities, and you ask an inmate, "What do you have to lose," they say "nothing." So if you have nothing to lose and you're facing 20, 30, 40 years in a maximum security facility, you're acting out this behavior. So I think if we go back and we look at the programs that are working in certain facilities, if we duplicate that it would go a long ways in helping to solve the problem. But let's not get caught up in the idea that, well, it works because it's a lower level facility and we have less violent offenders. Violent offenders, right, will
act out appropriate behavior if they have something to lose.

All offenders for the most part are coming back to society, okay? I was sentenced the first time to two terms of life in prison, okay? I'm sitting here, okay? I was a leader of the Gangster Disciples, 2, 3, 400 people under me, in the Indiana Department of Corrections.

Recently, I began to interview a lot of these people who are coming out. Most of them were going to college or involved in some type of program. So they had options. They had options. Let's use the programs we already have, add to them, come up with a way -- again, I say, create an independent office if you have want to investigate staff-on-inmate violence, empower that office.

On the other hand, let's create opportunities for offenders. Let's reinvest in the idea of rehabilitation and treatment. That's all we need to do. Not all offenders will follow through. But given an opportunity, most rational-thinking people will act out appropriate behavior.

MR. NOLAN: The Prison Rape Elimination Commission recently held our first public hearing, and the first witness was an inmate of slight stature who from the beginning of his term in prison was raped. And he made a fascinating, which frankly had never occurred to me; and that is, the inadequacy sometimes of formal
And Steve told a story of two different institutions he was in where he was being raped and sold. The first, when he went to his unit manager, he said, "I need to change cells." And the guy said, "Great. Find yourself somebody to move in with, and we'll do it." He knew what was going on and handled it.

The second one said, "Well, gee, do you have any -- have you been attacked? Is there anything you want to report?" And Steve immediately clammed up because he said he knew it would be a death sentence. So that guy condemned him to go back to his cell where he was continually beaten, raped, and sold because the guard officially wanted him to report it, and he wasn't willing to. The option was to go into protective custody, which condemns you to 23/7 custody, severely limited visits and other things, or suffer -- and alternatively, we've also had testimony of people who the guards say, "You've got a choice: Find yourself a husband or fight like a man or also tell them you'd probably enjoy it."

So the -- I guess it's -- from your experience, my question is, what are the informal mechanisms of dealing with some of this when the idea is to diffuse and get a person out of a dangerous situation as
opposed to a formal report which they probably will never do because they don’t want to suffer the consequences of being a rat.

MS. MOSS: Commissioner Nolan, I appreciate that you brought up a couple of issues. One is the staff culture and what we need to do to work with staff culture. I think it’s very much related back to Commissioner Nolan’s question about, are the tools and resources there. I think we’re talking about and addressing the violence. We’re talking about culture change within the facility, and some of that culture change has to come with really working with staff around these issues. And so that the tool is the reporting mechanism but making the tool work has to do with the staff’s will and the inmate’s belief and the credibility of that. So that having an objective process where people can report and know that that will happen, makes -- there’s some gaps there, and it’s going to take some time.

In facilities where I’ve seen that it really worked with the staff as well as the inmates around this, and have I been consistent and worked through these gaps -- I mean, we are seeing very positive results, I think, but it does take time, and we shouldn’t fool ourselves; that if staff is hurting, if their morale is in the pit because they’re having to
work doubles; they're missing the holidays with their families; they don't feel appreciated, then it just makes that even more serious. But I think having an investigative and reporting mechanism on paper does not mean that we have it in place, of course, but you have to start with having something on paper and in place, and I think that very structure is -- the investigative structure and the reporting structure is still on homework for a lot of agencies, and to make sure that the inmates know how to report and to look at what are the multiple reporting mechanisms; that they don't have to report only to their -- the officer in the housing unit, they that they can report to any staff member. And some systems have hot lines that they can report. Some systems have an outside phone contact they can call.

But I think we have to have ways and convince and build that confidence so that it can be done.

MR. NOLAN: But realize, Steve didn't want an investigation.

MS. MOSS: Right. I knew that.

MR. NOLAN: He wanted to be out of that situation.

MS. MOSS: And he wants out because he doesn't -- he can't have the confidence that he won't be hurt.

MR. NOLAN: Right.

MS. MOSS: Which is my point, is that we have -- that's a hard challenge, but that's the
challenge we have to take on is how you shift that and make that difference. And it's a difficult thing, but I believe -- I often tell people this is like -- if you think about drinking and driving, do people still drink and drive? Absolutely. Is there a different attitude about it? Absolutely.

And this is complicated, and I think we have to understand -- and it's often saying staff sexual misconduct -- it's a marathon, it's not a sprint. And we can be overwhelmed by all these issues, but I do think that there's some starting points that we can move forward on.

MR. GILLIGAN: I'd like to ask Mr. Thompkins a question, which I feel you partially answered already.

I wanted to raise the question of gang violence and what can be done about it? I feel one of the standard mechanisms, as I understand it, is try to separate people from -- who belong to different gangs so they're not under the same section of the prison or even in the same prison. And you've mentioned some ways of diminishing the level of violence.

I'm wondering what your thoughts are. How should we be dealing with the issues of rival gang members in the same prison?

MR. THOMPKINS: I don't think there's anything that we can do to eliminate the presence of gangs because we're log up gang members. I don't think that there's much we can do to eliminate totally gang
violence.

The first lines of defense, so to speak -- gangs monitor each other, okay? In a facility where you have two or three gangs, right, if both gang members are controlling the members, they're controlling each other as well, okay? How do we manage that? When I went from a maximum security facility, was transferred to a minimal security facility, I was surrounded by gang members. But again, they were vested in the program. They were able to take college classes, et cetera, et cetera, et cetera. And understanding they had this opportunity, they took advantage of it.

Now, if we look at the supermax facility, again, what do they have to lose, okay? And within these facilities, the guards are a gang, okay? The gang members coming into the facility, as someone said earlier today, they're sitting in a cell 23 hours a day, they're still able to communicate with the outside community.

I was asked to do something in LA for a radio station that was concerned with how it was the gang members in supermax facilities are still able to communicate with the outside world, and as they put it, continue their criminal enterprise. Well, it's only possible if you have a supportive staff, okay? We need to think about -- for example, I understand California was segregating offenders now by race. Some facilities were putting African-Americans together.
Well, come on. Just because we're African-American doesn't mean we all agree, okay? So you're putting people within these facilities who are members of rival groups. So that in itself is going to breed. Because, look, we're talking about competition for scarce resources. The prison community shares many similarities with outside intercity poor communities. Don't get away from that, don't ignore it.

So putting gang members of one race within a facility, that's not going to solve the problem, it's going to create it, okay?

I think that what we need to do is recognize that we have gangs in prisons and we hold them accountable, okay?

David Kennedy, who is now at John Jay, helped develop a process whereby persons in the community were being held accountable. Help hold members and gang leaders accountable for their actions, okay? Make them responsible, because you're not going to eliminate the gangs. They're not going anywhere because that's who we're locking up. So let's recognize they're there and create a process where we make them accountable and use them to police each other. Use the leadership. I'm not saying that you sanction the gang or I'm not saying that you promote gang activity. I'm saying, let's be honest. Gang members are in prison. We need to make them accountable, and in doing that, some would say, well, you're empowering them. Maybe we are. Maybe we are, but let's make them accountable, and
let's think about the strategies we're using such as putting African-Americans in one facility, white offenders in another facility, Hispanic, Latino in another. That's not the solution. That's not the solution.

I hope I answered your question to a degree.

MS. SCHLANGER: I see that it's one o'clock. And I have a feeling that the chairs of this Commission would like us to absorb the ten minutes extra from here rather than go late. So I think that we'll call it an end to this panel.

Let me one more time thank the panelists for coming. I know I learned a lot from this session.

MR. KATZENBACH: Just a few words in closing, and I'm sure John has something to say also.

It was less than two months ago that we announced the formation of the Commission on Safety and Abuse in America's Prisons. We were then and are now 21 people with 21 different experiences; 21 people with diverse views on what the problems are in our jails and prisons; 21 people who never even had a conversation about it. The past two days have been full of personal stories, professional accounts, lessons learned, opinions about what should be done. We have spoken with witnesses. We've spoken with each other. It's been an engaging, interesting, educational time talking and listening about our jails and prisons.

So as we conclude the first of the four hearings,
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the Commission will hold across the country over the
course of the next year, I think we leave as a group
who is whole and I believe will be and will become
stronger than the sum of its parts.

On behalf of the Commission all of you, I want to
thank all the witnesses who have traveled from near and
far to participate in the hearing. I want to thank all

the welcome we've had from the people of Tampa, and I
especially want to thank the staff who has worked so
hard and so long to make it all look so easy.

Thanks.

MR. GIBBONS: Well, I certainly agree with Nick
that we've learned a great deal over the course of the
past two days. Some of that testimony was extremely
troublesome to me, although not surprising. But there
were also hopeful moments in which we heard the men and
women who were working so hard to improve our jails and
prisons, and that wasn't surprising either. I have
renewed confidence that this Commission on Safety and
Abuse in Prisons has the potential to make a difference
in the lives of inmates, correction officers and their
families, and in society at large.

As I listened to the concerns of those and the
stories of those who work in our corrections world and
of those who have served time in our jails and prisons,
I'm certain that as this Commission develops our
findings and recommendations, those findings and
recommendations will lead to constructive change
because of the skill, the strength, the commitment and

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the openness to constructive suggestion of those
men and women who work in corrections and who
really want to do the right thing.

One theme in particular that the Commission will
be returning to in the future is the need for more
transparency in the operation of our jails and prisons.
Transparency will provide much of the data concerning
safety and abuse that is sorely missing. It will allow
the public and policymakers to move beyond the
anecdotes of violence and the broad generalizations
about inmates and corrections officers and to really
understand in a concrete way what goes on behind the
walls and behind the bars.

We look forward to our next meeting in New Jersey
in July when the Commission on Safety and Abuse in
American Prisons will look at some of the significant
factors that influence the conditions of safety and
abuse in our jails and prisons like overcrowding, poor
medical care, and medical health treatment, and the
excessive use of isolation and the privatization of
certain correctional facilities.

Thank all of you for joining us this week in
Tampa, Florida. We've only begun this important work
and we look forward to working with both the members of
the Commission and our future witnesses in
concluding what we hope will be a valuable report.

We're adjourned.

(The hearing was concluded at 1:19 p.m.)
REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

I, PAMELA J. WALKER, Certified Shorthand Reporter (CA), certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 4th day of May, 2005.

PAMELA J. WALKER, CSR